

Response to the Safeguarding Vulnerable Groups Act 2006/ The  
Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 Barring  
Consultation Document

NSPCC

September 2007

## **Introduction**

1. The NSPCC is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying and campaigning and public education. The NSPCC operates across the UK with more than 180 services providing a range of interventions to children who have been abused or at risk of abuse. This includes listening services such as ChildLine, family support, independent schools counselling, an investigative service and services designed to help children overcome the affects of abuse.
2. The NSPCC has worked extensively on new vetting and barring arrangements in the UK and particularly around evidence to the Bichard Inquiry and in relation to the recent passage of the Safeguarding Vulnerable Groups Act through parliament.
3. This Barring Consultation document published by the Home Office, DoH and DFES (now DCSF) in conjunction with the Northern Ireland Executive relates to both the Safeguarding Vulnerable Groups Act 2006 and equivalent legislation in Northern Ireland and this response represents the NSPCC's response from jurisdictions of England, Wales and Northern Ireland. We grateful for the opportunity to respond to the consultation document and have set out our comments under the consultation questions in the paper as they relate to children. The NSPCC would welcome the opportunity of meeting with officials further to clarify some of the questions and points we raise; we are of the view that the consultation document is not detailed enough to allow a substantive response at this stage.

## **Consultation Questions**

### **Q1. Should the period in which representation should be submitted by individual to the ISA be set at 8 weeks**

4. In setting the period by which representations are to be made, there are a number of important considerations and balances, not least ensuring effective operation of the scheme against the continuum of offences and circumstances that attract barring, human rights considerations and risk. Under the Safeguarding Vulnerable Groups Act (SVG) the barring scheme is extended into a whole new constituency of cases and circumstances and comparisons to List 99 and POCA at paragraph 18 may not translate well to practice. The NSPCC have a number of problems with this proposal exacerbated by

the lack of clarity in the consultation document itself around when the 8 week period would actually start and how it will work in practice. Is it from time of notification and is the 8 week period the time by which all representations should be made? What steps will ISA take to ensure an individual knows they are barred and that they have a limited period in which to make representations. In certain circumstances it is most likely to be impracticable in cases where evidence may need to be gathered from a range of sources. Previous listing on UK barring lists has been on the foot of employment-based referrals where there is more likely to be structured processes and documentation. The Scheme extends the ways in which material can be obtained and communicated to the ISA and there may as a result be more difficulties for individuals to obtain evidence, documentation and further material with which to make representations.

5. The NSPCC is also concerned about the 8 week representation period as it relates to young people and their capacity to fully understand the implications of failing to make representations to ISA about either an auto bar offence or behaviours or risks that would attract discretionary barring. Children in particular (and their parents) may not fully appreciate the complexity or implications of the bar or indeed the seriousness of the need to make representation on potential discretionary and auto bar listings. This especially applies to 'hard to reach' groups, disabled children, children with learning difficulties and those whose first language is not English. We would like to see a clear commitment to safeguards for children and young people. There also needs to be clear information about how to make an appeal to the Care Standards Tribunal and the kinds of information needed.
6. The lack of clarity in the consultation document on the whole issue of representation makes it very difficult to comment on the merits of an 8 week period. The comments on paragraph 18 regarding extension by ISA of the 8 week period in 'exception circumstances' appears very vague and clarification would be helpful on what these might be. This is particularly so given the very serious implications of listing and proposed lengthy no review period.

**Q2. Should the new scheme differentiate between young people and adults for the purposes of the minimum no review period?**

**Q3 Should the new scheme adopt the same minimum no-review periods as current schemes: 10 years for adults and 5 years for children?**

7. The NSPCC supported fully proposals in discussion with DfES officials during consultations on the provisions of the SVG Act to differentiate between young people and adults in terms of how the Scheme works and we campaigned to ensure that no child would be auto barred without the right to make representations. We are of a view that similar provisions and special measures should apply to the 'no review period'. The NSPCC's view is that given balancing serious implications for barring, the background to some children's offending behaviour, children's capacity to change and maturation that it would be inappropriate to have a minimum 'no review period' for under 18s. The consultation states that the applicant will have to provide new information and prove new circumstances before their case is heard and will then have to satisfy the ISA that they no longer pose a risk. We are of the view that this provides clear safeguards and we do not think listed children should be prevented from applying for a review.
8. We would welcome the opportunity to discuss further how these provisions relate to those under 18. For example, we are unclear whether an under 18 referred to the ISA in a discretionary case, once barred, and then unbarred on a review – would have their barring status recorded - or for how long. We would be concerned if this Scheme were to parallel the notification requirements of the Sexual Offences Act 2003 which imposes a rigid framework for children based on sentence length. Currently children who receive a 6-month sentence under the Act can be eligible for a 5 year notification period and that those that receive a sentence of imprisonment of over 30 months will have notification requirements for the rest of their lives. This in our view contradicts the need to respond to children's development as they grow and change. We know that long periods of sex offender notification can have a labelling effect that reinforces the likelihood of sexual offending by and restricting and limiting opportunities for change.
9. Any barring decisions made against children must be made in context and with caution and there must be a clear commitment to referral for assessment and treatment. It will be essential that the ISA gathers

