

The NSPCC Response to Safeguarding Vulnerable Groups Act 2006

Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

**Safeguarding Vulnerable Groups Act 2006: Independent Safeguarding
Authority Scheme Consultation**

Introduction

The National Society for the Prevention of Cruelty to Children (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, campaigning and public education.

The NSPCC purpose is to end cruelty to children. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection. The NSPCC has more than 180 services in the UK and the Channel Islands. These services aim to:

- Prevent children being abused by working with parents and carers in vulnerable families to improve their knowledge and skills in safeguarding, and giving children and young people someone to turn to through the provision of our Listening Services.
- Protect vulnerable children and young people from abuse by providing direct services in a number of settings, including schools and young people's centres. We also protect them by providing Listening Services for adults to ensure they have someone to turn to with their concerns; by ensuring that abused children and young people are identified and effective action is taken to protect them, and by working with young people and adults who pose a risk to children and young people to reduce the risk of abuse.
- Help children and young people who have been abused overcome the effects of abuse and achieve their potential. In drafting this response, we have drawn on what children and young people who use our services tell us about their experiences. We have also consulted a wide cross-section of frontline practitioners and service delivery managers who work directly with children and young people.

The NSPCC welcomes the UK Government's and Northern Ireland Executive's commitment to keeping children and young people safe through the new Vetting and Barring Scheme in England, Wales and Northern Ireland and the opportunity to work closely with the DCSF, the Home Office and the Northern Ireland administration on its implementation.

In our response we have considered and responded to a number of concerns and challenges. These include the need to communicate this complex scheme more widely, as well as the need to create consistency in the overall safeguarding response of anyone employing those who come into contact with children. The essential challenge of developing an effective scheme lies in

balancing the potential for heavy-handed regulation and a possible consequent loss of opportunities for children with the need to avoid creating unacceptable loopholes that can be used by people to gain positions of trust that enable them to abuse or exploit children.

We have aimed to provide constructive solutions to this challenge, and to ensure not only that all the roles that need to be covered are covered, but also that the scope of the roles is proportionate and based on an accurate understanding of risk. We have also highlighted some significant gaps which we consider should be addressed by the new regulations.

Summary of key points

1. The need for a broad safeguarding culture

During the process of consultation on the creation of this new scheme the NSPCC has consistently called for **wider safeguarding measures to safeguard children to accompany both the Scheme and the regulations underpinning it**. Clearly there are very fine distinctions between different circumstances which will determine whether or not a position falls within the scope of the scheme. There are also a number of informal arrangements where clubs or activities facilitate incidental contact between children and adults which place adults in positions of trust and leadership. Three-quarters of all school-age children participate in clubs and groups each week. However, these activities are not dependent upon the organisers having developed basic child protection policies and procedures; nor need staff demonstrate an awareness of child abuse, or receive training on what to do if they have any concern for a child's wellbeing.

This underlines the need for a broader safeguarding culture that reaches beyond vetting and barring. The NSPCC recommends a national award scheme which includes a quality mark standard for all providers modelled on the accreditation provisions in the Northern Ireland legislation. The NSPCC urges the Government to look at safeguarding measures more broadly in order to improve safeguarding standards in the voluntary and community sector.

2. Child employment

We agree that it is not necessarily practical to bring all the roles in child employment within the coverage of the scheme at this stage as this may have unintended negative consequences for children. **However, we do consider that the regulations covering these roles should be strengthened and other means of monitoring child employment need to be introduced in order to adequately safeguard children**. There is currently a very confused pattern of regulation in relation to child employment and the NSPCC has been calling for an improved code of practice for child employment. We would recommend the development of a registration process for child employers which would include

addressing not only the risk of individual harm but also broader health and safety measures, appropriate roles and hours of work for children.

