

**To: Key stakeholders impacted by the Safeguarding Vulnerable Groups (NI) Order 2007**

Addressees	Message sent through
Chief Executive of each HSS Board, HSC Trust, the CSA, and each Special Agency	
Education & Training Inspectorate (ETI)	
Regulation and Quality Improvement Authority (RQIA)	
Owners of establishments, bodies or agencies subject to inspection by RQIA	RQIA
Further Education Sector	Department for Employment & Learning
Higher Education Sector	Department for Employment & Learning
Chief Executives of District Councils	
AccessNI Registered Bodies	Via AccessNI Registered Bodies' e-mail / postal addresses
Government Departments and relevant NDPBs	SVG Departmental Representatives Group
SVG Stakeholder Groups	
Keepers of Registers <sup>1</sup>	
Education Sector (Primary & Secondary)	The Department of Education will separately issue a circular to the schools sector, setting out how schools should refer cases to the ISA from 13 March 2009.
Professional Regulatory Bodies	
Trade Unions & Professional Associations	

<sup>1</sup> as defined in Article 43(7) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

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06 February 2009

## The Safeguarding Vulnerable Groups (NI) Order 2007

### Implementation of a New Vetting and Barring Scheme for Northern Ireland

#### Decision-making by the Independent Safeguarding Authority (ISA) from 13 March 2009

#### Information for Employers and Human Resource Managers

##### Summary

1. You are aware that as part of the Northern Ireland Executive's commitment to safeguard children and vulnerable adults from harm and the risk of harm, we are in the process of implementing the Safeguarding Vulnerable Groups (NI) Order 2007 (the SVG Order). The SVG Order will establish a new Vetting and Barring Scheme (VBS) for Northern Ireland, which will work in tandem with similar arrangements being put in place within other parts of the UK. A new Independent Safeguarding Authority (ISA) will be central to the VBS.
  
2. This circular is being issued to:
  - Let you know about changes, involving the ISA that will become effective **from 13 March 2009** as part of the planned implementation of the VBS in Northern Ireland;
  - Request that you cascade this information through established channels to your sector, to ensure that all employers and HR Managers in the statutory, voluntary and independent sectors are made aware of proposed changes in advance of them coming into operation.

##### Proposed Changes

3. The proposed changes, which will be effective from 13 March 2009 are:

- Barring decisions on new referrals under existing POCVA<sup>i</sup> and Department of Education barring schemes will, from 13 March 2009, transfer to the ISA;
  - Provisional listing on new referral cases will end. As a result, you are asked to remind employers of their existing recruitment responsibilities or, in some sectors, statutory duties to: take up references [in particular from, the previous employer], check employment history, and follow up breaks in employment. With the termination of provisional listing, employers should also be advised, as part of their recruitment process, to check whether a previous employer has referred any relevant misconduct to the ISA for barring consideration;
  - A new statutory duty on employers, regulatory bodies, and supervisory authorities to respond to requests from the ISA for information they **already** hold; and
  - The extension of automatic barring to those working with vulnerable adults.
4. More detailed information on the proposed changes is set out at **Annex A**.

## **Background**

5. The SVG Order and relevant sections of The Safeguarding Vulnerable Groups Act 2006 will put in place a new Vetting and Barring Scheme (VBS) for Northern Ireland. A new statutory body, the Independent Safeguarding Authority (ISA), which will work across England, Wales and Northern Ireland, will be central to the VBS. One of its key tasks will be to establish and maintain lists of individuals barred from working in specified positions with either children and/or vulnerable adults. The ISA will make decisions on who should be barred. **ISA barring decision-making for Northern Ireland will start on 13 March 2009.**

## **Purpose of this Circular**

6. This circular is being issued as part of a series of messages that we will issue as we move to full implementation of the new VBS in Northern Ireland. Decision-making by the ISA from March 2009 is an important implementation milestone. We want to let you know about this in advance, to help you understand the reasons for the changes, the intended benefits and the impacts on employers, keepers of professional registers

and inspection authorities and child and adult protection teams in HSC Trusts. We also want to assure you that we are working closely with partner organisations, for example, AccessNI, and colleagues in England and Wales, to ensure that collectively we are ready for the full operation of the new VBS. We will be issuing further information relating to the wider implementation of the VBS to intermediary bodies in the near future and to employers. Our aim is to ensure that you are fully briefed before the VBS goes live.

