

Safeguarding vulnerable adults – Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme

DH recommends action by October 2008, by those who advise employers and recruitment managers, on key points at [2] below

Summary

1. Safeguarding vulnerable adults and children is a top priority for Government. We are committed to ensuring we have the toughest ever vetting and barring system for all those working with, or seeking to work with, children and vulnerable adults. As part of this continuing programme, we are writing to you about the next step (planned for winter 2008) in transition to the new Vetting and Barring Scheme for those who work or volunteer* with vulnerable adults in the regulated social care sector¹. This is in order to:

- let you know of planned changes, subject to Parliamentary approval;
- set out the background and timetable, with further guidance to follow;
- offer ready-to-use lists of key benefits, the implications of these changes for employers, regulators and others, and summaries of what will and will not change at winter 2008;
- recommend that you cascade this information to your sector through your usual channels, so that employers and recruitment managers for the workforce in the adult regulated social care sector will be aware of impending changes in good time.

The Department for Education and Skills is writing similarly to the children's sector; their message details how these changes affect the Protection of Children Act (PoCA) list and List 99 (for the education sector).

*Note: Volunteer managers and volunteers: where this message says "employer/employee" it also means volunteer manager/volunteer.

2. Key **actions** and **information points** for employers or managers are:

- **information**: ISA will, from winter 2008, take barring decisions on new

¹ Services to adults registered with the Commission for Social Care Inspection; care homes, domiciliary care agencies and adult placement schemes.

referrals under legislation relating to current lists, including the PoVA list. By this October, we will let you know a specific date from which these new arrangements will apply. CRB's disclosure process for employers and the POVA First service are both unaffected;

- action: employers will have the same duty to make referrals, but will have to send them direct to the ISA. We will publicise details of how and where, nearer the time. Employers, regulatory bodies, local authorities and supervisory authorities² will have a new duty to respond to requests from the ISA for information they hold already. They will not have to find it from other sources.

- information: from the same date, PoVA (and PoCA) provisional listing on new cases will end. Individuals who are referred to POVA will not be listed provisionally while the ISA considers whether or not to bar them. That is why this message recommends a reminder to recruiting employers to fulfil existing responsibilities. This means actions such as taking up references and scrutinising employment history.

- action: a prospective employer should check previous employment history and references carefully in accordance with regulations made under the Care Standards Act 2000. In addition we recommend that when taking up references, previous employers are asked whether they referred applicants to the POVA list on the grounds of misconduct which has harmed or caused risk of harm.

Information: a barring decision by ISA between winter 2008 and the autumn 2009 go-live will have exactly the same effect as a Secretary of State bar now on PoVA, PoCA or on List 99 for unsuitability.

3. This message will be complemented by wider messages from the Government about the new Scheme overall, in the run-up to 'go live' in autumn 2009. We are sending out the next instalment of these wider messages in the next few weeks (for intermediaries) and in October (for employers). We are also working with partner organisations to make sure all staff involved are prepared effectively. In 2009, further pre-launch messages will follow, to ensure you are fully briefed for the new Vetting and Barring Scheme 'go live.'

Background

4. Under the Safeguarding Vulnerable Groups Act 2006, Parliament has established a statutory body to take the decisions on who should be barred – the Independent Safeguarding Authority³. The existing barred lists (List 99, PoCA and PoVA) will be replaced, at go-live in October 2009, by the ISA's two new barred lists (one barring individuals from working with children; the other barring individuals from working with vulnerable adults). ISA is expected,

² From Winter 2008, the supervisory body affected for regulated adult social care will be the Commission for Social Care Inspection.

³ ISA; referred to in legislation as the Independent Barring Board - IBB

subject to Parliamentary approval, to start making barring decisions from winter 2008 on new referrals to the current schemes, in order to help ensure a smooth transition to go-live of the new Vetting and Barring Scheme the following autumn (see “key benefits” at Annex 1).

5. We recognise how much you and your sector contribute to the safeguarding of vulnerable adults. We want to let you know about this change well in advance, to help you understand the reasons for the change, the implications for you and the intended benefits. Since some of you have lead-in times of up to three months for publications, it is best to tell you now about our intention, subject to Parliamentary approval, with an update to follow about the specific date for the change. We would also update you in the unlikely event of a significant change to this timetable.

Timetable

6. The timetable is for Ministers to lay draft secondary legislation in Parliament in October, then debates in both Houses later in the autumn; followed by ISA Decision making coming into force during the winter. All messages to your sector in advance of the debates should say that the change is subject to Parliamentary approval. Please note that this is in advance of the VBS go-live in autumn 2009, when we will start to phase in the requirement for a person to be ISA-registered (which the legislation refers to as “subject to monitoring”) in order to do paid or unpaid work with children or vulnerable adults.

