

## **Independent Safeguarding Authority (ISA)**

### **Introduction**

The Independent Safeguarding Authority (ISA) is the new public body charged with setting up a register of those that are considered to be fit to work with, children and vulnerable adults in England, Wales and Northern Ireland. The ISA will replace current legislation such as the Protection of Children Act (PoCA); the Protection of Vulnerable Adults (PoVA) scheme, which currently comes under part VII of the Care Standards Act 2000; and of List 99. It is intended that the ISA will be a database of all individuals who work with children and vulnerable adults.

The creation of the ISA is part of the biggest overhaul of vetting and barring arrangements ever undertaken in the UK, and will eventually cover almost 12 million people. The ISA scheme has a much wider remit than current provisions, affecting more workers and professions than before. In fact, when fully rolled out in 2014, the ISA will be the biggest scheme of its kind in the world. All nurses, midwives, student nurses and health care assistants will be required by law to register. If they are not on the register they will not be able to work with children and vulnerable adults. A vulnerable adult includes all adults that receive health care.

This briefing is for members working in England, Wales and Northern Ireland. A briefing for members in Scotland is available at:

[http://www.rcn.org.uk/newsevents/congress/2009/congress\\_2009\\_resolutions\\_and\\_matters\\_for\\_discussion/4\\_isa\\_151\\_for\\_better\\_or\\_worse](http://www.rcn.org.uk/newsevents/congress/2009/congress_2009_resolutions_and_matters_for_discussion/4_isa_151_for_better_or_worse)

### **Why has it been set up?**

The ISA has been set up in light of the Soham murders of 2002 and the subsequent Richard Inquiry which declared the need for the registration of all individuals working with children or vulnerable adults. Recommendation 19 of the Richard Report states;

*“New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these client groups.”*

### **Who needs to be registered with the ISA?**

All individuals whose work brings them into contact with children or vulnerable adults such as the elderly and those in care will be required by law to be registered with the ISA. There will be a legal requirement on employers to ensure that their staff are registered and they will also be legally required to pass on any relevant information which they may hold on their staff to the ISA.

Whilst the service will extend to England, Wales and Northern Ireland, arrangements for applications and appeals will differ slightly in Northern Ireland. A separate but aligned scheme is currently 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, just as anyone on a barred list in England, Wales

and Northern Ireland will be barred in Scotland. It is vital that the ISA and Disclosure Scotland work together effectively across the whole of the UK in order to ensure that there are no loop holes or discrepancies over barred individuals.

In Wales much of the scheme will be consistent with that of England but under the Act the Welsh Assembly Government has seen fit to make regulations covering controlled activity more stringent than those in England. In Wales anyone who had committed any of the most serious offences and is included automatically on the barred list would not be allowed to work in Controlled Activities. In addition, those with other offences, or who have engaged in harmful behaviour that lead to a "discretionary" bar, may be employed in controlled activities subject to appropriate safeguards. In England those barred for the most serious offences can apply to work in controlled activities and be employed subject to appropriate safeguards.

The Independent Safeguarding Authority does not extend to Scotland. The Protection of Vulnerable Groups (Scotland) Act 2007 results from the same Richard Inquiry recommendations which have led to the establishment of the ISA. However, the Acts are different in scope and provide for separate processes to set up and maintain lists of adults barred from working with protected adults and/or children. The Central Barring Unit (the nearest equivalent to the ISA in Scotland) will decide who is deemed unsuitable to work with either group and will maintain the barred lists. Although the two Acts are different, they have been written to ensure that anyone barred in any other UK country will automatically be barred in Scotland and vice versa.

### **Regulated and controlled activities**

The regulations set out two types of ‘activity’: ‘Regulated Activity’ and ‘Controlled Activity’.

An individual may be barred from working in a ‘Regulated’ activity but might be allowed to work in a ‘Controlled Activity’.

Regulated activity will include;

- An activity of a specified nature which involves contact with vulnerable adults or children that is frequent, intensive and sometimes overnight. ‘Specified nature’ covers teaching, training or instruction, care or supervision of children or vulnerable adults and includes people such as sports coaches, referees, private tutors, teachers, childcare workers, probation and prison officers and health and social care workers.
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively. ‘Specified place’ includes schools, childcare premises including nurseries, residential homes for children and hospitals.
- Fostering and child minding.
- An activity which involves on a regular basis the day to day management or supervision of people carrying out activity of a specified nature or in a specified place, or inspection or functions of Children and Family Court Advisory and Support Service officers or Welsh family proceedings officers.

Controlled activity includes;

- Frequent or intensive support work in general health settings, the NHS and further education. Such work includes cleaners, caretakers, shop workers, catering staff, car park attendants and receptionists.

- Individuals working for specified organisations (e.g. a local authority) who have frequent access to sensitive records about children and vulnerable adults.

### **Launch date**

New applicants for jobs with vulnerable adults or children and those switching employers will be required to be ISA registered from 26<sup>th</sup> July 2010.

Since 20<sup>th</sup> January 2009 all new referrals to PoCA and PoVA have been dealt with by the ISA. This will continue, and from 12<sup>th</sup> October individuals who are to be barred from working with vulnerable groups will be barred from a much wider range of workplaces and volunteer settings – including all NHS settings and HM Prison Service.

### **Implementation**

The ISA will be rolled out across all sectors in four stages over a period of five years.

- The first wave being all new entrants/applicants for relevant positions will have to be registered with the ISA by 26<sup>th</sup> July 2010.
- The second wave will be individuals moving to a different post within the same organisation.
- The third group affected will be those currently within an organisation but have had no prior checks carried out on them.
- The final wave will be individuals who have previously had enhanced checks but not ISA checks or transferable safeguarding checks.

