

Vetting and Barring Scheme and Independent Safeguarding Authority

Royal College of Nursing briefing

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Introduction

The Safeguarding Vulnerable Adults Act (2006) is the government legislation which defines the scope of the Vetting and Barring Scheme including registration with the Independent Safeguarding Authority (ISA).

The Vetting and Barring Scheme is the new public body charged with setting up a register of those who are considered to be fit to work with children and vulnerable adults in England, Wales and Northern Ireland (a separate but aligned scheme is being set up in Scotland). The ISA has replaced schemes such as the Protection of Children Act (PoCA), the Protection of Vulnerable Adults (PoVA) and List 99. It is intended that the ISA will be a database of all individuals who work with children and vulnerable adults.

The creation of the ISA is part of the biggest overhaul of vetting and barring arrangements ever undertaken in the UK, and will eventually cover almost 10 million people. The ISA scheme has a much wider remit than the provisions which preceded it, affecting more workers and professions than before. In fact, when fully rolled out in 2015, the ISA will be the biggest scheme of its kind in the world. All nurses, midwives, nursing students and health care assistants working in a regulated environment will be required by law to register. If they are not on the register they will not be able to work with children and vulnerable adults. Vulnerable adults include all adults that receive any form of health care or treatment.

Concerns

The RCN supports the principle of safe and effective public protection.

However, the RCN has three main concerns surrounding the implementation and proposed practices of the scheme, they are:

- **right to a fair hearing** – currently any representations made can only be paper based and appeals can only be made on a point of fact or law. The RCN believes this to be in breach of the European Convention of Human Rights
- **duplication of registration** – the RCN is concerned that there is a lack of clarity surrounding how the ISA will work alongside professional regulators, such as the Nursing and Midwifery Council (NMC). We believe that the ISA should not be adjudicating on matters of professional competence, which should be left to the expertise of the professional regulators
- **cost** – the RCN does not believe that responsibility should lie with the individual to pay for registration.

Why has it been set up?

The ISA has been set up in light of the findings of the Bichard Inquiry which was set up by the government after the Soham murders in 2002. The inquiry recommended the registration with one organisation, of all individuals working with children or vulnerable adults. Recommendation 19 of the Bichard Report states:

“New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these client groups.”

Who needs to be registered with the ISA?

All individuals whose work brings them into regular contact with children or vulnerable adults such as the elderly and those in care will be required by law to be registered with the ISA. There will be a legal requirement on employers to ensure that their staff members are registered and they will also be obliged to pass on any relevant information which they may hold on their staff to the ISA.

Recent public concerns surrounding the ISA have been primarily concerned with the parameters set by the ISA in specifying who will need to be registered and vetted by the scheme. These concerns prompted Secretary of State Ed Balls MP to commission Sir Roger Singleton, Chairman of the ISA, to review what was meant by the definitions of ‘frequent’ and ‘intensive’ contact with vulnerable groups which would result in an individual being required to register with the ISA. Sir Roger has now reported back and his recommendations to relax legislation around these areas have been accepted. Whilst we welcome this move by the government, it has no impact on those working in the NHS or other health care environments as employees work with or near to children and or vulnerable adults on a daily basis.

Launch date

New applicants for jobs with vulnerable adults or children and those switching employers will be required to be ISA registered from November 2010.

Since 12 October 2009, individuals who are considered unsuitable to work with vulnerable groups are barred from a much wider range of workplaces and volunteer settings than under the previous schemes – including all NHS settings and HM Prison Service.

Implementation

ISA registration will be rolled out across all sectors in four stages over a period of five years.

- The first wave being all new entrants/applicants for relevant positions will be legally required to be registered with the ISA by November 2010.
- The second wave will be individuals moving to a different post within the same organisation.
- The third group affected will be those currently within an organisation but have had no prior checks carried out on them.
- The final wave will be individuals who have previously had enhanced checks but not ISA checks or transferable safeguarding checks.

By 2015 all workers or volunteers with children or vulnerable adults will have to be on the ISA register.

ISA decision making powers

The ISA will make all decisions about who should be barred from working with children and vulnerable adults. Previously this decision making power was held by the Secretary of State.

Conviction for some offences will automatically result in the individual being barred without leave to appeal or to make mitigating representations, for example, sexual assault. This is known as an ‘autobar without representations’. This list covers convictions for the most serious offences against children and vulnerable adults; it indicates that an individual poses a risk of harm to children or vulnerable adults in every conceivable case.

Some convictions for other serious offences will result in the individual being barred but being given an opportunity for written representations. This barred list is known as ‘autobar with representations’. For example, shop lifting or even offences as serious as GBH. However, the ISA will not remove a bar unless it is satisfied that the individual case does not pose a risk of harm to children or vulnerable adults. Representations can only be made in writing and must be made within eight weeks of the

individual receiving notice from the ISA that they have been minded to place the individual on a barred list.

