



Church House, Great Smith Street, London, SW1P 3AZ

T: 020 7222 1265

E: info@clas.org.uk

www.clas.org.uk

Chairman: The Rt Revd Michael Langrish, Bishop of Exeter

Secretary: Frank Cranmer

CLAS CIRCULAR 2011/10 (14 JUNE 2011)

Disclaimer

CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though every care is taken to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertake any liability for any error or omission in the information supplied. It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

VETTING & BARRING	2
Vetting and Barring Scheme (England, Wales and Northern Ireland) update: June 2011	2

VETTING & BARRING

Vetting and Barring Scheme (England, Wales and Northern Ireland) update: June 2011

For information.

Pearl Luxon has kindly written the following assessment of the present state of the Vetting & Barring Scheme

What were the key principles of the former scheme?

1. The vetting and barring scheme established a system of registration for all those working frequently or intensively with children or vulnerable adults (according to new definitions). It required everyone in these categories – whether in paid or voluntary work – to register before commencing work and provided a five-year roll-out programme for those who were already working. It is this part, due to begin in July 2010, which has been cancelled. This registration was to be authorised by the Independent Safeguarding Authority. This body also holds a list of those who are barred from working with children or vulnerable adults or both. Therefore, if you are registered you are not barred. Employers were entitled to ask employees to be registered and there were penalties for non-compliance.
2. The ISA provides an independent specialised service of risk assessment according to carefully-prescribed criteria and tribunals for those who 'appealed' or asked for a review of a decision to bar. Formerly these were done by the Department for Education (or the DCSF under the former government). This system is continuing even though the ISA may be amalgamated with the CRB.
3. There is currently an obligation for employers to refer people to the ISA (in relevant work) if they have been disciplined or have resigned pending a case where behaviour has been of concern, such that on the balance of probabilities harm or the risk of harm to a child or vulnerable adult has taken place. This should also include where a worker (paid or voluntary) has been reckless about following safeguarding procedures. This is continuing, although the ability for people to refer where they are in the voluntary or private sector may no longer exist. It is possible that the mandatory duty will be reduced to an expectation or less.
4. The ISA registration scheme provided for portability of the registration and also updating of employers if someone's status changed. This scheme has been scrapped.
5. It was envisaged that for the foreseeable future CRB checks would still be necessary, because employers would want to be aware of more issues than simply if someone was barred. They would need to know, in some cases, about drug offences, alcohol offences and serious driving offences and also violent crime against an adult.

Furthermore, the CRB check often shows police information or regulatory body (GSCC, NMC or GMC) information concerning relevant allegations.

6. CRB checks also showed additional police information on relevant offences at the discretion of the Chief Constable. This power is being reduced and curtailed in ways that are unclear at present.

Why has the VBS changed?

The new Government in 2010 decided that the scheme was disproportionate to the risk and needed to be 'scaled back to common sense levels'. The Protection of Freedoms Bill, which before the recess was at committee stage, contains a number of provisions including those which substantially alter the Vetting and Barring Scheme. In addition, the Government authorised a wholesale review of the scheme for CRB checks and the Rehabilitation of Offenders Act with a view to amending this too.

When will we know?

While we know the shape of most of the changes proposed, we will not know how much the committee stage has altered what was in the Bill till later this year – and, of course, the Bill will have to go through the same process in the House of Lords. Many changes will not come into effect until middle of 2012.

Some of the changes to the CRB system will come into effect at the same time, but others will take time to be amended as they may be dependent on other primary legislation.

What are the changes?

There are a large number:

1. ISA registration, including portability and continual monitoring, is unlikely to see the light of day at all.
2. The definitions of regulated activity are changing yet again to a more 'woolly' definition, so that it will be left up to employers as to whether a particular role meets the definition and therefore a CRB check is needed. This is intended to reduce the number of checks and the numbers eligible.
3. The CRB check will be issued as a single certificate to the applicant only and no certificate will be sent to the employer or to the CRB Umbrella Body/ Registered Body. This is intended to allow the individual who has applied to challenge any content before the employer sees it.
4. The Government proposed that only statutory sector employers should have access to barring information on the CRB check. This will be called something like 'Enhanced CRB plus'. Other employers will be able to insist upon Enhanced Disclosures for some employees who fit the criteria; but many of those who currently

are eligible for Enhanced CRBs or would have been ISA registered will only be eligible for Standard checks.

