

Explanatory Memorandum to the Safeguarding Vulnerable Groups Act 2006 (Prescribed Period and Appropriate Officer) (Wales) Regulations 2010

This Explanatory Memorandum has been prepared by the Department for Children, Education, Lifelong Learning and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Safeguarding Vulnerable Groups Act 2006 (Prescribed Period and Appropriate Officer) (Wales) Regulations 2010
I am satisfied that the benefits outweigh any costs.

LEIGHTON ANDREWS, AM

19 April 2010

1. Description

The Safeguarding Vulnerable Groups Act 2006 (Prescribed Period and Appropriate Officer) (Wales) Regulations 2010 define an appropriate officer (AO) and a prescribed period within which the AO must check whether a member, or clerk, of a maintained or independent school or further education institution (FEI) governing body are enrolled in the Independent Safeguarding Authority's Vetting and Barring Scheme. From 1 November 2010 newly appointed or elected governors and governing body clerks are required to enrol in the VBS before taking up post. From 26 July 2010 these persons may voluntarily enrol in the VBS. All persons who are already governors or clerks must enrol in the VBS by 31 July 2015. Information about the Independent Safeguarding Authority and the Vetting and Barring Scheme is available at:

<http://www.isa-gov.org.uk>

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

These regulations have been made under Sections 13, 56(1), 60 and 61(5) of the Safeguarding Vulnerable Groups Act 2006. Under Section 13 the Welsh Ministers may prescribe an AO and a prescribed period within which the AO must discharge their duty.

The powers in the Act were conferred directly on the Welsh Ministers. . Regulations are made by the Negative Resolution procedure.

4. Purpose & intended effect of the legislation

The Act

The Safeguarding Vulnerable Groups Act 2006 established the Independent Barring Board, now re-named the Independent Safeguarding Authority (the ISA). The ISA has an England and Wales remit. Similar but separate arrangements were established in Scotland and Northern Ireland.

The ISA's function is to manage a Vetting and Barring Scheme (VBS) whose purpose is to ensure that only suitable persons come into contact with children and young people, and vulnerable adults. The VBS includes contact through work or voluntary activity. The mission of the ISA and the purpose of the VBS is to protect children, young persons and vulnerable adults from persons who may harm them.

A person who has contact with children, young people or vulnerable adults through their work or voluntary activity is required to enrol in the VBS.

Enrolment in order to have contact with children also requires a person to undergo a Criminal Records Bureau check. After enrolment a person is subject to continuous monitoring. Activity or other evidence that suggests that a person is a risk, or unsuitable, may result in ejection from the VBS. The Act provides for automatic ejection or a ban on enrolment in the VBS at all for the most serious activities. The ISA has discretion to ban or eject persons for lesser activities. The practical effect of being barred from enrolling in the VBS, or being ejected from it, is that a person may no longer legally work with children, young people or vulnerable adults. To do so is a criminal offence.

The Act requires governors and clerks to the governing body of maintained (and independent, if they have governing bodies) schools, and further education institutions (FEIs) to enrol in the VBS and to be subject to monitoring. These persons will enrol in the VBS in a phased manner:

- From 1 November 2010 newly appointed, re-appointed, newly elected, and re-elected governors, and newly appointed clerks to governing bodies, will be required to enrol in the VBS before they can take up office.
- Governors and clerks in post prior to 1 November 2010 will be exempt from the VBS enrolment and monitoring until they are re-appointed or re-elected. After 31 July 2015 these persons must enrol however.
- Governors and clerks in post before 1 November 2010 may voluntarily enrol in the VBS from 26 July 2010.

The Regulations

The regulations prescribe the AO who is responsible for ensuring that governors and clerks have enrolled in the VBS prior to them taking up post.

The AO for maintained schools will be the chief education officer (or his or her representative) of the local authority which maintains the school.

The responsible individual in an independent school with a governing body will be its AO. This is the individual with overall control of the day to day management of the school. Where that control is shared between two or more persons, the responsible individual must be nominated by the proprietor. Independent schools without governing bodies are outside the scope of the regulations.

The Principal of a FEI will be the AO for that establishment's governing body.

