

## **Council, 10 December 2009**

### **Update on the Vetting and Barring Scheme and Protection of Vulnerable Groups Scheme**

#### **Executive summary and recommendations**

##### **Introduction**

This paper provides the Council with an update on the establishment of the Vetting and Barring Scheme and implementation of the Safeguarding Vulnerable Groups Act. This paper also provides the Council with an update on the Protection of Vulnerable Groups (Scotland) Act. Further papers will be brought back to Council as appropriate.

##### **Decision**

This paper is for information only. No decision is required.

##### **Background information**

The HPC's response to the consultation on the Safeguarding Vulnerable Groups Act 2006:

<http://www.hpc-uk.org>

[/assets/documents/10001C8Ccouncil\\_meeting\\_20070911\\_enclosure08.pdf](http://assets/documents/10001C8Ccouncil_meeting_20070911_enclosure08.pdf)

##### **Resource implications**

Implementing the Safeguarding Vulnerable Groups Act and Protection of Vulnerable Groups Act is a major project for 2009-2010 and has been identified as a major project in 2010-2011. As such, the resource implications have been identified within the project plan.

##### **Financial implications**

Implementing the Safeguarding Vulnerable Groups Act and Protection of Vulnerable Groups Act has been identified as a major project for 2009-2010 and has been identified as a major project in 2010-2011. The financial implications have been identified within the project plan.

##### **Appendices**

None

##### **Date of paper**

10 November 2009

## **About this paper**

This paper is divided into three sections. The first section provides an update on the Vetting and Barring Scheme (the scheme for England, Wales and Northern Ireland) and the Independent Safeguarding Authority. The second section updates the Council on the Protection of Vulnerable Groups Scheme (Scotland). The final section considers the impact upon the HPC.

## **Update on the Vetting and Barring Scheme**

### **Background**

The Bichard Inquiry, which was established in the wake of the Soham murders, recommended that:

‘...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 clients.’

As a result, the Safeguarding Vulnerable Groups Act (England, Wales and Northern Ireland) and Protection of Vulnerable Groups Act (Scotland) were passed to create a scheme to register those individuals.

### **The Independent Safeguarding Authority**

The Independent Safeguarding Authority (ISA) was created as a single organisation to vet and register all individuals who want to work or volunteer with vulnerable people and children and to bar unsuitable people.

The ISA will be responsible for maintaining two aligned barred lists (one for those who are barred from working with children and one for those who are barred from working with vulnerable adults) and will make decisions about whether an individual should be included in either or both barred lists.

Certain offences will lead to automatic inclusion in the barred list(s), in some instances with no right for the person concerned to be able to make representations about their inclusion. In other cases inclusion will be discretionary, either based upon specific behaviour or an assessment of evidence which suggests that the person may present a risk of harm to children or vulnerable adults.

It will be a criminal offence for a person who is on one or both of the barred lists to undertake “regulated activity” in respect of children, vulnerable adults or both (as the case may be) and it is also a criminal offence for regulated activity providers to fail to conduct barring checks on potential employees and to permit a barred person to undertake a regulated activity.

The phrase “regulated activity” covers, among other things, the provision of any form of therapy or treatment to a child or vulnerable adult and the term “vulnerable adult” is defined to include any adult who is receiving any form of health care (which in turn is non-exhaustively defined to include any form of

treatment, therapy or palliative care). Taken with the other activities covered within the legislation, “regulated activity” encompasses most professional activities undertaken by HPC registrants.

## **Phasing principles**

The ISA is already taking decisions about whether individuals should be barred from working with vulnerable groups, based on existing criteria set down in the Protection of Vulnerable Groups Act (POVA) and Protection of Children Act (POCA).

The Scheme launched on 12 October 2009. This means:

- It is now a criminal offence for those who are barred by the ISA to work or apply to work with children and vulnerable adults.
- Employers will now face criminal sanctions for employing someone who is barred.
- The Scheme is now making barring decisions based upon the new criteria established in the Safeguarding of Vulnerable Groups Act.
- Employers, regulators and other bodies now have a duty to pass information to the ISA.

From 1 November 2010, any individual who moves into a new role within regulated activity must join the Scheme before they start the new role.

