

**Safeguarding Vulnerable Groups Act  
2006**

**Safeguarding Vulnerable Groups  
(Northern Ireland) Order 2007**

**SVG Act 2006: ISA scheme  
Consultation Document**

14 November 2007

## Ministerial Foreword

The tragic murders of Holly Wells and Jessica Chapman in Soham in 2002 highlighted clearly and painfully the areas for improvement needed in the safeguarding systems at the time. In response, the Government commissioned an inquiry chaired by Sir Michael Bichard to investigate those areas, and welcomed the publication of his report in 2004, accepting all of its 31 recommendations. The Safeguarding Vulnerable Groups Act, which gained Royal Assent in November 2006, was introduced specifically in response to recommendation 19, which proposed requiring the registration of those who wish to work with children or vulnerable adults. The Act provides the framework for the new Independent Safeguarding Authority scheme for these groups and extends parts of the scheme to Northern Ireland. The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 replicates those parts of the scheme which do not extend to Northern Ireland so that a seamless vetting and barring scheme will be available across the jurisdictions. This consultation is part of our extensive communication campaign about this new scheme, and sets out our proposals for how the scheme will work.

Nothing can be more important than ensuring that children and vulnerable adults are properly safeguarded. Since 1997 the Government has invested heavily in strengthening safeguards for children and vulnerable adults, and has tried to ensure that lessons are learned from tragic events such as the Soham murders and the death of Victoria Climbié. We have introduced a number of measures to protect vulnerable people including:

- *The Protection of Children Act scheme was introduced in 2000, with the Protection of Vulnerable Adults scheme following in 2004.*
- *The Criminal Records Bureau was created in 2002, with the task of providing criminal records checks on people wishing to work with children or vulnerable adults — CRB checks are now mandatory for schools, the care home sector, and the domiciliary care sector.*
- *The Sexual Offences Act 2003 strengthened notification requirements for sex offenders.*
- *The Children Act 2004 further strengthened arrangements to safeguard and promote children's welfare, and introduced Local Safeguarding Children Boards.*
- *In 2006 we set up the Dignity in Care initiative to ensure all older people are treated with dignity when using health and social care services, and we also published the 'Our Health, Our Care, Our Say' white paper which included measures covering vulnerable adults.*
- *In response to the study into the prevalence of abuse and neglect of older people published on June 14<sup>th</sup> 2007, the Department of Health will be reviewing No Secrets which is guidance for local authorities on tackling abuse of vulnerable adults.*
- *A new national monitoring system of reports of abuse of vulnerable adults will be introduced during 2008-09*

- *The Safeguarding Children and Safer Recruitment in Education guidance, which is underpinned by regulations, came into force in January 2007. This consolidated guidance sets out the responsibilities of all local authorities and the education sector to safeguard and promote the welfare of children and young people.*
- *'Staying Safe' is a key outcome of the 'Every Child Matters' programme.*
- *The recent cross-Government "Staying Safe" consultation and a new Public Service Agreement to improve children's safety demonstrate our resolve to go further.*

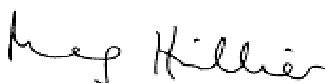
In Northern Ireland the Protection of Children (NI) Service and the Vulnerable Adults (NI) Service were introduced in April 2005. These services broadly mirror the schemes created under the Protection of Children Act and the Protection of Vulnerable Adults scheme. However, vetting checks are currently carried out by a range of Departments, namely the Department of Health, Social Services and Public Safety for the voluntary and community sectors, the Department of Education for the education sector and the Police Service of Northern Ireland for the statutory sector. Work is well underway to create a new vetting body, under the auspices of Part 5 of the Police Act 1997. This body will be known as "Access NI" and is expected to be introduced in early 2008.

The new Independent Safeguarding Authority will be the most stringent vetting and barring service yet. It will be an important part of this Government's continuing commitment to safeguarding the young and vulnerable. But this is not a task for Government alone, everyone has a responsibility in ensuring that children and vulnerable adults are safe. This is why your views, and your enthusiasm, will be central to the successful development and operation of the Independent Safeguarding Authority – we look forward to your response.



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## 1. Introduction

- 1.1 The Safeguarding Vulnerable Groups Act 2006 (SVG Act) and the Safeguarding Vulnerable Groups (NI) Order 2007 (the Order) are major elements of a wide-ranging and ambitious programme of work established across government and jurisdictions of the UK to address the systemic failures identified by the Bichard inquiry. The legislation was enacted in response to recommendation 19 of the Bichard Inquiry Report, which states:
- “New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these clients.”
- 1.2 The Safeguarding Vulnerable Groups Act 2006 was introduced in the House of Lords on 28 February 2006 and received Royal Assent on 8 November 2006. The Safeguarding Vulnerable Groups (NI) Order 2007 was laid at the Privy Council meeting on 2 May 2007 and was made on the 9 May 2007. The full text of the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups (NI) Order 2007 and explanatory notes are available on the Office of Public Sector Information website, [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 1.3 Under the terms of the SVG Act, a new scheme for England and Wales covering those who work or volunteer, or seek to work or volunteer, with children or vulnerable adults will be introduced. Certain provisions of the Act extend to Northern Ireland. The Safeguarding Vulnerable Groups (NI) Order 2007 will replicate those provisions which do not extend to Northern Ireland. The Act and Order will be referred to in this consultation as **the legislation**.
- 1.4 The scheme will operate across England, Wales and Northern Ireland. Certain provisions of the Act are devolved responsibility for the Welsh Assembly Government and may be applied differently. Where this is true in relation to this consultation, the fact that the issue is a devolved matter will be highlighted. However, the general principle informing the development of the scheme is that it will be a seamless scheme across the jurisdictions. The current planning assumption is that the scheme will be phased in from Autumn 2008.
- 1.5 Once the scheme is fully implemented, an individual who is working or volunteering, or seeking to work or volunteer, with children or vulnerable adults must apply to join the scheme. If the individual is considered unsuitable by the Independent Safeguarding Authority (ISA - see paragraphs 1.10-1.14) they are barred from working in regulated activity with children or vulnerable adults, if not they become ISA-registered. We expect there to be around 11 million members of the new scheme in due course.
- 1.6 The new scheme will be based on two barred lists: one of people barred from working with children which replaces List 99 (a list of those barred from working with children in education settings), the Protection of Children Act (POCA) list (a list of those barred from working with children in childcare settings), the Disqualification from Working with Children (NI) list, Disqualification Orders (court orders prohibiting individuals convicted of specified offences from working with children); and the Unsuitable Persons

List (NI); and another of people barred from working with vulnerable adults which replaces the Protection of Vulnerable Adults (PoVA) list (a list of those barred from the care workforce) and the Disqualification from Working with Vulnerable Adults (NI) list.

- 1.7 Individuals will be barred either automatically – if they are convicted or cautioned for certain offences – or following a decision by the ISA taking into account other offences, cautions any or relevant information. (Section 11 provides more detail on barring).
- 1.8 All barring decisions will be taken by the new ISA. The ISA, referred to in the legislation as the Independent Barring Board, will be the new Non-Departmental Public Body to be created to take consistent expert decisions as to who should be barred from working with children and/or vulnerable adults.
- 1.9 New robust information sharing processes will be used. The ISA will continually review new relevant information about its members. These information sharing arrangements are discussed in sections 6 and 10.
- 1.10 If new information comes to light, leading the ISA to bar an existing member of the scheme from working in regulated activity, all employers with a relevant interest will be notified that this person is no longer a member of the ISA scheme. This means that the employer will be required to remove the person from regulated activity. Further information about this process can be found in section 9. How this applies to controlled activity can be found in section 5.

### **The Independent Safeguarding Authority (ISA)**

- 1.11 The ISA will be an executive Non-Departmental Public Body sponsored by the Home Office and chaired by Sir Roger Singleton. It will be based in Darlington and will consist of a small expert board of public appointees, and 200-250 employees. These employees will all be public servants; highly skilled and trained to make barring decisions.
- 1.12 The ISA will make use of its extensive expertise to determine whether individuals should be barred from working in regulated activity with children and vulnerable adults and will also deal with representations from individuals whose cases are being considered. This will:
  - ensure that barring decisions are taken by those with relevant experience and expertise; and
  - promote confidence that decisions on barring are taken fairly without interference from Government or any other interested party.
- 1.13 The ISA will work closely with the Criminal Records Bureau (CRB), an Executive Agency of the Home Office, to deliver the new service. In Northern Ireland, the ISA application process will be managed by Access NI (ANI). ANI is the new disclosure service, established under Part V of the Police Act 1997 by the Northern Ireland Office, which will come into operation on 1 April 2008. The CRB/ANI will provide the administrative arm to the ISA and manage the application processes.

- 1.14 The ISA will be accountable through its statutory annual report and its relationship with Government; and it will engage with stakeholders about the conduct of its work to protect the vulnerable groups. Barring decisions by the ISA will be subject to appeal to the Care Standards Tribunal on points of law or on findings of fact. In Northern Ireland, ISA decisions will be subject to appeal to the Care Tribunal.

### **Purpose of this consultation**

- 1.15 This consultation sets out in detail how it is intended that the ISA scheme will operate. It is important to note that the scheme is still being designed and systems built. This consultation invites views on a range of issues that are fundamental to implementing the ISA scheme.
- 1.16 This second, wide ranging consultation paper builds on the public consultation we undertook earlier this year on the details of the scheme's barring policy. This is referred to in greater detail in section 11 and the response to this barring consultation can be found at [www.dcsf.gov.uk/consultations](http://www.dcsf.gov.uk/consultations).
- 1.17 Whilst the sections below describe the intended design of the scheme, providing as much information as is possible to help the reader respond to the questions, it may be that you still have outstanding queries about the scheme. In the first instance, a visit to the ISA's website; <http://www.isa.gov.org/> is recommended. Further to this, there are a series of public information sessions which explain the scheme, details of which can be found on the website. There will also be further public and sector specific guidance and communications throughout the period leading up to the launch of the ISA scheme.

## **2. Definition of children and vulnerable adults**

- 2.1 A starting point for understanding the scheme is understanding the vulnerable groups that the scheme will work to protect. It is when a person engages in regulated (see section 3) or controlled (see section 5) activities in relation to children or vulnerable adults that they will need to make an application to be ISA-registered.
- 2.2 A **child** is defined by section 60 of the SVG Act and article 2 of the SVG Order as being any person who has not attained the age of 18, regardless of the setting they are in or the service they receive.
- 2.3 The definition of **vulnerable adult** is provided at annex A
- 2.4 Adults will only be classed as vulnerable under the legislation when they are in one of the settings or receiving one of the services set out in annex A. The following case studies provide examples of where adults are vulnerable.

### **Case study: Adult receiving health care**

Mr A attends a hospital appointment. During his appointment he is receiving health care and so is a vulnerable adult. This means that those carrying out regulated activity with him must be ISA-registered. Once he leaves the hospital Mr A returns to his place of work. He has ceased to be in one of the settings or receiving one of the services listed in annex A and so is no longer to be treated as a vulnerable adult.

### **Case Study: Adult attending a day care centre**

On Tuesdays Mrs B attends a day care centre which provides social activities for frail older people. During her time at the day care centre she is receiving a service which is provided specifically for people with age-related needs and so is a vulnerable adult. On Wednesdays Mrs B visits the library. During her time at the library she is using a service which is targeted at the general public and so is not a vulnerable adult.

### **Case Study: Adult living in residential care**

Miss C lives in a care home. She only leaves the care home on outings organised by the home, when she is accompanied by a member of staff. At all times Miss C is a vulnerable adult.

### **Case Study: Adult detained in prison**

Mr D is detained in prison. He does not leave the prison site at any time. At all times Mr D is a vulnerable adult.



## **Supporting People services**

- 2.5 We intend to make regulations under section 59(1)(g) of the Act to prescribe that the definition of “vulnerable adult” also includes adults who are receiving Supporting People services. In Northern Ireland these regulations will be made under article 3(1) (g) of the Order. The Supporting People programme provides housing-related support to help prevent problems that can often lead to hospitalisation, institutional care or homelessness. The primary purpose of housing-related support is to develop and sustain an individual’s capacity to live independently. This could include, for example, supporting people to access their correct benefit entitlement, ensuring they have the correct skills to maintain a tenancy, advising on home improvements and accessing a community service alarm. Supporting People can also help the smooth transition to independent living for those leaving an institutional environment.

## **Physical or mental health conditions**

- 2.6 We do not currently intend to make regulations under section 59(9)(c) of the Act or article 3(9)(c) of the Order prescribing physical or mental health conditions. The effect of such regulations would mean that everyone with one of the prescribed conditions who participates in an activity or receives a service targeted at people with such conditions would be a vulnerable adult. We believe that this may overly restrict the provision of services such as support groups and social activities to people with physical or mental health conditions, where there is no real evidence of risk of harm. Health care services are already covered by section 59 (1)(d) of the Act and article 3(1)(d) of the Order, meaning that adults with any health condition are vulnerable while they are receiving health care. We will keep this position in relation to other services for people with physical or mental health conditions under review.

## **Dyslexia**

- 2.7 The legislation includes adults who are participating in activities or receiving services targeted at people with dyslexia within the definition of “vulnerable adult”. This is because the term “disability” in section 59(9)(b) of the Act and article 3(9)(b) of the Order include dyslexia. As above, we do not wish to overly restrict the provision of services or support to people with dyslexia, where there is no real evidence of risk of harm. We will therefore make an order under section 59(11) of the Act and article 3(11) of the Order specifying that those participating in activities or receiving services targeted at people with dyslexia are not to be treated as vulnerable adults. We will of course keep this position under review.