information from all agencies working with the young person not simply the criminal justice system. It is also essential that the risk assessment process is different for children as adult risk assessment models are not accurate or helpful in working with children. For example, currently the Multi Agency Public Protection Panels MAPPPs/ MASRAM (in NI) may use tools such as Risk Matrix 2000 an adult tools that is not valid for use with children. We would like to work further with you in developing age-appropriate assessment processes.

**Q4 Under the current schemes the age boundary for the purposes of the minimum no review period is 18. Should it remain at 18 or should it be raised to 25**

10. As stated above, it is important to ensure that children are treated differently in this process and consideration is given to the success of early intervention with children who offend and their capacity to mature. International and UK law also recognises the boundary for children and young people as being 18. In terms of sex offending it is also accepted that the age 15-25 is both a static and dynamic factor in risk. **Providing opportunities for early review by extension of the age boundary to 25 may be appropriate but issues surrounding prolific and serious sexual offending would need to be dealt with by commitment to an appropriate risk assessment model. We would in particular welcome further discussion with officials on this point.**

**Q5 Do you agree with the list of offences that would result in automatic barring from working with children.**

11. On an initial read of the consultation document the offences listed in the Annex 1 relating to England, Wales and Annex 2 Northern Ireland appear straightforward. However once the consultation document is put in the context of the some of the complexities of the vetting and barring environment there are a number of potential problems. These cannot be separated from the earlier points in this consultation response and other details of the Vetting and Barring Scheme which are not provided. In particular we would highlight:
- a. The lack of detail as to what factors, thresholds and safeguards will be relevant in 'representations';
  - b. The future status of the automatic barring and auto inclusion provisions as set out in the Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2007 and NI equivalent. There does not seem to be a complete cross over with these provisions and the offences listed in the Annex 1 and

2. Is the intention that SVG regulations will repeal and re-enact these provisions?
- c. Equating all offences as being identical when outcomes, capacity to change, maturation and future risk may be very different in relation to these. We find that the two lists are currently unhelpful in the assumptions they make about the relative risk to children;
  - d. We would like to see a commitment to ensure that no child is placed on a list that means that they cannot make representations. For example, Section 5 (currently on the no representations list) of the Sexual Offences Act 2003 covers children and young people and allows no provision or fault element for children. Section 5 outlines that in law there is no minimum age to commit rape.
12. With respect to both of the lists of offences at Annex 1 and 2, it is unclear why some offences allow representation and some do not. The nature and seriousness of many of the offences are similar in both respective lists. As a result their placement on one or another list appears somewhat arbitrary. The consultation document comments that with many of the offences in the *Children's Automatic Barring Offences-with right to make representations list* it would be very unlikely that representation would be successful. The NSPCC would welcome the opportunity to discuss further the process for representations and appeal, the risk assessment processes and the kind of evidence that would be material in each case.
13. The list of auto barring offences omits a number of violent offences relating to the Offences Against the Person Act 1861. The omission of violent offences creates an important lacunae, particularly where the individual has offended against children or vulnerable adults. These very serious offences may be charged and prosecuted instead of child cruelty offences and it seems a contradiction that they are not included in the auto barring list with representation. The Home Office in circular 16/2005 has issued revised guidance on offences against children following the review in 2004 of schedule 1 offences. Listed offences include: wounding and causing grievous bodily harm under Section 20 Offences Against the Person Act and Section 47 Assault causing actual bodily harm. **We would strongly suggest that list of auto barring provisions in Annex 1 and 2 is reviewed in relation to some of these offences.**
14. The NSPCC is also concerned that civil orders such as RSHOs under the Sexual Offences Act 2003 are not included in the list of auto barring offences with representation, notwithstanding that they have been included in the recent DCSF amendment to the Education (Prohibition from Teaching or Working with Children) Regulations 2007. While a RSHO is a Civil Order, it can attract notification requirements on its breach and is obtained on individuals who the court considers a high risk of sexual offending. The Annexes also leave out equivalent foreign

committed offences and notification orders obtained under Section 97 of the Sexual Offences Act 2003.

15. We would also recommend that in future consultation documents **DCSF and the ISA make it very clear that the criminal behaviour outside of those auto barring offences listed in the Annexes can be picked up under the discretionary barring provisions of the Act and Order.**
16. **The NSPCC would also suggest that case examples would be useful to illustrate points or issues in future consultations**

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