CHOOSING TO PROTECT

A GUIDE TO THE PROTECTION OF CHILDREN & VULNERABLE ADULTS (NI) ORDER 2003 (POCVA)

Revised 13 March 2009
FOREWORD

The Pre-Employment Consultancy Service (PECS) operated by the Department of Health, Social Services & Public Safety (the Department) since 1982 assisted agencies in screening out and assessing the suitability of individuals when recruiting to positions where there was likely to be substantial access to children and to adults with learning disabilities.

The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) commenced on 1st April 2005 and enhanced the arrangements for safeguarding vulnerable members of society by providing a legislative basis for pre-employment checking and for maintaining two lists:

- The **Disqualification from Working with Children (DWC (NI)) List** which is a list of individuals who are considered unsuitable to work with children and;
- The **Disqualification from Working with Vulnerable Adults (DWVA (NI)) List** which is a list of individuals who are considered unsuitable to work with vulnerable adults.

This guide was updated in March 2008 to reflect the transfer of checking services previously provided by the DHSSPS to the AccessNI Disclosure Service from 1 April 2008. Contact details for AccessNI are provided at section 6 of this guide.

The guide is now being updated again to reflect further changes to existing vetting and barring arrangements in Northern Ireland as they relate to work with both children and vulnerable adults.

The further changes take effect from 13 March 2009, when responsibility for barring decision-making will transfer from the Department of Health, Social Services and Public Safety (DHSSPS) [or in the education sector from the Department of Education (DE)] to the new Independent Safeguarding Authority (ISA), which was established under Section 1 of the Safeguarding Vulnerable Groups Act 2006. The ISA will have a central role to play in a new Vetting and Barring Scheme (VBS) being put in place in Northern Ireland under the Safeguarding Vulnerable Groups (NI) Order 2007. Further information on implementation of the VBS in Northern Ireland is available from at: [www.dhsspsni.gov.uk/svg](http://www.dhsspsni.gov.uk/svg).

From 13 March 2009, referrals previously made to DHSSPS and DE should be made to the ISA and sent to the ISA postal address provided in section 6. You are asked to carefully consider section 4, which provides information on the new ISA referral arrangements. Section 4 should be read in conjunction with the ISA-decision-making circular, which issued on 6 February 2009 and is available at: [http://www.dhsspsni.gov.uk/index/hss/svg/svg-newsroom.htm](http://www.dhsspsni.gov.uk/index/hss/svg/svg-newsroom.htm)

You should be aware that existing requirements under POCVA as set out in this guide are largely unaffected by the changes explained at section 4.

This means that the requirement to check against the barred lists established under POCVA will continue and the checking mechanism will continue to be through the AccessNI Disclosure Service. In addition, the requirement to refer and the criteria for referral will not change. Finally, DHSSPS will continue to process referrals received prior to the 13th March 2009.

This guide is accessible to all those agencies and organisations in the statutory, voluntary, community and private sectors who have responsibilities for recruiting staff or volunteers to work with children and/or vulnerable adults.
Please note that this is an interim guide only to provide guidance to organisations during the period between 13 March 2009 and the full commencement of the Safeguarding Vulnerable Groups legislation. On commencement of the Safeguarding Vulnerable Groups legislation this guide will no longer apply.
# Tourism and Hospitality

The tourism and hospitality industries are significant economic drivers in many countries. They offer a wide range of job opportunities, from entry-level positions to high-level management roles. This section explores the various roles and responsibilities involved in these industries, as well as the skills and qualifications needed for success.

## Roles and Responsibilities

1. **Tour Guides:**
   - **Responsibilities:** Lead group tours, provide information about local attractions, and ensure the safety of tourists.
   - **Qualifications:** Strong knowledge of the region, good communication skills, and a sense of humor.

2. **Hotel Managers:**
   - **Responsibilities:** Oversee the day-to-day operations of the hotel, including guest services, housekeeping, and maintenance.
   - **Qualifications:** Strong leadership skills, experience in the hospitality industry, and a bachelor's degree in hospitality management.

3. **Restaurants and Bars:**
   - **Responsibilities:** Prepare and serve food and beverages, manage the staff, and ensure customer satisfaction.
   - **Qualifications:** Culinary skills, excellent customer service skills, and a passion for the industry.

4. **Event Planners:**
   - **Responsibilities:** Organize and coordinate all details of special events, such as weddings, conventions, and conferences.
   - **Qualifications:** Experience in event planning, strong organizational skills, and excellent communication skills.

## Skills and Qualifications

- **Customer Service:** Essential for all positions in tourism and hospitality.
- **Communication Skills:** Needed for effective interaction with guests.
- **Creativity:** Important for developing new menu items or innovative marketing strategies.
- **Flexibility:** Often required to accommodate last-minute changes or emergencies.

## Career Paths

- **Entry-Level Positions:** Server, Host/Hostess, Cleaner, Bartender.
- **Intermediate Positions:** Bartender, Chef, Desk Manager, Food and Beverage Manager.
- **Advanced Positions:** General Manager, Chief Financial Officer, Executive Chef.