3. Transport

The NSPCC has considerable concerns about the lack of vetting and barring in relation to children and transport. While the scheme will cover specific transportation of children to activities and events, loopholes remain in terms of the general suitability of bus and taxi drivers. For example, we would prefer all taxi drivers to be covered by the scheme regardless of why they are engaged. In our view, the very nature of their activities means they will fall into the regulated activity definition in relation to children or vulnerable adults. Failing this **we consider it essential to see requirements around licensing that bring these positions into line with the scheme in terms of repeat disclosure checking and a commitment to raise awareness and improve standards of safeguarding within the transport sectors.**

4. 'Controlled' and 'regulated' activity

We continue to be very concerned about the concept of 'controlled activity'; we strongly disagree with the concept and do not consider it workable. It adds complexity to an already complex scheme and is inconsistently applied in the Safeguarding Vulnerable Groups Act and NI Order to posts which are identical in the voluntary and community sector. **We recommend that the concept of controlled activity should be abandoned and that we recommend bringing the roles currently covered by 'controlled activity' should be brought within the definition of 'regulated activity' where it is practical to do so.** If the concept remains, it must have consistent application and cover key activities within the voluntary and community sector as well as the statutory sector.

5. Communication and understanding of the new scheme

The complexity and coverage of this scheme presents a significant communications challenge and this needs to be addressed. Employers and employees as well as parents and carers must know and understand the key components of the scheme and how to interpret the information they are presented with. We are particularly concerned that the new scheme is already being misinterpreted as a way of establishing an individual's general suitability to work with children, rather than a means to provide information about those who must be barred.

Questions

2 Are you content with our proposed understanding of frequently?

On balance we are satisfied with the definition of 'frequently' outlined in the consultation document. We consider that the combination of 'frequency' and

'intensively' provides an appropriate level of safeguarding and addresses the previous loophole that people who went away once a year with children on overnight stays (for example on trips organised through a school or club) were excluded, as this was not considered to be 'frequent'.

The proposals still leave some gaps in the vetting of people who come in to help out with children on an occasional basis as they would not come under the definitions of either 'intensive' or 'frequent'. However, we agree that it would be inappropriate to regulate everything as we consider that, ultimately, safeguarding will depend upon staff having a wider knowledge and awareness of safeguarding issues to ensure that organisations operate safely. For example, in the scenario where a parent or other person comes into a school on an irregular basis, teachers and others should be aware of appropriate safeguarding practices, including ensuring that the individual is never left alone with a child.

However, we would welcome the opportunity to work with the Department on further refining the definitions of 'frequently' and 'intensively'. For example, we consider that the 'intensively' definition should be strengthened to capture situations where adult volunteers work with children with no other adults present. In our view it is the nature of the access that individuals have to children which ought to affect the definition of 'intensively', and not simply the length or regularity of the time they spend with them. The monitoring scheme should also be flexible enough to bring roles within the scheme where this option is preferred, even if they are not intensive or frequent enough to meet the criteria outlined. There are always likely to be occasions when good practice would require that an individual should be a scheme member and be checked, despite the fact the role is not considered to be 'regulated activity'.

We would also welcome further clarification in relation to those people who work for different Regulated Activity Providers for only a short period of time, so that their contact with children overall would fall within 'frequency' and 'intensively', but each different Regulated Activity Provider would not necessarily be aware of their contact with others and they would not therefore necessarily be picked up by the scheme. Individuals in such situations who work for more than one Regulated Activity Provider may never have to apply to be ISA registered. While we understand that an individual will be committing an offence by working in this way, nonetheless explicit guidance for Regulated Activity Providers would be very helpful to minimise the potential for this occurring.

3. Are there situations other than those described in paragraphs 3.8 - 3.12 where children are 'merely incidental' to the provision of regulated activity to adults?

We agree that the issue of incidental contact is problematic as it may be difficult to foresee all situations where adults and children may share activities and

spaces. However, we consider that the current articulation of these issues in the consultation paper is unhelpful and unclear. It is implied that if it is at all foreseeable that a child under 16 will attend a class with adults then that activity would have to be regulated, but this is not stated clearly.

It is even less clear what is proposed in relation to 16 and 17 year olds. We find paragraphs 3.11 and 3.12 confusing in relation to those aged 16 and 17, as it appears to imply that it would be too onerous to make open-age activities with children and young people aged 16 and 17 a regulated activity. We are not sure what the rationale is for this to be different; there is certainly nothing in the Safeguarding Vulnerable Groups Act 2006 that makes a distinction between regulated activity for children under 16 and regulated activity for those aged 16 and 17.

