Impact of the Vetting & Barring Scheme

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Safeguarding Vulnerable Groups Act 2006
Key changes

• Scope of safeguarding extended - people included on the new barred lists by the ISA will be barred from a much wider range of jobs/activities than before. **For the NHS, this includes areas of work with vulnerable adults for the first time**

• Existing List 99, PoCA and PoVA lists, and Disqualification Orders will no longer exist - replaced by two new separate but aligned lists: one for barred from working with children and one for barred from working with vulnerable adults

• Management of the Lists and all barring decisions will be the responsibility of the Independent Safeguarding Authority (the ISA) replacing all existing arrangements with the DH and DCSF

• PoVA First service and provisional listing will stop

• Information sharing will be enshrined in law. New legal duties place on employers to refer to the ISA when certain conditions are met – such as vulnerable adults or children placed at risk or harm

• The scheme will be gradually phased in over a five year period based on risk factors. All staff are expected to be registered onto the scheme by 25 July 2015.

• New criminal offences will be introduced
Vetting and Barring Scheme
Benefits

• Two separate but aligned lists, one for working with children, one for working with adults

• Management of the Lists, referrals, and barring decisions are made by one government body (the Independent Safeguarding Authority)

• Continuous monitoring - once an individual is registered with the ISA, their registration is transferable from one employer to another – no need to re-register for as long as they continue to be employed in regulated activity and do not voluntarily de-register

• Once registered, employers can check on-line, free of charge and the result is instantaneous – no need to wait for written confirmation of their ISA registration status

• Allows risk based decision as to whether to appoint them prior to receipt of the full CRB disclosure – patient safety is paramount and appropriate safeguards must be put in place until receipt of the disclosure

• Where no information is held on the individual, their ISA registration will take up to 7 working days – this, however, may be longer where information has to be considered by the ISA
The new scheme will not:

- replace the need for CRB checks where there is an existing mandated requirement for employers to carry out a check, nor will it remove the risk based assessment used currently when considering a pre-disclosed CRB disclosure or appointing individuals prior to receipt of disclosure information.

- relax the requirement to carry out existing pre-employment checks as outlined in the NHS Employment Check Standards such as checking identity, verifying professional registration and seeking references.

- make any changes to an employers’ duty to refer, or the way in which they need to refer.

- make any distinction between permanent, temporary, contracted, or overseas staff, trainees/students, or staff who are appointed as unpaid volunteers – all will need to be registered with the scheme if they want to work in regulated activity.
Vetting and Barring Scheme
Which organisations need to comply?

If you are responsible for managing people volunteering or employ people in regulated activity (as defined by the Safeguarding Vulnerable Groups Act (2006)) then you will need to ensure those individuals are registered with the Independent Safeguarding Authority before you appoint them.

This includes *any* organisation involved in providing any form of health or social care treatment or therapy to a child or vulnerable adult. Includes: contractors, sub-contractors, agencies, transport, charities, volunteering organisations.

Self employed individuals may join the scheme but are not legally required to do so.
Vetting and Barring Scheme
What is regulated activity?

- Any activity which involves contact with children or vulnerable adults and is of a specified nature (e.g. teaching, training, care, supervision, advice, treatment or transport) … frequently, intensively and/or overnight

- Any activity allowing contact with children or vulnerable adults and is in a specified place (schools, children’s homes, childcare premises, children’s hospitals, children’s detention centres, adult care homes, further education institutions where children and/or vulnerable adults study) … frequently or intensively

- **Fostering** and childcare

- Certain defined “office holders” (e.g. LA Director of Children’s Services, trustees of children’s charities, school governor)

Makes no distinction between paid and unpaid voluntary work

In a specified place, even if you are not carrying out specified activity like treatment or care, you are engaged in regulated activity if you are carrying out work which gives you the opportunity of contact with vulnerable groups. This may include catering, cleaning, administrative and maintenance workers or contractors. Activity which involves on a regular basis the day to day management or supervision of a person carrying out the activities above is also covered.
Vetting and Barring Scheme

What is controlled activity?

