

Care Law: Safeguarding Vulnerable Adults

The Safeguarding Vulnerable Groups Act 2008 (“**Act**”) has paved the way for the new Independent Safeguarding Authority (“**ISA**”) scheme. The new scheme was introduced during the Autumn of 2008 and continues to be rolled out. The new Act has defined the scope and implementation principles of the ISA and provides that certain activities in relation to vulnerable groups are regulated. A fundamental change following the full implementation of the ISA will be the replacement of the **POVA list**. An additional benefit to the Act will be to enable local authorities in their safeguarding role to refer individuals to the ISA. The current downfall to the POVA system is that only employers who are regulated could refer employees to the POVA list. Seen as a major improvement to the existing protection principles, the ISA will be actively able to make decisions about who should be barred from working with vulnerable groups and within the industry itself.



By way of replacement of the POVA list, the Act introduces the **ISA Barred List**. It is anticipated that the new ISA Barred List will deal with activities that are classified as ‘**regulated or controlled**’. Individuals will be prohibited from working with vulnerable groups either **automatically** – if they are convicted or cautioned for certain offences – or following a decision by the ISA taking into account other offences, cautions together with any other relevant information. Barring decisions by the ISA will be subject to appeal to the **Care Standards Tribunal** on points of law or on findings of fact.

The main issues that need to be identified relate to “regulated or controlled” activity and clarification is required. The Act provides that a **regulated activity** is an activity of a specified nature that **involves** contact with vulnerable adults **frequently, intensively and/or overnight**. Anyone providing a regulated activity must be registered with the ISA. For an activity to be considered as regulated activity, alongside the satisfaction of criteria relating to the activity and/or establishment where it takes place, such activity must be carried out by the same person frequently or satisfy the ‘period condition’ ie intensively.

Without the frequency test any person engaging in the activities defined as regulated, regardless of how often they carried these out, would be engaged in regulated activity. Guidance has been given as to the meaning of “frequently” meaning once a month or more often



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No. 28

Intensively has been defined in the Act as an activity which happens at any time on more than two days in a 30 day period, or overnight (the latter meaning that the activity occurs at any time between 2 am and 6 am).

A controlled activity is frequent or intensive support within general health settings, the NHS and further education. It includes individuals working for specified organisations e.g. a local authority who have frequent access to sensitive records about vulnerable groups. So what are the consequences of the Act:

Adult Protection Teams in local authorities have a **legal obligation** to refer relevant information to the ISA; Employers and service providers of regulated and controlled activity have a similar legal obligation to that of a local authority.

When must information be referred to ISA?

Local authorities (in their social services capacity), professional bodies and supervisory authorities must refer where:

an individual who is working closely with vulnerable groups has harmed, or may harm a vulnerable adult; or they think that that the ISA may consider it appropriate to bar the individual.

If new information comes to light, leading the ISA to bar an existing member of the scheme from working in regulated activity, **all** employers with a relevant interest will be notified that such individual is no longer a member of the ISA scheme and prohibited from working with a vulnerable group. Care should be taking in dealing with an event such as this to ensure that employment policies and procedures and complied with to avoid additional problems for the employer.

For further information on this topic, please contact either Gareth Brewerton or Louise Tobin



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