## Education and Training

- **High School:** Courses in English, math, and computer skills.
- **Post-Secondary:** Degrees or certificates in hospitality management, culinary arts, or related fields.
- **On-the-Job Training:** Often provided for entry-level positions.

## Industry Trends

- **Sustainability:** Increasing focus on environmentally friendly practices.
- **Technology:** Use of technology in reservations, marketing, and operations.
- **Remote Work:** Growing number of virtual options for work in the industry.

## Benefits

- **Competitive Salaries:** Depending on position and experience.
- **Commissions:** Possibility for increases based on performance.
- **Vacation Time:** Typically offered, sometimes with additional paid time off.
- **Health Insurance:** Provided by some employers.

## Challenges

- **High Turnover Rate:** Common in the industry due to seasonal work and low wages.
- **Long Hours:** Especially for entry-level positions.
- **High Stress:** Noisy environments and the need to handle customer complaints.

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**Note:** This is a brief overview. For more detailed information, explore the resources listed in the previous section.
Section 1

INTRODUCTION

1.1. RECRUITING SUITABLE PEOPLE TO WORK WITH CHILDREN AND/OR VULNERABLE ADULTS

It is important for every organisation working with children and/or vulnerable adults to employ/recruit suitable personnel. This means choosing people with the necessary skills, knowledge and experience, and ensuring those whose behaviour could be a threat to the safety and well-being of the vulnerable are screened out.

The Protection of Children and Vulnerable Adults (NI) Order (POCVA) became law in February 2003 and became operational in April 2005. POCVA aimed to improve existing safeguards by preventing unsuitable people obtaining work in any capacity, whether paid or unpaid, with the vulnerable. All organisations entrusted with the care of the vulnerable need to have robust recruitment and staff selection procedures and to provide appropriate training for all staff and volunteers. POCVA complements the child/vulnerable adult protection measures each organisation is required to have.

The guidance contained within is for information only and is not intended to be a definitive statement of the law. The guide covers:

- The main provisions of POCVA
- What employers must do to fulfil their responsibilities regarding checking and referral
- Where to get help, support and training

This guide was updated in March 2008 to provide information on changes to checking arrangements, which took place with the introduction of the AccessNI Disclosure Service.

In March 2009, it was updated further to reflect further changes to vetting and barring arrangements as we move towards the introduction of a new Vetting and Barring Scheme under the Safeguarding Vulnerable Groups (NI) Order 2007. The changes relate to the start of barring decision-making by the new Independent Safeguarding Authority (ISA). In Northern Ireland, ISA decision-making will start from 13 March 2009. A circular explaining the start of ISA decision-making and what it will mean for employers working with children or vulnerable adults issued on 6 February 2009 and should be read in conjunction with this guide.

In summary, the responsibility for barring decision-making will transfer from DHSSPS to the ISA from 13 March 2009. The requirements to check individuals against the POCVA barred lists, the requirement and facility to refer under POCVA and the POCVA referral criteria will remain unchanged from 13 March 2009. The key changes are set out in section 4. However, you are asked to note the inclusion of ISA-decision-making notes (IDM Notes) throughout, which are intended to explain what specifically will change with the commencement of ISA decision-making from 13 March 2009.
1.2 CANCELLATION OF EXISTING GUIDANCE

This guide replaces all existing departmental guidance circulars and letters about PECS, as follows:

- Circular HSS (Gen 1) 6/83 – ‘Services for Children and Young People in Northern Ireland: Recruitment of Staff: Establishment of a Pre-Employment Consultancy Service’;
- Circular HSS (CC) 2/89 (and amendments) – ‘Disclosure of Criminal Background of Persons Seeking Access to Children or Mentally Handicapped People’;
- Circular HSS (CGLU) 1/91 – ‘Disclosure of Criminal Background: Proprietors and Managers of Homes for Persons in Need and Nursing Homes’;
- Circular HSS (CC) 4/02 -Circular HSS (CC) 4/02 – ‘The Pre-employment Consultancy Service (PECS) – Operational Changes’;
- Making the Right Choice - A Guide to The Pre-Employment Consultancy Service DHSSPS - May 2003;
- Choosing to Protect – A guide to using the Protection of Children, Northern Ireland (POC (NI)) Service - April 2005 (including amendments July 2007 & April 2008);
- Choosing to Protect – A guide to using the Protection of Vulnerable Adults, Northern Ireland (POVA (NI)) Service - April 2005 (including amendments July 2007 & April 2008).
Section 2
PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NI) ORDER 2003 (POCVA)

2.1 GENERAL PROVISIONS

The commencement of POCVA provided a legislative basis for referral of those in child care/care positions and for screening prospective employees to child care/care positions. It brought significant changes to existing arrangements and introduced new terminology and definitions. This section sets out the main provisions and provides a definition of terms.