The NSPCC would not be supportive of an arrangement where a person could teach, train or supervise an open-age activity that includes 16 and 17 year olds as well as adults without this position being ISA regulated. This situation would, for example, allow a barred person wanting access to children to form a team with adults, invite 16-year-olds to join, and avoid monitoring. Whilst it is not possible to foresee all circumstances of incidental contact, if people actively work with children up to the age of 18 then they should be monitored. The abuse of trust provisions in the Sexual Offences Act 2003 rightly acknowledge the vulnerability of this age group to those in a position of trust and introduced special protection for 16 and 17 year olds. This same logic should be adopted by these regulations.

We would also like to highlight the issue of adults who participate in mixed-aged activities but who do not have to be ISA registered. They have access to children, and could be barred from working with children, but may engage freely in these activities without committing any offence. They are likely however to have substantive contact with children and thus in a position to develop a relationship of trust with them. This is particularly the case for children and adults who perform leadership roles in sport, such as being the captain of a team. We agree that including these roles within the definition of regulated activity would be problematic for the effective functioning of the scheme. We further suggest that there needs to be specific guidance to ensure that they are not captured as regulated activity through the definition of 'working with'. However, while we agree it would not be feasible to bring these roles within the scope of the scheme, this again underlines the importance of whole-organisation safeguarding policies.

In relation to other roles which may allow a position of trust to develop between adults and children, we consider that for children's organisations, such as charities, all senior management or board level directors should be covered in the same way as trustees. These individuals are in a position that gives them

access to children and children will see them as being in a position of power and authority.

4. Do you agree with our proposals to include and exclude those forms of transport specified in paragraphs 3.24 – 3.25 as regulated activity?

The NSPCC has considerable concerns about the lack of vetting and barring in relation to children and transport. While the scheme will cover specific transportation of children to activities and events, loopholes remain in terms of the general suitability of bus and taxi drivers.

We agree that for the purposes of the smooth running of this scheme it may be more effective to make transport safer through other pieces of regulatory legislation. For example, the NSPCC has written to the Driver Vehicle Licensing Association responding to the consultation on 'Improving Bus Passenger Safety through the Driver Licensing System'. We were strongly supportive of option 5 in the document which recommended that Public Service Vehicle licence requirements must include disclosures at the Enhanced level.

We understand that taxi drivers are already eligible for Enhanced Disclosures as part of their licence requirements and will be covered by the scheme when taxis are engaged by a school or care home to transport children. We would prefer all taxi drivers to be covered by the scheme regardless of why they are engaged. In our view, the very nature of their activities means they will fall into the regulated activity category in relation to children or vulnerable adults. Failing this we would like to see similar requirements around licensing that bring these positions into line with the scheme in terms of notifications by the police and repeat periodic disclosure checks. We would also like to see work to raise awareness in this sector of issues in relation to transporting children and the need for high standards of recruitment and vetting. Taxis are often relied on to transport children at short notice rather than as part of an arrangement made in advance with a school or a care home where they would be covered by the scheme. When taxis are used in this way they do offer adults unsupervised access to children.

While the examples in the consultation document are useful and clear in this section we would like further consideration of the scenario where a parent helps out at a club or activity by transporting children in their own car to and from events. If this is a personal arrangement with another parent or ad hoc then this would not be covered, but if it is something they do regularly as their role for that club then it is important that they are brought within the scheme. While we would not want to stop parents giving lifts to other children it would be useful to be clear about the difference between an informal arrangement and a formal role with a club or group which should require scheme membership. We recognise that this

can be a difficult distinction to make in practice and we would welcome the opportunity to discuss this further with you.

Do you have any further comments on these proposals?

We consider that the examples outlined in relation to child employment are unclear and unhelpful. It is clearly the case that child employment should fall within the definition of regulated activity. In situations where children are in employment there is an imbalance of power and opportunities to develop a relationship of trust. We are therefore concerned that these roles will not be brought within the scheme.