**Question 1: Do you agree with the proposals for refining the definition of vulnerable adults (paragraphs 2.5 – 2.7)? If not, please explain why.**

### **3. Regulated Activity**

- 3.1 Regulated activity is central to the ISA scheme. Undertaking regulated activity accounts for the vast majority of those who will be required to become **ISA-registered**. Being ISA-registered means that the individual has been initially vetted by the ISA and is not barred from working in regulated activity.
- 3.2 The intention of regulated activity is to include activities where the person engaging in that activity could develop a relationship of trust with the child or vulnerable adult. The definition also includes specific positions and settings where it is felt that by their very nature, it is right that children or vulnerable adult should be able to build relationships of trust with the people working with them as a matter of course.
- 3.3 Regulated activity is defined by the legislation and a definition of the range of regulated activity is to be found in schedule 4 of the SVG Act and schedule 2 of the Order. It is important to note that for an activity to be considered as regulated activity, alongside the satisfaction of criteria relating to the activity and/or establishment where it takes place, it must be carried out by the same person frequently or satisfy the 'period condition' ie intensively.

#### **Frequently**

- 3.4 Without the frequency test any person engaging in the activities defined as regulated, regardless of how often they carried these out, would be engaged in regulated activity.
- 3.5 This would have the effect, for example, of placing a duty on a leisure centre to check an aerobics teacher who would normally deliver an aerobics class to adults but had agreed to deliver a one-off class to children because the regular instructor is ill. It would also have the effect that a plumber, for example, going into a care home to fix a burst pipe would need to be ISA-registered before they were used, even as a one off.
- 3.6 The policy position is that frequently should be clarified through guidance as meaning once a month or more often. This would mean that, were the same person to teach children in a class every Saturday, or every fortnight, they would have the opportunity to develop a relationship of trust with their class and, therefore pose a greater risk of harm.

#### **Question 2: Are you content with our proposed understanding of frequently? (paragraphs 3.4-3.6)**

#### **Intensively**

- 3.7 Intensively is defined in the legislation and means an activity which happens at any time on more than two days in a 30 day period, or overnight (the latter meaning that the activity occurs at any time between 2 am and 6 am).

## **'Merely Incidental'**

- 3.8 Activities relating to any form of teaching, training, instruction, care for or supervision of children are regulated activity. However, the particular activities relating to any form of teaching, training, instruction, care for or supervision of children is only regulated activity where children are not merely incidental to the same activity for adults.
- 3.9 For example, a local leisure centre sets up an aerobics class. If one week a participant brings their child, and they join in the class, their participation is merely incidental to that of their parent. This activity would not be considered as regulated activity because neither the leisure centre nor the instructor would have been able to foresee the involvement of the children. If the same leisure centre runs a class to teach children how to swim then they are targeting children. Even if the pool is also open to adults the children in the swimming class could not be said to be incidental to those adults.
- 3.10 In some circumstances the participation of children is not an unforeseen or chance occurrence, even though the activity is not targeted at children. An example is the attendance of an undergraduate course at a Higher Education Institution (HEI). Although the majority of students will be aged 18 years or over when they first enrol, there is the probability that some will be under 18 years old when they start their studies, turning 18 during the course of their first year. This would mean that, for example, anyone taking a tutorial in which a few of the students are 17 years old would be undertaking regulated activity until the students turned 18, at which point it would cease to be engaged in regulated activity. Applying the definition of regulated activity in this example would mean that anyone involved in the teaching, training, instruction, care for or supervision of such students would have to become ISA-registered for the period of time the student was 17 years old and would not be required to remain one (unless they were undertaking regulated activity in a different part of their life) once the student had turned 18. In relation to teaching, training or instruction; where 16 and 17 year olds are part of a mixed age group, we propose that the person teaching, training or instructing them should not be required to become ISA-registered.
- 3.11 A further example is the participation of children in some leisure activities. Whilst clubs may have specific audiences, for example, a rugby team aimed exclusively at 14 – 15 year olds; there are others, for example 'open age' football, in which both adults and children aged 16 -17years old can participate. In both of these settings, the roles of coach and trainer would fall within the definition of regulated activity. However, with the example of 'open age' leisure activities, there is the possibility that 16-17 year olds could be denied access to leisure activities if it would mean that every member of staff having personal contact with these children would be required to become ISA-registered. Similar scenarios exist in relation to other leisure activities for example an open age orchestra or drama class which is aimed at a mixed age group which includes 16 and 17 year olds and adults.
- 3.12 As it is not our intention to make an activity a regulated activity unnecessarily, we would be seeking to make clear that activities relating to the teaching,

training and instruction of children aged 16-17 years should not be considered to be regulated activity, where the 16 and 17 year old is part of an activity aimed at mixed age groups which includes adults. We only seek to take this approach in relation to teaching, training and instruction where an individual is part of an activity targeted at a mixed age group. This is because in relation to the other instances of merely incidental there is much more likelihood of a relationship of trust developing, where for example an individual is caring for a 16 or 17 year old as part of a mixed age group. In addition we only intend to take this approach in relation to 16 and 17 years olds, rather than extending it to younger children.

**Question 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?**

### **What it means to work in regulated activity**

- 3.13 When the ISA scheme goes live, anyone wishing to engage in regulated activity with children or vulnerable adults will be required to be ISA registered, providing that they have a regulated activity provider who can make the check<sup>1</sup>. A barred individual will commit an offence if they engage or seek to engage in any form of regulated activity. This applies equally to those in paid employment or those working as volunteers.
- 3.14 Being ISA-registered will mean that the person will have been initially vetted by the ISA and there is no known reason to believe they pose a risk of harm to children and/or vulnerable adults. In relation to applications to work with children, the same test is applied whether the individual will be undertaking regulated activity as a foster carer, teacher, or builder who has frequent or intensive contact with children in a school. Similarly, in relation to applications to work with vulnerable adults, a single test is applied regardless of the job in question.
- 3.15 This decision will be made by the ISA and will be based on an assessment of all of the available information including convictions/cautions, other information from the police, employer, professional regulatory bodies, local authorities and equivalent bodies in Northern Ireland and any other relevant information provided to the ISA.

### **Employing children**

- 3.16 The requirements on the employer to make checks on individuals who engage in regulated activity do not generally apply where the activity is being carried out in the course of the child’s employment<sup>2</sup>. Employment as described here includes any form of work which is carried out under the supervision or control of another, whether or not the person carrying it out is paid for doing so.

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<sup>1</sup> This will also apply to school governors and childminders. See section 8 (2) and (3) of the Act and article 12 (2) and (3) of the Order

<sup>2</sup> SVG Act Schedule 4, Paragraph 2 (2) and (3) and SVG Order.

- 3.17 However, where someone's job (including where they are a sole proprietor – see the 'summer job' case study below) requires them to train, supervise, or instruct children under the age of 16 the requirements of the new scheme will apply to them. 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. Therefore, an individual whose job it is to supervise an under 16-year-old work placement students would be required to be ISA-registered. We have taken this approach to enable an employer to permit a child under 16 to participate in a work experience placement without having to apply the new scheme requirements to all of their staff whom that child will encounter.
- 3.18 The legislation defines a child as anyone under the age of 18. However, in the case of 16 and 17 year-olds who are in employment, even if the main job purpose of their manager is to supervise the 16 or 17 year old, the manager is not engaged in regulated activity if this occurs in the course of the 16 or 17 year olds employment.

#### **Case Study: Work experience**

A 15 year girl attends a one week work experience placement in a bank. During the placement, the girl spends an hour with a staff member who teaches the girl how they deal with customer enquiries and complaints. The staff member's job is dealing with customers and there are no specific arrangements in place for his job to include teaching the girl or other work experience placements how to deal with customer enquires and complaints or supervising them. The staff member is not required to be ISA-registered. In the same way when the girl goes to lunch the canteen staff and others who may supervise her or teach her about the bank do not have to be ISA-registered even if they encounter the girl frequently.

However, the girl also spends a week being supervised by a staff member, Mrs E. Mrs E works in the bank HR department and there are arrangements in place that part of her job is to supervise work experience placements at the bank. Mrs E will therefore be required to become ISA-registered.

- 3.19 In the course of their employment, providing a 16 or 17 year old with training, supervision, guidance etc is excluded from regulated activity. This means that where an employer provides training, for example, to an employee aged 16 or 17, the employer is not required to apply the scheme requirements to the staff undertaking that work with the child. In the case of 16 and 17 year olds, even if the employees' main job purpose is to supervise the 16 or 17 year old, they are not required to become ISA-registered.

### **Case Study: Saturday job**

A 15 year old boy has a Saturday job at the local store. The store is owned by Mr F. Mr F has several employees and arrangements exist that one of these employees has, as part of his job, the role of frequently supervising and instructing the 15 year old. Under the SVG Act and the Order the employee who is supervising the 15 year old is carrying out regulated activity and would be required to become ISA-registered. Mr F would be required to check that the employee who is supervising the 15 year old is ISA-registered. In addition any activity which involves on a regular basis the day to day management or supervision of a person carrying out regulated activity is also treated as regulated activity. This means that Mr F is also engaged in regulated activity. If Mr F does not have an individual who permits him to engage in the regulated activity, i.e. an employer, then he is not required to become ISA-registered<sup>1</sup>. He will, however, commit an offence if he seeks to do this work and is barred.

### **Case Study: Summer job**

A 15 year old girl works for Mr G for two weeks over the course of her summer holiday. Mr G is a sole trader and has no other staff therefore his job will always involve supervision and training of the 15 year old. There is no requirement for Mr G to become ISA-registered as he is a sole-trader and has no regulated activity provider i.e. employer to check that he is ISA-registered. However, if Mr G is barred he will commit an offence if he employs the 15 year old girl.

## **Proposed changes to regulated activity**

- 3.20 Through regulations, we have the ability to refine the definition of regulated activity. There are two important considerations in refining the definition:
- I. Does the definition capture the full range of activities that allow a special relationship of trust to develop between the person engaging in the activity and the child or vulnerable adult?
  - II. Does the definition inappropriately include any activities where this is not a key function of the activity? We do not wish to place restrictions on activities, and increase burdens on individuals, where there is no identified risk.

## **Transport**

- 3.21 Under the legislation<sup>3</sup> the act of driving a vehicle which is being used solely for the purpose of transporting children and/or vulnerable adults and any person responsible for supervising or caring for them will be classed as regulated activity, subject to regulations that may prescribe the circumstances in which these provisions will apply. Any person subject to the relevant provisions and any associated regulations will therefore be subject to the requirements of the scheme.

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<sup>3</sup> Provision for these regulations is made in the SVG Act at Schedule 4 Paragraph 2(1)(f) ) and Schedule 2 Paragraph 2 (1)(f) of the SVG Order. The exact wording is 'driving a vehicle which is being used only for the purpose of conveying children and any person supervising or carrying for the children pursuant to arrangements made in prescribed circumstances.' There is a mirror provision at Schedule 4 Paragraph 7(1)(f) of the SVG Act and Schedule 2 Paragraph 7(1)(f) of the SVG Order in relation to vulnerable adults.

- 3.22 We are proposing to use this regulation- making power to clarify certain circumstances where it should be regulated activity where people exclusively transport children and/or vulnerable adults.
- 3.23 For example, a school may organise taxi or bus services to collect children and in this situation, all the taxi or bus driver is doing is driving the child to school. A similar situation may arise in relation to vulnerable adults where a care home arranges a taxi to take residents to church on a weekly basis. These regulations are intended to clarify that such persons are subject to the requirements in relation to regulated activity where they carry out this activity frequently or intensively.
- 3.24 We are proposing that the following circumstances be classed as regulated activity in relation to children and vulnerable adults and that where an individual drives a vehicle, meeting the frequency or intensity test, which is exclusively for conveying children or vulnerable adults, or escorts a child/vulnerable adult on such a service, he or she is engaged in regulated activity.

**It is proposed that the following are classed as regulated activity in relation to children.**

- Transporting children to and from services which are regulated activity, e.g. to and from school, early years settings, children’s drama club or Brownie camp. This would apply where a vehicle is owned or operated by the provider of the service, such as a mini bus operated by a school, early years setting, Scout group etc. In these circumstances driving that vehicle should be classed as regulated activity, whether or not there are additional adults in the vehicle whose job is to supervise the children such as a teacher or scout leader.
- Where a vehicle is commissioned by a service provider such as a school, early years setting, sports club or by a local authority, Education and Library Board or a Health and Social Services Body under a formal agreement or contract, e.g. a taxi or bus organised by a school or local authority<sup>4</sup> to regularly or frequently transport children to school or another regulated activity such as a sports club. Driving such a vehicle should again be classed as regulated activity.
- Escorting a child to or from school or another regulated activity such as early years setting, sports club under arrangements made by or on behalf of a local authority an Education and Library Board or Health and Social Services Body is also regulated activity. The escort is contracted by the local authority, an Education and Library Board or Health and Social Services Body or the operator themselves. Escorts will generally be used for taxi journeys or on mini buses.<sup>5</sup>

**It is proposed that the following are classed as regulated activity in relation to vulnerable adults.**

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<sup>4</sup> A local authority may approach a passenger transport authority such as Transport for London to arrange the contracts. In Northern Ireland, an Education and Library Board or a Health Social Services Body may enter a contract with Translink to provide a transport service

<sup>5</sup> Arrangements such as walking buses do not need to be covered in these regulations as people regularly walking a group of children to school would already be covered by schedule 4 paragraph 2 (1) (b) of the SVG Act and Schedule 2 Paragraph 2 (1)(b) of the SVG Order.

- People who transport vulnerable adults within the social care sector, e.g. to and from care homes, sheltered housing and/or day care centres. Where a vehicle is owned or operated by the provider of the social care service, such as a mini bus operated by a day care centre, driving that vehicle should be classed as regulated activity. Where a vehicle is commissioned by the service provider under a formal agreement or contract, e.g. a taxi organised by a day centre to regularly or frequently transport older people to the centre, driving such a vehicle should again be classed as regulated activity. In such circumstances there would need to be a contractual arrangement between the service provider and the transport provider as we would not wish to catch one-off trips.
- People who drive ambulances and other vehicles transporting patients on behalf of the NHS or Health and Social Care sector in Northern Ireland and/or independent sector healthcare providers will also be engaged in regulated activity. In some cases they will already be engaged in regulated activity as their work involves treating and caring for patients but the regulations will make clear that all such drivers are engaged in regulated activity

#### **Case Study: The school bus**

A school contracts a bus company to take children to/from school every day, or from school to the sports ground once a week where they play football. In this case the driver is engaged in regulated activity while transporting the children for the purposes of that contract, even if at other times the bus and driver are used for other contracts such as driving members of the general public.