The main provisions are:

a. The introduction of the POCVA Disqualification from Working with Children (DWC (NI)) List. The Department is required to maintain a list of individuals who are considered unsuitable to work (in a paid or unpaid capacity) with children in a child care position.

b. The introduction of the POCVA Disqualification from Working with Vulnerable Adults (DWVA (NI)) List. The Department is required to maintain a list of individuals who are considered unsuitable to work (in a paid or unpaid capacity) with vulnerable adults in a care position.

c. The requirement for child care organisations to refer to the Department, for consideration of inclusion on the POCVA DWC (NI) List on the grounds of misconduct, those individuals who have harmed a child, or placed a child at risk of harm. [See IDM Note 1 below].

d. The requirement for providers of care for vulnerable adults to refer to the Department, for consideration of inclusion on the POCVA DWVA (NI) List on the grounds of misconduct, those individuals who have harmed a vulnerable adult or placed a vulnerable adult at risk of harm. [See IDM Note 1 below].

e. The introduction of a right of appeal to an independent tribunal for individuals whose names are placed on the POCVA DWC (NI) and/or POCVA DWVA (NI) lists. [See IDM Note 2 below].

f. The requirement for child care organisations to carry out checks against the POCVA DWC (NI) List when proposing to appoint someone to a child care position.

g. The requirement for providers of care for vulnerable adults to carry out checks against the POCVA DWVA (NI) List when proposing to appoint someone to a care position;

h. Provision for a whistle-blowing facility aimed at addressing situations where a child care organisation fails to comply with the duties to refer and to check.
i. Introduction of offences where individuals disqualified from working with children or vulnerable adults apply for, offer to do, accept or do any work, either paid or unpaid, in a child care or care position.

j. Introduction of offences where individuals knowingly offer, employ, or procure work for a disqualified person in a child care or care position or where they fail to remove a disqualified person from such positions;

ISA Decision-Making Notes

With the commencement of ISA decision-making from 13 March:

Note 1

Under The Safeguarding Vulnerable Groups (Transitory Provisions) (Northern Ireland Order) 2009 [made under the Safeguarding Vulnerable Groups (NI) Order 2007] the requirement and facility to refer to ‘the Department’ (DHSSPS) under Articles 4, 5, 6, 9, 35, 37 and 38 of POCVA will be replaced with a requirement to refer to ‘the ISA’. For further detail on how to refer to the ISA see section 4.

Note 2

Any individuals referred to the ISA under POCVA and included in a barred list by the ISA under the Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009 will, with the leave of the Tribunal, be able to appeal against the ISA decision. In Northern Ireland, appeals against ISA barring decisions will be heard by the Care Tribunal on the grounds that the ISA has made a mistake on a point of law or on a finding of fact on which the barring decision being appealed was made. The process of appeal will remain unchanged.
2.2 DEFINITION OF TERMS

Care Position means a position (either paid or unpaid) which:

a) enables the individual to have regular contact in the course of their duties with adults to whom accommodation is provided at a residential care home or nursing home;

b) enables the individual to have regular contact in the course of their duties with adults to whom prescribed services are provided by a health services body or at a private hospital;

c) is concerned with the provision of personal care, and assessment of the need for such care, for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

Only (a) and (c) were commenced on 1st April 2005

Care Provider means:

a) any person who carries on a residential care home or nursing home;

b) any person who carries on a domiciliary care agency or is a social worker, care manager, community or district nurse, chiropodist or a person who provides services to a vulnerable adult in that vulnerable adult’s own home to assist with their sight, sound, speech, appearance or mobility and which may involve physical contact;

c) any person who carries on a private hospital which provides prescribed services; and

d) a health services body which provides prescribed services.

Only provisions for parts (a) and (b) were commenced on 1st April 2005

Child

A child means a person under the age of 18.

Child Care Organisation

A child care organisation means an organisation which provides accommodation, health services or personal social services to children or is concerned with the supervision of children and whose activities are regulated by statute. Examples include:

- Children’s homes
- Early years providers such as day care facilities, pre-school playgroups, child-minders
- Trust Family & Child Care Services

The provisions of POCVA apply to all child care organisations and child care positions in order to offer maximum protection for children. However it will only be effective if all child care organisations fully implement the requirements.
Child Care Position

A child care position is a **regulated position** as defined by Article 31 of POCVA and includes those who work in a range of establishments providing services for children, including Children’s Homes, Detention Centres, Children’s Hospitals, Schools, Further Education Colleges, Day Care Centres. It also includes those who, in the course of their normal duties, care for, train, advise, counsel or supervise, or are in sole charge of children as well as the supervisors/managers of individuals in regulated positions. Management Boards and Governing Bodies of organisations involved with children are now also included.

Throughout this guide the term child care position will mean a regulated position. Organisations should fully consider Article 31 to determine which positions fall within the scope of POCVA.

**Department/DHSSPS**

The Department/DHSSPS means the Department of Health, Social Services and Public Safety.

**Disqualification Orders**

POCVA introduces Disqualification Orders which may be imposed by a Court where an individual is found guilty of certain offences such as sexual offences, crimes of violence against a child or supplying drugs to children and which carry a minimum sentence of 12 months.

Individuals who are the subject of a Disqualification Order will be disqualified from working with children and this will be disclosed as part of a criminal records check. Juveniles, as well as adults, may be subject of Disqualification Orders.

