

**EXPLANATORY MEMORANDUM TO THE SAFEGUARDING
VULNERABLE GROUPS ACT 2006 (CONTROLLED ACTIVITY) (WALES)
REGULATIONS 2010**

This Explanatory Memorandum has been prepared by the Directorate for Children's Health and Social Services and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity) (Wales) Regulations 2010.

Gwenda Thomas,
Deputy Minister for Social Services
Date

Description

These Regulations would create an interim requirement on employers (“responsible persons”) to undertake a check of the barred status of individuals before permitting them to enter, or move to a new post in Controlled Activity once these Regulations come into force. Controlled Activity in the new Vetting and Barring Scheme (VBS) is defined in sections 21 and 22 of the Safeguarding Vulnerable Groups (SVG) Act 2006 and applies only to tightly defined categories of work for certain, mainly public-sector, employers.

These Regulations would increase the effectiveness of safeguarding measures arising from the introduction of Independent Safeguarding Authority (ISA) registration in relation to Regulated Activity, which for new entrants and movers will be optional from July 2010, and mandatory from November 2010 with full registration to be phased in over five years. At this point it is possible for those barred from working in Regulated Activity to seek to work in controlled activity and these Regulations would allow employers to identify such individuals.

The requirement in relation to controlled activity is needed despite the Government having accepted Sir Roger Singleton’s recommendation that the Government should review the continuing need for the category of controlled activity¹ in his review ‘Drawing the Line’.

Matters of special interest to the Subordinate Legislation Committee

These Regulations are to be made under affirmative procedure.

These Regulations are part of series made in order to implement the SVG Act. Similar regulations are due to be made by the Secretary of State in respect of controlled activity in England and are due to come in to force on 1 April 2010. The regulations made by the Secretary of State will also include provisions which will enable employers to comply with the new requirement in these Regulations by modifying a Criminal Records Bureau disclosure provision in the Police Act 1997. This modification will extend to England and Wales.

Legislative background

The Welsh Ministers may make these Regulations in exercise of the powers conferred by sections 23(1), 56 (1) and 61 (5) of the SVG Act section 56.

Policy and legislative background

Following the conviction of Ian Huntley for the murders of Holly Wells and Jessica Chapman, Sir Michael Bichard was commissioned by the Home

¹ Sir Roger Singleton’s report and the Government’s response, both dated 14 December 2009, are at: www.dcsf.gov.uk/everychildmatters/safeguardingandsocialcare/safeguardingchildren/vettingandbarring/scheme/vettingvadbarring .

Office in December 2003 to prepare a report on failings in child protection measures, record keeping, vetting and information sharing. The Report setting out Sir Michael's findings and recommendations was published on 22 June 2004.

Recommendation 19 of his report proposed the development of a registration scheme covering all those who work with children and vulnerable adults. The scheme, administered by a central body and with appropriate appeals mechanisms, would confirm that there is no known reason why an individual should not work with children or vulnerable adults. The register would be continuously updated with relevant information from the police and other bodies and available to prospective employers and parents for checking online.

The SVG Act reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The arrangements it introduced include barring and referral arrangements which, from October 2009, broadly replaced those provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002. In July 2010 the voluntary registration of employees in Regulated Activity will commence with mandatory registration to be phased in over five years.

Decisions on barring take into account relevant material provided by the Criminal Record Bureau (CRB) (convictions, cautions and police intelligence) plus referrals from employers, professional registers, etc. Persons included in either list are barred from engaging in "regulated" activities in relation to children or vulnerable adults as appropriate. Persons on either list may, subject to suitable safeguards being in place, be able to engage in controlled activities.

Sections 21 and 22 of the SVG Act define the term "Controlled Activity". It covers a tightly-defined range of specified activities carried out frequently or intensively e.g. by support staff for employers in sectors such as further education, local authorities or the health service, that provide either an opportunity for any form of contact with children or vulnerable adults, or access to certain personal records on individuals in those groups.

Purpose and intended effect of the legislation

The regulations subject to this document specifically deal with controlled activities. The primary purpose of these regulations is the safeguarding of vulnerable groups through the vetting and barring scheme for employees engaged in controlled activities. The need for these regulations is due to a perceived gap in the safeguarding of these groups whilst the VBS is being phased in. The principal reason is that, as regulated activity is rolled out, there will be individuals who will become barred from it, and the risk is that some of them may seek to gain access to vulnerable groups by applying for a position in

controlled activity. The employer needs to know if the individual is barred or not because controlled activity comprises certain work for specified employers which involves either contact with a vulnerable group or access to their records. Therefore the Government aims to enable employers with such posts to determine whether an applicant is barred, so that in the rare cases where an applicant does turn out to be barred, the employer can make a considered judgment on the applicant's suitability and/or put in place appropriate safeguards if a barred individual is employed in a Controlled Activity.