Audiences

7. It will help employers and managers in your sector if you cascade the key messages to them promptly, so they have time to:

- a) take stock of how key information above will affect their operations;
- b) prepare to implement the key action points above; and
- c) resource those actions where necessary .

Please let us know if you want us to provide an article, or feel free to reproduce this message and/ or any of its annexes for your own publications, website or intranet, leaflets, or PowerPoint presentations in order to brief your staff and stakeholders. Annexed are:

- [1] key points and benefits of this change, in the context of transition;
- [2] technical details of what will change/ reminders of what will not;
- [3] a timeline of the changes.

8. Chief Executives have received the following short message via the weekly bulletin. The short message published in September 2008 says:

“Since 31st March 2008, as part of transition to the new Vetting and Barring Scheme (starting October 2009), the Independent Safeguarding Authority (ISA) has advised the Secretary of State on barring decisions (POVA, POCA and List 99). In the next stage of transition, subject to Parliamentary approval

from Winter 2008, employers must send new referrals under these schemes to the ISA, which will take the barring decisions.

Link: www.isa-gov.org.uk

Action: Dir of Adult social services, LA and NHS chief executives, need to access the further information at the above link and prepare for the implications for their organisations and the regulated adult social care sector

Further guidance

9. We will issue further guidance, including a check-list for employers about ISA decision making. There will also of course be full guidance for the autumn 2009 go-live of the new Vetting and Barring Scheme. You will receive further news on this through the same route which brought you this message, or you can check on the above ISA website, where you can also sign up for email updates on the new Vetting and Barring Scheme.

DH, September 2008

Contacts

Queries on ISA and the new Vetting and Barring Scheme:

- scheme.info@homeoffice.gsi.gov.uk ; tel 0300 123 1111.

Queries on current barring schemes

(on cases started before the change to ISA decision making, dealt with by the Secretaries of State):

- List 99 or PoCA: tsm.casework@dfes.gsi.gov.uk ;

- PoVA: pova.mail@dcsf.gsi.gov.uk .

Annex 1

Safeguarding vulnerable adults - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme

Factsheet from DH for the regulated adult social care sector

key benefits of changes which start in winter 2008

- further strengthening safeguarding arrangements to deliver the Government's commitments to establish the toughest ever vetting and barring scheme, placing decisions in the hands of independent experts. This is the next key phase of the transition to go-live of the new Vetting and Barring Scheme in autumn 2009;
- widening the workforce which is covered by automatic barring of those newly convicted or cautioned for the most serious offences;
- contributing to the well managed, staged transition to the new Vetting and Barring Scheme by making sure that ISA casework will have been running for several months before go-live.

key messages for employers

As an employer, you need to know that, under the new arrangements from winter 2008:

- you must make any referral under PoVA, PoCA or List 99 to the ISA, not to the Secretary of State, and must provide relevant information, which you already hold, to the ISA on request;
- there are no other changes to your duty to make a referral, the way you make a referral, your duty to check, the way you check prospective employees, e.g. obtaining a PoVA check as part of a CRB check, or the PoVA First service;
- provisional listing in relation to new PoVA (and PoCA) cases will stop. Therefore it is even more important to take up references and look into career history, to ensure that you understand why a job applicant left their previous employment;
- the ISA will bar automatically individuals who have been convicted or cautioned for serious relevant offences, to be set down in regulations.

How employers should prepare: we recommend

- cascading this information to personnel and recruitment managers and the person in your organisation who oversees referrals to the POVA scheme
- checking that current practice on pre-employment responsibilities,

e.g. taking up references and conducting checks, is in line with regulations made under the Care Standards Act 2000.

These arrangements will not come into force until winter 2008. We will advise you in October of a specific start date. Until then, you must continue making referrals as at present.

key messages for regulators, supervisory bodies and local authorities

- you need to tell key individuals in your organisation that the ISA will take over decision making from the Secretary of State in relation to PoVA, PoCA and List 99 from the planned date;
- your organisation will have a new statutory duty to respond to requests from the ISA for further information. This duty relates to information you already hold and will not require you to seek information from other sources.

More background on:

- the Safeguarding Vulnerable Groups Act,
 - the Independent Safeguarding Authority and
 - the new Vetting and Barring Scheme
- is at: www.isa-gov.org.uk .

DH, September 2008

Annex 2

Safeguarding vulnerable adults - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme

What will change at winter 2008: technical details

(subject to Parliamentary approval)

- Employers must refer all new cases to the ISA, who will do the casework and take the barring decision* rather than the Secretary of State.