**Independent Safeguarding Authority (ISA)**

The ISA is established under Section 1 of the Safeguarding Vulnerable Groups Act 2006, which extends to Northern Ireland. The ISA will be central to a new Vetting and Barring Scheme that will be put in place in Northern Ireland under the Safeguarding Vulnerable Groups (NI) Order 2007. The ISA will establish and maintain lists of individuals whom it bars from work with children and/or vulnerable adults. This guide has been updated to reflect the start of barring decision-making by the ISA from 13 March 2009 brought about by changes to POCVA under the Safeguarding Vulnerable Groups (Transitory Provisions) Order (Northern Ireland) 2009.

**Non Child Care Organisations**

Many organisations and groups working with children do not fall within the definition of child care organisations as they are not regulated by statute. These include voluntary and community groups, church-based organisations and sports clubs.

POCVA allows for organisations that are not child care organisations but have regulated positions to carry out checks against those employees/volunteers they intend to place in regulated positions.

**Personal Care** in relation to a vulnerable adult means:-
a. rehabilitation, which includes time-limited programmes designed to enable that person to acquire the skills necessary to achieve independent living;

b. personal assistance, which includes assistance to get up and go to bed, assistance with dressing and undressing, surgical appliances, prosthesis and orthoses, mechanical and manual aids and transfers including use of a hoist;

c. personal hygiene, which includes bathing, showering, hair washing, shaving, oral hygiene and nail care;

d. continence care, which includes assistance with toileting, catheter or stoma care, skin care, laundry and bed changing directly related to continence care or illness;

e. assistance with eating, assistance with special diets under the guidance and direction of an appropriate professional and assistance with preparation of food where this is necessary to make sure that that person eats regularly and safely;

f. assistance with mobility, which includes dealing with the consequences of not being able to move in so far as it impacts on the individual’s ability to meet his personal care needs;

g. personal safety and well-being, which includes assistance to make sure the person is kept safe which may involve assistance with the management of reminding and safety devices, supervision to reduce or eliminate risk and assistance with the management of behaviours that may compromise the safety of the person or others; and

h. simple treatments, which includes assistance with the administration of medication, application of creams and lotions, simple dressings and oxygen therapy, emotional and psychological support, including counselling, advice, encouragement and supervision, the promotion of social functioning and assistance with cognitive functions which includes speech, physical and occupational therapy.

Regulated Position

The examples given below are intended to be illustrative and the list is by no means exhaustive. A full definition of regulated position is set out in Article 31 of POCVA.

A regulated position is a position whose normal duties include:

- work on day care premises;
- caring, training, advising, counselling, supervising or being in sole charge of children;
- unsupervised contact with children in arrangements made by a responsible person;
- caring for children under the age of 16 in the course of the children’s employment;
- supervising or training in certain circumstances of children under 16 in the course of the children’s employment; and
- the supervision or management of an individual in a ‘regulated’ position.

A regulated position also refers to a position whose normal duties involve work in a range of establishments. These include:

- institutions where children are exclusively or mainly detained under a court order or statutory provision;
- a hospital used exclusively or mainly for reception and treatment of children;
- a residential care or nursing home used mainly or exclusively for children;
• an education establishment; and
• a children’s home.

Regulated positions also specifically include:

• Both executive and non executive members of Health and Social Service Boards and Health and Social Service Trusts;
• Directors of Social Services;
• a member or chief education officer of an education and library board;
• a member of the governing body of an education institution;
• trustee of a children’s charity; and
• Commissioner for Children and Young People in Northern Ireland

Vulnerable Adult means an adult to whom:-

(a) accommodation and nursing or personal care are provided in a residential care home or nursing home;
(b) the provision of personal care, or the assessment of the need for such care, is provided in their own home under arrangements made by a domiciliary care agency or by one of the following persons:
  o a social worker or care manager;
  o a community or district nurse;
  o a chiropodist; or
  o a person who provides services to a vulnerable adult in that vulnerable adult’s own home to assist with their sight, sound, speech, appearance or mobility and which may involve physical contact; or
(c) prescribed services are provided by a health services body or at a private hospital.

An adult is a person aged 18 years of age and over.

Only provisions for parts (a) and (b) were commenced on 1st April 2005
Section 3

POCVA REQUIREMENTS

3.1 WHAT DOES POCVA MEAN FOR ORGANISATIONS WORKING WITH CHILDREN AND/OR VULNERABLE ADULTS?

POCVA currently requires that all ‘child care organisations’:-

- Refer individuals to the Department in certain circumstances for barring consideration. [See IDM Note 3 below].
- Check against the barred lists when proposing to offer employment to someone in a child care position.
- Do not employ anyone whose name is on a barred list in a child care position.
- Terminate the employment of anyone in a child care position if it becomes known that the individual’s name is included on a barred list.

POCVA currently requires that all providers of care for vulnerable adults:-

- Refer individuals to the Department in certain circumstances for barring consideration. [See IDM Note 3 below].
- Check against the barred lists when proposing to offer employment to someone in a care position.
- Do not employ anyone whose name is on a barred list in a care position.
- Terminate the employment of anyone in a care position if it becomes known that the individual is included on a barred list.

