

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

**To: Key stakeholders in DCSF's sector/s in England**

<b>Addressees</b>	<b>Original message sent in September through:</b>
Local Authorities: - Chief Executives + Lead Members; - DCSs, Assistant DCSs; - Chair, Local Children's Safeguarding Boards Government Offices: - DCLs; CSAs; Team Leaders; Children's workforce Foundation, Aided & Independent Schools organisations Voluntary/ Community/ Third Sector FE workforce; FE Principals; Heads of Institutions; HE sector. Unions; Trade Bodies etc., through HO message to ISA consultative groups: CRB customers and Registered Bodies	DCSF's LA web-pages; CX Update (quarterly);  LA Email (weekly to DCS cc CX)  GO SmartMail [newsletter]  ECM Website [pointed to, from ISA website]  Emails to FASNA and ISC  CO Office of Third Sector  DIUS: e.g. FE & Skills Newsletter; DCSF emails to HE sector bodies: UUK, Guild HE, AHUA, AMOSSHE, EQU +UCEA  [1] Regulators & Supervisory bodies, [2] Education, [3] Faith Groups, [5] L.As, [6] Sport, [7] trade unions & [8] voluntary sector.  CRB "Disclosure News" & consultative groups

**Updated December 2008**

DCSF recommends action before 20 <sup>th</sup> January 2009, by those who advise employers and recruitment managers, on key points at [2] below
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*This is an update of the detailed message which was mentioned in a short message\* on this topic published from September onwards through several Government channels.*

*DCSF has also*

- on 16<sup>th</sup> October 2008, publicised the original message to school head teachers and governors by a regular email to maintained schools in England;*
- on 6<sup>th</sup> November sent an update in a regular email to Local Authorities in England, which specified that the planned start date is in January 2009..*

**Basic background:** if this is the first you've heard of the new Scheme or the ISA (though you know about CRB-checking), basic background is at the *ISA website* (page 6);

**Key points**, if you are already familiar with the Scheme and prefer to go straight to bullets summarising our message, are at the *Annexes* (page 5).

**Summary**

1. Safeguarding children and the vulnerable 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, this message is to let you know about the next step (planned for 20<sup>th</sup> January

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

2009) in transition to the new Vetting and Barring Scheme (VBS) for those who work or volunteer\*\* with children (or with vulnerable adults), in order to:

- let you know of planned changes;
  
- set out the background (para 4-5) and timetable (para 7), 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 January 2009;
  
- recommend that you cascade this information to your sector through your usual channels, so employers and recruitment managers for the children's workforce will be aware of impending changes in good time.

The Vetting and Barring Scheme aims to safeguard both children and vulnerable adults. The Department of Health has sent to the Vulnerable Adults sector a message similar to DCSF's September message, to detail how these changes affect the Protection of Vulnerable Adults (PoVA) list and adult social care staff and employers.

\*\*Note: Volunteer managers and volunteers: where this message says "employer/ employee" it also applies to volunteer-involving organisations, volunteer managers and volunteers.

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

information: the ISA will, from 20<sup>th</sup> January 2009, take barring decisions on new referrals from England and Wales under current legislation relating to PoCA, PoVA and List 99. 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, by week commencing 12<sup>th</sup> January 2009. All employers, regulatory bodies, Local Authorities and supervisory authorities<sup>1</sup> will have a new legal 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, PoCA (and PoVA) provisional listing on new cases will end. The ISA will not provisionally bar a person while considering a referral. Therefore we recommend a reminder to recruiting employers to fulfil existing pre-recruitment responsibilities, such as taking up references and scrutinising employment history.

- action: a prospective employer should check previous employment history and references carefully. If the applicant has worked with a vulnerable group, this check should include asking the most recent such employer (or

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<sup>1</sup> Supervisory Authorities in England are: registration authorities under the Care Standards Act; the CHAI and CSCI; the Public Guardian; Ofsted; and the Charity Commission. All are specified in Safeguarding Vulnerable Groups Act 2006, Section 45(7).

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

employers, if there are several in a short time) if they made a referral of any misconduct, for possible barring. In many sectors, employers must do these checks under national standards or regulations. Voluntary organisations should also ask the most recent relevant employer, not just other voluntary organisations.

Information: a barring decision by the ISA between 20<sup>th</sup> January 2009 and the autumn 2009 go-live of the new Vetting and Barring Scheme 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 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 Authority (ISA<sup>2</sup>). Existing lists (List 99, PoCA and PoVA) will be replaced, at go-live of the new VBS in October 2009, by the ISA's two new barred lists. One will bar individuals from working with children; the other will bar individuals from working with vulnerable adults. The Government also plans that the ISA will start making barring decisions from 20<sup>th</sup> January 2009 on new referrals under current schemes. The purpose of starting then is to help ensure a smooth transition to go-live of the new Vetting and Barring Scheme in October 2009: see "key benefits" at Annex 1.

5. We recognise how much you and your sector contribute to the safeguarding of children. We have let you know about this change in advance, with updates as details became available, to help you understand the reasons for the change, implications for you, and the intended benefits.