### **Timetable**

7. The commencement of decision-making by the ISA from 13 March 2009 requires supporting secondary legislation at Westminster and the Northern Ireland Assembly. The secondary legislation for Northern Ireland was made on 6 February 2009. ISA decision-making for England and Wales commenced on 20 January 2009. Our aim is to put in place new arrangements in Northern Ireland within broadly similar timescales to England and Wales to ensure that we afford equal protections to children and vulnerable adults living here.

### **Audience**

8. This circular is being issued widely across the statutory, voluntary and independent sectors. It will help employers and HR managers in your sector if you cascade the key messages to them promptly, to ensure that they are prepared for the changes when they come into operation on 13 March 2009. It would be helpful if this circular could be placed on your website or intranet. Also, the contents of this circular may be reproduced in your own publications, in information leaflets, or used in PowerPoint presentations for the purposes of briefing your staff and stakeholders on the latest development in relation to implementation of the new Northern Ireland Vetting and Barring Scheme.

### **Further guidance**

9. We will be revising existing DHSSPS guidance, *Choosing to Protect*, to reflect the changes created by the start of ISA decision-making. *Choosing to Protect* will make it

clear that employer referrals should be made directly to the ISA [in place of DHSSPS] from 13 March 2009. Choosing to Protect [when revised] will include the ISA address to which referrals should be sent from 13 March 2009. It will also include links to the ISA website from which new ISA referral forms can be downloaded. **The revised guidance will be available on the DHSSPS website at:**  
[http://www.dhsspsni.gov.uk/child\\_protection\\_guidance](http://www.dhsspsni.gov.uk/child_protection_guidance) from 06 March 2009.

10. We will also produce comprehensive guidance on the operation of the Vetting and Barring Scheme as a whole in advance of full implementation. You will receive further news in due course.
11. We also recommend that you regularly check for updates on the ISA website at [www.isa.gov.uk](http://www.isa.gov.uk), where you can also sign up for email updates on the Vetting and Barring Scheme. Update information will also be posted regularly on our own website, which can be accessed at <http://svgni.dhsspsni.gov.uk>.

#### **Enquiries**

12. Should you have any queries about any aspect of this circular, please contact a member of the Safeguarding Vulnerable Groups Order Implementation Team by e-mail on [svgni@dhsspsni.gov.uk](mailto:svgni@dhsspsni.gov.uk) or by telephone on 02890 528223 / 523173.

#### **SAFEGUARDING VULNERABLE GROUPS ORDER IMPLEMENTATION TEAM**

*The Department of Health, Social Services and Public Safety*

**February 2009**

## **Annex A**

### **WHAT IS THE ISA?**

1. The ISA is an independent Non-Departmental Public Body of the Home Office. It was established under the Safeguarding Vulnerable Groups Act 2006, which extended the operation of the ISA to England, Wales and Northern Ireland. The ISA will be central to the new Vetting and Barring Scheme that is being implemented in Northern Ireland under the Safeguarding Vulnerable Groups (NI) Order 2007. One of the ISA's key roles will be to establish and maintain lists of individuals barred from working with children and/or vulnerable adults. It will make decisions about who is placed on those barred lists. The ISA came into being in January 2008 and one of its first tasks is to transfer individuals on to the new barred lists from existing barred lists established under the Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) and the Education (Prohibition from Teaching or Working with Children) Regulations (NI) 2007 (Unsuitable Persons Regulations). This work is ongoing at the time of publication of this circular. Further information on the ISA can be accessed at: [www.isa.gov.org.uk](http://www.isa.gov.org.uk)

### **WHAT IS THE SIGNIFICANCE OF ISA DECISION-MAKING?**

2. Decision making powers on barring individuals will be conferred on the ISA in March 2009. This means that from 13 March 2009, ISA will take all barring decisions on new referrals made under POCVA and the Unsuitable Persons Regulations. These decisions are currently taken by the Department of Health, Social Services and Public Safety (DHSSPS) and the Department of Education (DE). From 13 March 2009, barring decision-making by Northern Ireland government departments will cease on all new referral cases. However, DHSSPS and DE will continue to deal with cases received and under consideration before the date on which ISA barring decision-making starts.
3. The ISA has a publicly appointed board of experts who specialise in adult and child protection matters. Richard Black, former Chief Executive of North and West Belfast HSS Trust, represents Northern Ireland on the ISA board. The ISA will employ highly trained case-work staff to help with barring decisions which will be based on clear

barring criteria and evidence.