From 1 April 2008 the checking services provided by the DHSSPS ceased. A check against the barred lists on those seeking work in a regulated or care position will require an Enhanced Disclosure. All requests for, and queries relating to Enhanced Disclosures must be made to AccessNI. The link below will take you to the AccessNI website which provides all the necessary information you will need to register and request disclosures:- www.accessni.gov.uk

ISA Decision-Making Notes

With the commencement of ISA decision-making from 13 March:

Note 3

Under The Safeguarding Vulnerable Groups (Transitory Provisions) (Northern Ireland Order) 2009 [made under the Safeguarding Vulnerable Groups (NI) Order 2007] the requirement and facility to refer to ‘the Department’ (DHSSPS) under Articles 4, 5, 6, 9, 35, 37 and 38 of POCVA will be replaced with a requirement to refer to ‘the ISA’. For further detail on how to refer to the ISA see section 4.
3.2 WHISTLE-BLOWING

POCVA introduced a whistle-blowing facility aimed at addressing situations where a child care organisation fails to comply with the legislation. This means that an employee, director or member of the governing body of a child care organisation can report to the ISA that their organisation or any other child care organisation has failed to comply with their duty, either to refer individuals to the ISA or to carry out required checks. There is no whistle-blowing facility under POCVA in relation to care providers for vulnerable adults.

3.3 TRAINING/ADVICE

Queries about disclosure checks, or about disputes or disagreements over the results of disclosure checks should be made to AccessNI at www.accessni.gov.uk.

From 13 March 2009 all queries about referrals for barring consideration must be made to the ISA at the following address:

Independent Safeguarding Authority
PO Box 181
Darlington
DL1 9FA

Queries about referrals made to DHSSPS before 13 March 2009 should continue to be made to the POCVA Referral Team at the following address:

Child Care Policy Directorate
Room C3.3 Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

The Volunteer Development Agency (VDA) is currently delivering awareness sessions on the new Vetting and Barring Scheme that will be established under the Safeguarding Vulnerable Groups (NI) Order 2007. When fully implemented the VBS will replace existing vetting and barring arrangements put in place under POCVA from April 2005.

For further details see the VDA website: www.volunteering-ni.org

The Department strongly encourages organisations working with children/ vulnerable adults to attend one of these sessions.
Section 4

MAKING REFERRALS TO THE ISA FOR BARRING CONSIDERATION

POCVA sets out the circumstances where:

- child care organisations must and other organisations may refer individuals to the department for consideration of barring [see IDM Note 4 below];
- care providers for vulnerable adults (see para 2.2 for definitions) must refer individuals to the department for consideration of barring [see IDM Note 5 below].

4.1 GROUNDS FOR REFERRAL

The grounds for referral include:-

- that the organisation/care provider has dismissed the individual on the grounds of misconduct (whether or not in the course of their employment) which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm;
- that the individual has resigned, retired or been made redundant in circumstances such that the organisation/care provider would have dismissed them, or would have considered dismissing him, on such grounds if they had not resigned, retired or been made redundant;
- that the organisation/care provider has, on such grounds, transferred the individual to a position within the organisation which is not a child care/care position; or
- that the organisation/care provider has, on such grounds, suspended the individual or provisionally transferred them to a non child care/non care position, but has not yet decided whether to dismiss them or to confirm the transfer.

REFERRAL ON THE GROUNDS OF SUSPENSION

POCVA makes it clear that individuals who have been suspended on the grounds of harm they have caused to children or vulnerable adults, but before decisions have been made to dismiss them or permanently transfer them to a non child care/ non-care position, should be referred to the department for consideration of barring [See IDM Notes 4 and 5]. Two points are important here. First, before an individual is suspended, the employer should (so far as possible) take steps to establish, as quickly as possible, that the allegations of harm have some element of substance. A precipitate suspension and subsequent referral that later proves to be based on groundless allegations could cause significant upset and damage to the individual and their working relationship with colleagues and children/vulnerable adults. Second, even if an individual is immediately suspended because the allegations of harm are particularly serious, a referral should only be made if the employer is reasonably satisfied that the allegations have some substance.

Where the employer has suspended on ‘neutral’ grounds and has not reached a view on the facts, a referral should be deferred until after the facts have been established. This will usually be after an investigation has taken place and any disciplinary measures taken, but it may be sooner. A referral should be made at any point in the investigation where evidence of misconduct that harmed (or risked harm to) a child/vulnerable adult is found.
REFERRALS ON GROUNDS OTHER THAN SUSPENSION

Additionally, child care organisations, other organisations and care providers may refer individuals in other circumstances. This would be where they have dismissed an individual, the individual has resigned, retired or has been transferred to a position within the organisation which is not a child care/care position and where information not available to the organisation/care provider at the time has since become available. On the basis of that information the organisation/care provider has formed the opinion that, had the information been available at the time and if (where applicable) the individual had not resigned or retired or been made redundant the organisation/care provider would have, or would have considered dismissing the individual on the grounds of misconduct which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm.