An individual must be referred to ISA if an employee has engaged in conduct which endangers a vulnerable adult or is likely to endanger an adult if repeated. Information can be relayed to ISA from interested parties such as employers, regulatory bodies or even concerned members of the public. There is also scope for so called 'soft information' to be taken into account. 'Soft information' could be any information which suggests that a person may pose a risk to vulnerable adults and children; for example, information from colleagues or patients relating to previous disciplinary matters whether the individual has been found guilty or not or if there are aspects of a person's personal life which may be suggestive that the individual is unsuitable.

Individuals listed on one of the ISA barred lists may have the right to appeal to an independent tribunal but only on a point of fact or law and not on the appropriateness of ISA's decision.

There is no process for an individual to automatically return to the register. If an individual has been barred they will remain barred. However, dependent upon how long it has been since the barring took place the individual may be allowed to seek a review of their position. The timescales are:

- After one year if barred at under age 18
- After five years if barred aged 18-24
- After 10 years if barred aged over 24.

The cost of registration

The overall cost for registering will be £64 per person (£58 in Northern Ireland); this is designed to be a one-off fee which is transferable between employers. Volunteers will not have to pay a fee but will still be required to register with the ISA. We are also concerned and disappointed that the £64 fee is more than three times that of the £20 fee originally estimated in the government consultation document.

The first part of the fee, which has been set at £28, will cover the following costs:

- administering the registration process with the ISA
- the instant online registration checking system
- volunteers registering with the scheme
- continuous monitoring and updating whilst registered with the scheme.

The remaining £36 will cover the Criminal Records Bureau's costs as administrators of the applications. The ISA will work in conjunction with the Criminal Records Bureau (CRB) to deliver the new system. The CRB will provide the administrative arm, supporting the ISA's primary function of making barring decisions. The CRB will perform an enhanced check upon individuals seeking registration, if this highlights any relevant concerns they will be flagged up to the ISA for potential barring.

The RCN has attempted to gain concession that the individual will not have to foot the bill for registering with the ISA. Currently it is the responsibility of the employer to carry out the CRB process. In the NHS the individual employer has also funded the cost of such applications. We now understand that this will no longer be the case.

This has been further emphasised in a letter from NHS Employers to NHS Human Resource Directors stating that it is not the responsibility of NHS Employers to pay individuals' fees, they will only go as far as stating that the decision will lie at a local level. The RCN believes that this is unacceptable, particularly in light of the increased strain upon lower earning staff due to the current financial climate.

RCN Concerns

The RCN has been involved in extensive lobbying of the Home Office, Department of Health, Department for Children, Schools and Families, NMC, Council for Healthcare Regulatory Excellence (CHRE) and of the ISA itself since the summer of 2008. We have been working together with other trade unions to form a set of joint objections to the scheme and these have formed the basis of our

lobbying position. Whilst welcoming the need for improved safeguards for children and vulnerable adults the RCN has significant concerns around several areas of the ISA's proposed implementation.

Right to a fair hearing

The RCN has fought in the past to ensure that barring schemes are compatible with Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) of the European Convention of Human Rights.

The RCN is concerned that whereas every other health care regulator hears cases in public, the ISA will apparently not conform with this practice. This seems at odds with other government requirements which seek patient and public engagement, openness, transparency and adherence to human rights legislation.

The RCN calls for the ISA to carefully consider the implications of the Convention and past cases and to amend its barring decision making process accordingly.

Duplication of registration

The RCN has concerns how the ISA will work along side the Nursing and Midwifery Council (NMC) and other regulators, as these arrangements are not yet clear. The main duty of the NMC is to protect the public. There should be no duplication of regulatory mechanisms leading to over-regulation.

The RCN is concerned that ISA will adjudicate on cases which fall more appropriately within the expertise of the individual health care regulators. Furthermore, the relationship between ISA and organisations like the NMC has not been clarified sufficiently and that guidance issued by ISA does not assist. The RCN is planning further work to address these concerns.

Cost

Registered nurses are already regulated through their registration with the NMC. NMC registration costs £76 per year. Adding the ISA registration fee of £64 to the costs of an already strongly regulated group of workers is unfair and adds to the financial burden our members are facing in the current economic environment.

The RCN believes that individuals should not have to pay twice for public protection. All set up and running costs associated with the ISA should be met by employers and/or governments. We believe that the £64 registration fee, if to be paid for by the individual, will disproportionately affect those in low paid work and those working part-time.

As stated earlier NHS Employers are expecting to foot the bill and it will be down to the individuals to pay the cost themselves.