

Fact Series

The safeguarding vulnerable groups act 2006 and the ISA/Vetting and Barring Scheme
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THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 AND THE ISA/ VETTING AND BARRING SCHEME

WHAT IS THE ACT FOR?

The Safeguarding Vulnerable Groups Act is an important part of a bigger programme of work, extending out across government departments and is designed to solve the failures identified by the 2004 Bichard Inquiry, arising from the Soham murders. The Act is designed to protect children and vulnerable adults from individuals who may pose a threat to their wellbeing or safety.

THE ACT AND THE VETTING AND BARRING SCHEME

The Act provides the legislative framework for the new Vetting and Barring Scheme, put into place by the Independent Safeguarding Authority. These new arrangements will be introduced in managed phases from autumn 2009. Meanwhile, the Department for Children, Schools & Families (The DCSF), The Department of Health and the Home Office are drafting regulations and guidance, that will underpin the scheme and help prepare for its launch. These notes are therefore subject to change as further guidance becomes available.

WHAT IS THE INDEPENDENT SAFEGUARDING AUTHORITY?

The Independent Safeguarding Authority (ISA) is a non-departmental public body based in Darlington. Its main aim is to prevent unsuitable people from “working” with children and vulnerable adults. It will do so by placing these people on one of two ISA Barred Lists. The ISA will make decisions about who should be on these lists as part of the new Vetting and Barring Scheme (VBS).

WHO WILL THE SCHEME APPLY TO?

The scheme will apply to any individual working with children and vulnerable adults in a regulated or controlled activity. Volunteers are classed as “workers” in this context. For the purposes of this Act, any requirement or liability (including criminal liability) will rest with the person responsible for the management and control of the association, or, if there is more than one such person, all of them jointly and separately. It will therefore not be possible for a committee member to escape liability by delegating responsibility to a chaperone.

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DEFINITION AND SCOPE OF A 'REGULATED ACTIVITY'

The Safeguarding Vulnerable Groups Act 2006 sets out the definition of a 'regulated activity'.

The list of regulated activities includes: teaching, training, instruction and transportation of children and any form of care for, or supervision of, children. It also includes activities that take place in full-time educational institutions, hospitals, care homes etc.

Therefore all chaperones will need to be registered, and anyone else who is responsible for the welfare of children, or vulnerable adults, whilst taking part in a society's activities. It could be argued that a director is "training or instructing children" (which falls within the definition). It could also be argued that a health and safety officer also falls within the definition, if their advice or guidance "relates to [a child's] physical, emotional or educational well-being".

Due to the lack of specific guidance at this time, NODA urges a cautious approach. Some activities are excluded e.g. if the activity is carried out by the same person less than once a month, and on less than three days in any 30 day period and not between 2am and 6am.

DEFINITION AND SCOPE OF A 'CONTROLLED ACTIVITY'

The Act also defines 'controlled activity'. Again, the definition is complex, but includes health care, any activity that is carried out in a further education institution and any other activity outside the scope of this factsheet. This will include ancillary work such as cleaning, administrative work etc.

The Act does not prohibit a barred person from working in a controlled activity, but only allows it with safeguards.

HOW DOES THE ISA WORK?

The ISA works in partnership with the Criminal Records Bureau (CRB), an executive agency of the Home Office, to deliver the new Vetting and Barring Scheme.

The ISA will consider a range of information – from the police, employer referrals, regulatory bodies and other agencies when compiling its lists. An Independent Barring Board (IBB) will then decide whether the individual in question should or should not be barred from working with children or vulnerable adults. There will be a separate barred list for children and vulnerable adults (any individual barred from working with adults will automatically be barred from working with children).

The ISA will also keep a record of individuals who can:

- Work in regulated activities with children and/or vulnerable adults.
- ONLY work with children and/or vulnerable adults in controlled activities with safeguards.

