



## Briefing

Employment, Pensions and Benefits – June 2010

### Plans to re-model the Vetting and Barring Scheme

**Just weeks before voluntary registration with the Independent Safeguarding Authority (ISA) was due to commence, the Home Office has announced plans to re-scope and fundamentally re-model the Vetting and Barring Scheme in line with what is promised to be a more proportionate, common sense approach.**

A review of the scope of the Vetting and Barring Scheme was first promised in September 2009 following publication of Sir Roger Singleton's Report, **Drawing the Line**, amidst fears that the original Scheme, involving as it does a requirement for ISA registration by all employees and volunteers engaged in 'regulated activity' [1] under the Act.

Following the May election, the coalition Government announced its intention to review the Scheme's scope with a view to scaling it back to 'common sense levels'. The Home Office's June announcement has the effect of underlining previously expressed concerns and calls into question the ultimate coverage of the Scheme, which was launched in October 2009 (see our Autumn 2009 EPB newsletter).

Existing arrangements, which came into effect on 12 October 2009 are unaffected by the announcement.

This means that despite the announcement;

- It is a criminal offence for a barred person to take part in a 'regulated activity'.
- Employers, local authorities, professional regulators and inspection bodies continue to have a duty to refer to ISA any information about individuals working with children and vulnerable adults who are considered to have caused harm or pose a risk of harm.

- The ISA will continue to maintain two constantly updated lists of those barred from work with vulnerable adults and those barred from working with children. Relevant applications for enhanced disclosure certificates will include checks against these lists.

#### Voluntary Registration

Under the Scheme individuals taking up positions involving regulated activity were eligible to apply for voluntary ISA registration from July 2010. The Home Office announcement includes an announcement that this registration process is now halted pending the outcome of the proposed review of the Scheme.

#### The future

A number of key aspects of the Scheme are set to come into effect in November 2010 including compulsory registration for new recruits engaging in regulated activity. Registration of existing staff is to begin on a phased basis from April 2011. From November 2010 it will be an offence to fail to check for ISA registration when appointing staff to relevant positions.

There is therefore a clear need for the proposed review of the Scheme to be carried out promptly to avoid uncertainty and confusion on the part of employers and staff. In view of the criminal sanctions that flow from breach of certain of the Scheme's obligations it is essential that any review should result in clear recommendations and that changes to the Scheme should have the effect of simplifying rather than complicating the regime.

From a technical point of view, however, unpicking parts of the Scheme may prove challenging as some of the key definitions and obligations are set out in the Safeguarding Vulnerable Groups Act itself while other obligations are set out in Regulations made under the Act. There is also the challenge of revising ISA guidelines in line with new arrangements and, in the meantime, ensuring that employers and staff are not misled about the scope of their obligations under the Scheme.

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[1] Regulated activity covers anyone working closely with children or vulnerable adults on a frequent (once a week or more or, in health and personal care services, once a month or more), intensive (four days in one month or more) or overnight basis. Regulated activity is the term used in the Act to cover activities where people are working or volunteering with children or vulnerable adults and can include, but is not limited to, teaching, training, instruction, supervision and treatment. In addition, an activity is regulated if it is carried out at prescribed establishments including schools, children's homes and care homes.

### More information

If you would like further information, or would like to discuss the potential impact of these decisions on your organisation, please call Heledd Lloyd-Jones, or your regular Morgan Cole contact.



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