6. The main points of the short message to Local Authorities in September 2008 were:  
"Since 31<sup>st</sup> 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 (List 99, PoCA, PoVA). In the next stage of transition [...] employers must send new referrals under these schemes to ISA, which will take the barring decisions. Where ISA asks organisations for information on a case, they must provide it.

"[...] please cascade this information within your sector, so employers can prepare in time; and remind employers to fulfil existing pre-employment

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<sup>2</sup> ISA; referred to in legislation as the Independent Barring Board – IBB.

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

responsibilities, e.g. taking up references and conducting checks. Details/ link to DCSF information: [www.isa.gov.org.uk](http://www.isa.gov.org.uk) .”

### **Timetable**

7. Ministers laid draft secondary legislation in Parliament in autumn 2008; and completed debates on it in both Houses on 16<sup>th</sup> December 2008. The Government plans to lay in Parliament in the next few weeks the remaining items of legislation (which do not have to be debated), so that ISA decision making on new referrals from England and Wales under the current barring schemes can start on 20<sup>th</sup> January 2009. Please note that this is in advance of the Vetting and Barring Scheme go-live in autumn 2009, when the ISA will start to bar people from a wider range of paid work, volunteering or work placements with children or vulnerable adults, than is covered by the current barring schemes.

### **Audiences**

8. 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; and
- b) prepare to implement the key action points above.

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.

### **Further guidance on the new Vetting and Barring Scheme**

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

*Safeguarding Vulnerable Groups Act Implementation Division, DCSF*

#### **Contacts:**

Queries on the ISA and the new Vetting and Barring Scheme:

- [scheme.info@homeoffice.gsi.gov.uk](mailto: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](mailto:tsm.casework@dfes.gsi.gov.uk) ;

- PoVA: [pova.mail@dcsf.gsi.gov.uk](mailto:pova.mail@dcsf.gsi.gov.uk) .

# **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

## **Annex 1**

### Factsheet from DCSF for the children's services sector in England

#### **key benefits of changes which start on 20<sup>th</sup> January 2009**

- further strengthening of 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 October 2009;
- automatic barring of those newly convicted or cautioned for specified more serious offences (which now only happens under List 99) will be extended to include all the workforces from which persons are barred by current schemes;
- 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, from 20<sup>th</sup> January 2009:

- you must make any referral under PoCA or PoVA, or under List 99 where it relates to a risk of harm to children, to the ISA, not to the Secretary of State, and must provide relevant information, which you already hold, to the ISA on request;
- employers in the education sector cease to make misconduct<sup>3</sup> referrals to DCSF. Misconduct referrals on teachers (i.e. not child-protection related) must go to the GTC;
- there are no other changes to your duty to make a referral, the way you make a referral, your duty to check and the way you check prospective employees, e.g. List 99/ PoCA/ PoVA as part of a CRB check, and the POVA First service. See guidance online<sup>4</sup>;
- This change from 20<sup>th</sup> January 2009 does not introduce any changes to current legal requirements on when employers must make a CRB check on staff or volunteers. Nor does it change any current guidance on when employers should make a CRB check;

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<sup>3</sup> With one exception – details at Annex 2 below.

<sup>4</sup> "Safeguarding Children and Safer Recruitment in Education", at [www.everychildmatters.gov.uk/socialcare/safeguarding/](http://www.everychildmatters.gov.uk/socialcare/safeguarding/) ; and [www.dh.gov.uk/pova](http://www.dh.gov.uk/pova) .

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

- provisional listing in relation to new PoCA (and PoVA) 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 previous employment;
- the ISA will bar automatically individuals who have been convicted or cautioned for specified serious offences, to be set down in regulations.

How employers should prepare: we recommend

- cascading this information to personnel and recruitment managers;
- checking that current practice on pre-employment responsibilities, e.g. taking up references and conducting checks, is in line with legal requirements and with good practice recommended by the Government<sup>5</sup>.

**These arrangements will not come into force until 20<sup>th</sup> January 2009. Until 20<sup>th</sup> January 2009, you must continue making referrals as at present.**

### **key messages for regulators, supervisory bodies and local authorities**

- You should tell key individuals in your organisation that the ISA will take over decision making from the Secretary of State in relation to PoCA, PoVA and List 99 from 20<sup>th</sup> January 2009;
- Your organisation will from 20<sup>th</sup> January 2009 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](http://www.isa.gov.org.uk) . On that website, you can see key points about:

- **ISA's role:** including ISA's legal responsibilities, & how ISA works;
- **The Scheme:** legal responsibilities of employers, volunteer organisations, employees and volunteers, and what happens next;
- **Resource library:** glossary, legislation, factsheets, newsletters;
- **Frequently Asked Questions:** e.g. how long will registration take?
- Newsroom, Events, Links etc.

*DCSF, December 2008*

<sup>5</sup> E.g. DCSF statutory guidance in force from 2007: "Safeguarding Children and Safer Recruitment in Education", at [www.everychildmatters.gov.uk/socialcare/safeguarding/](http://www.everychildmatters.gov.uk/socialcare/safeguarding/) .