#### **Case Study: Mini bus drivers**

The leader of the local Brownie pack hires a local mini bus company to provide a mini bus and driver to transport children to the Brownie camp. The Brownie pack leader who supervises the children in the mini bus is engaged in regulated activity where she supervises children regularly. The mini bus driver is also engaged in regulated activity where he/she frequently drives for people such as the Brownie pack, a school, or a local junior football team.

#### **Case Study: Buses contracted for children**

The local bus company frequently gets requests from uniformed groups such as the Scouts, Woodcraft Folk, Brownies along with early years settings and local youth football teams to supply transport and drivers to take children on trips. The company will be required to ensure that drivers they supply frequently for this sort of activity are ISA-registered. The driver will be committing an offence if s/he seeks to drive a bus of Scouts etc while barred, even if it is a one off occasion. The bus company will be committing an offence if they provide a driver who they have reason to believe is barred even if it is a one-off occasion.



### **Case Study: Contracted minibuses**

A minibus company has a contract with a day centre to transport adults with physical disabilities from their homes to the centre. The bus driver is engaged in regulated activity while he is transporting adults in connection with the contract. The minibus company also regularly transports families from their homes to the airport under a private arrangement with each family. During these journeys the bus driver is not engaged in regulated activity.

3.25 The policy is not intended to cover individuals who engage in the following activities;

- Driving a taxi with an unaccompanied child if this is not part of a contract but a result of, say, a 16 year old hailing a taxi or a parent booking a taxi privately for a child.
- Bus drivers who work on a mainstream bus route which includes a school (for example) but who are not contracted by a regulated activity provider such as a school or by the local authority or Education and Library Board in Northern Ireland to transport the children to a regulated activity e.g. school, nursery.
- People who transport vulnerable adults in settings other than those mentioned above, e.g. coach holidays targeted at older people. Such arrangements are part of people's private lives and should not be regulated activity.
- Where vulnerable adults organise their own transport, such as an older person who books a taxi him/herself to travel to a day centre, driving such vehicles should not be classed as regulated activity as this is a private arrangement.

For further information on the legislation, existing checking in transport and the DVLA's consultation for future proposals please see Annex B.

Department for Transport, Home Office and DCSF are looking into options to avoid potential duplication of burdens across the transport sector where drivers and driving instructors may have to obtain a CRB Enhanced Disclosure as part of an ongoing or proposed licensing requirement or accreditation process; then register with ISA at a later date to work in regulated activity. This further consideration will also be informed by responses to DVLA's consultation "Improving Bus Passenger Safety through the Driver Licensing System".

**Question 4: Do you agree with our proposals to include and exclude those forms of transport specified in paragraph 3.24 and 3.25 as regulated activity? Do you have any further comments on these proposals?**

## Children's Centres

- 3.26 Sure Start Children's Centres are settings offering integrated services to improve outcomes for children from birth to five and their families, based on local need. These services can include access to family health care, advice and support for parents including drop-in sessions, outreach services, integrated early education and childcare and links through to training and employment. Children's Centres are developed by local authorities and involve providers from statutory, voluntary, private and community organisations and parents. There are currently over 1,500 Sure Start Children's Centres - the target is for 3,500 Centres to be open by 2010, giving every community access to one.
- 3.27 Currently the legislation includes as 'establishments', places that provide exclusively or mainly for nursery education or full time education of children, such as schools and nurseries<sup>6</sup>. Also included are childcare premises or the parts of premises where individuals carry out childcare<sup>7</sup>. This includes childminders houses, and early year's settings including the parts of Children's Centres premises where childcare or nursery education is carried out and care homes. Being denoted as an establishment means that any activity that occurs on these premises and allows the opportunity for contact with children or vulnerable adults on a frequent or intensive basis will be a regulated activity.
- 3.28 Unlike schools, the entirety of the Children's Centre is not defined in the legislation as an establishment in this sense, only the parts where the childcare or other regulated activity is happening. The purpose of defined special 'activity' and special 'places' under the legislation are to capture those instances where a bond of trust can develop between the child or vulnerable adult and the individual. Children, young children in particular, do not distinguish between an adult who is carrying out a specified activity such as teaching or supervising and an adult that they see serving them their dinner, cleaning the premises or renovating the building. By specifying that any activity in a special establishment, not just a specified activity such as teaching or supervising, is regulated, we seek to stop unsuitable individuals building up relationships of trust with children or vulnerable adults.
- 3.29 We are proposing that all Children's Centres be included as 'establishments' under the legislation in the same way that schools and nurseries are already covered. The effect of this would be that a barred individual would not be able to carry out any activity on the Children's Centre where it gave the opportunity of contact with children.
- 3.30 In addition an individual wishing to carry out an activity on the premises frequently or intensively would be required to be ISA-registered where they have the opportunity of contact with children. The employer would be required to check the individual is ISA-registered before they engaged them in the work frequently or intensively.

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<sup>6</sup> A complete list of these establishments is provided for in Schedule 4 Paragraph 3 of the Act and Schedule 2 Paragraph 3 of the Order.

<sup>7</sup> This covers childcare which is required to, or chooses to, register with Ofsted under the Childcare Act 2006 or day care which must be registered under Children Act 1989. In Northern Ireland, this covers child care or day care in respect of which the provider must be registered under Article 118 of the Children (NI) Order 1995.

- 3.31 In a Children's Centre, many individuals will be required to be ISA-registered by virtue of the legislation's current provisions. This would be because the specific activity they do on the Children's Centre is already classed as regulated activity, such as those supervising, teaching, or caring for children. Other individuals who come onto the Children's Centre premises and have the opportunity of contact may also be carrying out regulated activity outside of the Children's Centre e.g. practitioners such as social workers and health visitors.
- 3.32 There would be a small percentage of individuals it would include who may not otherwise be carrying out regulated activity such as auxiliary staff, e.g. cleaners, administrative and maintenance staff and wider community workers such as community support workers and Jobcentre Plus staff.
- 3.33 Individuals working in Children's Centres would be required to be ISA-registered where they had the opportunity for frequent or intensive contact with children. So for example, a Jobcentre Plus worker may offer advice to parents at the Children's Centre as a one off because the usual staff member was on holiday or sick. The worker would not have to be ISA-registered if they were not going to be on the premises frequently or on an intensive basis. Equally, a cleaner or maintenance worker who is on the premises before or after it is open to children, or when closed to children because of a holiday would not have to be ISA-registered because he is not coming into contact with the children as part of his work. Parents and carers picking up their children are also not required to be ISA-registered even though they encounter other children.
- 3.34 Under the legislation the person allowing the individual to undertake regulated activity in the Children's Centre would be required to check that the individual is ISA- registered. This duty to check falls to the person at the top of the organisation. However, it can be delegated. See section 9 for further details about making checks of ISA-registration.

**Question 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? (paragraphs 3.26-3.34)**

#### **4. Eligibility to make checks**

4.1 Schedule 7 of the SVG Act and schedule 5 of the Order include categories of people who are eligible to make checks of ISA registration and to receive notification if an individual's status in the scheme changes. It is an offence under the SVG Act and Order to make a false declaration to obtain this information on an individual. We propose to add to the list of situations in which an organisation may make such checks as follows.

#### **Licensing and registration bodies that endorse individuals but are not regulated activity providers (RAP-see annex E).**

4.2 As the legislation stands organisations who license/register or otherwise endorse individuals would not necessarily be eligible to check ISA status and receive notification of this status. This is because Schedule 7 of the Act and schedule 5 of the Order specify that checks may be made by a person who 'permits, or is considering whether to permit', an individual to engage in regulated activity relating to children or vulnerable adults. In the case of many organisations who endorse suitability they are not the regulated activity provider (RAP)<sup>8</sup> employing the individual, or strictly speaking 'permitting' them to engage in regulated activity. They are though, responsible for releasing them into regulated activity and endorsing them.

4.3 In some cases there will be a RAP who will be required to carry out a check of registration status where they use the individual frequently for regulated activity. An example would be a leisure centre employing a sports coach to coach children, in this case the individual is required to register with the ISA and the sports centre is required to check they are ISA-registered.

4.4 In other cases there is no obvious RAP, for example where an individual is self-employed or a sole-trader. In these cases, endorsing organisations can play a valuable role in assessing whether an individual is suitable for a particular activity where there is no obvious employer fulfilling that function. As the legislation stands an individual can choose to join the scheme but the relevant endorsing organisation may not be eligible to obtain continuous updating of registration status and would not know if an individual has ceased to be ISA-registered. In addition leaving the legislation as it stands may lead to duplication of burdens where individuals may be required by their endorsing organisation to obtain a CRB/ANI Disclosure as part of an ongoing or proposed licensing/registration/endorsement requirement; then register separately with ISA to work in regulated activity as they could not register with the ISA as part of their registration with the licensing/registering/endorsing body.

4.5 **We are proposing that the CRB's Registered and Umbrella Bodies should be able to register an interest in individuals who are being endorsed to undertake regulated activity relating to children or vulnerable adults.** Some endorsing bodies will be 'Registered Bodies', this means that they are an organisation which is registered directly with the CRB to use its services. Other endorsing organisations will not be directly

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<sup>8</sup> A regulated activity provider is defined in section 6 of the SVG Act and article 10 of the Order and is explained in some more detail in annex E.

registered with the CRB and will use an 'Umbrella Body'. An Umbrella Body is a registered body that provides access to the CRB for other non-registered organisations. Depending on the contract the Umbrella Body has with the endorsing organisation they either make the suitability decision themselves or pass the Disclosure on to the organisation to make the suitability decision.

- 4.6 We are proposing that endorsing organisations that are Registered Bodies should be able to check ISA status where they are making decisions about the suitability of individuals who may engage in regulated activity. In addition, Umbrella Bodies should be able to receive the information and pass it on to the endorsing organisation where they are making the suitability decision. The organisation or Umbrella Body as appropriate could then take the decision as to whether they should continue to endorse/register/license the individual. This is intended to cover the following types of circumstance;

#### **Case Study: The Driving Standards Agency**

The Driving Standards Agency (DSA) currently requires CRB Enhanced Disclosures for those applying to be Potential Driving Instructors (PDIs) and for newly registered Approved Driving Instructors (ADIs). A criminal record check is undertaken as part of the existing regulatory "fit and proper" check carried out by the Registrar when individuals apply to start the qualifying process. The checks on the instructor are carried out by one of the CRB's Umbrella Bodies and suitability is decided by the registrar. Driving Instructors will be undertaking regulated activity in relation to children where they are instructing someone under the age of 18.

- 4.7 To continue the example above, we are proposing that when the new scheme is implemented the instructor should be able to make an application for ISA-registration and apply for a CRB/ANI Disclosure as part of their registration with the registrar as an ADI/PDI. In this case the Umbrella Body would register interest in the individual and would be able to pass ISA-registration status to the registrar, as they do currently with an Enhanced Disclosure, so they could assess the individual's suitability to register as a driving instructor. In this example being barred from working with children would not automatically mean that an individual is not suitable to teach adults how to drive. It would be for the relevant registrar to decide whether an additional CRB/ANI Disclosure should be carried out, where an individual's ISA-registration status changes, to assess whether they remain a 'fit and proper' person to teach the general public. Regardless of whether the registrar decides to deregister the individual or carry out any further checks, a barred individual will commit an offence should they continue to engage in regulated activity such as teaching 17 year olds how to drive.
- 4.8 When the new scheme is implemented an employer, such as a driving school, will be required to check that their instructor is ISA-registered where they intend for them to teach 17 year olds how to drive. If the individual has already become ISA-registered as part of their registration as an instructor with the registrar then the employer can decide whether to make a free online check to verify the individual is ISA-registered or whether to carry out a check of ISA-registration via an Enhanced Disclosure. Where an individual is not already

ISA-registered, they will be required to register with the ISA before they can engage in regulated activity for an employer and the employer will be required to check they are registered. When an employer checks an individual's ISA-registration status they can, at the same time, register with the ISA to be notified if an employee's registration status changes. This is so an employer is notified where an individual is no longer ISA-registered as an individual can not be used by an employer for regulated activity unless they are ISA-registered, so the employer would need to remove them from regulated activity.

- 4.9 Comparable scenarios arises in relation to many other situations where endorsing organisations use CRB Disclosures to assess suitability to accredit or license an individual and would want to be able to check ISA-registration status as part of their suitability decision making.

### **Case Study: National Governing Bodies**

A National Governing Body (NGB) such as the Football Association (FA) currently use one of the CRB Umbrella Bodies to obtain on their behalf CRB Disclosures on those people who care for, train, supervise or have sole charge of children and young people under the age of 18 in football as part of their normal role. The FA receives the Disclosure from the Umbrella Body and they then use it to decide whether the individual should be endorsed as appropriate to carry out these activities. As explained earlier neither the FA nor the Umbrella Body are eligible to register an interest in the individual and check ISA-registration status under as they are not, strictly speaking, 'permitting' the individual to engage in regulated activity.

- 4.10 We propose that the endorsing organisation, whether through being a Registered Body with the CRB/ANI or via an Umbrella Body, where appropriate, should be eligible to receive vetting information and that the individual should be able to apply for ISA-registration and a CRB/ANI Disclosure when they register with the endorsing organisation. If an individual goes on to be employed by a sports centre to teach children the employer would be required to check their status in the scheme (this could be a free online check as the person may already be ISA-registered as part of their registration with the NGB) and register for notification if their status in the scheme changes. In this case where the individual's ISA-registration status changes the employer would be notified that they can no longer use them for regulated activity such as teaching or instructing children. The endorsing organisation would also be notified that the scheme status has changed so they can assess whether they should continue to endorse the individual.
- 4.11 There will, of course, be self-employed individuals who are not affiliated to an endorsing organisation and do not have a RAP. In these cases they will be able to make a stand alone application to be ISA-registered. A parent, with the consent of the individual, would then be able to check that the self-employed coach is ISA-registered and therefore not barred.