These regulations are interim arrangements that ensure that a responsible person proposing to allow someone to engage in controlled activities undertakes a check of the barred status of an individual before employing them. If that individual is barred they will receive a full enhanced disclosure from CRB and will be required to put in place appropriate safeguards.

At present some employers can check the barred status of an individual without seeing a certificate or notification through the use of TP Online for those in the teaching profession and through ISA Adult First in relation to regulated activity with vulnerable adults.

Regulations 2 and 3 require a responsible person (normally an employer), in relation to new entrants or movers into controlled activity, either to satisfy themselves that the individual is not barred from regulated activity, or to obtain an enhanced CRB check (criminal records certificate) with a barred list check (suitability information) if it appears that the individual is barred under the VBS.

Regulation 2 specifies the circumstances in which a responsible person, as defined in section 23(3) of the Act, must not permit another to engage in controlled activity relating to children, as defined in section 21 of the Act. Regulation 3 makes provision in relation to controlled activity relating to vulnerable adults, as defined in section 22 of the Act, parallel to that made by regulation 2.

These Regulations extend only to Wales and it is proposed that they come into force on 1 April 2010 at the same time as the regulations due to be made by the Secretary of State.

Workforce Implications

Original assessments indicate that over 11 million members of the workforce will come within regulated activities across England and Wales, with 750 000 estimated in Wales alone. However, Sir Roger Singleton consulted stakeholders in compiling his report "Drawing the Line", which reviewed the scope of the Scheme. The recommendations of this report will be subject to formal consultation and may lead to amendments to the Scheme and reduce its impact by reducing the number of individuals required to register. The total is expected to fall to around nine and a half million. It is estimated that there are 500,000 individuals working in controlled activity across England

and Wales, with 33,000 in Wales. Assuming a turnover of 5% this will mean 1650 people moving into jobs in controlled activity per year in Wales.

Consultation

In December 2007 the document 'Controlled Activities Wales' was published for consultation by the Welsh Assembly Government. The document outlined the proposals for the Safeguarding Vulnerable Groups Act (Controlled Activities) (Wales) Regulations. At that time the proposals in Wales were different from England and were more stringent. In England the proposal was that those on the barred lists could work in Controlled Activity subject to assessment, supervision and monitoring. In Wales we proposed that those subject to automatic barring due to having committed some of the most serious crimes will still not be able to work in controlled activities in any circumstance.

The document was widely distributed to interested parties inviting comments on the principles of proposed regulations by 29 February 2008. Some 64 written replies were received. This was in addition to two consultation events held in North and South Wales where a total of 119 people attended representing Local Authorities, the National Health Service, the Voluntary Sector and other interested parties.

There was almost unanimous agreement that those subject to automatic barring should be excluded from both regulated and controlled activities and those subject to a discretionary bar would only be able to work in controlled activity subject to appropriate assessment, supervision and monitoring. Although there were respondents who did not agree that any barred individuals should work in controlled activities, given that there was too much potential for individuals to slip through the net and access vulnerable persons. The report by Sir Roger Singleton outlined above recommends a review of Controlled Activity to simplify the Scheme and to prevent those on the barred list from working in such posts and this reflects the policy in Wales.

The 2007 consultation also addressed the requirement by employers to receive an enhanced disclosure and it was generally seen as essential to obtain an Enhanced Disclosure as the only way for employers to know why an individual was barred. This information was seen as necessary in order for the employer to appropriately assess the risk of whether or not to employ the individual within a controlled activity.

The full analysis can be found at Annex A.

The current regulations will allow employers to check the barred status of those applying to work in Controlled Activity and access an Enhanced Disclosure to enable the appropriate assessment of barred individuals before they take up such work.

Implementation

Welsh Ministers intend to bring these regulations into force on 1 April 2010. Parallel legislation is being introduced in England and it would be preferable that the legislation is in place at the same time. Work is being taken forward to ensure a full range of guidance is being prepared to help organisations, employers and individuals. The documents will address general issues and provide sector specific guidance as well as basic information leaflets. A full marketing and communications programme is being led by the Home Office.

Impact

A Regulatory Impact Assessment has not been carried out by Welsh Assembly Government. However, DCSF have prepared an analysis of impact which can be found at Annex B in the Explanatory Memorandum prepared by DCSF for the Safeguarding Vulnerable Groups Act 2006 (Controlled Activity and Miscellaneous Provisions) Regulations 2010 please note paragraphs 10 and 11 'Impact'.