The consultation states that “where someone’s job requires them to train, supervise, or instruct children under the age of 16 the requirements of the new Scheme will apply to them” (3.17). However, the document goes on to say: “This will be true whether this is a key part of the job or merely a minor aspect of it, where there are arrangements in place specifically for that person to carry out the role and they do so frequently.” The frequency test is likely to apply to most continuous child employment situations. The other test is whether the “arrangements are in place”. This also applies to the work experience case outlined. It would be helpful to clarify the wording *arrangements are in place* so that it is clear what this actually means in practice. We are unclear whether this refers to a job description or whether it is something that someone does. In the case of the summer job case study it appears that someone must always be responsible for supervising and training the 15- year-old girl. There appears to be an assumption in the document that it is likely that wherever a child is employed the ‘arrangements’ are always ‘in place’. This is not adequate and nor is it true.

There is also considerable inconsistency in relation to sole traders. As sole traders have no other staff, their job will always involve supervision and training of the children. However, in the case study of the sole trader that there is no requirement to become ISA registered even though he clearly satisfies both the main tests. The argument is that he has no regulated activity provider. There is unfortunately no logic or coherence in this position from a safeguarding point of view. In our view those engaged in a regulated activity with children, even if they are self-employed and have no regulated activity provider, should be required to register with the Scheme.

We do have some sympathy with the idea that it may be more effective to safeguard children in employment through improved workplace regulation and that inclusion within the new scheme at this stage could be counterproductive and prevent opportunities for children to work. We recommend that workplace regulations are developed in conjunction, and in parallel, with the ISA procedures. There is currently a very confused pattern of regulation in relation to child employment and the NSPCC has been calling for an improved code of

practice for child employment. **We would welcome the opportunity to discuss with you proposals for a registration of child employers which might include addressing not only the risk of individual harm but also broader health and safety measures, appropriate roles and hours of work for children.**

5 Do you agree that Children’s Centres should be classed as establishments under the SVG legislation in the same way as schools? Are there any other settings that should be covered?

It is essential that establishments such as Children’s Centres are covered. Currently many of the workers in such centres would be covered by virtue of the activity they do but legislation would not cover the setting itself which is rightly identified as a gap. However there must also be congruence with similar settings in other sectors, including community and voluntary organisations. For example, these regulations should also cover establishments such as NSPCC centres which may not be the same as Sure Start children’s centres but operate in a similar way, by providing a variety of services in the same building which are attended by different children.

A more useful and consistent definition would be to include any establishment which is solely for the purpose of providing services, care, support, training or supervision to children and young people and families. If an establishment is also used by adults (over 18s) in the evening (e.g. for night classes) then it would only be the staff and volunteers who are present during the day when children are present that need to be covered. The staff that do not come into contact with children such as the cleaners who only come in after hours need not be checked.

6 Do you agree that endorsing organisations should be able to check ISA status of the groups specified in paragraphs 4.2 - 4.11?

Yes we agree that the endorsing organisations should be able to check the ISA status of the groups specified and to register an interest in an individual. We also welcome the fact that self-employed people are referred to frequently in the document and that they will be able to make a stand-alone application to the ISA Scheme. We also consider it essential for the scheme to ensure that those engaged in a regulated activity with children, even if they are self-employed and work through more than one regulated activity provider, register with the Scheme. It is also essential that the communication strategy for parents, children and the public is extensive and makes them aware of the need to check that those who are self-employed are registered.

We think it would be helpful in the final guidance to have an example of a self-employed person (e.g. a personal tutor or piano teacher) and for the process to be explained clearly and simply to parents so that they are aware of the process

and know how to go about checking that someone is ISA registered, and how to accurately interpret the information that they are then given. We are aware that the online check presents both a communications and an operational challenge. For example, in relation to workers from overseas it will be important for parents and carers to understand the limitations of scheme membership in the UK, due to the difficulties of obtaining accurate and useful information about criminal records from other countries for the purposes of vetting and barring. Different countries in Europe will retain data about an individual's criminal convictions in different ways and for different lengths of time. There is also a lack of consensus between European countries about the appropriateness of sharing information for the purpose of vetting and barring and considerable complexity and variation in the processes for doing so.

