

Care Homes Briefing

Number 64

Safeguarding Vulnerable Groups Act 2006

In November 2006, the Safeguarding Vulnerable Groups Act (the Act) received Royal Assent, although it is not yet in force. The Act provides the framework for the new Independent Safeguarding Authority (ISA) scheme to provide protection for children and vulnerable adults. These proposals have recently been published for consultation, jointly, by the Department for Children, Schools and Families, the Home Office and the Department of Health. It is proposed that the scheme will be phased in from Autumn 2008.

The New ISA Scheme

The Act introduces a new scheme regulating those who work or volunteer or apply to work or volunteer, with children or vulnerable adults in England and Wales¹. It will see the development of two lists of barred individuals. The first will list those individuals barred from working with children and will replace the Protection of Children Act (POCA) list and 'List 99'. The second list will detail those individuals barred from working with vulnerable adults and will replace the Protection of Vulnerable Adults (POVA) list.

When fully implemented, all individuals who work, whether they are paid or not, with children or vulnerable adults must apply to join the scheme. Their application will be considered by a new organisation, the ISA, which will bar any unsuitable candidates and add them to one or

other or both of the new lists. Individuals may also be barred automatically on conviction for certain offences.

When an individual is barred, either by the ISA or automatically, they will be prohibited from working or volunteering in 'Regulated Activities' as defined in the Act and will only be able to work or volunteer in 'Controlled Activities', also as defined, unless adequate safeguards have been put in place.

Definition of Vulnerable Adult

An adult will only be classed as vulnerable where they are in one of the wide range of settings or receiving one of the services set out in the Act. A detailed list is contained within the Act and it includes any individual living in residential accommodation such as a care home.

Regulated Activity

The Act provides a detailed and wide-ranging list of activities that are to be considered regulated activities. The definition includes any activity carried out in a care home which is exclusively or mainly for vulnerable adults or an activity within a care home which allows the individual the opportunity for contact with vulnerable adults, subject to the requirement for frequency or intensity considered below. The Act also specifies that any individual involved in the day to day management or supervision of a person carrying out a regulated activity in a care home is themselves carrying out a regulated activity.

¹ Replicated in Northern Ireland by the Safeguarding Vulnerable Groups (NI) Order 2007

In order to carry out a regulated activity for the purposes of the Act an individual must engage in the defined activities frequently or intensively. It seems that frequently will mean once a month or more, and intensively will mean activity which happens at any time on more than two days in a 30 day period or overnight.

When the new scheme is operational anybody wishing to engage in regulated activity with children or vulnerable adults must be ISA registered. Regulated Activity Providers (RAPs) will be required to carry out a check of registration status where an individual is used frequently for regulated activity or applies to be used frequently for regulated activity. A RAP is an organisation or individual that directly allows other individuals to engage in regulated or controlled activities. It will include care homes. They will generally be employers or managers of volunteers. It is envisaged that an online registration checking facility will be made available once the scheme has been rolled out.

Controlled Activity

The Act creates a separate category of "Controlled Activity". Controlled activity is activity which is ancillary to regulated activity. It only applies where there is the opportunity for contact with children or vulnerable adults or alternatively for access to records about children or vulnerable adults or other prescribed information. Like regulated activity, for an activity to be "controlled" it must be carried out frequently or intensively. It also includes the day to day management or supervision of staff carrying out controlled activity. Individuals who are barred from carrying out regulated

activity may still carry out controlled activity but only where appropriate safeguards are put in place by the employer.

Offences

It will be an offence if an individual or organisation permits any individual to engage in a regulated activity from which he is barred or if an individual or organisation employs an individual in a regulated or controlled activity who is not registered with the ISA. An individual carrying out a regulated activity when barred from doing so or when not ISA registered will commit an offence, as will an individual carrying out a controlled activity, unless appropriate safeguards are in place in the case of barred individuals.

It will be important for care homes to ensure that their procedures to check staff registration are effective as it will also be an offence if the regulated activity provider fails to ascertain whether an individual is properly registered.

There will be duty on RAPs to refer individuals to the ISA where an individual has caused harm or a risk of harm to a vulnerable adult or where a RAP withdraws permission for an individual to work in regulated or controlled activity.

The proposed working of the ISA scheme, as set out in this briefing note, is still at the consultation stage but the legislation is now in place and expected to come into force next year, although its application to existing workers is likely to be phased in over a period.

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