

**NSPCC response to consultation on the continuing need for a Controlled Activity category in the Vetting and Barring Scheme**

**July 2010**

- 1) The NSPCC is the lead voluntary child protection agency working across the UK. We have worked extensively with governments in England and Wales and Northern Ireland in the development of vetting and barring provisions contained in the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (NI) Order 2007. We have made extensive submissions to a range of consultations on vetting and barring issues including Sir Roger Singleton's review *Drawing the Line*.
- 2) Vetting and barring arrangements play an important role in protecting children and preventing unsuitable people working with or gaining access to positions of trust in which they can more easily abuse children. We strongly support a proportionate and risk-based approach to this and welcome many of the improvements to previous safeguarding already achieved by the Safeguarding Vulnerable Groups Act and Order. We support further reforms to simplify and strengthen arrangements, such as proposals on Controlled Activity. However, we are very concerned that postponing vital elements of the Scheme's design could result in much weaker arrangements that open up serious loopholes which can be exploited by those wishing to gain access to children.
- 3) The NSPCC has consistently raised concerns about the concept of Controlled Activity (CA) and it may be useful to review these as a context for the consultation questions. Our concerns about CA relate to a number of different issues:
  - a) **The concept of 'controlled activity'**. CA is complex and is very much like a Scheme within a Scheme. It adds an extra layer of complexity for many people and organisations in trying to understand the Vetting and Barring Scheme (VBS) and requires additional guidance and procedures for employers without providing obvious benefits for the protection of children, vulnerable adults or employers. In our submission to the Singleton Review we highlighted the issue of proportionality that is raised by this concept. Our position has always been that Controlled Activity should be scrapped and that posts where there is clear and evidence-based risk of an individual developing a position of trust with a child should be subsumed into Regulated activity ..
  - b) **Inconsistent application to voluntary and statutory services.** Unlike regulated activity, which applies to the same post or position irrespective of sector or setting, CA only relates to certain positions in the statutory sector. Thus the same post - for example a receptionist in a local authority-run family centre - is captured by CA, while the same post in a centre run by the NSPCC or another voluntary organisation usually is not. This inconsistency makes no sense, and is not based on risk to children.
  - c) **Risk and proportionality.** While many of the ancillary positions which are mentioned in the consultation document and are picked up by the legislation will have incidental contact with children, we are not aware of any strong evidence of these posts posing a major risk to children. Where a particular position has regular contact with children or access to sensitive information on

children, our view is that it should be subsumed in the establishment or activity definition of regulated activity.

- d) **Considerable differences across the UK.** The consultation document has highlighted the differing approach taken by the Welsh Assembly Government to Controlled Activity. This creates a real problem for the Scheme of one approach being taken to CA in one jurisdiction with differing approaches in Northern Ireland and England. There are also significant differences in relation to eligibility to carry out Enhanced Criminal Records Checks (ECRC) on individuals in controlled activity as defined by the Act between Northern Ireland, and England and Wales. This level of inconsistency in eligibility criteria creates potential for greater risks and mistakes for individual children from border to border, especially in UK-wide organisations.
- e) **Employing a barred person in CA and achieving protections in other ways.** We agree that even with safeguards we would find it hard to envisage a situation where a barred person would be employed in a CA position. Screening out unsuitable individuals from these posts can be achieved by other means, such as good employment practices, and through a combination of bringing certain positions into regulated activity and/or allowing employers to seek CRB/ANI Enhanced disclosures on these posts and roles.
- f) **Lack of clarity on level of safeguards.** There is no guidance on what are “appropriate safeguards” that should be in place for someone who is barred and offered employment in controlled activity. If the concept of controlled activity were to be scrapped, with certain posts subsumed into regulated activity and others falling outside the Scheme, as described above, this would no longer be an issue.
- g) **CA Undermines the requirement to refer.** There is a potential loophole in information sharing. Currently, with the controlled activity definition in force, organisations that remove workers from controlled activity are under a duty to provide information to the ISA who will then consider if barring under regulated activity is necessary. However an agency that employs people carrying out identical work but does not fall into the category of controlled activity (due to the setting in which it is carried out) is not required to refer, but rather has the power to refer. Thus there is an unhelpful inconsistency, potentially leading to differing practices, when there is a need for simplicity and consistency. The solution we propose, of bringing relevant post into regulated activity, would ensure that the duty to refer applies to all posts.

#### 4) NSPCC response to specific consultation questions:

##### Further Education

**Question 1: The Government believes that the level of risk associated with workers in FE who do frequent or intensive work that provides the opportunity for contact with children is such that this work should be classed as regulated activity. Views are invited on the proposal to place**

**those FE institutions that offer education to under-18s on the same footing as sixth form colleges and other educational institutions for the purposes of safeguarding.**

We agree. Given the mix of young people and young adults in further education (FE) settings and close alignment with teaching situations we are supportive of including FE colleges within the established definition of regulated activity.

**Question 2 (a): If these roles were not moved into regulated activity, but all regulation were to be completely removed, would there be unacceptable safeguarding risks? Or (b): should the category of controlled activity remain?**

We consider that there would be an unacceptable level of risk of young people being groomed by inappropriate individuals, especially considering the younger students who attend FE settings and well-publicised cases of teachers using their position of trust to groom and abuse young people. (b) In light of the above, it would be sensible to define FE as a regulated setting, to avoid creating another layer of activity and bureaucracy.