“Would have dismissed” - This covers the situation where an individual has engaged in misconduct which satisfied the criteria for referral (i.e. misconduct which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm), and has possibly been suspended or moved whilst the matter is investigated by the employer. As a result of the employer’s investigation (and possibly a disciplinary hearing) the employer is satisfied that the individual has carried out the misconduct and as a result should be dismissed or moved to a non-childcare/care position. However, before this decision can be communicated to the individual, the individual resigns/retires. In this situation the employer has come to the conclusion that dismissal was appropriate in the circumstances because they have completed their enquiry into the allegations and can draw this conclusion.

“Would have considered dismissing”. This type of referral will be where an allegation has come to light which satisfies the criteria. However, before the employer has had the opportunity to complete their investigation the individual retires/resigns. Until the employer has completed their investigation they cannot conclude, with any degree of certainty, that the individual would have been dismissed. Whilst the employer should undertake all investigations open to them it may not be possible to conclude all enquiries. From the information available they could only realistically conclude that they would have considered dismissing the individual. Employers could only come to that conclusion when bearing in mind the nature of the allegations made, dismissal would have been a serious possibility, that is, within the range of reasonable options.

It is important to note that organisations/care providers should not make a referral when dismissal of the individual was not a serious option. If a referral is made in such circumstances the case will not be taken any further on the basis that it would not be appropriate for the individual to be barred.

See Figure 1 below
Procedure for Referrals for Barring Consideration after 13 March 2009

Identification of Misconduct
Which harmed a child/vulnerable adult or put child/vulnerable adult at risk of harm

Conduct Internal Investigation

Evidence of misconduct as defined
- Determine unsuitable
  - Dismissal
  - Resignation, retirement or redundancy
  - Suspend /Transfer to non regulated/non care position

Misconduct as defined, not evidenced
- No need to refer

Refer to ISA
4.2 WHAT CONSTITUTES “MISCONDUCT”?

“Misconduct” is defined within POCVA as “misconduct which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm and was committed (whether or not in the course of his employment) at a time when the individual was employed in a child care/care position”. The determination of “misconduct” must be a matter for the employer to decide. It is difficult in guidance such as this to give precise examples, because it is not possible to reflect every situation likely to apply. However misconduct can take many forms for example:

- **misconduct against children** can range from sexual abuse through to physical abuse, which may include intentional inappropriate restraint and/or poor child care practices in breach of organisational codes of conduct, which resulted in harm or risk of harm to children.

- **misconduct against vulnerable adults** can take the form of physical, psychological, emotional, financial or sexual maltreatment, or neglect of a vulnerable adult, which may include intentional inappropriate restraint and/or poor care practices in breach of professional codes of conduct, which resulted in harm or risk of harm to vulnerable adults.

Acts of omission and commission should both be considered.

Misconduct which occurred after the individual left their position is therefore not relevant for referral to POCVA, because once the individual had left the post they could not have been dismissed, however it may be necessary to report such misconduct to the relevant appropriate authority.

4.3 INFORMATION TO BE SUPPLIED WITH A REFERRAL

Only individuals who occupied child care/care positions, whether paid or unpaid, within the meaning of POCVA may be referred to the ISA for barring consideration (see section 2.2 for definitions). Organisations/care providers should note that a referral of an individual does not lead to an automatic barring decision.

Referrals should be made on an ISA referral form available from the ISA website at: [www.isa-gov.org.uk](http://www.isa-gov.org.uk).

You should clearly indicate on the form if the referral is to the children's barred list or to the adults' barred list or to both.

The minimum information that ISA will require for all referrals is as follows:-

- Full name, address, date of birth and National Insurance number of the individual;
- Confirmation that the individual occupied a child care/care post within the meaning of POCVA;
- Full details of the alleged misconduct;
- Detailed explanation about how – by their misconduct – the individual harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm;
- Details of any investigations carried out to date – and their conclusions – including copies of all relevant papers (including statements, notes of interviews, minutes of meetings and minutes/notes of disciplinary hearings) and details of the organisation’s disciplinary procedures;
- Details of the action taken against the individual – suspension, dismissal or transfer from a child
• Information on any police involvement (or the involvement of any other agency);
• Details of proposed further action – i.e. dates for disciplinary hearings, timetable on further investigations etc; and
• Any other information considered relevant to the circumstances of the alleged misconduct.

**NB:** In circumstances where a child care/care worker has been suspended or dismissed (or has resigned etc) from a child care/care position, whether paid or unpaid, after having been charged with offences against children/vulnerable adults and who is awaiting the outcome of criminal investigation or trial, a referral to the ISA should also be made.

The individual referred must be given a copy of the referral form as completed and submitted to the ISA and a copy of the organisation’s accompanying report [if included]. If posting these documents to an individual recorded delivery should be used and a certificate of posting retained on file.

Guidance, which will be used by ISA caseworkers, who will deal with referrals submitted after 13 March 2009 is available on the ISA website at: [www.isa-gov.org.uk](http://www.isa-gov.org.uk).

### 4.4 REFERRALS BY EMPLOYMENT BUSINESSES, EMPLOYMENT AGENCIES AND NURSING AGENCIES

Child care organisations/providers of care may obtain temporary staff through employment agencies/businesses and/or nursing agencies. POCVA imposes a duty on such agencies/businesses to refer a supply worker to the ISA if:

• the agency/business has decided not to do any further business with the worker on the grounds of misconduct which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm; or
• the agency/business has decided on such grounds not to find the worker further employment in a child care/care position.