The NSPCC has recently produced a report which makes a series of recommendations in relation to improving the exchange of information for the purposes of recruitment.¹ In our report we recommend that the European Commission produce a Green Paper on EU cooperation to monitor and exchange information about known sex offenders with the aim of preventing further abuse and actively take a role in promoting the exchange of experience and best practice between member states. We recommended that the EU member states agree a set of common principles and minimum standards for vetting and barring systems, based on a draft text from the European Commission.²

7 Do you agree that adoption agencies should be able to check ISA status on the groups set out in paragraph 4.12 - 4.17? Do you have any other comments on these proposals?

Yes we agree that these proposals are appropriate and proportionate.

8 Do you agree that it should be possible to check ISA status on the groups set out in paragraphs 4.18 - 4.21?

Yes

9 Are you content with our proposals relating to ContactPoint in paragraphs 4.25? Do you have any other comments?

We agree with the proposals outlined in the consultation document to check those using ContactPoint but it is not altogether clear as to whether the proposal

¹ Fitch, K with Spencer-Chapman, K. & Hilton, Z. (2007) 'Protecting children from Sexual Abuse in Europe: Safer recruitment of workers in a border free Europe', NSPCC: London

² Such standards and principles could include, for example, an agreed list of sectors and/or professions where vetting of individuals is compulsory, the frequency of checks, and mechanisms of redress for individuals.

is to bring them within the definition of regulated activity as implied by the suggestion that users are ISA registered. This needs to be clarified.

This section also raises the issue of very similar positions in the voluntary sector that are not captured under either the regulated or the controlled activity definitions and we refer to our comments about controlled activity as a concept (provided below in response to question 10). We consider that an administrator working for our ChildLine service who has access to personal information on children should also be a regulated activity. We see the current absence of coverage for these kinds of roles in the voluntary sector as a substantial loophole and consider that these roles must be brought within the coverage of the scheme. We would welcome the opportunity to discuss this with you further.

10 Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity?

We strongly disagree with some of the positions outlined in the case studies under controlled activity and we strongly disagree with the concept of controlled activity in its entirety. We do not agree that it would be acceptable to employ someone to undertake a controlled activity if they have already been barred by the ISA from regulated activity for harming a child or placing a child at risk of harm. Indeed, we cannot conceive of why an employer would take the risk of employing such a person even with appropriate safeguards in place. Although a controlled activity role may not give them direct access to children, it does call into question their values about children and how suitable they are to work in a role which may impact on children's safety and well-being. A further weakness is that individuals in controlled activities cannot be scheme members, so these roles would not even be safeguarded by continuous monitoring. We consider that controlled activity brings an unnecessary, additional layer of complexity to the scheme which makes it less workable. Our preference would be to bring controlled activity within the definition of regulated activity where this is possible.

The current provisions relating to controlled activity are incoherent. These potentially envisage a range of posts in the statutory sector classed as controlled activity, while at the same time **identical positions** in the voluntary and community sector are not. For example, under these regulations the NSPCC would find that certain posts within our organisation would be defined as controlled activity, such as administrators in a family centre funded by a local authority, while others would not be, simply by virtue of varying funding arrangements with social services. Other posts, for example ChildLine administrators, or administrators in our Young Witness Support Services, would fall outside the definitions of controlled activity, notwithstanding the similar nature of the roles in relation to children's data. The regulations must cover all organisations with staff who hold sensitive personal data about children, such as

health, education and similar data, either as a controlled, or - our recommended option - as a regulated, activity.

We do not see the current construction of controlled activity as sensible or consistent and we strongly recommend a review of the concept of controlled activity. Our view is that a better, simpler, and more consistent way to achieve safeguarding in this area would be through an amendment to the Act to bring controlled activity within regulated activity. This should be done in conjunction with the development a kite marking or accreditation Scheme to promote good safeguarding practice.

11 Are there good reasons for employers in controlled activity to have access to Enhanced Disclosures for individuals who are not barred and who are ISA-registered? If so, for what purpose would the information on the Disclosure be used?

Subject to our comments above, we support the proposal that all employers of those working in controlled activity should have access to enhanced disclosures and that this should set out the reason for the individual's bar. It is important for any prospective employer to have a full enhanced disclosure about a prospective employee and as much information as possible about the circumstances surrounding someone being barred, so that the employer can consider whether they really are suitable for controlled activity. The guidance for organisations on controlled activities needs to be clear in explaining that although the legislation says that a barred person can be employed in controlled activity, it does not mean that they should be. It also needs to set out clearly the potential safeguards that they should put in place if they do employ such a person.