### **Health care settings**

**Question 3: The Government welcomes any views and supporting evidence for the proposition that hospital porters should be moved into regulated activity.**

We agree with the assessment regarding minimal risk. Our view is that alternative safeguarding arrangements could be put in place in other ways for the positions that fall within CA (as we describe in point 3 (e) above). We do not regard the example provided (portering roles) as being any different to other activities currently within the definition. Posts should come into regulated activity, according to their assessed nature and level of risk, or fall outside this.

We suggest that the capacity to do an Enhanced Criminal Record Check (ECRC) at the point of employment would be helpful and would highlight the useful additional safeguarding role played by police forces in implementing the Home Office Notifiable Occupations Scheme (HO circular 6/2006) which itself could be extended to a wider range of settings and professions.

**Question 4: The Government would also welcome any views (and supporting evidence) on whether other controlled activity positions within health care settings should be moved into regulated activity.**

There are numerous roles within health-related settings such as receptionists, catering and staff who work on wards in hospitals who may interface with children and vulnerable adults. Where there is evidence of a risk by nature of the ability to be seen to hold a position of trust, the ability to form a relationship and frequent contact with children, this should come within

regulated activity. It is also essential to recognise that certain “peripheral” roles have a greater access to the vulnerable than is stated in their job description, and by virtue of their association with the environment in which they work are deemed to be people who children and young people can trust. Therefore we are of a view that those individuals who clearly have access to vulnerable groups by the nature of their work or setting, must be classed as carrying out regulated activity. Our view is that employers should make an assessment of roles by virtue of their context and where a role involves regulated activity it should be within the Scheme. One such example would be a handyman in an adolescent Child and Adolescent Mental Health unit, where the individual has a significant interface with young people in the course of their duties, within a relatively informal environment.

**Question 5: The Government welcomes any views and supporting evidence for the proposition that individuals who are engaged by local authorities, health and social care trusts or voluntary organisations to advise or support direct payment recipients should be moved into regulated activity.**

We strongly support this proposal. Individuals employed through the direct payments schemes will often be carrying out intimate caring tasks for vulnerable children and adults and it is sensible that where they meet the definition of regulated activity they come within the Scheme. If the service were provided by a local authority or health and social care trust the position would be within the definition of regulated activity and it is important that there should be a consistent approach.

### **Social care settings**

**Question 6: The Government would welcome any views (and supporting evidence) on whether there are controlled activity positions in social care settings which should be moved into regulated activity.**

We agree with this analysis and again suggest the capacity to an ECRC in conjunction with good employment practices are a sufficient safeguard. In terms of positions that should be moved into regulated activity, we refer above to our comments on peripheral roles and the nature of these. This would also ensure consistency of approach between the voluntary and statutory sectors.

### **Access to records**

**Question 7: If all regulation in relation to these roles is removed, will there be unacceptable safeguarding risks?**

The digital world presents new challenges for employers around safeguarding. There is a significant public outcry when personal data is

deemed insecure, such as the loss of child benefit data in November 2007.<sup>1</sup> The risks, and perceived risks, of data being misused because it has fallen into the hands of the wrong people, are enormous.

Those with access to children's and vulnerable adults' personal data are in a significant position of trust. With the development of databases and increasing digitalisation of information, the level of sensitive data with which individuals are entrusted is increased.

We suggest that this area is kept under review and supported by good practice advice in conjunction with an expanded capacity to do ECRCs which we cannot currently do for these roles.

**Question 8. Removing these roles from controlled activity would not affect any existing eligibility (that is, pre-dating VBS categories) which the employer has to request a CRB/ Access NI disclosure on the individual. Views are invited on this proposition. (a) If all regulation in relation to these roles were removed, would there be unacceptable safeguarding risks? Or (b): should these roles be moved into regulated activity? Or (c): should the category of controlled activity remain?**

We support keeping the capacity to do ECRC disclosures for these posts. However, we would query this issue with respect to the ability in Northern Ireland (as opposed to England and Wales) to do an ECRC without a legal provision to do so. It may well be that some tidying up of provisions under Part V of the Police Act 1997 across England, Wales and Northern Ireland is necessary to ensure consistency of approach to ECRC if these posts are removed from the definition of Controlled Activity

**Question 9: Would any of the above proposed changes add a new burden or cost to business, or be of benefit? Please provide details if possible.**

We consider that these amendments would reduce costs to business and be a clearer way to deal with those who have ancillary contact with children. It would also ensure a level playing field based on risk, not on where the activity takes place. Good employment practices will also be important and we suggest that if government follows these options on controlled activity that it may be helpful for the ISA to issue some good practice guidance for these positions.

- 5) In conclusion, we consider that many of the proposals in the consultation paper are sensible. With the amendments we have suggested around capacity to do CRB disclosures, development of the Home Office Notifiable Occupations

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<sup>1</sup> 'Brown apologises for records loss', November 21, 2007, available at: [http://news.bbc.co.uk/1/hi/uk\\_politics/7104945.stm](http://news.bbc.co.uk/1/hi/uk_politics/7104945.stm)

Scheme and sensible guidance, it will be possible to achieve the same objectives in a more rational way. If controlled activity were to remain, we recommend that it should not be limited by settings, but be based on activity definitions.

**For further information please contact Colin Reid, NSPCC Policy and Public Affairs Manager, Northern Ireland. Email: [creid@nspcc.org.uk](mailto:creid@nspcc.org.uk); tel: 02890 355754.**