### 4.5 REFERRAL BY OTHER AUTHORITIES

Various other bodies such as the Northern Ireland Social Care Council and Nursing and Midwifery Council can make referrals on the same grounds as child care organisations/care providers. (Article 6 (child care organisations) and Article 38 (care providers) of POCVA refers). **From 13 March 2009 referrals by ‘other authorities’ should also be made directly to the ISA at the ISA address provided at para 4.8.**

### 4.6 REFERRALS BY NON CHILD CARE ORGANISATIONS

The Department also encourages all organisations with regulated positions to refer, where appropriate, individuals for barring consideration. **From 13 March 2009 referrals by other organisations should also be made directly to the ISA at the ISA address provided at para 4.8.**
4.7 SAFEGUARDS FOR THE INDIVIDUAL - A RIGHT OF APPEAL

From 13 March 2009, all individuals placed on a barred list by the ISA, with the exception of those who are autobarred without the right to make representations to the ISA, will have the right to appeal against the ISA barring decision. These appeals will be heard by the Care Tribunal. An individual may appeal with the leave of the Care Tribunal on the grounds that the ISA has made a mistake on a point of law or on a finding of fact on which the barring decision being appealed was made.

4.8 ADDRESS FOR REFERRALS

All referrals to the ISA should be sent to the following address:-

Independent Safeguarding Authority
PO Box 181
Darlington
DL1 9FA

ISA Decision-Making Notes

With the commencement of ISA decision-making from 13 March:

Note 4

The requirement for a child care organisation to refer under Article 4 of POCVA will continue after the start of ISA decision-making from 13 March. The POCVA criteria or grounds for referral will remain unchanged. However, after 13 March 2009 cases which meet the POCVA criteria for referral should be sent to the ISA, which will consider the referrals under The Safeguarding Vulnerable Groups (Transitory Provisions) (Northern Ireland Order) 2009 [made under the Safeguarding Vulnerable Groups (NI) Order 2007]. The postal address to which referrals to the ISA should be sent is provided above.

Note 5

The requirement for a provider of care to vulnerable adults to refer under Article 36 of POCVA will continue after the start of ISA decision-making from 13 March. The POCVA criteria or grounds for referral will remain unchanged. However, after 13 March 2009 cases which meet the POCVA criteria for referral should be sent to the ISA, which will consider the referrals under The Safeguarding Vulnerable Groups (Transitory Provisions) (Northern Ireland Order) 2009 [made under the Safeguarding Vulnerable Groups (NI) Order 2007]. The postal address to which referrals to the ISA should be sent is provided above.
Section 5

REQUESTING CHECKS ON PROSPECTIVE EMPLOYEES

POCVA made it a legal requirement for:

- child care organisations to carry out checks against the barred lists when proposing to employ an individual in a child care position (see para 2.2). If an individual’s name is included on any of these lists the organisation must not offer the individual employment in a child care position; and
- providers of care for vulnerable adults to carry out checks against the barred lists when proposing to employ an individual in a care position (see para 2.2). If an individual is included on any of these lists the care provider must not offer them employment in a care position.

5.1 LEGAL REQUIREMENT TO CHECK - NEW OFFENCES

POCVA introduced the following new offences:

- Anyone who is disqualified from working with children will commit a criminal offence if they apply for, offer to do, accept or do any work either paid or unpaid in a child care position.
- Anyone who is disqualified from working with vulnerable adults will commit a criminal offence if they apply for, offer to do, accept or do any work either paid or unpaid in a care position
- An individual who knowingly employs a disqualified individual to work in a child care/care position; offers work to or procures work for a disqualified individual; or fails to remove a disqualified person from a child care/care position will be guilty of a criminal offence.

Individuals found guilty of any of these offences are punishable by imprisonment or fines or both.

Although POCVA does not extend to all voluntary and community organisations the legislation suggests an implicit responsibility on anyone appointing staff or volunteers to regulated positions to undertake appropriate checks.

The Department strongly encourages non-childcare organisations to carry out checks on all regulated positions, prior to appointment.

All responsible organisations will want to satisfy themselves that the potential employee does not have a criminal record for violence, abuse or neglect of children/vulnerable adults before offering a regulated/care position. Organisations/care providers who do not carry out the appropriate checks may find themselves without any adequate defence against a charge of ‘knowingly’ employing someone who is disqualified from working with children/vulnerable adults.

*Notification that an individual is on a barred list is a prohibition on employment in a regulated/care position.*
5.2 WHICH POSTS CAN BE CHECKED?

Organisations/care providers may only request a check on the preferred applicant for a child care/care position, that is, an individual to whom a conditional offer of appointment has been made - not short listed applicants.

Checks should not normally be requested on existing staff or volunteers. However, a check may be requested if:-

- an individual takes up new duties in a child care/care post where this had not previously been the case;
- serious allegations are made about an individual already working with children/vulnerable adults or new information comes to light.