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

**Adoption**

- 4.12 Currently the scope of the legislation excludes prospective adoptive parents and those who live with them, because they are personal or family relationships. One of the underlying principles of the legislation is to cover the workforce and not to intrude into family life. There are exceptions to this, such as fostering, which is in scope, where arranged by, a local authority, an agency, voluntary body or other third party, where the organiser has the power to terminate the placement.
- 4.13 In adoption, it is already a requirement in England and Wales under the Adoption Agency Regulations 2005 and the Adoption Agency (Wales) Regulations 2005 that Enhanced Disclosures, which include checks against barred lists, are made on prospective adopters and adult members of their household. Northern Ireland's adoption regulations<sup>9</sup> require that agencies obtain any relevant information which may assist the adoption panel. As standard practice, PoCVA checks are currently undertaken on applicants and any members of their household aged 10 or over. DHSSPS is considering the need to clarify statutory requirements in preparation for the intended commencement of Part V of the Police Act in Northern Ireland. As the legislation stands an adoption agency would be able to obtain CRB/ANI Enhanced Disclosures on prospective adoptive parents and on adult members of their household. However, the agency would not be able to receive continuous updating of registration status, nor would they be able to make an online check of registration status. This means that if new information became known and the ISA subsequently decided that the individual should be barred because they are a risk of harm to children or vulnerable adults, the agency would not automatically find out that an individual is no longer ISA-registered, unless a new Enhanced Disclosure (which will include barred status) was carried out.
- 4.14 It is proposed that CRB Enhanced Disclosures will continue to be obtained on prospective adoptive parents and adult members of their household. In addition the adoption regulations will require prospective adopters and adult members of their household to be ISA-registered. The effect of this would be that a barred individual could not adopt, nor could an individual adopt if an adult member of their household is barred. The legislation will be amended so that checks can be made by adoption agencies.
- 4.15 This would involve the prospective adopters and adult members of their household registering and remaining ISA-registered. The adoption agency would need to register their interest in the prospective adopter and in adult members of their household. They will then be notified if an individual's registration status changes (i.e. they stop being registered with the ISA, which would be because they are barred and are now a risk of harm to children or because they left the scheme voluntarily).

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<sup>9</sup> The Adoption Agencies Regulations (NI) 1989 (S.R. 1989/253)

- 4.16 The requirement to be ISA-registered would only stand until the adoption Order was made. The prospective adopters and adult members of their household could then if they wished, deregister themselves from the ISA scheme. Deregistration could not be automatic where the adoption Order was made because an individual may need to continue to be ISA-registered for other reasons such as being a volunteer at Scouts or because they are a teacher. However, once the Order was made the adoption agency would cease to have a legitimate interest in the prospective adopter and adult members of their household, and as such would no longer be eligible to receive updates on ISA-registration status on the individual or those in the household.
- 4.17 An online check and continuous updating will tell you whether an individual is ISA-registered. It will not give the full information you would get on an Enhanced Disclosure. Therefore, we propose that requirements for Enhanced Disclosure checks on prospective adopters and on adult members of their household should remain. This is because information that may not lead to an individual being barred may make a person unsuitable to adopt.

**Question 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?**

### **Childminders**

- 4.18 Childminders and their employees: Under the legislation Childminders<sup>10</sup> are undertaking regulated activity and they commit an offence if they undertake this activity without being ISA-registered. In the case of a Childminder in England, Ofsted acts in the same way as a regulated activity provider would for an employee. Similarly the Care and Social Services Inspectorate for Wales (CSSIW) fulfil this role in Wales; therefore when the new scheme is implemented they will check that the Childminder is ISA-registered and register to be notified if the childminder's status in the scheme changed. If the childminder has an assistant helping to look after the child then the childminder would be the regulated activity provider and will be required to check their employee is ISA-registered. Under the relevant Childcare regulations childminders will be required, where it is the case now with new childminders, to make an application for an Enhanced Disclosure. The childminder's application to register with Ofsted or a similar authority in Northern Ireland or Wales will, when the new scheme is implemented, mean in practice that they must apply to be registered with the ISA via an application to the CRB/ANI for an Enhanced Disclosure.
- 4.19 Schedule 7 of the SVG Act and schedule 5 of the Order include categories of people who are eligible to make checks of ISA-registration and to receive notification if an individual's status in the scheme changes. It is an offence under the legislation to make a false declaration to obtain this information on

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<sup>10</sup> Schedule 4, para.1(3) in relation to England and Schedule 4, para.1(6) in relation to Wales and Schedule 2, para 1(3) of the SVG Order in relation to Northern Ireland for the definition of childminding.



an individual<sup>11</sup>. As the legislation stands it is only possible to obtain this information in relation to childminders and those who work on childminding premises<sup>12</sup> not those who live on the premises.

4.20 In England, Ofsted currently obtain an Enhanced Disclosure on the household member and it is proposed would continue to be able to, but not necessarily required to, do so in the future. However, only those covered by schedule 7 of the Act or schedule 5 of the Order would be able to receive continuous updating of registration status under the legislation, and make an online check of ISA-registration status. This means that if new information became known and the ISA subsequently decided that the childminder should be barred that information would not be automatically passed on and may not come to light unless a new Enhanced Disclosure was obtained. As stated above an organisation would be able to receive this information on the childminder themselves and those who work on the premises as they are already provided for under schedule 7 of the Act and schedule 5 of the Order.

4.21 **We propose to amend the legislation to allow ISA checks to be made on those who live on childminding premises aged 16 or over.** Relevant Childcare regulations would need to be amended to require that they remain ISA-registered. It is being considered whether Childcare regulations should require that exceptionally where childminders care for children overnight (and this is on the Childminders registration certificate) or are applying to care for children overnight, Enhanced Disclosures should be obtained for household members given the increased risk for children in those settings. Withholding consent would then lead to a childminder's application for registration being refused / cancelled by Ofsted or the Health and Social Services Trust as is the case now where an individual withholds consent for a CRB/POCVA check.

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

## ContactPoint

Further information about ContactPoint can be found at;

<http://www.everychildmatters.gov.uk/deliveringservices/contactpoint/>

4.22 As the legislation stands operators of ContactPoint databases are 'office holders' under the legislation<sup>13</sup>. Therefore they are engaged in regulated activity and the individual who permits them to engage in regulated activity can register their interest in them and receive updated ISA-registration status in respect of that individual. An operator is defined under the legislation as an individual who;

<sup>11</sup> Section 34 of the Act and article 36 of the Order

<sup>12</sup> Schedule 4 Para.s 1(2), 3(1)(g) and 3(2) catch those who work (even if not for pay) in "relevant childcare premises" and in connection with those premises.

<sup>13</sup> SVG Act Schedule 4 Para 4 (1)(K) and Schedule 4 Para 4 (6).

- (a) establishes or maintains the database, or
- (b) otherwise, exercises any functions in relation to the management or control of the database

- 4.23 However, access to ContactPoint by users is not defined in the legislation as regulated activity and someone permitting an individual to be a ContactPoint user can not make a check of ISA-registration status or receive continuous updating as the scheme stands.
- 4.24 While many users are engaged in regulated activity because they are practitioners, e.g. teachers, social workers, doctors, others may not be engaged in regulated activity, for example some administrative staff.
- 4.25 We propose that individuals who permit a person to access ContactPoint should be eligible to register an interest in the ContactPoint user and make an ISA check on them. The ContactPoint Regulations will continue to specify that an Enhanced Disclosure is necessary for those who access ContactPoint; in addition regulations would be needed to require users to remain ISA-registered. The Enhanced Disclosure will continue to be a requirement in addition to making an online check of ISA-registration as offences which relate to suitability of access to ContactPoint such as computer misuse and data fraud may not necessarily lead to an individual being barred as a risk of harm to children.

**Question 9: Are you content with our proposals relating to ContactPoint in paragraph 4.25? Do you have any other comments?**

## **5. Controlled Activity**

**The regulation-making powers that underpin the policy on controlled activity in relation to Wales is devolved to the Welsh Assembly Government. Accordingly, the section below applies only to England and Northern Ireland. The Welsh Assembly Government will consider their regulations and consult on their proposals in due course.**

### **What is controlled activity?**

- 5.1 Controlled activity is work, both paid and unpaid, which provides less opportunity than regulated activity for regular or frequent contact with children and/or vulnerable adults. Sections 21 to 23 of the Act and articles 25 to 27 of the Order make provision in relation to controlled activity and enable regulations to be made placing requirements on employers and contain the definition of controlled activity.
- 5.2 Sections 21 and 22 of the SVG Act and Articles 25 and 26 of the SVG Order make provision for controlled activity in relation to children and vulnerable adults respectively. Controlled activity is activity which is ancillary to regulated activity, meaning that it only applies where regulated activity does not apply. Controlled activity applies where there is the opportunity for contact with children or vulnerable adults, to access records about children or vulnerable adults or to access other prescribed information. For an activity to be classed as controlled activity it must be carried out frequently or intensively. Controlled activity also includes the day-to-day management or supervision of staff carrying out controlled activity.
- 5.3 Controlled activity is more limited in its application than regulated activity and applies in the following sectors only in England and Wales– further education, health care (both primary care and hospital services), social care (both local authority social services and social care providers registered under the Care Standards Act 2000) and family court proceedings (in relation to court records). In Northern Ireland controlled activity applies in further education, health care (both primary care and hospital services), social care (provided by Health and Social Services Trusts or other social care providers registered under The Health and Social Services (Quality, Improvement and Regulation) (NI) Order 2003 and family court proceedings (in relation to court records).

### **Case Study: Hospital Catering Assistants**

Mr A works in the kitchen of a local hospital. His duties involve the preparation of food for patients within the kitchen. Once a week he also goes onto the wards to serve food to adult patients. Mr A's job therefore provides the opportunity for contact with vulnerable adults on a frequent basis and so is controlled activity.

Mrs B also works in the hospital's kitchen preparing food for patients. Her duties do not involve serving food on the wards and she only does so very occasionally, for example when Mr A is on holiday or off sick. Mrs B's job is not controlled activity.

### **Case Study: Office workers**

Mrs C is an administrative assistant in the children's services department of a Local Authority or a Health and Social Services Trust in Northern Ireland. She is responsible for filing records which contain information about children who are looked after by the local authority or Trust. Mrs C works with these records every day. She is therefore carrying out controlled activity.

Miss D is an administrative assistant in the same department. Her responsibilities include taking minutes of meetings, answering telephone calls and typing up reports. Miss D does not have access to records about individual children and so is not carrying out controlled activity.

### **What it means to work in controlled activity**

- 5.4 As with regulated activity, employers will be required to check whether an individual is ISA-registered before employing that individual in controlled activity. The key difference between controlled activity and regulated activity is that barred individuals will be permitted to work in controlled activity, provided that the employer puts appropriate safeguards in place (see paragraphs 5.9 – 5.13).
- 5.5 Controlled activity will provide further safeguards for children and vulnerable adults, in addition to those provided by regulated activity. However, as there will be no absolute bar from working in controlled activity, it will do so without unduly limiting employment opportunities. The employment of barred individuals in controlled activity will take place at the discretion of the employer and following consideration of the level of risk posed by the individual.
- 5.6 Where an employer wishes to employ an individual in controlled activity, he or she must first check that the individual is a ISA-registered. The checking process which employers will need to follow is illustrated in the flow charts at annexes C and D.

### **Employing a barred person in controlled activity**

- 5.7 The following examples illustrate circumstances where employers may wish to consider employing a barred individual in controlled activity. There will of course be many other examples.

### **Case Study: Social services records department**

Mrs C applies for a job as a records clerk in the social services department of her local authority/Health and Social Services Trust, working with children's social services records. Mrs C is included in the list of people barred from working with children due to physically harming a child while working in a school. The local authority consider the reason for the bar and conclude that Mrs C can be employed in this controlled activity position, with appropriate safeguards in place, as she is highly unlikely to pose a risk when not in direct contact with children. As a safeguard Mrs C is not permitted to have any direct contact with children as part of her job and may not, for example, accompany staff on visits to families.

## Case Study: Receptionist

Mr D applies to work as a receptionist at a local GP's surgery. He is included in the list of people barred from working with vulnerable adults due to the misuse of residents' money while working in a care home. The practice manager considers this matter and concludes that Mr D can be employed in this controlled activity position safely, provided that appropriate safeguards are in place, as it does not involve financial responsibilities or unsupervised one-to-one contact with patients. As a safeguard Mr D is not permitted to be left alone with patients and may not, for example, enter the treatment rooms.

- 5.8 Where an employer proposes to employ a barred individual in controlled activity, he or she will need to obtain a CRB/ANI Enhanced Disclosure in respect of that individual. The Enhanced Disclosure will state the reason for the bar, thereby helping the employer to determine the type of safeguards which he or she will need to put in place.

**Question 10: Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity? (paragraphs 5.7-5.8)**

**Question 11: 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 ISA-registered? (paragraphs 5.4-5.6) If so, for what purpose would the information provided on the Disclosure be used?**

### Safeguards

- 5.9 The next step will be for the employer to carry out an assessment of the risks to children and/or vulnerable adults of employing the individual concerned in controlled activity. We will make regulations requiring the employer to carry out a risk assessment and to make and retain a record of it. He or she will then need to take reasonable and appropriate steps to address the risks identified.
- 5.10. Employers should also ensure appropriate supervision of barred individuals working in controlled activity. The detail of the supervision arrangements will need to be determined on a case by case basis, depending on the position in question and the reason why the individual has been barred. They will however need to be recorded by the employer in the risk assessment.