5. Portability of CRB checks and updating of employers is problematic now, as this requires further legislation. Furthermore, if you as an individual applicant want to use the CRB check for wider range of employers or voluntary organisations where you need this, you will be required to pay a subscription instead of the 'one-off fee', whether or not you are a volunteer. A one-off certificate for volunteers will continue to be free but you may have to apply for a number of these if you do not want to pay the annual fee and you need it for more than one organisation.
6. The police's current discretion to share relevant information on allegations or investigations is being curtailed to very limited criteria.
7. Some old and minor offences are being 'stepped down' from the databases, so that they will not show up at all for the purposes of employee vetting. This has been tried before by the police and CRB.
8. The Rehabilitation of Offenders Act 1974 is to be rewritten to reduce the circumstances in which a former offenders have to share information about their past; currently this is for relevant employment/ volunteering exemptions.
9. There will be stronger penalties for employees where their work does not meet the new definition of regulated activity and they seek CRB checks where the employee or volunteer is not eligible.

What are the problems with what is proposed?

To take the last two items first:

- the Rehabilitation of Offenders Act needed revision in any case, as it had been amended by several exemptions orders over the decades; however, it is quite strongly worded in favour of rehabilitation in any case: something which as a former Probation Officer I was in favour of – but any changes should not at the expense of the vulnerable.
- The penalties for inappropriate checks were already in existence and some of us used to argue with colleagues against church flower-arrangers and adult choir-members being CRB checked. The CRB used to clamp down periodically on inappropriate checks and the new forms introduced in July 2010 were going to help with this. However, to make the definitions vaguer and increase the penalties is not the way to go about this. Organisations, especially local places of worship, are going to be very confused and no one can blame them for wanting to fire-proof themselves. For this reason the criteria/ definitions for regulated activity must be clearer and unambiguous.

- Stepping down of old offences was tried by the police and CRB before – unsuccessfully. It also caused considerable confusion for applicants who assumed that old offences would show up and disclosed them to employers anyway.
- The police should have final discretion to disclose relevant information about investigations; but they must do so within strict criteria and they should also help employers to understand what is being disclosed. Work does need to take place to improve risk assessment of allegations or offences by employers. I will be writing something on this for Churches Agency for Safeguarding shortly.
- It was the volunteers who were the most disgruntled about lack of portability of CRB checks and yet they are not going to be able to get the portability free! The modified scheme also assumes that individuals pay for CRB checks; in practice it is mostly the employers who do so. It seems very unlikely that they will pay out for a subscription scheme.
- The most problematic area for churches is the fact that the certificate will only go to the applicant. In the mainstream churches *and* in some others, the other certificate goes to the Umbrella Body and in many cases the decision as to whether, on the basis of the unclear CRB check, someone is suitable is made by people with some expertise in this area, at either diocesan, national or UK-wide level. In other cases the Umbrella Body is able to assist and advise the local church in making the decision.
- At local church level the modified scheme will increase the burden upon local safeguarding administrators and those who are responsible for safeguarding. Firstly, they will have to chase up each applicant for sight of the disclosure – which in most cases will be clear. Secondly, an applicant who is ashamed of even a minor offence on his or her record could simply decide not to volunteer, even when this would most likely have been cleared previously by safeguarding specialists at the diocesan/national office. The advantage of the former system was that in most cases the decision was not about a relevant offence and the local church did not need to know about it at all.
- The modified scheme is going to put off more volunteers than the old scheme; and organisations are going to have less leverage to refer people about whom they have significant evidence and concerns to ISA
- Voluntary organisations will not be told if someone is barred, nor will they be able to insist on removal from employment of a barred people if they are working in the voluntary sector.

The Government has made these decisions not on the basis of any solid evidence – but of a media panic involving authors and flower arrangers and of a vocal minority using the Press. Most users and relatives want all employees and volunteers in relevant work checked according to the highest standards. We had all got used to the CRB checks and most people

welcomed the VBS. Yet the highest standards will still be needed across the voluntary sector – but we will not have the best tools to achieve them.

The immediate Implications are that churches and voluntary organisations must prepare by developing Safer Recruitment strategies and training. The onus is going to be far more on the person/ people recruiting volunteers and employing staff to make decisions about the suitability or unsuitability of those joining their workforce.

Recruiting safely

This includes:

- Using applications or registration forms for volunteers, gaining references, having an interview
- Ensuring a probationary period, good support and supervision, training and regular development reviews
- Good processes for addressing problems, disciplinary, grievance and complaints, whistle-blowing
- Good training for all, to ensure they know how to respond well to people who have been harmed or are reporting harm.

These things are essential for organisations across the churches and churches themselves, whether recruiting ministers, employees or volunteers. They will be even more imperative without the strict systems for CRB checks which we had become accustomed to.

Pearl A. Luxon

June 2011

© Pearl A. Luxon 2011: www.pearlluxon.org.uk