Tightly defined - includes:

- Ancillary support workers in NHS and Further Education settings (e.g. cleaner, caretaker, catering staff, receptionist) with frequent or intensive contact with children or vulnerable adults
- Those working for specified organisations (defined by the SVG Act) with frequent access to sensitive records about children

A barred person may be employed in controlled activity, providing tough safeguards have been put in place e.g. supervision, restriction on access to certain areas of the building. It will be illegal for an employer to appoint a barred person in a controlled activity if appropriate safeguards are not put in place to manage that individual.

Individuals working/volunteering in a controlled activity may register onto the Scheme between 1 Jan 2014 and 25 July 2015.
A person who is aged 18 or older and:

- Is living in residential accommodation, such as a care home or a residential special school;
- Is living in sheltered housing;
- Is receiving domiciliary care in his/her own home;
- Is receiving any form of healthcare;
- Is detained in prison, remand centre, youth offending institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;
- Is in contact with probation services;
- Is receiving a welfare service of a description to be prescribed in regulations
- Is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care (age related needs includes needs associated with frailty, illnes, disability or mental capacity);
- Is receiving direct payments from a local authority/HSS body in lieu of social care services;
- Requires assistance in the conduct of his/her own affairs
What is the definition of a child?

A person who has not attained the age of 18, regardless of the setting they are in or the services they receive with the exception of 16 and 17 year olds at work.
Vetting and Barring Scheme
Five year phasing in programme

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<tr>
<th>Phase 1</th>
<th>2 stages</th>
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<td>Scheme does not remove the requirement for an enhanced CRB check where there is an existing mandated requirement to obtain one</td>
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<th>Phase 2</th>
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<td>Between 1 Feb 2011 and 25 July 2015, employers may start to invite existing staff working within regulated activity who are not changing jobs but who have had a CRB check three or more years ago. Application for a fresh enhanced CRB check may be required – employers should make appropriate risk based assessment. If the individual only previously needed a standard level disclosure, a new enhanced disclosure must be carried out.</td>
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<td>[Start date not yet confirmed but must be registered onto the Scheme by 25 July 2015] Employers may start to invite existing staff who are working within regulated activity, who are not changing jobs but who have had a CRB check three or more years ago. Application for a fresh enhanced CRB check may be required – employers should make appropriate risk based assessment. If the individual only previously needed a standard level disclosure, a new enhanced disclosure must be carried out.</td>
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<td>Registration with the ISA will become a mandated requirement. Criminal offences and penalties for individuals and employers will be enforced for those phased in groups.</td>
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<th>Phase 5</th>
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<td>On 26 July 2010 registration with the Scheme commences. New recruits and staff changing jobs within regulated activity where they are working frequently, intensively or overnight with children and/or vulnerable adults. Where there is a mandated requirement for you to carry out a CRB check, this requirement remains – all applicants working or volunteering with these vulnerable groups will require an enhanced disclosure. CRB will issue all registered bodies with new forms 6 months before 26 July with training tools and guidance. Same form to be used for either application for ISA registration or CRB check or both. New forms must not be used any earlier than 4 weeks prior to 26 July.</td>
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New definition of regulated activity. Two new ISA barred (replaces PoCA, PoVA, List 99, Disqualification Orders) individuals transferred to the new barred lists will be barred from a far wider range of jobs/activities (will affect those working with vulnerable adults for the first time in the NHS). Where eligible for a check, new recruits and staff changing jobs working/volunteering in regulated activity on or after 12 October 2009 must have an enhanced CRB check (application should continue to be made using existing CRB disclosure application forms). Information sharing enshrined in law – new duty on employers to refer. It will be an offence for any employer to knowingly appoint anyone into regulated activity if they are barred or for a barred individual to apply to work/engage in regulated activity.
Vetting and Barring Scheme
Changes from October 2009

• Safeguarding extended – the criterion for enhanced checks will include all individuals working in regulated activity frequently, intensively or overnight. Employers should continue to apply for CRB checks on the current CRB disclosure application form.

• People included on the new ISA barred lists will be barred from a far wider range of jobs/activities than before – for the NHS the scope of the scheme will also cover positions working or volunteering with vulnerable adults for the first time.