**Question 12a: Do you agree that employers, before employing a barred individual in controlled activity, should be required to conduct, make a record of and retain the copy of a risk assessment? (paragraph 5.9)**

**Question 12b: Do you agree that employers, before employing a barred individual in controlled activity, should be required to ensure the person will be appropriately supervised? (paragraph 5.10)**

**Question 12c: Should the employer be required to record these supervision arrangements in the risk assessment? (paragraph 5.10)**

- 5.11 Supervision is one of a number of safeguards which employers will need to put in place. Guidance will be developed to support employers in identifying other safeguards which could be applied to particular job roles or to individuals who have been barred for particular kinds of abuse.
- 5.12 Employers will also need to ensure that the safeguards they have put in place remain effective and appropriate during the course of the individual's employment. The employer will need to keep the risk assessment up-to-date by repeating it at set intervals.
- 5.13 Where a person employed in controlled activity is ISA-registered, their employer will automatically be informed if they subsequently become barred. The employer will then be required to obtain a CRB Enhanced Disclosure which will provide the reason for the bar, thereby helping them to determine whether the individual can remain in the post and, if so, the safeguards which will need to be put in place. Similarly, a barred person who is employed in controlled activity could also be convicted of further criminal offences and/or be the subject of a referral to the ISA during the course of their employment. As barred individuals will not be ISA-registered, employers will need to obtain regular Enhanced Disclosures in respect of such individuals, in order to remain fully informed about the risks they pose to children and/or vulnerable adults. This will help employers in their role of ensuring the ongoing suitability of the safeguards.

**Question 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? (paragraph 5.13)**

## **6. Applying to the ISA scheme**

- 6.1 Applications for ISA-registration will be received by the Criminal Records Bureau or by Access Northern Ireland (ANI) (for Northern Ireland-based applicants). This application process will be based on the current application process undertaken to receive an Enhanced Disclosure from the CRB. The CRB/ANI will provide criminal records and other police information to the ISA. Employers will also be able to obtain a CRB/ANI Disclosure in the usual way
- 6.2 Around 11 million people will be required to become ISA-registered by the time that the scheme has fully rolled out. It is vitally important that the scheme is phased in in such a way as to take into consideration the capacity of employers, Registered and Umbrella bodies, the CRB/ANI, the ISA and all parties who will be impacted upon by the scheme. At the same time, we will need to develop a phasing strategy that places safeguarding at its heart. (This strategy is discussed in further detail in section 7)
- 6.3 Anyone who wishes to engage in regulated or controlled activity will need to apply to become a member of the ISA scheme. Once a person is ISA-registered, he or she may carry out regulated or controlled activity. A person who is barred may not carry out regulated activity, but may take part in controlled activity, subject to appropriate safeguards being put in place (as in section 5 above).
- 6.4 It is expected that most applications will go through the network of CRB/ANI Registered Bodies. Some applicants will be self-employed, and these will need make a self-standing application to the ISA through one of the CRB/ANI's Registered or Umbrella bodies.
- 6.5 People will be able to apply to be ISA-registered in respect of work with children, or vulnerable adults, or members of both vulnerable groups. In principle people should join the scheme in respect of the workforce in which they intend to work.

### **The application form**

- 6.6 The application form will be similar to the current application form for a CRB Disclosure, but with an additional option to apply for membership of the scheme. The application form provided by ANI in Northern Ireland will be modelled on the CRB form. We envisage that most applicants to join the scheme will apply for an Enhanced Disclosure at the same time (this is discussed in section 9). Regardless of whether or not the person has recently undertaken a CRB/ANI Enhanced Disclosure application, the application to become registered with the ISA will be the same. This is because on application to the scheme, the ISA will have to consider all available information about a person, and therefore will have to access the person's criminal records. However, those with the most recent disclosures will be required to join the scheme last. (see section 7 for details about the phased roll-out of applications to the scheme).

## Assessing information

- 6.7 On receipt of an application to join the scheme, the CRB/ANI will gather together any criminal background information from national and local police sources about the applicant, and will also check whether the person is already barred.
- 6.8 It is essential that the applicant is not matched to someone else's criminal record, The responsibility for establishing an applicant's identity will remain with Registered Bodies, in line with the existing CRB process and that being proposed by the ANI. Self-employed people will make applications through one of the CRB/ANI's Registered or Umbrella Bodies, who will check identity and counter-sign the application.
- 6.9 If the CRB/ANI finds that an applicant has committed certain prescribed criminal offences then it will send the details to the ISA. The ISA will automatically bar someone, with or without their representations, for the most serious criminal offences which indicate a risk of harm to children or vulnerable adults. In other cases a discretionary barring decision will be made, depending on the offences in question. In cases where allegations have come to the notice of local police forces, that information will be gathered by the CRB/ANI and sent to the ISA. The ISA will also take into account any relevant referral information about the applicant (see section 10 for further details)
- 6.10 In cases where the CRB/ANI sends any information to the ISA, it will send all the relevant information relating to automatic barring or discretionary decisions. Information on certain minor offences which would not demonstrate any risk of harm will not be referred, such as a minor traffic offence, unless there is also other relevant information, in which case, these offences will be considered by the ISA. Any information provided to the ISA will be considered.
- 6.11 The rules governing the forwarding of information about individuals to the ISA for barring decisions will be set in regulations and by the ISA and will not entail any judgements by CRB/ANI staff. The aim is to maximise the protection of the vulnerable groups by ensuring that the ISA has the necessary information to make decisions on the basis of risk of harm, but is not encumbered with superfluous information.
- 6.12 The CRB's process entails a search of national police records which includes a system for alerting the CRB if there is any additional local police information about an individual. If there is, the CRB will write to the relevant local police force which will apply a relevance test and forward any relevant local information to the CRB. In addition the CRB will write to the local police forces that cover the addresses where the applicant has lived over the last 5 years. The ANI will adopt a similar process.
- 6.13 Because local police information is not held centrally and requires an exchange of correspondence and the application of a relevance test, it may take some time to reach the CRB/ANI. This is one reason why Enhanced Disclosures may take a few weeks. We are clear that this is too long to clear someone with no criminal background who wishes to join the scheme, as they may need to take up post quickly.
- 6.14 In line with the provisions of the legislation, applicants who provide the information necessary for identity matching and who are not already barred



should become ISA-registered within a few days of the CRB/ANI receiving their application. However, they should also be recorded on the online check output as “undergoing assessment” pending the arrival of any local police information. If it is confirmed that no police information exists – this will be the case for more than 90% of applicants – then the “undergoing assessment” flag will be removed at that point, typically up to a month after the application was received, and the Enhanced Disclosure will be ready to issue at the same time. If there is police information, the “undergoing assessment” flag will be removed at the point that the ISA is satisfied that it does not need to make a barring decision.

- 6.15 ISA registration with an “undergoing assessment” flag on the online check means that an applicant can work or continue to work with the vulnerable groups. In many cases during the phased roll-out when the existing workforce are registering, employers will know their staff well enough to judge that “undergoing assessment” is a technicality.
- 6.16 In cases where a person is applying at the same time for a new post and to register with the scheme, the employer will be notified quickly that the person is ISA-registered and undergoing assessment. Confirmation of unqualified ISA-registered status should normally come along a few weeks later. If there is an Enhanced Disclosure, confirmation should come at that stage.
- 6.17 If the employer needs to fill the post immediately, and the post-holder is ISA-registered and undergoing assessment, managers will need to consider whether and if so to what extent the post-holder needs to be supervised in order to work with the vulnerable groups.
- 6.18 This will occur mainly during the roll-out of the scheme. Once members of the workforce are in the scheme, the simple online check of status in the scheme will enable employers to establish very quickly whether or not they can consider an applicant for a post. We will continue to engage with employers and other stakeholders to establish how best to handle applications to become ISA-registered and how these can best be coordinated with recruitment procedures.

## **7. Phased applications to the scheme**

7.1 When the scheme is fully operational we estimate that around 11 million people in England, Wales and Northern Ireland will need to be ISA-registered. This will require the scheme to be phased in over a period of time. Phasing arrangements will need to take into account the needs of all those who will be affected by the scheme and there are a number of options for phasing in the scheme. Our current thinking is that detailed arrangements could be based on the following principles:

- the workforce is phased in initially by people applying to register when they first join the workforce or move jobs during the phasing period
- the phasing period should last up to 5 years in order to manage the impact on the scheme in its early years, and to minimise the burden of the application fee across sectors by linking it where possible to occasions when an Enhanced Disclosure would be required anyway
- members of the workforce who have never had an Enhanced Disclosure or have not had one for a number of years and who do not change posts should join the scheme early in the phasing period, following new entrants.
- the existing workforce would then be invited to apply based on the time at which they obtained their most recent disclosure.
- controlled activity would be phased in at the end of this period

7.2 These principles seek to provide a balance between the risk of harm to the vulnerable groups resulting from delayed barring decisions, the management and capacity of the scheme, and the management of the cost of the fee to employers and people who work with children or vulnerable adults.

7.3 We have rejected the proposal that phasing might be undertaken on a sectoral or geographic basis as it is felt that this would simply allow predatory abusers to move from sector to sector, or location to location, throughout the phasing period in order to avoid being barred. Our phasing proposal mitigates against this risk.

7.4 Inevitably during a phasing period there will be some members of the workforce who are scheme members and some who are not. The phasing arrangements will need to be managed by means of effective communications and with the full understanding of employers and people who work with vulnerable groups. The criminal offences in relation to people who are not members of the scheme undertaking regulated activity, and the requirements for employers to make checks, will be enforced in parallel with the phasing arrangements. For example, once it is clearly established that the phasing

strategy is working as proposed, employers will be required to make checks on new entrants.

**Question 14: Do you agree with our proposed phasing principles? Are there any particular issues for certain sectors? (paragraphs 7.1-7.4)**

## **8. The application fee**

- 8.1 Members of the paid workforce and those intending to join the paid workforce will need to pay an application fee to join the scheme. Those who do not undertake any paid work with a vulnerable group but who do work with them on a voluntary basis will not have to pay the fee to join the scheme. The overall costs of the scheme will be reflected in the fee, including those for checks on volunteers.
- 8.2 However, if someone applies to the scheme as a volunteer, and hence pays no fee, and subsequently moves into paid employment within regulated or controlled activity, there will be a requirement to pay the cost at that point. This will work as when the paid employer makes the check on the person who is joining the paid workforce, they will declare that they are engaging in paid activity. At this point, the ISA will contact the person requiring payment.
- 8.3 At present, the CRB Disclosure fee is payable in law by the individual member of the workforce, although in practice the fee may be paid by the individual or by another party, such as an employer or a higher education institution. This will also be the case when ANI is established in April 2008 in NI. The ISA scheme fee will likewise be payable in law by the individual, and payment arrangements in practice will be subject to the employer's decision. Unlike the CRB Disclosure fee, the scheme membership fee will be paid only once in most cases, when a person first joins the workforce or where a volunteer who is already registered with the scheme subsequently enters paid employment in regulated or controlled activities. After this, continuous monitoring will apply and an on-line check of the individual's registration with the scheme will be free of charge. See section 9 for further information on the online check.
- 8.4 We are not yet in a position to announce the level of the fee. For initial applications to the scheme, there will be two elements to the fee: firstly a sum equivalent to the current CRB Enhanced Disclosure fee, because the CRB/ANI will need to undertake initial work on receiving an application that is equivalent to the work involved in compiling an Enhanced Disclosure. In Northern Ireland, it is envisaged that the Enhanced Disclosure fee will be set at a similar level. A second element of the fee will cover the cost of the ISA administration and the cost of running the scheme including continuous monitoring and the on-line checks (which will be free at the point the check is made). This second element will be payable only once, at the point of entry to the scheme
- 8.5 The fee, once set, is not expected to change significantly during the early years of the scheme. The fee will be periodically reviewed however, and after a period of up to 5 years, the basis on which the scheme is funded will be reviewed.

## **9. Checking that a person is ISA-registered**

9.1 Once an individual is ISA-registered, the CRB and ISA will ensure that any new criminal records or referral information is monitored and, where necessary, referred to the ISA for a further decision. CRB will operate the monitoring element of the scheme for England, and Wales and Northern Ireland. Where an individual is barred as a result, the last known employer, or where there are more than one, employers with a relevant interest will be advised accordingly. The ISA will contact any employer who has registered an interest in the person to ensure they still have an interest in that person's membership status. If they confirm that they do, those employers will also be told about the individual's change in status. It will be an offence to continue to employ a barred person in regulated activity, whether paid or voluntary. In controlled activity the employer will be able to consider whether they wish to continue to employ the person with appropriate safeguards in place – see section 5. In addition, subsequent Enhanced Disclosure checks will indicate the individual's barred status.

### **Personnel Suppliers**

9.2 The general principle under the legislation is that the requirement to check that an individual is ISA-registered falls on the employer. However, where individuals are supplied by personnel suppliers, specific provision exists in relation to the checking requirement.

9.3 A 'personnel supplier' as defined in the legislation covers;

- An employment agency<sup>14</sup>: This is defined as the business of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. In broad terms, an employment agency introduces workers to client employers for direct employment by those employers. This is known in the industry as "permanent recruitment" even though the employment may only be for a short, fixed period. In practice this means that an employment agency is an agency that introduces an individual to an employer and then ceases to have any role in the management of that individual. Under the employment agency arrangement the individual's contract is with the employer and not with the agency.
- An employment business: This is defined as the business of supplying people in the employment of the person carrying on the business, to act for, and under the control of, other people in any capacity. An employment business engages workers under either contracts for services or contracts of employment and supplies those workers to client hirers for temporary assignments or contracts where the workers will be under the hirers' supervision or control. This covers the hiring out of workers on a temporary basis. In practice this means that an employment business will place an

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<sup>14</sup> Employment agency and employment business have the same meaning as the Employment Agencies Act 1973

individual with an employer to work but the individual's contractual arrangement remains with the employment business and the employment business is responsible for paying them.

- An educational institution: This is an institute which supplies a student for the purpose of enabling them to obtain experience of engaging in regulated activity as part of their course e.g. a trainee teacher getting experience in a school or a medical student working with patients in a hospital.