THE ISA AND SOCIETIES

A society will be required to ensure that any person, paid or voluntary, who they have working with children and/or vulnerable adults, has passed a CRB check and has gone through the registration process with the ISA.

This can be done via a registered or umbrella body such as NODA.

Once the employee/volunteer is registered, a nominated person within the society (preferably a CRB contact), will receive a certificate showing the person's ISA status. As the ISA does NOT check for malpractice or all criminal convictions, ISA registration does not guarantee that a person does not have a criminal history.

The society will have a discretionary right to conduct an Enhanced CRB check in order to obtain the full picture of the individual's criminal history, allowing them to decide whether they are suitable or not for a particular role or position. (There are instances where an Enhanced CRB check is legally required or required by a Local Authority). This extra information will feature on the employee/volunteer's certificate.

Once ISA registration is complete, any society will be able to check a person's ISA status online free of charge (unless application for an Enhanced CRB check is mandatory). All ISA registered individuals will be subject to continuous monitoring. When new information, such as a conviction, or caution, or a referral from an employer becomes known about an individual already registered, the ISA will review its original decision not to bar. Societies will be automatically notified of changes of status of any individual who continues to work with them.

Societies should NOT work with individuals who are not yet ISA registered, or who are still waiting for confirmation on their registration.

All societies, employers, social services and professional regulators have a duty to refer to the ISA any information about individuals who may pose a risk.

The Society will commit a criminal offence if it:

- Permits a worker to engage in a regulated activity if that worker is barred, and the society knows (or has reason to believe) that the worker is barred.
- Allows a worker to engage in regulated activity knowing (or having reason to believe) that the worker has not obtained a registration certificate under the scheme.

- Permits a worker to engage in regulated activity without checking that the worker has complied with these regulations.

THE ISA AND THE INDIVIDUAL

Any individual seeking to work with children or vulnerable adults must apply to the ISA and the Vetting and Barring Scheme. Applications cost £64. This cost includes a £28 fee to cover the ISA's costs and £36 to cover the CRB's costs as administrator of the applications.

The fee will be a one off payment and is intended to cover the applicant for the duration of their career in regulated activity.

Those involved in unpaid voluntary activity will not have to pay the application fee. Individuals will then receive a registration number, which can be used by the society to check on their ISA status at any time.

An appeal process is available if any individual feels he or she has been barred unfairly.

OPTING OUT OF THE SCHEME

Should an individual no longer wish to work or volunteer in a regulated capacity, then they may opt out of the scheme by writing to the ISA.

WILL THIS SERVICE INCLUDE NORTHERN IRELAND, SCOTLAND AND WALES?

The service will extend to England, Wales and Northern Ireland, although arrangements for application and appeals may differ slightly in Northern Ireland.

A separate, but aligned, scheme is being set up in Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007. Anyone included on a Barred List in Scotland will also be barred from working with children and vulnerable adults across the UK and vice versa.

PROGRESSION THROUGH THE PHASES OF THE SCHEME

From October 2009

There will be criminal penalties for barred individuals who seek or undertake work with vulnerable groups and for organisations who knowingly take them on.

The eligibility criteria for Enhanced CRB checks will be extended to include anyone working in a regulated position.

**From July 2010**

Those who currently work with children or vulnerable adults and are taking up a new appointment will have to become ISA registered. Those who currently work with vulnerable groups, but are staying in their current role, will not have to become registered until later in the five-year phasing period.

Employers and voluntary organisations working with children and vulnerable adults cannot recruit workers who are not ISA registered.

From July 2010, individuals can apply for ISA registration and a CRB check (including an ISA check) on one new application form.

When a person becomes ISA registered, they will be continuously monitored and their status reassessed against any new information which may come to light.

From 2011

Existing employees and volunteers with no CRB check must apply for ISA registration. Existing employees and volunteers with CRB checks will also need to apply for ISA registration, starting with staff whose CRB checks are the oldest.