Despite the fact that in the legislation the 'controlled activity' roles are classed as presenting a lower risk than regulated activity, they are still positions that may involve contact with vulnerable children and/or their data. Where there is direct contact, it is possible for these adults to build up a relationship of trust with vulnerable children. The enhanced disclosure would provide additional information on which to base decisions on suitability to work in such a position. Given that people will only be barred for very serious offences, the additional data would be very useful for knowing what safeguards to put in place if the organisation did decide to employ an individual despite some lesser concerns about their record.

12 a) Do you agree that employers, before employing a barred person in controlled activity, should be required to conduct, make a record of and retain a copy of a risk assessment?

Again, subject to our comments above, we consider that it would be essential to have clear guidance on what safeguards can be put in place and information about behaviour that should cause a concern. It would also be useful to provide

guidance as well as consultation and advice on the phone for carrying out a risk assessment of these individuals for organisations that are not accustomed to these procedures.

The key remaining question for the NSPCC is how the ISA will ensure that adequate safeguards are put in place for employing a barred person. We would like to see clear proposals for how this will be monitored and enforced within organisations. Clearly one mechanism for enforcing this would be to ensure that it forms part of the inspection arrangements. However, this will not apply for the voluntary and community sector and some thought needs to be given as to how these measures might be overseen and checked in the voluntary sector, potentially involving bodies such as the National Council of Voluntary Child Care Organisations (NCVCCO) or others.

12 b) Do you agree that employers employing a barred person in controlled activity should be required to ensure the person will be appropriately supervised?

We agree that supervision will be essential to doing this safely but there will need to be clear guidance on what this means in practice for organisations. Again, inspection processes should also examine whether such supervision is in place.

12 c) Should the employer be required to record the supervision arrangements in the risk assessment?

Again, we agree that this will be important, but ultimately we consider that it can only be done appropriately if it is enforced and monitored. We would hope eventually to see a situation where the guidance surrounding controlled positions is very thorough and clear and will help to improve the standard of safeguarding within organisations more generally by challenging them on how to reduce risks and think through the risks of different posts.

13 Do you agree that the employer should be required by regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals? If so, how frequently should it be repeated?

We agree that this should be done if controlled activity is retained as a concept. We consider it would be suitable to repeat the risk assessment every 12 months, although we would expect organisations to be continually reviewing this as part of their assessment of individuals in order to ensure they are still clear on the individual's and the organisation's responsibilities.

In the NSPCC we obtain a new enhanced check for someone in a regulated position every three years. We would advise continuing to carry out enhanced checks on ISA registered people to check all information relevant to employment. Currently most organisations do this every three years for this, but perhaps once

the ISA is introduced, its measures for continual updating may mean that this can move to every five years. However, it is not possible to say at this stage whether this would be appropriate, and we would need to consider this further as the Scheme progresses. We welcome the fact that the Criminal Records Bureau (CRB) is looking at how new information might be flagged to employers through the ISA monitoring.

Above all, we believe that guidance for organisations about the scheme needs to be clear. The ISA will be a positive additional safeguard but it will not provide organisations with everything they need to know about an individual's criminal activity which needs to inform the decision that is made about their suitability for employment. This will only be provided by an enhanced CRB check, and even looking at criminal record information is only one aspect of a broader range of other safeguarding checks and measures.

14 Do you agree with our proposed phasing principles? Are there particular issues for certain sectors?

We welcome the fact that there is not a sector or geographic phasing to the implementation. We also agree that the sequence of the phasing is logical.

However, while the phasing makes sense in terms of who goes first, there does not appear to be anything in the phasing structure which will prevent the ISA being inundated with initial applications, with the potential that it may grind to a halt early on. This was the experience of the CRB when it was first launched, as it did not adequately anticipate demand. There will be thousands of people taking on new roles and moving roles in the phasing period. Many organisations are already rechecking existing staff and will probably be ready to do more checks in 2008 so these will all come forward as well.