9.4 Requirements on employment businesses: An employment business will commit an offence if they fail to check an individual is ISA-registered and register an interest in the individual prior to supplying them to an employer to engage in regulated activity irrespective of the frequency of the activity. This is to ensure that the employer is fully aware of the level of check they can expect from the employment business. Registering an interest will ensure that the employment business is informed if the individual ceases to be ISA-registered. Our intention is that in the majority of cases an employment business will be required to obtain an Enhanced Disclosure on an individual on the same basis as the requirement will apply to other employers. An employment business will not be required to obtain a new Disclosure every time it supplies an individual to a new employer, so long as an Enhanced Disclosure had been obtained within a prescribed period of time. **We propose that the time period for getting a new Disclosure should be three years.**

9.5 Requirements on employment agencies: Where an employment agency supplies an individual to work in regulated activity they are not required to check ISA-registration, register an interest in an individuals, or to obtain Enhanced Disclosures under the SVG legislation, because their relationship with the individual is more indirect. However, employment agencies will commit an offence if they knowingly supply individuals whom they know to be barred<sup>15</sup> or not ISA-registered<sup>16</sup>. In addition the Conduct of Employment Agencies and Employment Business Regulations, explained in paragraph 9.7, have the effect that the agency would need to check the individual and register an interest in them before supplying them to regulated activity so they could be sure that the person is suitable.

### **Notification from employment agencies to the employer that an individual's ISA-registration status has changed.**

9.6 As described above personnel suppliers will be able to 'register an interest' in a person. If an agency is informed by the ISA that an individual they have supplied to engage in regulated activity is no longer ISA-registered, the agency will need to inform the employer so that the employer can cease to use that individual in regulated activity.

9.7 The Conduct of Employment Agencies and Employment Business Regulations require agencies to inform the employer when they get

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<sup>15</sup> SVG Act Section 9(2)

<sup>16</sup> SVG Act Section 10(2)

information that an individual is not or may not be suitable for the assignment in question; this would include a notification that an individual is no longer ISA-registered. The requirement on an employment agency to inform the employer only lasts for 3 months from the introduction of the worker. In contrast the employment business has an ongoing responsibility to notify the employer if the individual becomes unsuitable.

- 9.8 The legislation provides that an employer can only rely on the written confirmation of an agency for a prescribed period of time. This is to ensure that where employers employ an individual supplied by a personnel supplier for a significant period of time; the employer is required to make a check themselves. At the time of doing a check they will be able to register an interest to receive notification if the person's ISA-registration changes. **We propose that a period of time equal to or less than three months is prescribed.** In this way it will not be necessary for the agency to notify the employer beyond 3 months, as the employer will have responsibility for checking and registering an interest beyond then. Therefore if an employer is using an individual for three months or more they are required to carry out their own check of ISA-registration.

### **Health and Social Care staff**

- 9.9 Sections 10(7) and 17 of the SVG Act make provision specifically in relation to the temporary supply of staff within the NHS. The effect is that where a person is employed in "relevant NHS employment", and provided that employment continues, he or she is able to undertake other such employment without the need for a check of ISA-registration. Relevant NHS employment is defined as employment by one of the following bodies – NHS Trusts, NHS Foundation Trusts, Strategic Health Authorities, Special Health Authorities and Primary Care Trusts, or by an organisation which provides services on behalf of one of these bodies.
- 9.10 These provisions are intended to cover the situation where a person is employed in the NHS as his main employment and is then supplied by NHS Professionals or by another agency to work elsewhere in the NHS on a temporary basis. The main NHS employment acts as an "umbrella" for the other NHS employment undertaken while the main NHS employment continues, thereby removing any requirement to check in relation to the temporary employment. This provision was intended to ensure that the supply of temporary staff in the NHS was not adversely affected by overly prescriptive checking requirements.

### **An educational institution**

- 9.11 An educational institute would not generally be covered by the Conduct of Employment Agencies and Employment Business Regulations. For example where the placement of a student teacher with a school was part of that student's course (and where the student was not paid for this or received any other consideration) then the Conduct of Employment Agencies and Employment Business Regulations would not apply. That said, an

educational institute is a personnel supplier under the legislation and therefore they would be committing an offence if they supplied an individual who they knew to be barred or not ISA-registered to engage in regulated activity. **We propose that in the case of educational institutions they should be required to check the student is ISA-registered and register an interest in a student before placing them for the purpose of enabling them to obtain experience of engaging in regulated activity, e.g. a trainee teacher getting experience in a school or a social care student gaining experience in a care home.** The educational institution should continue to be registered in relation to the student for the duration of the student's course.

- 9.12 Using the example of Initial Teacher Training (ITT) we propose that where a student goes into a placement in a school, the school can rely on written confirmation from the education institute that the Enhanced Disclosure and ISA-registration check has been done and that the education institution have registered to be notified if the student's ISA-registration status changes. This means that they will be required to inform the school that they can no longer use the student
- 9.13 We propose that regulations be amended so that where an Enhanced Disclosure has been carried out by an education institute as part of ITT a school which goes on to employ the teacher will not, where there is continuity of employment<sup>17</sup>, be required to obtain an additional Enhanced Disclosure in addition to checking that the teacher is ISA-registered and registering their own interest in the individual.

**Question 15: Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational establishments? If not, why? (paragraphs 9.2-9.13)**

### **Online checks**

- 9.14 Once a person has become ISA-registered, an on-line check will be available to employers to verify their registration. A registered person may then be employed. It will be for the employer to decide whether a further Enhanced Disclosure check should also be made, unless this is a legal requirement within their employment sector. The employer should take into account the age of the Enhanced Disclosure already obtained and any relevant governmental or sector specific guidance or statutory requirements.
- 9.15 Where a person is not ISA-registered, they may not be employed in regulated activity. Special arrangements will be put in place to advise providers of controlled activities in cases where an individual is barred from regulated activity, and of the reasons for the bar (see section 5).

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<sup>17</sup> In line with the current rules in the schools and FE sectors we propose that an additional Enhanced Disclosure only needs to be carried out where there is a gap in continuity of employment for 3 months or more. So for example if a student's placement finishes and they then start work in the school the following term the school should not be required to obtain a new Enhanced Disclosure.



## Enhanced Disclosures

- 9.16 Enhanced disclosures will continue to be available from the CRB as at present, and from the ANI in Northern Ireland from 2008. For new entrants it will normally be possible to make the application to the scheme and an enhanced disclosure application at the same time. For those registered, further Enhanced Disclosure checks will be at the employer's discretion, except where they are also a legal requirement or required by a regulatory body.
- 9.17 Once a person is ISA-registered, the Enhanced Disclosure will include the individual's registration status, or their barred status with brief reasons for the bar.
- 9.18 The CRB Business Plan for 2007/2008 lists activities and tasks that the CRB will aim to undertake in the period. Objective 5 provides for 'Continuous updating of Disclosures' and states that the CRB will complete a feasibility study in the fourth quarter of 2007/2008.
- 9.19 It should however be noted that there are currently no legal powers to provide continuous updating of Disclosure information however dependent on the results of the study the necessary changes will be considered.
- 9.20 Continuous updating for the purposes of registration with the ISA is provided for under the legislation. This allows for those who have registered an interest in an individual to be notified where the individual's ISA-registration status changes and the person is no longer ISA-registered. Where someone ceases to be ISA-registered an employer can no longer use them for regulated activity.
- 9.21 As explained above we anticipate that initial registration with the ISA will generally be in the form of a joint application to the CRB/ANI for an Enhanced Disclosure and ISA-registration<sup>18</sup>. This section covers the requirement for a regulated activity provider (RAP) to check that an individual is ISA-registered before engaging them in regulated activity frequently or intensively.

### Options for checking an individual is ISA-registered under the legislation.

- 9.22 The default position under the legislation is that the regulated activity provider (RAP) is required to check that an employee or volunteer they use is ISA-registered by carrying out an online check or by obtaining an Enhanced Disclosure. The minimum legal requirement under the legislation for existing scheme members is for a free online check of ISA-registration.
- 9.23 We have provision to make regulations under the legislation to;
- a. Require a RAP to check scheme membership via an Enhanced

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<sup>18</sup> As is the case with the current system some individuals will not be eligible for an enhanced Disclosure and therefore will register with the ISA via a stand alone application. For example, a private tutor would make a stand alone application to the CRB/ANI to register with the ISA. A parent using the tutor to teach their child music would be able to make an online check that the music tutor is ISA registered (i.e. not barred) but, as is the case now, they would not be eligible to obtain an enhanced Disclosure on the tutor.

Disclosure before a person undertakes regulated activity.

- b. Require a RAP to make an online check of membership of the scheme and also to have taken steps to obtain an Enhanced Disclosure before an applicant engages in regulated activity. This would be the equivalent of a PoVA First check or a check against List 99 while waiting for an Enhanced Disclosure to be processed, as currently used in some sectors.

9.24 If we do not exercise this regulation making power the default position under the legislation will stand, i.e. a RAP will be able to choose whether to check an individual's status online, whether to check status via an Enhanced Disclosure, or whether to make an online check and seek an Enhanced Disclosure at a later date.

**Proposal for checking ISA registration where there is not an existing statutory or regulatory requirement for a CRB/ANI Disclosure.**

9.25 We are not proposing to make new regulations to require RAPs to check ISA-registration via an Enhanced Disclosure where there is no existing statutory requirement for a CRB Disclosure. The advantage of not putting a requirement into regulations under the legislation is that it gives employers the flexibility to decide which method is best for their employees/volunteers and whether they need to see information in the Enhanced Disclosure which does not relate to risk of harm to children and/or vulnerable adults but which does relate to whether the individual is suitable for a specific post.

9.26 There are a number of bodies who currently obtain CRB Enhanced Disclosures. For example, in relation to child care positions it is the only way to determine an individual is not listed on the PoCA list. Under the ISA scheme an online check would tell an employer whether an individual is ISA-registered. If an individual is ISA-registered it would mean that they are not on the barred list so an employer may not need to obtain a Disclosure in the future to ascertain that a person is ISA-registered.

**Proposal for checking ISA registration where there is already an existing statutory requirement for a CRB Enhanced Disclosure.**

9.27 There are a number of existing statutory requirements which make CRB Enhanced Disclosures a legal requirement. These requirements may apply differently in England, Wales and Northern Ireland and will have to be considered accordingly. We have two main options;

- a. Whether to keep the existing statutory requirements for legislation.
- b. Whether to change the existing statutory requirements for Enhanced Disclosures, either by regulations under the legislation or through the existing regulations. Any changes to existing regulations would have to be considered by the appropriate authorities.

- 9.28 **We are proposing to retain existing requirements for Enhanced Disclosures and the default position under the legislation:** The effect of this is that the legislation will require the RAP to, at the very least, carry out an online check to verify that an individual is ISA-registered before they can undertake regulated activity. Existing statutory requirements for CRB Enhanced Disclosures will still apply, so for example if regulations under Care Standards Act 2000 specify that a new Enhanced Disclosure is sought on a social care worker on change of post that requirement will stand. In Northern Ireland, existing requirements to conduct criminal records checks as part of an individual's suitability assessment, will be updated to reflect the requirement to obtain an Enhanced Disclosure through ANI.
- 9.29 Regulations and standards which apply to specific sectors such as teachers or social care workers specify a range of pre-employment checks and processes which go beyond the requirement to carry out a CRB/ANI Disclosure, for example, the requirement to check references or hold a particular qualification.
- 9.30 It is not practicable to port all these existing requirements into regulations under the legislation, therefore, we are proposing to amend the existing regulations and standards to make reference to the requirement to be ISA-registered and not barred under the new children and/or vulnerable adult list. In addition sector specific guidance on suitability checking will be updated to make reference to the requirements on RAPs to make checks and employees and volunteers to register with the ISA. ISA checks are just one element of good recruitment and employment procedures and that they are not intended to replace existing good practice but rather to supplement safeguarding procedures.

**Question 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? (paragraphs 9.25 – 9.30)**

## **10. Referring information to the ISA**

10.1 Information sharing is central to the successful operation of the ISA. Section 6 details how the ISA will use the CRB/ANI to access police information. This section explains how it is intended that the ISA will have access to a wider range of information from organisations other than the police. The duties around information sharing fall on 5 different groups in the legislation. These groups are as follows (see annexe E for further details):

- Regulated Activity Providers (RAPs)
- Personnel Suppliers
- Local authorities/ Education and Library Boards (ELBs)/Health and Social Services Bodies (HSS Bodies)
- Keepers of Registers (KofRs:)
- Supervisory Authorities (SAs)

### **Referring Duties**

10.2 RAPs, personnel suppliers, local authorities/ELBs/HSS Bodies, KofRs and SAs are under a duty to refer in certain circumstances, to the ISA, any prescribed information they hold in relation to a person they have engaged in, know to engage in, or suspect may engage in, a regulated or controlled activity. These are where the harm test (see below) has been satisfied, and also where the requirements in annex F are fulfilled.

### **The harm test**

10.3 The harm test is defined in the legislation as a person:

- harming a child or vulnerable adult;
- causing them to be harmed;
- putting them at risk of harm;
- attempting to harm them or
- inciting another to harm them.

10.4 In these circumstances, the information provided to the ISA could lead to them making a barring decision. To do so, the ISA will have to be satisfied that the relevant conduct is serious enough, or that the risk that a person may harm a child or vulnerable adult is such that the person should be included on the barred list.

10.5 The policy intention is that harm should take its normal meaning. We would expect this to include:

- Ill-treatment
- the impairment of health (physical or mental)
- the impairment of development (development meaning physical, intellectual, emotional, social or behavioural)

Ill treatment here includes sexual and financial abuse and forms of ill-treatment which are not physical.

**Question 17: Should anything be added to this understanding of harm?  
(paragraphs 10.3-10.5)**

**Referral Duties**

10.6 Regulations will prescribe the information that each of these bodies must refer to the ISA when either of the two triggers for this passing of information are met. These triggers differ slightly for each type of organisation but broadly fall into two categories:

i. Duty to refer

This is the requirement to refer 'any prescribed information that is held', when certain circumstances are met. These circumstances vary depending on the referring organisation and are laid out at annexe F.

ii. Duty to provide information on request

This is the requirement to provide 'any prescribed information that is held', when the ISA makes such a request as it is considering to include or remove a person from a barred list.