4. The role of AccessNI as criminal history disclosure body will continue after the start of ISA decision-making. The body will provide basic, standard and enhanced disclosure certificates to registered bodies who apply for them, as at present.

#### **WHEN WILL ISA START MAKING BARRING DECISIONS?**

5. The ISA will start making barring decisions from 13 March 2009. As indicated, it is subject to the approval of Parliament and the Northern Ireland Assembly.

#### **HOW DO I MAKE REFERRALS TO THE ISA?**

6. The process of referral to the ISA will be set out in revised DHSSPS guidance, *Choosing to Protect* [available on the DHSSPS website from 06 March 2009]. The revised guidance will provide ISA address details and updated referral forms to be completed by employers required/seeking to refer an individual to the ISA for barring decision-making.

#### **ARE THERE ANY OTHER CHANGES HAPPENING FROM THAT DATE?**

7. In addition to the start of ISA decision-making, **there are 3 other changes that will take place from 13 March 2009**. They are:
  - Provisional listing will end [see Para 8];
  - Employers, keepers of professional registers and inspection authorities will be **required** to provide information to the ISA on request; and
  - ISA will be able to automatically bar a person without a referral from an employer. While this currently can happen under the Department of Education Unsuitable Persons Regulations, which can automatically bar individuals from working with children, it will be extended from the start of ISA decision-making to cover those working with vulnerable adults. The ISA will receive information directly from the

police about convictions or cautions after the start date, for all relevant serious offences. These offences will be set out in secondary legislation, which will come into operation to coincide with the start of ISA decision-making.

#### **WHAT DOES THE END OF PROVISIONAL LISTING MEAN?**

8. Currently under POCVA, an individual who is referred to DHSSPS is afforded the opportunity to comment on the referral to DHSSPS. The individual may then be placed on a provisional list while his case is being considered by the department. AccessNI conducts a check against the provisional list as part of the enhanced disclosure process. With the end of provisional listing from 13 March 2009, an individual who is referred to the ISA will not be placed on a provisional list. **As a result, it will be more important than ever before for employers to establish why an applicant left his previous employment by completing the full range of pre-employment checks that are advised or required as part of the recruitment process.** These include, inter alia, checks against criminal records and the barred lists [through the enhanced disclosure process], employment history checks, identity checks, qualification and workforce registration checks [where relevant], reference taking and follow-up and investigations of breaks in employment. An employer should also specifically enquire whether the job candidate has been previously referred to the ISA as a result of misconduct involving either a child or vulnerable adult.

#### **WHAT INFORMATION WILL EMPLOYERS, KEEPERS OF PROFESSIONAL REGISTERS OR SUPERVISORY AUTHORITIES OR HSC CHILD AND ADULT PROTECTION TEAMS BE ASKED BY THE ISA TO PROVIDE?**

9. As part of the barring decision-making process, the ISA may request information from an employer who made the referral to the ISA in the first place. The ISA might also request information from a keeper of a professional register [e.g. NISCC, GMC, GTCNI or NMC] or an inspection authority [RQIA or ETI], which the relevant body might be expected to hold in consequence of its particular functions. From the date of commencement of ISA decision-making, **it will be a statutory duty under The Safeguarding Vulnerable Groups (NI) Order 2007 to provide such information at the request of the ISA.** The duty will relate to information that is already held by the employer or body and will be set out in secondary legislation.

**WHY ARE THESE CHANGES COMING INTO FORCE IN ADVANCE OF THE VETTING AND BARRING SCHEME BEING FULLY IMPLEMENTED?**

10. There are number of reasons for commencing ISA decision-making in advance of full VBS implementation. These are set out as **key benefits** below:

**Key Benefits of ISA decision-making from 13 March 2009**

- This is in keeping with government's commitment to bring about sustained improvement to the arrangements for safeguarding vulnerable groups;
- Smoothing the way for full implementation of the Vetting and Barring Scheme;
- Building on existing practice of preventing unsuitable persons from working with vulnerable groups by placing them on barred lists, as established under POCVA and the Unsuitable Persons Regulations;
- Delivering on the commitment to place barring decisions in the hands of independent experts;
- Facilitating gradual gearing up by employers, keepers of professional registers and inspection authorities as we move towards go-live.