We are concerned that although there is a proposal to admit the entire children and adults' workforce, and that this will take five years, the Scheme could encounter significant difficulties if the applications are not managed effectively.

15 Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational institutions? If not, why?

We do agree with the proposals. It will be important to ensure that DiPSW student placements are covered by this as well.

16 Do you agree with our proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA Scheme?

We would be concerned if organisations were given the impression that checking that someone is ISA registered is as thorough a check as doing an enhanced

CRB check. Guidance should be clear that they must not rely solely on this when making a decision about someone's suitability. We have through our external work heard of a number of organisations particularly sporting organisations which already believe that checking if someone is a member of the Scheme will be a thorough and complete safeguarding check. We consider that any organisation making an ISA check on an individual for a regulated post should have to do an enhanced disclosure as well so that they have all criminal record information and Part V disclosure information they need to make a fully informed decision about an individual's suitability. Once someone is in the system working and for an organisation, and then for example takes up a voluntary post, it is acceptable for the employer just to check their registration status online, as they should also have also obtained a reference from the other employer to give them more information about the person. Above all, it is important that the guidance is clear to organisations about what ISA registration tells them and what its limitations are.

We are concerned that this consultation document is largely silent on the relationship between disclosure checks in the non-statutory sector and scheme membership. We understand that various regulatory bodies in the statutory sector will prescribe the requirements for enhanced disclosure checks in a range of settings, but we are concerned that this is not the case in the voluntary sector where there is no overseeing regulatory body. **We would welcome clarification on this issue** and we recommend the development of some proposals as to how this may be overseen and checked in the voluntary sector, and some thinking about which bodies might be in a position to perform this role.

17 Should anything be added to our proposed understanding of harm?

Although we broadly agree with what is covered under the definition of 'harm' we do remain concerned about the lack of clarity and detail in these definitions. There is no detail here about what the threshold of harm is and what is covered by, say, 'attempting to harm' or putting 'at risk of harm'. There are some forms of harm to children which are difficult to evidence, assess, and measure, for example when the harm is psychological rather than physical, and this needs to be acknowledged.

There is also some confusion in the document about sexual and physical abuse, implying that sexual abuse is not physical. In relation to abuse we think it would be helpful if the definitions used are consistent with the definitions outlined in *Working Together to Safeguard Children*.³

18. Do you agree that the list at Annex G will capture all the information that the ISA would require to make barring decisions?

³ (DFES, 2006) *Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*, DCSF: London <http://www.everychildmatters.gov.uk/resources-and-practice/IG00060/>

While we agree with the content of the list in Annex G we also think that there should be the opportunity for the referring organisation to give a reason and an organisational rationale for making the referral. This should include the specific reason why the referring body thinks that the individual is unsuitable to work with children and should be barred. This can often add weight to the other evidence that has been asked for.

As a member of the wider stakeholder group that discussed the development of the scheme, the NSPCC is aware of a request from a number of organisations to be given feedback following a referral made to PoCA and List 99 on why applications for individuals to be barred were unsuccessful. This would enable the organisations to learn from what they did wrong, help them to build better cases and/or not waste time by making inappropriate referrals. This consultation does not mention any process for engaging with referring organisations and we would like to see clear processes put in place for organisations that are asked to refer information to receive feedback and learn from unsuccessful referrals.

We would also like greater clarification about the process of referrals. Paragraph 10.12 states that the ISA needs to receive information only once from referring bodies and that Supervisory Authorities need not refer information if they believe the ISA already has the information. It is important therefore that the ISA makes clear to organisations which one should be the lead referring body. For example if it is a case of an allegation against an employee about harm to a child, it should be the employing organisation that makes the referral, although they will have informed other organisations such as the LSCB, perhaps the GSCC and the police. However, the consultation is vague on how this will work in practice, and also on whether an organisation should refer information to the ISA before, at the same time, or after they have met their other duties to inform other organisations such as the LSCB under the new *Working Together* guidance, and the GSCC in the case of an allegation against a Social Worker. Clearer guidance on the process for making referrals when they link to a range of bodies would be helpful.

19 a) At what stage in the ISA's consideration process do you believe employers should be notified?