Under the Act an AO may consider that it is not feasible for him/her to actually carry out each and every check due to the number of checks required. The AO may therefore ask another person to carry out this function on their behalf. If the AO does this the AO will remain responsible for any failure, as failure in the AO function is a criminal offence under the Act.

The regulations also prescribe a time of four months within which the AO must carry out his duty. The four months begins from the date on which the governor

or clerk gives their consent for the AO to check that the governor or clerk has enrolled in the VBS. Four months is approximately one school term and is deemed an appropriate period of time to allow the AO to execute his duty.

5. Consultation

Details of the consultation carried out are contained in the RIA below.

REGULATORY IMPACT ASSESSMENT

6. Options

There is no 'do nothing' option. Making regulations is necessary for the Welsh Ministers to comply with the SVG Act. The Act places a requirement on the Welsh Ministers to make regulations defining who the AO should be and the prescribed period in which the AO must discharge their duty. Regulations must be made as part of the mechanism to operate the ISA arrangements. The Welsh Ministers therefore have no choice other than to make regulations.

Within the ambit of regulations there are options for who is prescribed to be the AO and what period of time should be prescribed for the AO to discharge his duty. Given the nature of the function, the AO needs to be a person who has a connection with, or oversight of governors. Logically the AO could be one of the following persons:

- the head teacher for maintained schools including nurseries;
- the chief education officer (CEO) of the local authority for maintained schools including nurseries;
- the clerk to the governing body for FEIs and maintained schools and nurseries;
- the chair of governors or another governor for FEIs and maintained schools and nurseries;
- the principal for FEIs; or
- the responsible individual for independent schools with a governing body.

Chief Education Officers

For maintained schools it was concluded that a local authority's Chief Education Officer is the most suitable person to be the AO. The reasons for selecting the CEO are:

- a) it is understood that local authorities are currently responsible for ensuring that teachers and other school are registered with the ISA and have undergone a CRB check. Ensuring school governors have also been registered and checked would be consistent with and an extension to this current practice;
- b) it is further understood that many local authorities already arrange for CRB checks to be carried out on governors where governing bodies

- have asked governors to undergo a CRB check (in accordance with the Government of Maintained Schools (Wales) Regulations 2005); and
- c) local authorities have experience in these matters and are therefore best placed to make sure the scheme runs smoothly once the requirement is in place.

Headteachers, chair of governors, another governor or a clerk to a governing body

It is not reasonable to place a duty which brings the risk of conviction on any volunteer such as governors or clerks to governing bodies of both FEIs and schools. The level of responsibility attached to the work of the AO and the potential penalty for failing to discharge the duty are such that the appropriate officer should be a paid employee of a senior grade.

The need for impartiality must be kept taken into account. An AO should not be influenced or pressured because they work in a school or are a member of that governing body, which could be the case if the AO were the chair, clerk or another governor. Headteachers of maintained schools and nurseries were discounted from being the appropriate officer because making the checks would add to their workload.

Having an AO who does not work or volunteer at the school mitigates these risks.

Principals of FEIs

The governance arrangements for FEIs are different and there is no body that has an equivalent role of a local authority. For the reasons given in the paragraph above it is not appropriate to place such a duty on governors. The most senior paid person therefore to carry out the role of the appropriate officer in FEIs is the Principal.

Responsible Individual in Independent Schools

Some independent schools do have governing bodies but as stated earlier it is not appropriate for governors to be given the role of the AO. For these reasons the responsible individual in an independent school with a governing body is identified as being the AO.

The responsible individual is a person with overall control of the day to day management of the school, or where that control is shared between two or more individuals, the person nominated by the proprietor to be the responsible individual.

Prescribed Period

The prescribed period needs to strike a balance between being short enough so that the AO discharges his duty quickly enough to avoid undue delay to the

governor or clerk beginning his term with the governing body but not so short that the AO is at risk of failing his duty because there is too little time to make the check. Periods of three or four months were considered. The regulations prescribe 4 months, starting from the date the prospective governors gives consent to the AO to make the checks and provides them with the information necessary to make those checks.