**WHAT WILL THE COMMENCEMENT OF ISA DECISION-MAKING MEAN IN PRACTICE AND WHAT DO I NEED TO DO NOW?**

11. The first thing that you need to do is make this information widely available to employers and HR managers in your sector via you own publications channels so that they are aware that:
- ISA decision-making will start on 13 March 2009 in advance of full implementation of the Vetting and Barring Scheme;
  - Referrals under POCVA or the Unsuitable Persons Regulations will change from

13 March 2009. From that date, referrals should be made to the ISA. *Choosing to Protect* [when revised] will include the ISA address to which referrals should be sent from 13 March 2009. It will also include links to the ISA website from which new ISA referral forms can be downloaded. The revised guidance and forms will be available on the DHSSPS website from 06 March 2009;

- In making referrals to the ISA, employers will need to continue to ensure that their investigative approaches are both fair and robust;
- Provisional listing will cease from the start of ISA decision-making. With the end of provisional listing, it will be even more important for employers to adhere to robust pre-employment checks;
- From the start of ISA decision-making, it will be a statutory requirement to respond to requests for information from the ISA; and
- It will be possible for the ISA to automatically bar an individual from work with children and vulnerable adults if they commit a specified offence and that the police will pass offence information directly to the ISA.

**PLEASE NOTE:**

- **There are no other changes to your duty to make a referral under POCVA, your duty to check against the barred lists under POCVA nor the way you check prospective employees through AccessNI.**

## **SUMMARY OF WHAT WILL CHANGE AND WHAT WILL NOT CHANGE FROM 13 MARCH 2009**

### **What will change:**

- From 13 March 2009, the ISA will start making decisions in relation to 'new' referrals for barring consideration. From that date, DE and DHSSPS will only deal with 'existing' referrals, which were under consideration by the relevant department prior to the start of ISA decision-making;
- The way you make referrals. These will be made directly to the ISA and guidance and referral forms will be revised to reflect the new referral arrangements;
- Employers must refer all new cases to the ISA, which will: consider each case and request further information as required; and take the final barring decision without any reference to either DE or DHSSPS;
- The ISA will automatically bar a person without a referral from an employer, when they receive information directly from the police that the person has received a conviction or caution for a relevant serious offence (as currently happened under the DE Unsuitable Persons Regulations, in relation to those teaching or working with children);
- The ISA will be accountable for all of the barring decisions its makes (those based on convictions/cautions for criminal offences as well as those based on referrals from employers etc.) and the process of decision-making;
- DE and DHSSPS remain accountable for the existing barring decisions and the existing barred lists, and for decisions on existing referrals being worked on at the date when ISA takes over new cases;
- An individual barred by the ISA during this phase of ISA decision-making will be barred from the same range of activities as if they had been barred on one of the current lists established under POCVA or the Unsuitable Persons Regulations. When we expand the definitions of the children's and adult's workforces [with the introduction of a new definition of regulated activity in the next stage of implementation], individuals barred by the ISA will be barred from a much greater range of activities.
- The ISA will be able to take into account information from any previous referrals to current barring schemes, when it considers a case for barring;
- ISA will decide whether to contest appeals against any decision to bar an individual and will contest them if it so decides;
- ISA will handle any reviews on new cases;

- From the start of ISA decision-making, as part of an enhanced disclosure request, AccessNI will make a check against the lists established under POCVA and the Unsuitable Persons Regulations as well as a check against the ISA children's and adults' barred lists; and
- Employers, regulatory bodies, supervisory bodies and child and adult protection teams will have a duty to respond to requests from ISA for further information.

- **What does not change**

- The employer's duty to make referrals under POCVA. (from 13 March 2009, the duty will be to refer to the ISA not DHSSPS);
  - The employer's duty under POCVA to check individuals against the barred lists and the process of checking against the barred lists via a standard or enhanced disclosure certificate from AccessNI;
  - The range of activities that a barred individual is barred from [i.e. from work in a regulated position [children] or a care position [vulnerable adult] as defined under POCVA;
  - In the education sector, referrals as a result of misconduct (with no child protection element) and health grounds should continue to be made to the Department of Education;
  - Handling of existing referrals at change-over date. Where a referral is made before ISA decision-making commences and the process of consideration is underway, the case will be seen through to conclusion [the decision to bar/not to bar] by DE or DHSSPS, as relevant.
  - Appeals against barring decisions (where these are permitted by the legislation) will, with the leave of the Tribunal, continue to be heard by the Care Tribunal in Northern Ireland.
-