There are various complex issues to consider here. First, the ISA should always operate with the reporting requirements in *Working Together to Safeguard Children* in relation to any information that indicates that a child is a risk of significant harm. This should immediately be reported to the police and social services.

As an employer, we consider that if the ISA receives information about the activities of an individual which causes them to be concerned about children, and they are aware that the individual is currently working with children in one or more settings, we would expect the ISA to inform us at the earliest possible opportunity that the person could pose a risk to children. This would enable us to

put safeguards in place, namely the temporary removal of the individual from contact with children. In such circumstances, we recognise that the ISA may need to carry out further investigations, but on the basis of the information they have they might be sufficiently concerned about the safety of children to inform employers before they take a decision to bar an individual.

In the majority of cases where the ISA are considering information it may be appropriate not to inform an employer until a barring decision is made. However, we would urge the ISA to ensure that if there is any risk to the safety of children then employers are given as much information as possible as early as possible so that safeguards can be put in place. This process of assessing the risk to children before deciding whether to inform an employer and remove an individual from contact with children is consistent with the guidance on dealing with allegations issued under *Working Together to Safeguard Children* in 2006

19 b) What information should the ISA pass to employers at this stage?

Where information is passed to an employer before a final barring decision is made, useful information would include the details of the referring organisation and a broad outline of the nature of the harm that is being investigated, so that the employer can put appropriate safeguards in place. In our view, if the referring body considers the person to be a real risk to children and the ISA considers that they need to investigate this further and there is strong initial evidence that the individual should be taken out of contact with children while the investigation is carried out, it would be helpful for the ISA to pass on such a recommendation to the employer. The ISA should also be clear about how long it will take them to make the decisions so that interim safeguards are proportionate. If information is passed to employers at the stage when a person has been barred by the ISA it should give employers sufficient detail about the reasons for the bar for them to then take appropriate action in relation to the individual's employment.

20 Please use this space for any other comments

The NSPCC has a number of concerns about issues that are missing from the consultation which we consider essential to the scheme's successful implementation.

First, we have had a consistent concern about the lack of positive measures accompanying the Act's implementation. We consider that a national safeguarding awards scheme would help to raise the profile of work to improve children's safety and we would welcome its introduction of a scheme to accompany implementation and to work in tandem with the Independent Safeguarding Authority. Many of the ISA's provisions are complex matters requiring detailed interpretation, and, as we have indicated, raise issues of thresholds, proportionality and risk. There are some posts which will be ISA

registered in some settings but not in others despite them being identical in terms of the risks they pose to children. We are of the view that a national award scheme with a quality mark standard for all providers modelled on the accreditation provisions in the Northern Ireland legislation would be beneficial. This could be used as a guide for grant awarding bodies when deciding which providers should be allocated funds. It would also act as a lever to encouraging providers to put in place comprehensive safeguarding procedures to secure funding commitments from grant-giving bodies.

The ISA's relationship with local authorities has not been addressed, and we emphasise the need for a barring decision about an individual to be fed back to the local children's/social services. While they may often be aware of these individuals through police and other investigations it cannot be assumed that this is the case and that information is shared. Listing by the ISA raises issues in relation to any children with whom the individual may have contact with in a personal capacity, whether as a parent or in another role, and should at a minimum trigger a social services assessment of risk under *Working Together/ Co-operating to Safeguard Children*⁴ processes.

Conversely there will be occasions when social services as part of their process of investigating an individual may wish to check with the ISA about an individual's barred status, for example if it is relevant to an assessment being made about the level of risk posed by an individual. We would suggest strongly that this is facilitated through the regulations.

We would welcome more guidance on self-employed individuals who work outside of a regulated activity provider. There are a number of self-employed sports coaches who work on their own premises and we remain unclear as to how they will be brought into the Scheme.

The implementation of the Safeguarding Vulnerable Groups Act 2006 is a vast undertaking and it raises huge issues of communication to employers, professionals and the general public. The document is largely silent on this and we would welcome more detail on how it will be communicated and implemented. We would also be happy to discuss this with you.

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⁴ (DHSPSS, 2003) 'Co-operating to Safeguard Children', Department of Health, Social Services and Public Safety: Belfast www.dhsspsni.gov.uk.