

Success
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Free
Information
Guide

Services

Children Law
Criminal Law & Fraud
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Immigration Law
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Mental Health &
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Criminal Law & Fraud



Certain employers must refer individuals to the Independent Safeguarding Authority. This factsheet explains who has a duty to refer and in what circumstances they must refer an individual.

The ISA “barred lists”

The Independent Safeguarding Authority (ISA) was established in the wake of the Soham murders to try and prevent people who may pose a risk to children and vulnerable adults from working or volunteering with those groups. Until recently, the “Vetting and Barring Scheme” (VBS) operated by the ISA required anyone working with vulnerable groups to register with them. The Coalition government has suspended this requirement and the scope of the VBS is likely to be reduced by forthcoming legislation.

However, the ISA continue to maintain two “barred lists.” One for people barred from working with children and the other for people barred from working with vulnerable adults. If the ISA place a person on these “barred lists” then that individual commits a criminal offence if they work or volunteer, or try to work or volunteer, with that particular vulnerable group.

It is also a criminal offence for an employer to allow an individual to engage in activity from which she or he is barred if she or he knows that person is barred.

The Safeguarding Vulnerable Groups Act 2006 conferred a legal duty for the following groups to refer information to the ISA in certain circumstances:

- Regulated activity providers;
- Personnel suppliers (including employment agencies)
- Local authorities;
- Health and Social Services (HSS) bodies;
- Education and Library Boards;
- Keepers of registers; and
- Supervisory authorities.

Under the Act it is an offence for an individual who has a duty to refer to fail to do so without reasonable excuse.

Duty to refer an individual to the ISA

When the ISA receives a referral from an employer then the ISA will consider whether to add an individual to those barred lists.

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A referral **must** be made to the ISA where a regulated activity provider withdraws permission for an individual to engage in regulated activity or controlled activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which does not involve regulated activity or controlled activity **because** they think that the individual:

- has engaged in relevant conduct - "Relevant conduct" includes conduct likely to endanger a child or vulnerable adult, as well as other conduct that may be considered inappropriate; or
- may attempt to harm or cause harm to a child or vulnerable adult, or incite another to do so – this is known as the harm test and is laid out in detail in the legislation; or
- has been convicted or cautioned of particular offences.

What/who is a "regulated activity provider"?

This is an organisation or an individual that is responsible for the management or control of *regulated* activity, paid or unpaid, and makes arrangements for people to work in that activity.

Regulated activity is defined in the Act but generally speaking a person is involved in regulated activity if:

- they undertake activity of a specified nature – for example teaching, training, care, supervision, advice, guidance, treatment – that involves contact with children or vulnerable adults on a frequent, intensive or overnight basis; or
- they undertake activity in a specified place – for example schools, childcare premises, residential homes, nursing homes etc – that provide opportunity for contact with children or vulnerable adults on a frequent, intensive or overnight basis; or
- they undertake fostering or childcare; or
- they occupy a position of responsibility specified in the legislation – for example a school governor.

What is a "controlled activity"?

This is set out in the Act but, in general terms, an individual is involved in controlled activity if they are support workers in Further Education, or healthcare settings (e.g. cleaner, caretaker staff or receptionist) which is done frequently or intensively and gives the opportunity for contact with children or vulnerable adults.

When do I make a referral?

A referral need only be made once the regulated activity provider has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission.

How do I make a referral?

Employers must use the ISA referral form provided on their website. See below. The completed form and supported documents should be posted to the ISA.

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Useful links

ISA Referral Form
<http://www.isa-gov.org/Default.aspx?page=432>

ISA Referral Guidance Document
<http://www.isa-gov.org/PDF/Referral%20Guidance%20and%20Form%20FINAL%20v%2010-01.pdf>

I require further advice. What should I do?

If you are in any doubt whether or not these obligations apply to you, your organisation or company then please contact us for further advice.

Please contact Miriam Andrews for more information on +44 (0)20 7091 2715 or at miriam.andrews@fishermeredith.co.uk.

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