10.7 In both these instances, and for each of the five different referring organisations, regulations will detail what the prescribed content will be.

10.8 In the case of LAs/ELBs/HSS Bodies, KofRs and SAs, there is a further power that they may provide the ISA with 'any prescribed information they hold' relating to a person if:

- a) They think that the person has engaged in relevant conduct (as defined in Schedule 3 (4) and (10) of the Act) before the commencement of the relevant sections, and
- b) That the person is engaged or may engage in regulated or controlled activity, and
- c) The ISA may consider it appropriate for the person to be included in the barred list.

10.9 The overarching aim of referrals must be to ensure that the ISA has access to the full range of information at the point at which they need it. However, it will be important that a need to have access to a full range of information does not mean that an unnecessary duplication of information occurs.

10.10 The primary source of many referrals will be the RAP. Often these will be the organisations who are generating the information that referrals will comprise of, through disciplinary investigations into incidents of harm or risk of harm to children or vulnerable adults.

10.11 The exact process for referrals is not finalised but it is agreed that we would expect RAP referrals to be made once the facts of the case have been established as fully as possible and the final decision to remove the person from regulated activity has been taken (or the person has left the post). In

addition to this, bodies who have a duty to refer also have a power to refer incidents which have occurred before the scheme goes live.

- 10.12 This information is likely to be shared with other organisations in the network of referring organisations. We need to be clear that the ISA only needs to receive the information once. The legislation says that the SAs need not refer “if the supervisory authority is satisfied that ISA already has the information”. This would be a sensible approach to adopt with both KofRs and LAs/ELBs/HSS Bodies if possible as, in practice, they will often receive information, knowing that it had been referred to the ISA. In other cases, caseworker to caseworker interaction would be able to establish what information was already held mutually.
- 10.13 However, there will be instances when the KofR, SA or LA/ELBs/HSS Bodies receives information that it knows the ISA has not, or is unsure if, the ISA has received. At this point we would expect that the information would be passed quickly to the ISA so it can begin its decision making process.
- 10.14 We intend to prescribe that the ISA has the power to ask for any information that it feels is relevant to its decision making process. This approach would allow us to prescribe an identified list information for initial referrals, and leave a more general power for the ISA to ‘sweep up’ any information that may have been left out of the initial referral.
- 10.15 Even with this approach, we would hope that the information included in the initial referral would be sufficient to prevent a need to rely on this.

### **Content of the referrals**

- 10.16 The information prescribed will be slightly different depending on the nature of the referring organisation (as outlined above). However, there will be some information that we will expect to be common across all referrals. As a base line this will be the identifying information and the details and evidence of the conduct that has lead to the referral
- 10.17 Where possible we are keen to prevent unnecessary duplication of referrals, however, it is important that information is referred and not withheld in the mistaken belief that a referral has been made somewhere else in the chain.
- 10.18 The intention is that the ISA will develop a referral form that referrers will be able to use and will outline all the required information. It is not intended that this will be a statutory pro forma, and referrers will be able to provide the information in other formats, but we would encourage the use of the ISA referral form.
- 10.19 There are two elements that will be required parts of the referral. These are as follows.
- 10.20 **Identity Information:** For a referral to be matched against members of the scheme, or for records to be checked, sufficient identity information will need to be included with all referrals. We would expect this to include:

- Full known name
- Aliases,
- Date of Birth,
- National Insurance Number,
- Gender,
- Position held,
- Last known address,
- ISA Unique Identifier.

10.21 **Case Information:** This is the information that details the facts of the case, and will allow the ISA to make its decision.

10.22 Described at annex G is the information that we propose to prescribe for referral. It is worth noting that the types of information will be common in most referrals, with some organisations having additional information to add. As noted previously, the organisation only has to refer the information it holds from the prescribed list. There will be no additional duties to specifically gather further information beyond what is held by the organisation.

**Question 18: Do you agree that the lists at annex G will capture all the information that the ISA would require to make barring decisions?**

10.23 The ISA is also under a duty to provide relevant information to the KofRs and SAs where the ISA knows or thinks that a person is of interest to the body. This provision is so that the Authority can provide information that may lead one of these bodies to review a person's registration or fitness to practise. We are discussing with these bodies the most appropriate way for this duty to be enacted.

## **11. Barring, Representations and Appeals**

- 11.1 The rationale behind barring, and indeed the new scheme, is that those who pose a risk of harm to children or vulnerable adults should be prevented, at the earliest opportunity, from getting access to them via their work.
- 11.2 Under the new scheme there will be two barred lists: those who are barred from working with children, and those who are barred from working with vulnerable adults. There are two ways an individual might be put on the lists: following a decision by the ISA or automatically.
- 11.3 The legislation provides that employers will be notified that the status of a person who they have a registered interest in has changed only once the person is barred or has left the scheme. We believe it is important that the ISA can notify employers as soon as they establish that the person poses a serious risk of harm. We are considering the stage at which it would be most appropriate to inform employers.

**Question 19a): At what stage in the ISA’s consideration do you believe employers should be notified? (paragraph 11.3)**

**Question 19b): What information should the ISA pass to employers at this stage? (paragraph 11.3)**

### **Decision by the ISA**

- 11.4 The ISA will be the country’s leading expert safeguarding group. It will take all barring related decisions under the new scheme. The ISA’s decision making process will operate independently of individual Government Ministers, including the Secretary of State, who is responsible for taking these decisions under current schemes.
- 11.5 It will use its considerable expertise to assess all relevant information, including all relevant cautions and convictions, in deciding whether an individual satisfies the barring condition. The barring condition is that an individual poses a risk of harm to children or vulnerable adults, and that risk of harm is such that the individual should be barred from working or volunteering with the relevant vulnerable group.
- 11.6 Whilst assessing the relevant information in relation to one group, the ISA will also determine whether it should consider barring in relation to the other group. If the ISA is satisfied that a case meets this condition it will place the individual on the relevant barred list, or on both lists where appropriate.

### **Automatic Barring**

- 11.7 Conviction or caution for some offences self-evidently satisfies the barring condition. In these cases it is unnecessary for the ISA to make this decision as the outcome including the resultant bar will be the same in every case. These offences are known in the scheme as ‘automatic barring’ offences.



## **Automatic Barring Offences without Representations**

- 11.8 With some of these offences there is absolute certainty that there could never be any additional information that an individual could provide that will make it necessary for the ISA to consider whether the barring condition truly applied. Therefore there is no point in providing for representations with these offences and this subset is known as 'automatic barring offences without representations'.

## **Automatic Barring Offences with Representations**

- 11.9 Where the certainty whether the barring condition is satisfied is not absolute, however remote the possibility, it is necessary to make provision for representations. This subset of automatic barring offences is known as 'automatic barring offences with representations'.
- 11.10 More detail about the proposed barring processes including the list of the proposed automatic barring offences can be found in the barring consultation document and the Government response which is available at:

<http://www.dcsf.gov.uk/consultations>

- 11.11 Just because an offence does not appear on the list does not mean the offence is not considered. The ISA will consider all relevant offences. As mentioned above, the same bar applies and the individual is barred from the same activities in all cases whichever way the individual is barred.

## **Appeals**

- 11.12 Apart from those automatically barred with no right to make representations, people barred by the ISA will have a right to: make a representation to the ISA if they believe that there are reason/s why they should not be included on, or removed from, these lists; and apply to the Care Standards Tribunal for permission to appeal their bar on the grounds that the ISA has made a mistake on a point of law or a finding of fact they have made and which they have used to make their barring decision.
- 11.13 Those who have been automatically barred with representations or barred by a decision by the ISA on the grounds of inappropriate behaviour or risk of harm will have the right to make a representation to the ISA to put forward reason/s as to why they should not be included on the barred lists as well as the right to apply for permission to appeal.
- 11.14 Those individuals who have been automatically barred without the right to make representations have more limited rights. As they will be placed on both barred lists, they will not have the right to make representations or apply for permission to appeal against inclusion on the list most relevant to their conviction or caution, for example, being placed on the children's list for child

rape. However, they will have the right to make representation to the ISA regarding inclusion on the 'other' list, for example, inclusion on the vulnerable adults' list for child rape and have the right to apply to the Care Standards Tribunal for permission to appeal.

- 11.15 Unless the Care Standards Tribunal, or the Care Tribunal in Northern Ireland, finds that the ISA has made a mistake in law or on a point of fact, it must uphold the decision the Authority has made. If the Tribunal finds that the ISA has made a mistake it must either direct the Authority to remove the individual from the list or remit the matter back to them for a new decision.

## Annex A: Definition of Vulnerable Adults

### Definition of Vulnerable Adults

Section 59 of the Act and article 3 of the Order provides a definition of **vulnerable adult** for the purpose of the ISA scheme. It provides that a vulnerable adult is a person aged 18 or over who:

- (a) is living in residential accommodation, such as a care home or a residential special school;
- (b) is living in sheltered housing;
- (c) is receiving domiciliary care in his or her own home;
- (d) is receiving any form of health care;
- (e) is detained in a prison, remand centre, young offender institution, secure training centre or attendance centre or under the powers of the Immigration and Asylum Act 1999;
- (f) is in contact with probation services;
- (g) is receiving a welfare service of a description to be prescribed in regulations;
- (h) is receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care (age-related needs includes needs associated with frailty, illness, disability or mental capacity);
- (i) is receiving direct payments from a local authority/HSS body in lieu of social care services;
- (j) requires assistance in the conduct of his or her own affairs.

In all the above settings and situations adults need to be able to trust the people caring for them, supporting them and/or providing them with services.

## Annex B: Transport

At present, if employed or contracted by schools or local authorities for the purpose of transporting children or vulnerable adults, bus drivers will be required by the local authority or school contracting the service to obtain an enhanced disclosure from CRB. However, there is currently no universal requirement on bus and coach drivers to obtain a CRB Enhanced Disclosure.

DVLA are currently consulting on a series of proposals to improve passenger safety by tightening the Passenger Carrying Vehicle (PCV) licence system. The DVLA consultation "Improving Bus Passenger Safety through the Driver Licensing System" is available to view at <http://www.dvla.gov.uk>. As part of its consultation exercise, DVLA is seeking views on a range of options including requiring CRB Enhanced Disclosures upon application and renewal of license and how often, if favoured as an option, they should be undertaken.

The requirements DVLA propose would be complementary but separate to the requirements of the SVG legislation. The legislation will require membership for anyone exclusively transporting children or vulnerable adults in specific circumstances. DVLA propose to undertake CRB Enhanced Disclosures at the time a person applies for or renews their PCV licence, the aim being, to ensure that anyone who may pose a risk driving a bus/coach on any routes including regulated and open services is prevented from obtaining a licence and therefore qualifying for employment driving buses.

The following examples illustrate how requirements under the SVG legislation might operate alongside requirements generally on holders of, and applicants for, a PCV licence. These examples are dependant upon the outcome of DVLA's consultation exercise.

### **Example 1:**

A driver applies to DVLA for a PCV licence. DVLA require CRB Disclosure (standard/enhanced/or other - as determined by the consultation response) on the driver which is returned to DVLA, as the registered body, with several convictions. The case is referred to the Traffic Commissioner who decides that the person poses a risk to the public and the applicant is not granted a licence.

### **Example 2:**

A driver applies to DVLA for a PCV licence. DVLA require an Enhanced Disclosure on the driver which is returned with no previous convictions. The case is not referred to the Traffic Commissioner as the person does not pose a risk to the public and the applicant is granted a licence. After qualifying as a bus driver and securing employment with a local bus company, his employer secures a contract to run closed school services. The driver applies to register with ISA and he is granted ISA-registration enabling him to work in regulated activity on the closed routes.

**Example 3:**

A driver applies to DVLA to renew his PCV licence. He has recently been granted ISA-registration enabling him to work in regulated activity on closed routes. In support of his PCV renewal he provides a copy of the CRB Disclosure undertaken as part of the ISA-registration process. This is accepted where this is recent and relevant to occupation of bus driver. ("Improving Bus Passenger Safety through the Driver Licensing System" asks whether a CRB Disclosure obtained in advance of a PCV application might be used in support of that application, and for how long such a CRB Disclosure might be valid. It would be helpful to have responses on this point sent to [CRB.consultation@dvla.gsi.gov.uk](mailto:CRB.consultation@dvla.gsi.gov.uk) by 12 December 2007).

Bus drivers must declare any convictions as part of the licensing process and employers have an ongoing responsibility to notify any known criminal offences. Arrangements are in place with the police to notify DVLA and the Traffic Commissioners of any serious offences involving bus drivers.

**Taxi and Private Hire Vehicles (PHV) drivers**

Taxi and Private Hire Vehicles (PHV) Licensing authorities have a statutory duty to ensure that any person to whom they grant a taxi or PHV driver licence is a "fit and proper" person. In support of carrying out this duty licensing authorities are entitled to receive details of an applicant's spent and unspent convictions. As would be the case with bus drivers, taxi drivers where they are driving a child or vulnerable as part of a contracted service would need to be ISA-registered and obtain an Enhanced Disclosure as part of that registration process.