• Where the employer is eligible to make a check against the new barred lists, and they have indicated that the individual will be working with children and/or vulnerable adults on the CRB disclosure application form, the disclosure will include any relevant information relating to any barring.
Vetting and Barring Scheme
Changes from October 2009

- There will be a special interim arrangement in place between October and when the scheme goes live in July 2010 to allow employers to make a check against information held on the new lists prior to receipt of the full disclosure – this arrangement will stop once the ability to register onto the scheme commences from 26 July 2010

- New legal duties on employers enforced to share information - if someone you employ or are responsible for is dismissed for misconduct concerning children or vulnerable adults, you are legally obliged to refer information to the ISA

- It will be illegal for any employer to knowingly allow a barred person to engage in regulated activity if they are barred from working with that vulnerable group. It will also be illegal from this date for a barred individual to apply for or engage in regulated activity.
Vetting and Barring Scheme
Changes from July 2010

- All staff newly appointed (paid or unpaid) and staff changing jobs within regulated activity will be able to register onto the scheme through a registered or umbrella body, and their registration status will become continuously monitored.

- One form to complete to make applications onto the Scheme and/or request a CRB disclosure. The CRB will issue all registered bodies with new forms (6 months prior to the July go live date) with supporting guidance notes.

- Once registered, the individual will be given a unique VBS ID number which they can disclose to any prospective employer to allow them to carry out an on-line check on their ISA registration status.

- Employers checking this information on-line may register an interest in that individual and will receive notification if their ISA registration status changes.
Two barring routes:

**Auto bar – without representation**

- involves the most serious of offences e.g. of a sexual or violent nature or involves drug abuse/peddling

**Auto bar – with representation**

- allows individual to provide evidence that they no longer pose a risk to that vulnerable group and should be removed from the list. Barring decisions are made against the basis of fact or the balance of probability that they pose a risk of harm or potential risk of harm in the future. The decision is reviewed in 5 stages involving:
  - initial assessment
  - evidence evaluation
  - case assessment
  - representations
  - barring decision – remove from/or remain on the barred list
Individuals can not appeal against the ISA’s decision to bar them unless the ISA has made an error in fact or in law e.g. mistaken identity, however, they may in certain circumstances, appeal to have their name removed from a barred list.

To appeal, the individual must seek permission from the Tribunal and will be given the opportunity to provide representations giving evidence to the ISA that they no longer pose a risk of harm or potential risk of harm in the future to that vulnerable group and should therefore be removed from the barred list(s).
Vetting and Barring Scheme

Penalties for employers

- From **1 November 2010**, any employer found guilty of appointing someone into regulated activity without ensuring they are registered onto the scheme before they take up the position are liable, on conviction by a Magistrate’s Court to a fine of up to £5,000, the level of which will be defined by the Court.

These penalties/offences only apply to the relevant phased in groups, in the first phase the offence will only include newly appointed staff and existing staff who are changing jobs within regulated activity from 1 November 2010.

- It will be a more serious criminal offence for any employer to knowingly allow a barred person to engage in regulated activity if they are barred from working with that vulnerable group. This offence will not phased in and will be enforced immediately from **12 October, 2009**. Employers will be liable, on conviction by a Crown Court to up to 5 years imprisonment and/or a fine, the level of which will be determined by the Court.

*Full details are to be confirmed within Home Office guidance and may be subject to change*
Vetting and Barring Scheme
Penalties for individuals

- A person found guilty of engaging in regulated activity without being registered with the ISA is liable, on conviction in a Magistrate’s Court, to a fine of up to £5,000.

This offence will come into force from 1 November 2010 and will only initially apply to new recruits and staff changing jobs but will be extended to all staff engaging in regulated activity from 1 November 2015 when all existing should be registered onto the Scheme.

- Engaging in regulated activity whilst barred is a more serious offence and will not be phased in, this will apply immediately from 12 October 2009.

A person guilty of this offence will be liable on conviction in a Crown Court to up to 5 years imprisonment or a fine at a level defined by the Court, or both.

*Full details are to be confirmed within Home Office guidance and may be subject to change*
and finally

Further information and supporting FAQs can be found at:

www.nhsemployers.org/RecruitmentAndRetention/Employment-checks.cfm

AND

www.isa.gov.org

Email queries to: scheme.info@homeoffice.gsi.gov.uk

Thank you