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

### Annex 2

#### What will change at 20<sup>th</sup> January 2009: technical details

- Employers in England and Wales (under PoCA and PoVA) and employers in England (under List 99) must refer all new cases to the ISA, who do the casework and take the barring decision\* rather than the Secretary of State.  
(\*The ISA will decide on:
  - any new referrals on or after 20th January 2009;
  - existing referrals at 20th January 2009 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.)
- 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 (on or after 20th January 2009), for a specified serious offence:
  - now, DCSF automatically bars people on List 99 on receipt of information directly from the police (informing them about specified<sup>6</sup> new convictions or cautions since February 2007);
  - after, 20th January 2009, the ISA will, for new convictions or cautions for specified serious offences, automatically bar people from work covered by list 99 or PoCA or PoVA (with a right to make representations about why the bar should be removed, for all but the most serious offences).
- Employers, regulatory bodies, supervisory bodies and local authorities will have a duty to respond to requests from the ISA for further information, 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. When there is an appeal on a new case, the ISA will decide whether to defend its decision; and the ISA will handle any reviews on new cases. The ISA can take into account information from any previous referrals to current barring lists, when it considers a case.
- Appeals: except in the most serious cases, a barred person can appeal against being barred. They must apply for permission from the Tribunal<sup>7</sup>, on grounds that show the ISA made an error in fact or in law.
- Reviews: a newly barred person will first be able to request permission

<sup>6</sup> The specified offences are listed in SI 2007 No. 195, see [www.opsi.gov.uk](http://www.opsi.gov.uk) .

<sup>7</sup> The new Upper Tribunal will hear appeals on ISA decisions: p4, Transfer of Tribunal Functions Order, SI 2008 No. 2833, at [www.opsi.gov.uk](http://www.opsi.gov.uk) .  
See also Upper Tribunal rules , SI 2008 No. 2698, at [www.opsi.gov.uk](http://www.opsi.gov.uk) .

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

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 24<sup>8</sup>.

- Where an employer in your sector checks against List 99 or PoCA, this check will also automatically cover people barred by the ISA from 20th January 2009 onwards, and those barred by the Secretary of State.
- Employers in the education sector should cease to make misconduct<sup>9</sup> referrals to DCSF. Misconduct referrals on teachers (i.e. with no child protection element) from 20<sup>th</sup> January 2009 must go to the relevant GTC.

### **What does not change at 20<sup>th</sup> January 2009**

- The employer's duty under List 99, PoCA and PoVA legislation to make referrals (but, from 20<sup>th</sup> January 2009, to the ISA, not the Secretary of State).
- The areas of work from which a newly barred person is barred: a barring decision by the ISA between 20<sup>th</sup> January 2009 and the October 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;
- The process of applying for a CRB check for List 99/ PoCA/ PoVA purposes, and the POVA First service.
- The employer's duty to check individuals (which lists and how), including current requirements or guidance on when CRB checks must or should be made. In particular, where the Government has not previously recommended checking, we recommend that employers should not retrospectively check existing staff now, just because of the forthcoming go-live of the new Scheme in October 2009.
- DCSF will be notified by the ISA about bars; and will continue to provide a List 99 checks service to employers, as now.
- The Secretary of State remains accountable for:
  - Existing<sup>\*\*\*</sup> barring decisions and the existing barred lists;
  - decisions on existing referrals being worked on at the date when the ISA takes over new<sup>\*\*\*</sup> cases.

*\*\*\*as defined at the top of this Annex.*

*DCSF, December 2008*

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<sup>8</sup> 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 7/4/08.

<sup>9</sup> Except for misconduct bars from running an independent school; they continue until replacement secondary legislation comes into force, under provisions at Education and Inspections Act 2006 S.169 (to be superseded in due course by Education and Skills Act 2008, S.128-131).

## **Safeguarding children - Independent Safeguarding Authority (ISA): next step in transition to new Vetting and Barring Scheme**

### **Annex 3**

#### **Timeline leading up to changes in 2009**

**September 2008:** we encouraged you to publicise the sector-specific implications to your sector via your own publications.

**October 2008:** draft legislation laid in Parliament.

**November - December 2008:** debates took place in Parliament on draft legislation.

#### **January 2009:**

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:

- The Government plans to confer decision making powers on barring individuals on the ISA from 20<sup>th</sup> January 2009,.
- The ISA, the independent Non-Departmental Public Body, will implement all automatic barring and take all discretionary barring decisions on new referrals (as defined in Annex 2) that are currently taken by the Secretary of State under current arrangements (that is, for the children's sector, Protection of Children Act List (PoCA) and List 99). Ministers and civil servants will no longer make decisions on these individual cases where referrals are made on or after 20<sup>th</sup> January 2009, although they will retain that role in respect of some existing cases still being worked on at 20<sup>th</sup> January (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 List 99, PoCA and PoVA will need to be aware of the changes. In particular, the PoCA sector need to be aware of the end of provisional listing on new referrals from 20<sup>th</sup> January 2009. 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.

*DCSF, December 2008*