People will then be invited to join the Scheme gradually in phases between 1 February 2011 and 25 July 2015. Phasing principles are based on the risk posed by the individual and related to when an individual last had a CRB check.

All those working within regulated activity must join the Scheme by 25 July 2015.

## **Protection of Vulnerable Groups (Scotland) Act**

The Protection of Vulnerable Groups (Scotland) Act 2007 completed its Parliamentary passage in March and became an Act in April 2007. It is anticipated that the Scottish scheme will go live in 2010. The Scottish Government is currently running a consultation on draft guidance which HPC will respond to.

## **Protection of Vulnerable Groups Scheme**

The Protection of Vulnerable Groups Scheme (PVG Scheme) will be managed and delivered by Disclosure Scotland which will make decisions, on behalf of Scottish Ministers, about who should be barred from working with vulnerable groups.

Individuals undertaking ‘regulated work’ should register themselves with the PGV Scheme. Regulated work is work which requires an individual, in the normal course of their duties, to be involved with a child or protected adult in a way specified in the legislation. A protected adult is a person, aged 16 or over, who receives one or more type of care or welfare service either regularly or for a short

period of time. This includes healthcare services provided or secured by the NHS or provided by independent operators.

Unlike under the Safeguarding Vulnerable Groups Scheme, it is not a criminal offence for someone who is not registered with the PVG Scheme to undertake regulated work. However, it is a criminal offence for someone who is barred by the Scheme to do so.

People who work, on a regular basis, with vulnerable groups will join the PVG Scheme and, from then on, their membership records will be automatically updated if any new vetting information arises. Vetting information is conviction information retrieved from criminal justice systems and non-conviction information held by the police that is considered relevant.

In instances when vetting or referral information indicates that a person may pose a risk to vulnerable groups, Disclosure Scotland will consider all the information available before deciding whether a person should be placed under consideration for listing on one or both of the barred lists. If a person is under consideration for listing, Disclosure Scotland will be able to obtain further information from other sources, such as employers or regulatory organisations.

Decisions about barring will involve a thorough and fair process. The person will have access to all the information being considered and they will be able to submit written representation to the PVG Scheme. While under consideration for listing, the person can continue to work with vulnerable groups but all organisations and groups known to have an interest in them will be notified that their PVG Scheme membership status has changed.

If, after careful assessment, a person is considered a risk and therefore, unsuitable to work with children or protected adults, or both, Disclosure Scotland will list them on one or both of the barred lists. This means that the person will not be able to become a PVG Scheme member in relation to one or both areas of work. It will be an offence for a barred person - and for an organisation to permit that person - to undertake such work. An appeals procedure will be in place for anyone wishing to challenge a barring decision.

A person who is barred from working with children, protected adults or both in Scotland will also be barred throughout the rest of the UK and vice-versa as the PVG Scheme will dovetail with the systems being developed for England, Wales and Northern Ireland through the Safeguarding Vulnerable Groups Act (2006). The PVG Scheme introduces different types of disclosures which aim to suit different needs and make the system as quick and efficient as possible. One of the benefits of becoming a PVG Scheme member is that it will significantly reduce the need for people to complete a detailed application form every time their circumstances change. This has been a source of frustration with the current system.

Scheme membership will be phased in once the Scheme is live. The 'go-live' date is still to be confirmed although it has been indicated that this will be in 2010.

## Impact on the HPC

The Executive has established a project team which will consider the impact of both schemes on HPC.

The HPC will have a duty to inform the ISA and Disclosure Scotland about any individual who:

- Appears on the regulator's register;
- May satisfy any of the criteria for inclusion in a barred list;
- Is engaged or may engage in a regulated activity (ISA only); and
- In the opinion of the regulator, the Authority may wish to include in a barred list.

At the same time, both the ISA and Disclosure Scotland will have similar duties to inform HPC if a registrant is barred. This will enable the HPC to make a decision about whether to remove an individual from its register or place conditions on their registration.

In addition, the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 has made two amendments to the Health Professions Order 2001:

1. It amends Article 5 so that inclusion on a barred list is information which can be taken into account in determining whether a person is of suitable character to be registered.
2. It creates a new, free-standing allegation under Article 22(1) to the effect that a person's fitness to practise is impaired by reason of their inclusion in a barred list.

The Council has approved a practice note providing guidance for panels on dealing with barring allegations.