(*ISA will decide on:

- *any new referrals on or after that date;*
- *existing referrals at that date in cases where barring is not automatic; and the Secretary of State had not yet written to the person inviting them to make representations as to why they should not be included in the barred list.)*
- There will be a set of offences⁴ which will attract an automatic bar from regulated adult social care. The ISA will automatically bar a person without a referral when they receive information directly from the police that the person received a new conviction or caution (after the winter 2008 start date) for a relevant serious offence.
- A barred individual will be barred from the same range of activities as if they had been barred on POVA.
- Employers, regulatory bodies, supervisory bodies and local authorities will have a new duty to respond to requests for information from the ISA where that information is already held (as in practice they do now, on request from the Secretary of State).
- The ISA will be accountable for all work on and subsequent decisions on these cases – both automatic and discretionary barring. ISA will decide whether to contest appeals on new cases and will contest them if appropriate and will handle any reviews on new cases.
- Where an employer in your sector makes a check against POVA, that will also automatically check people barred by ISA from winter 2008 onwards, as well as those barred by the Secretary of State.
- Appeals: except in the most serious cases, a barred person can appeal against being barred. They must first apply for permission from the Tribunal⁵ on grounds that show the ISA made an error in fact or in law.

⁴ The specified offences are listed in SI 2007 No. 195, see www.opsi.gov.uk

⁵ The new Upper Tribunal will hear appeals on ISA decisions ; p4 draft transfer of Tribunals Functions Order, at www.opsi.gov.uk/si/so2008/draft/ukdsi_9780110817828_en_1 . See also draft Upper Tribunal rules to be submitted to the Ministry of Justice in October 2008, at www.tribunals.gov.uk/tribunalprocedurecommittee.htm

- Reviews: a newly barred person will first be able to request permission to seek a review at a set period after being barred (or convicted/cautioned for more serious offences): one year if they were aged under 18 when barred; 5 years, if they were 18-24 when barred (or convicted/cautioned for more serious offences); 10 years if over 24⁶.
- Where an employer in the regulated social care sector makes a check against POVA (or POCA where care for adults and children is provided), this check will also automatically cover people barred by the ISA from winter 2008 onwards, and those barred by the Secretary of State.

What does not change at winter 2008

- The employer's duty under the POVA scheme to make referrals (but, from winter 2008, to ISA, not to the Secretary of State).
- The employer's duty to check individuals, the lists which the employer must check, and how.
- The areas of work from which a newly barred person is barred: a barring decision by the ISA between winter 2008 and the autumn 2009 go-live date will have exactly the same effect as a Secretary of State bar now on PoVA, PoCA or on List 99 for unsuitability.
- The process of applying for CRB checks for PoVA/PoCA/List 99 purposes and the PoVA First service.
- The Secretary of State remains accountable for:
 - existing barring decisions;
 - the existing barred lists;
 - decisions on existing referrals being worked on at the date when ISA takes over new cases (as detailed at the top of this Annex).

Each organisation (ISA, DH, DCSF) answers Freedom of Information

⁶ The set period is the "Minimum Barred Period": Regulation 9 in Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008". SI 2008 No. 474, in force from 07/04/08.

requests or Data Protection Act queries about information they hold on cases.

DH, September 2008

ANNEX 3

Timeline of what will change

September – November: we encourage you, in this period, to publicise the sector-specific implications to your sector via you own publications channels (we recognise that you will have two to three month lead-times on some of your publications). In parallel, we will contact specialist media (e.g. leading national sectoral magazines) for your audiences.

October: draft legislation laid in Parliament

November: likely timeframe for debates in Parliament on draft legislation.

Winter 2008:

Your employers, employees and volunteers should by now have absorbed these messages from the above sources and be aware of what is happening/ what steps to take, as the changeover takes effect:

- Decision making powers on barring individuals will be conferred on the ISA in winter 2008, subject to the enabling secondary legislation being approved by Parliament (after being laid in October and then debated).
- ISA, the independent Non-Departmental Public Body, will take all automatic and discretionary barring decisions on new referrals (as defined in Annex 2) that are currently taken by the Secretary of State under current arrangements (for the vulnerable adults' sector, the Protection of Vulnerable Adults (PoVA) list). Ministers and civil servants will no longer have any role in making decisions on these individual cases where referrals are made after the change-over date, although they will retain that role in respect of some existing cases still being worked on at that date (as defined in Annex 2). The ISA's publicly appointed board of specialists in adult and child protection matters and highly trained case-work staff will help with the discretionary decisions, which will be based on clear criteria and evidence.
- Therefore key employers operating in the sectors covered by PoVA, PoCA and List 99 will need to be aware of the changes. In particular, the PoVA and PoCA sectors will need to be aware of the end of provisional listing on new referrals from winter 2008. It will be more important for employers to check references to understand why applicants left previous employment.
- The Criminal Records Bureau will continue to provide disclosure of criminal records, as at present.

DH, September 2008

