



**Dim mwy o greulondeb i blant. DIM.  
Cruelty to children must stop. FULL STOP.**

**NSPCC CYMRU/WALES  
RESPONSE TO:  
SAFEGUARDING VULNERABLE GROUPS ACT 2006  
CONTROLLED ACTIVITIES WALES**

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January 2008

- 1.1 NSPCC Cymru/Wales welcomes the opportunity to respond to this consultation on controlled activities under the Safeguarding Vulnerable Groups Act 2006
- 1.2 The NSPCC's purpose is to end cruelty to children. Our vision is of a society where all children are loved, valued and able to fulfil their potential.
- 1.3 We seek to achieve cultural, social and political change – influencing 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.

## **General Comments**

NSPCC Cymru/Wales would like to take the opportunity in responding to this consultation to express our continued concern about the concept of “controlled activity”, which we do not believe is workable and strongly disagree with as a concept. It adds complexity to an already complex scheme and is inconsistently applied in the Safeguarding Vulnerable Groups Act to posts which are identical in the voluntary and community sector. **We recommend that the concept of controlled activity should be abandoned and that 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.

## **Consultation Questions**

### **1. Do you agree that individuals subject to automatic bar should be barred from controlled activity in addition to regulated activity?**

NSPCC Cymru/Wales welcomes the proposal from the Welsh Assembly Government that those individuals that are subject to an automatic bar should also be barred from controlled activity as well as regulated activity. Taking into account the concerns expressed above about controlled activity as a concept, we would strongly urge the Welsh Assembly Government, if they are to progress with controlled activity, to ensure that those who are automatically barred are barred from controlled and regulated activity.

### **2. Do you agree that employers, before employing a barred individual in permitted controlled activity, should be required by regulations to:**

- i) carry out a risk assessment;**
- ii) make a record of the risk assessment and retain that record;**
- iii) ensure that the individual will be appropriately supervised;**
- iv) record the supervision arrangements in the risk assessment?**

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. Supervision would be essential in employing a barred person safely, but there needs to be clear guidance around what this means in practice for organisations. This would also form a key part of the inspection process as highlighted below.

We welcome the intention from the Welsh Assembly Government to publish further guidance on the appropriate steps that employers need to take in undertaking risk assessments and what appropriate safeguards need to be put in place in order to employ a barred person. Further to this we believe there would be a need to ensure there is a resource for organisations to contact for consultation and advice on carrying out risk assessments and putting in place necessary safeguards, particularly for those agencies and organisations who are not accustomed to these procedures.

The key remaining question for NSPCC Cymru/Wales 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.

### **3. Do you agree 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. It would be particularly important for the assessment to be reviewed if there were any changes to the barred person's role or working environment.

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.

**4. Do you agree that employers should be required to obtain an Enhanced Disclosure, that will provide details of the reason for the bar before employing a barred individual in controlled activity?**

We strongly disagree with the position outlined in the case study under controlled activity and, as mentioned above, 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 whom 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.

**5. Are there good reasons for employers in controlled activity to also have access to Enhanced Disclosures for individuals who are not barred and who are members of the ISA scheme? If so, for what purpose would the information provided 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.

**Conclusion**

NSPCC Cymru/Wales would be happy to discuss further any of the points raised within this consultation response and look forward to working with the Welsh Assembly Government in improving safeguards for children and young people in Wales

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