By 2014 all workers or volunteers with children or vulnerable adults will have to be on the ISA register.

### **The cost of registration**

The overall cost for registering will be £64 per person (£58 in Northern Ireland), this is designed to be a one-off fee which is transferable between employers. Volunteers will not have to pay a fee but will still be required to register with the ISA.

The first part of the fee, which has been set at £28 will cover the following:

- The cost of administering the registration process with the ISA.
- The cost of the instant online registration checking system.
- The cost of volunteers registering with the scheme.
- The cost of continuous monitoring and updating whilst registered with the scheme.

The remaining £36 will cover the Criminal Record Bureau's costs as administrators of the applications. The ISA will work in conjunction with the Criminal Records Bureau (CRB) to deliver the new system. The CRB will provide the administrative arm, supporting the ISA's primary function of making barring decisions. The CRB will perform an enhanced check upon individuals seeking registration, if this highlights any relevant concerns they will be flagged up to the ISA for potential barring.

ISA registration will be transferable. That is, if a person were to change jobs or take up a voluntary activity, they would not need to apply again.

The RCN is lobbying to gain concession that the individual will not have to foot the bill for registering with the ISA.

### **ISA decision making powers**

The ISA will make all decisions about who should be barred from working with children and vulnerable adults, previously this decision making power was held by the Secretary of State.

Some offences will automatically result in the individual being barred without leave to appeal or to make mitigating representations, for example, sexual assault. This is known as an 'autobar without representations'. This list covers the most serious offences against children and vulnerable adults, it indicates that an individual poses a risk of harm to children or vulnerable adults in every conceivable case.

All individuals over 18 who have committed sexual offences and other specified sexual and violent offences will be placed on the barred list automatically.

Some offences, or prior convictions, will result in the individual being barred with an opportunity for written representations, and in turn removal from the barred list, 'autobar with representations'. For example, shop lifting or even offences as serious as GBH. However, the ISA will not remove a bar unless it is satisfied that the individual case does not pose a risk of harm to children or vulnerable adults. Representations can only be made in writing and must be made within 8 weeks of the individual receiving notice from the ISA that they have been placed on a barred list.

Relevant information about an individual will be referred to the ISA from interested parties such as employers, regulatory bodies or even concerned members of the public. There is also scope for so called 'soft information' to be taken into account. 'Soft information' could be in the form of allegations from colleagues or patients or previous disciplinary matters whether the individual has been found guilty or not.

Individuals listed on one of the ISA Barred Lists may have the right to appeal to the Care Standards Tribunal on a point of fact or law but not on the ISA's decision.

There is no process for an individual to automatically return to the register. If an individual has been barred they will remain barred. However, dependent upon how long it has been since the barring took place the individual may be allowed to seek a review of their position. The timescales are:

- If barred at under age 18 – after 1 year.
- If aged 18-24 after 5 years.
- If over 24 after 10 years.

### **RCN Concerns**

The RCN has been involved in extensive lobbying of the Home Office, Department of Health, Department for Children, Schools and Families and of the ISA since the summer of 2008. We have been working together with other trade unions to form a set of joint principles. These joint principles have helped to shape the basis of our lobbying position. Whilst welcoming the need for improved safeguards for children and vulnerable adults the RCN has significant concerns around several areas of the ISA's proposed implementation.

- **A cost too far?**

Registered Nurses are already regulated through their registration with the Nursing and Midwifery Council (NMC). NMC registration costs £76 per year. Adding the ISA registration fee of £64 to the costs of an already strongly regulated group of workers is unfair and adds to the financial burden our members are facing in the current economic environment.

The RCN believes that individuals should not have to pay twice for public protection. All set up and running costs associated with the ISA should be met by employers and/or governments. We believe that the £64 registration fee, if to be paid for by the individual, will disproportionately affect those in low paid work and those working part-time.

- **Joint working and over-regulation**

The RCN has concerns that it has not yet been made clear as to how the ISA will work alongside the NMC. There should be no duplication of regulatory mechanisms that would lead to over-regulation. Clear arrangements and relationships should be put in place to ensure that relevant data is shared between existing regulators, employers and the ISA. It is vital that no contradictory decisions are made between the two bodies, leading to consequential injustices.

- **Fair representation?**

The House of Lords declared on the 21<sup>st</sup> January 2009 in the appeal of Wright vs. Secretaries of State that the PoVA scheme was incompatible with Articles 6 (right to a fair trial) and Article 8 (right to respect for private and family life) of the European Convention of Human Rights in having a Provisional Listing System in which a work ban was imposed at the outset before receiving representations.

The ISA system does not have a provisional listing system as such, but other comments in the Lords 'judgement', and in particular the fact that Articles 6 and 8 are engaged, call into question the fairness of the new scheme, most notably in the lack of an unrestricted right of appeal against a barring decision made on the basis of paper representations only. The RCN would like the ISA to carefully consider the implications of this judgement and to amend its barring decision making process accordingly.

### **Further Information**

For general information please go to: [www.isa-gov.org.uk](http://www.isa-gov.org.uk)

For information regarding ISA implementation in Wales please go to: [hnew.wales.gov.uk/topics/health/socialcare/vulnerableadults/vettingbarring/?lang=en](http://hnew.wales.gov.uk/topics/health/socialcare/vulnerableadults/vettingbarring/?lang=en)

For information regarding ISA implementation in Northern Ireland please go to: [www.dhsspsni.gov.uk/index/hss/svg.htm](http://www.dhsspsni.gov.uk/index/hss/svg.htm)

For information regarding Protection of Vulnerable Groups Act (Scotland) please go to: [www.scotland.gov.uk/pvglegislation](http://www.scotland.gov.uk/pvglegislation)

**Royal College of Nursing**  
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