8. Costs & Benefits

Making the regulations means that the Welsh Ministers will comply with the requirements of the SVG Act. The regulations are a necessary part of the arrangements to reduce the risk of harm to children and vulnerable adults in education settings.

The regulations have no financial costs for the Welsh Assembly Government.

There are no costs to governors either because as volunteers they are exempt from fees. The costs of VBS enrolment and monitoring, and the CRB checks that will be part of that, will be borne by the ISA and Criminal Records Bureau.

The regulations will have cost implications for the employer of the AO.

FEIs and Independent Schools

The AO in these establishments is identified as the Principal for FEIs and the responsible person in an independent school. All FEIs have governing bodies but not every independent school has a governing body. Governors in these establishments will only be checked when they are appointed or elected or re-appointed and re-elected. Given the small numbers of governors in FEIs and independent schools the expectation is that the AO will not have many checks to make and costs will therefore be negligible.

Maintained Schools and Nursery Schools

There will inevitably be some administration costs for local authorities associated with the CEO, or the person asked by the CEO to carry out the checks on their behalf, in terms of time taken to carry out the checks.

There are around 23,000 governors in Wales. Those who are headteachers, teacher governors and staff governors are likely to have already been enrolled in the VBS scheme and CRB checked because of the nature of their employment. This leaves approximately 17,700 governors to be enrolled in the VBS. The requirement in the regulations is that from 1st November 2010 all newly appointed/elected and re-appointed /re-elected governors must be registered with the ISA. Any governor in place on that date will not need to be checked until their term of office comes to an end and they are re-appointed or re-elected.

Governors have a four year term of office but can resign at any time and be replaced. A governor's four year term of office is therefore specific to them and commences from the date of their appointment or election to the governing body. It is estimated that around 4,400 governors, spread across the 22 local authorities, could be eligible for checking each year.

The numbers of governors each CEO would have to check will depend on the numbers of schools in that local authority and the vacancy rate, but the burden of effort in each authority will match the size of the education service being provided. The AO will be able to check on-line whether a governor or clerk is enrolled in the VBS. The on-line procedure could be carried out quickly. A governor or clerk must give permission for the check and provide information that will allow the check to be carried out. The AO can then log onto the ISA site to check that the person has been registered to work with children and vulnerable adults and is able to take up post.

On the issue of clerks, every school has to have a governing body and every governing body has to have a clerk. There are therefore approximately 1,773 clerks who will also need to register with the ISA. As with governors, only clerks appointed on or after 1 November 2010 will be required to register immediately with the ISA.

Some local authorities offer a clerking service to schools and members of staff in the local authority education department undertake this role and may already have been CRB checked because of their involvement with children. Also clerks do not have a fixed term of office. They are appointed until they resign or are removed from office. Thus it is likely that an AO will have few checks to make on clerks each year.

Local authorities are already responsible for carrying out checks for their own staff and school staff and will have established a process and built up expertise in this. The cost per authority to check governors and clerks is therefore likely to be very low. In practice we do not expect the AO function to be personally carried out by the CEO. The CEO may arrange for other staff to administer the AO function on his/her behalf, although the CEO may not delegate responsibility and will be responsible for any failure to discharge the duty.

9. Consultation

Consultation on the draft regulations took place between May and September 2008. The consultation document was sent to a 10% sample of all maintained schools including nurseries, all independent schools; local authorities; teaching and other unions; diocesan authorities; Governors Wales; the Children's Commissioner for Wales; the Welsh Local Government Association, Estyn; fforwm and FEIs in Wales. Delays with the establishment and subsequent operation of the ISA, which are beyond the control of the Welsh Ministers has meant that these regulations could not be made until now.

Thirty nine responses were received to the consultation. There was overwhelming support for the AO being identified as the chief education officer (or his or her representative) for maintained schools; the Proprietor for independent schools and the Principal for FEIs.

Consultees agreed that a prescribed period of 4 months for the AO to carry out his duty was appropriate.

10. Competition Assessment

Not applicable.

11. Post implementation review

The Welsh Assembly Government will monitor the implementation of the regulations through casework, correspondence and through the Association of Directors of Education Wales.