Child Care Positions

It is mandatory that checks are carried out by child care organisations before making an appointment to any child care position including a temporary position. Other organisations should use the service to check all paid, volunteer, or student/training child care positions. (See para 2.2)

Care Positions

It is mandatory that checks are carried out by care providers before making an appointment to any care position including a temporary position. (See para 2.2 for definitions)

The following paragraphs provide guidance about arrangements for a number of specific situations. All organisations employing people to work with children/vulnerable adults must examine all job descriptions against the definition of child care/care position. If they have any difficulty with interpreting the provisions of POCVA they should seek their own independent legal advice to ensure they are compliant with the requirements of POCVA.

Individuals Providing Child Care Services in their Own Homes

Certain individuals apply to undertake regulated positions within their own homes such as prospective foster carers, adoptive parents and child minders. In addition to carrying out checks on these applicants it is necessary to process checks for each person over 10 years of age living on the premises.

Staff Employed By Private Contractors within Child Care Organisation/Care Providers’ Premises

Child care organisations/providers of care may contract out services such as cleaning, maintenance and building works to the private sector. If so, checks should be carried out by the service provider on each individual staff member considered to be employed in a regulated/care position (see para 2.2 for definitions). Child care organisations/care providers contracting such work out should be satisfied that the relevant checks are carried out.
In such circumstances, child care organisations/care providers should, at the tender stage, make it clear to private contractors that checks must be carried out after a contract is awarded, but before any work is undertaken. At the same time, the childcare organisation/care provider should advise contractors that an employee will be refused entry to the premises if the organisation/care provider considers appropriate checks have not been carried out.

Services Provided Under Contract to a Child Care Organisation/Care Provider

Where an organisation, within its own premises, provides services under contract to a child care organisation/care provider it is for the organisation providing the services to determine whether any posts are child care/care positions, and to use the Access NI disclosure service as appropriate.

Nursing and Allied Health Professionals Students Undergoing Professional Training Who Are Not Formally Employed

Special arrangements apply to Nursing and Allied Health Professionals students whereby the Universities or Colleges are responsible for requesting disclosures from Access NI on students after acceptance on to the course and prior to the commencement of training. Each University and College of Nursing must discuss the arrangements for training with the organisations providing it, and identify those placements which will be child care/care positions.

This procedure does not apply to students from Universities or Colleges outside Northern Ireland, or to students who are formally employed by a Board or Trust. Responsibility for checks on such students remains with the Board or Trust concerned.

Further Education Colleges

Students who undertake a child care/health & social care course in a Further Education College may have a number of training placements during their course. To avoid multiple checks being carried out the College must request a disclosure from AccessNI for these students at the beginning of the academic year.

Junior Leaders

Organisations who involve young people under 18 in helping out and assisting other leaders in activities will only meet the criteria of a “regulated position” if it is an expectation of their role that they will at times carry out the full range of duties of the leader and, on occasion, be in sole charge of younger children.

If young people under 18 are assisting in order to gain expertise, citizenship development, personal or professional development and are not expected to take on the full range of duties of the leader or be left in sole charge of other children / young people, they will not meet the criteria for regulated posts and will not require checking against the barred lists.
Employment Agencies, Nursing Agencies and Employment Businesses

Employment and nursing agencies who supply staff to statutory, voluntary and private child care organisations/care providers are required by POCVA to request checks on the staff they provide. A child care organisation/care provider must satisfy itself that a check has been carried out within the past 12 months on any individual supplied by an employment agency and obtain written confirmation of the information provided.

Checks should not be requested on applicants who are going to work outside the UK. The exception to this is where a group of children from Northern Ireland are taken abroad.

5.3 ARRANGEMENTS FOR THE POLICE TO REPORT CONVICTIONS OF STAFF DURING EMPLOYMENT

The police will advise Health and Social Care Trusts if an existing employee, who is in a child care/care position, is convicted of an offence involving: indecency, dishonesty, violence, alcohol or drugs. The employee should be told about the report and given the opportunity to confirm its accuracy.

5.4 TERMINATION OF EMPLOYMENT

If a child care organisation becomes aware that an individual who is employed in a child care position is subject to a Disqualification Order, or is included on a barred list the organisation must terminate the employment or move the individual to a non child care position.

If a care provider for vulnerable adults becomes aware that an individual who is employed in a care position is included on a barred list, the care provider must terminate the employment or move the individual to a non care position.

A check for a regulated or care position will require an Enhanced Disclosure. All requests for, and queries relating to Enhanced Disclosures must be made to Access NI.

The link below will take you to the AccessNI website which provides all the necessary information you will need to register and request disclosures:

www.accessni.gov.uk
Section 6

CONTACT DETAILS FOR ENQUIRIES

Queries about POCVA referrals made **before 13 March 2009:**

Telephone - 028 9052 28288 or 028 9052 2009.

Queries about POCVA referrals made on or after **13 March 2009:**

PO Box 181, Darlington DL1 9FA.

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

By email: scheme.info@homeoffice.gsi.gov.uk ;
By telephone: 0300 123 1111.

Queries about AccessNI Enhanced Disclosures and registering to use their disclosure service:

By email: accessni@ani.x.gsi.gov.uk
By telephone: 028 9025 9100
By Fax: 028 9025 9186