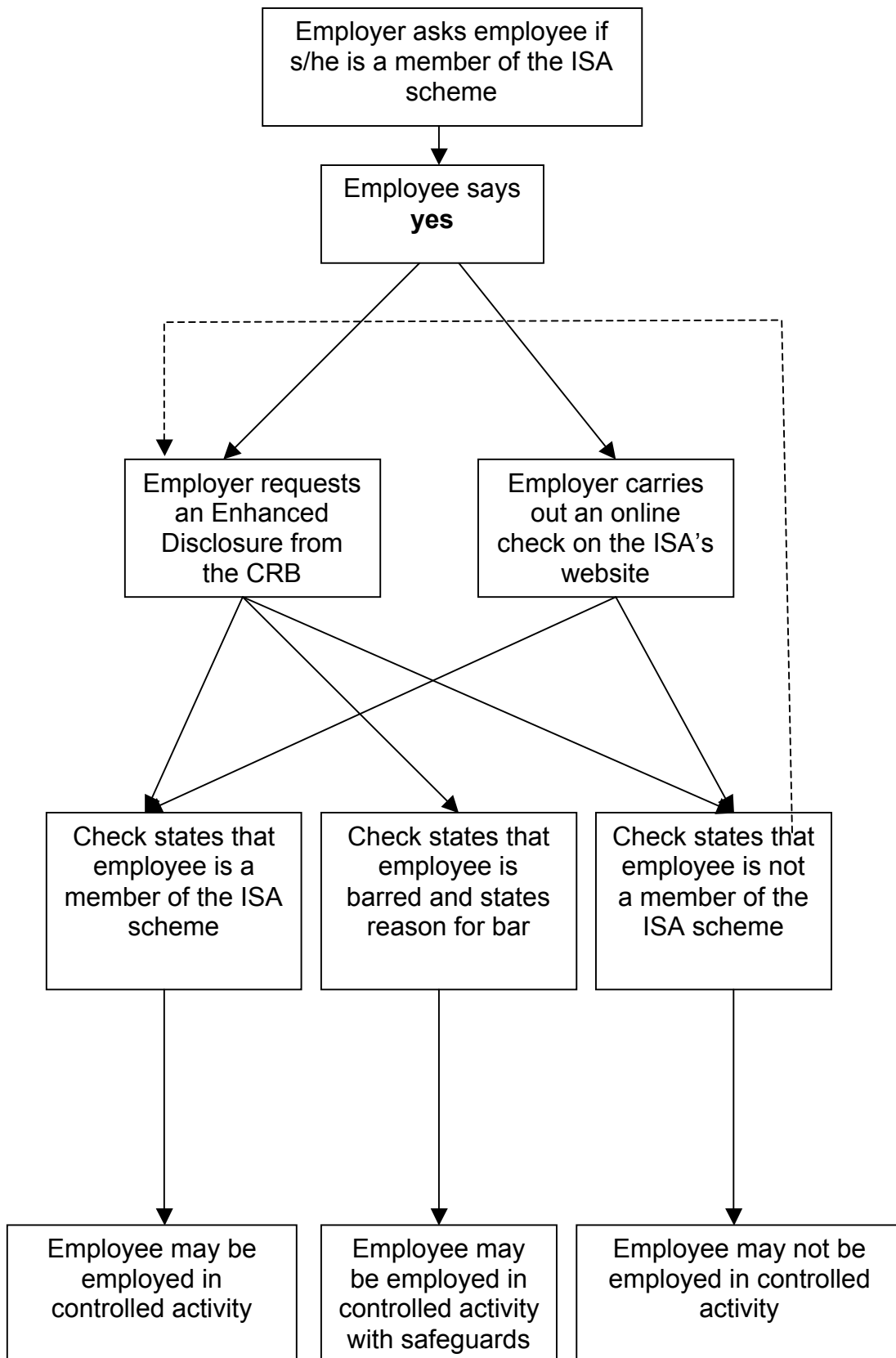
Department for Transport Best Practice Guidance for taxi and private hire vehicle licensing authorities in England and Wales (November 2006), available to view at:

<http://www.dft.gov.uk/pgr/regional/taxis/taxiandprivatehirevehiclelic1792>

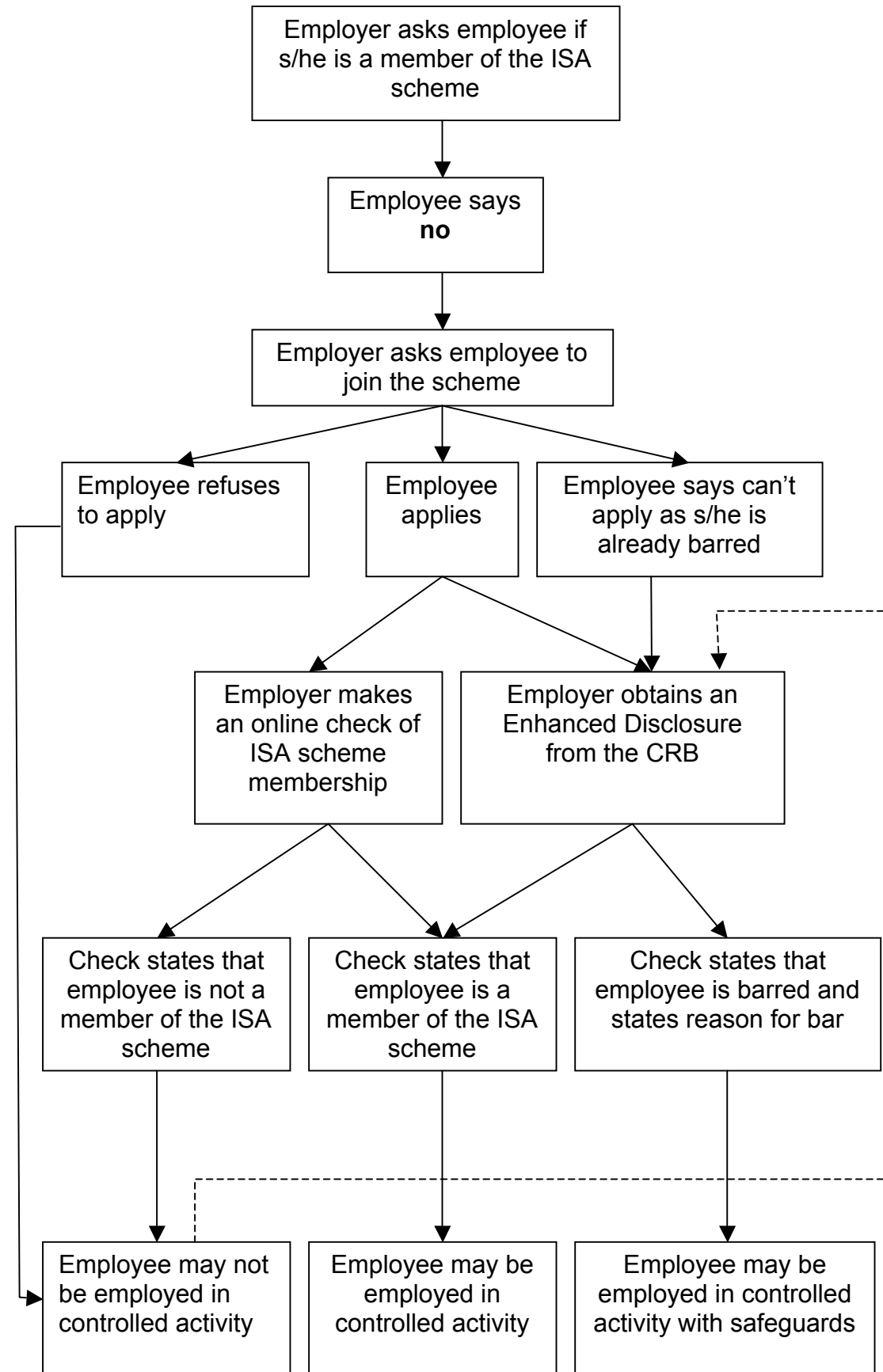
and recognises that a criminal record check is an important safety measure and is widely required and that Taxi and PHV drivers can be subject to an enhanced disclosure through the CRB. DfT guidance recommends as best practice for disclosures to be sought when a licence is first applied for and then every three years, even if a licence is renewed annually, provided drivers are obliged to report all new convictions and cautions to the licensing authority.

The Driving Standards Agency (DSA) introduced a requirement for CRB Enhanced Disclosures for those applying to be Potential Driving Instructors (PDIs) and for newly registered Approved Driving Instructors (ADIs) in March 2007. A criminal record check is now undertaken as part of the existing regulatory "fit and proper" check carried out by the Registrar when individuals apply to start the qualifying process. Driving Instructors would be carrying on regulated activity under the SVG legislation where they are instructing someone under the age of 18 and would need to be ISA-registered.

**Annex C: Controlled Activity Checking Process 1**



**Annex D: Controlled Activity Checking Process 2**



## **Annex E: Referring Organisations**

- **Regulated Activity Providers (RAP)**

Those who directly allow the person to engage in the regulated or controlled activity. These will generally be employers or managers of volunteers. The information they have will consist of records of employment and personal information about the person as well as first-hand accounts of any incident and any investigations they have undertaken as part of normal employment procedures. In the case of voluntary organisations, this information is likely to be less formalised.

- **Personnel Suppliers**

Personnel Suppliers are detailed in section 9 of the consultation document

- **Local Authorities (LAs)/HSS Bodies**

The child and adult protection teams in LAs/HSS Bodies co-ordinate multi-agency investigations into allegations of child or adult abuse. This means in many cases they will be in contact with one or more organisation who should be referring information to the ISA, including RAPs, the police, regulators etc...

The LAs/HSS Bodies then, can provide two important functions, firstly informing the ISA of the agencies involved in the investigation and secondly passing any information it has as part of its co-ordinating role. to the regulations will work to ensure that there is not unnecessary duplication where the LA/HSS Body knows the information has already been referred.

- **Keepers of Registers (KofRs)**

These are the professional regulatory bodies such as the General Medical Council, the General Teaching Councils (GTCs) etc.. These organisation receive referrals from professionals and the public and conduct investigations into professional fitness to practice which culminate, where necessary in public hearings. Therefore, by the end of one of their investigations they will assemble a large range of reliable information, some of which will relate to risk of harm.

- **Supervisory Authorities (SAs)**

Supervisory Authorities are the inspectorates such as Ofsted, CSCI and the Healthcare Commission etc. In Wales this includes the Assembly Government. In Northern Ireland, they include the Regulation and Improvement Authority and an Inspector appointed under Article 102 of the Education and Libraries (NI) Order 1986 (an ETI Inspector). These organisations routinely conduct inspections and, where they receive complaints about a practitioner or organisation may commission special investigations to consider whether the practitioner/organisation is complying with regulations or meeting professional standards.



## Annex F: Referring Duties

<p>Regulated Activity Providers</p>	<p>a) If he withdraws permission for a person to engage in regulated activity or would have withdrawn permission had the person not left voluntarily, and</p> <p>b) This was because the person has harmed or may harm a child or vulnerable adult</p>
<p>Personnel Suppliers</p>	<p>a) The agency or business determines to cease to act for, or supply a person to another for the purposes of engaging in regulated activity, and</p> <p>b) This was because the person has harmed or may harm a child or vulnerable adult</p>
<p>Local Authorities</p>	<p>a) The person has harmed or may harm a child or vulnerable adult, and</p> <p>b) The person has engaged or may engage in regulated activity, and</p> <p>c) The LA thinks that the ISA may consider it appropriate to include the person on a barred list</p>
<p>Keepers of Registers</p>	<p>a) The person has harmed or may harm a child or vulnerable adult, and</p> <p>b) The person has engaged or may engage in regulated activity, and</p> <p>c) The KofR thinks that the ISA may consider it appropriate to include the person on a barred list</p>
<p>Supervisory Authorities</p>	<p>a) The person has harmed or may harm a child or vulnerable adult, and</p> <p>b) The person has engaged or may engage in regulated activity, and</p> <p>c) The SA thinks that the ISA may consider it appropriate to include the person on a barred list</p>

## **Annex G: Information to be referred**

### **i) Regulated Activity Providers: Duty to Refer:**

- Identifying Information
- Details of registration with any Register or Supervisory Authority (including Charity Commission in England and Wales), including registration number
- Evidence/Details of Employment and employment history  
ie copy of letter of appointment, job spec, description of duties, start dates, disciplinary record, employment history, qualifications, training record, duty roster for period in question
- Evidence of misconduct  
ie Summary of misconduct, impact on service user, details as to why the victim is considered vulnerable (ie child or vulnerable adult), details of relationship between person and victim, evidence of alleged misconduct, details of investigations
- Details of Action taken and any further action  
To include evidence such as notes of disciplinary hearings, formal notice of dismissal
- Details of all other agencies involved in investigating or pursuing the incident.  
To include police, SAs, KofRs, LAs/ ELBs/HSS Bodies. Contact details to be included
- Referrers Information  
ie Contact name, position, phone number, details of the establishment etc...
- Findings of Employment Tribunals, or whether it is known the individual has taken a case to a tribunal
- Employers Details

### **ii) Personnel Suppliers: Duty to Refer**

- Information prescribed in i)
- Any other information held by the Personnel Supplier under Schedule 4 of the Conduct of Employment Agencies and Employment Business Regulations 2003 (SI 2003/3319) or the Conduct of Employment Agencies and Employment Business Regulations (NI) 2205 (SR2005/395) except where the individual is a student.

### **iii) Regulated Activity Providers and Personnel Suppliers: Duty to Provide Information on Request**

- Any information not previously shared with the ISA that is held under ii)
- Any further information specified by the ISA that the ISA deem relevant in order to consider a referral, for example receipt books, medication administration records

### **iv) Local Authorities/ELBs/HSS Bodies: Duty to Refer/ Power to provide information:**

- Identifying Information

- Any information of the type prescribed under i) that the LA/ELB/HSS Body believes has not already been referred to the ISA
- Details of all other agencies involved in investigating or pursuing the incident or any related incident involving the person
- Any information that the Local Authority/ELB/HSS Body holds in its Child or Adult safeguarding capacities that relate to harm or risk of harm, that it believes has not already been passed to the ISA

**v) Local Authorities: Duty to provide information on request:**

- Any information not previously shared with the ISA that is held under iv)
- Any further information specified by the ISA that they deem relevant in order to consider a referral, for example receipt books, medication administration records

**vi) Registers: Duty to Refer/ Power to provide information:**

- Identifying Information
- Any information of the type prescribed in i), relating to an incident or incidents of harm or risk of harm that the Register believes has not already been referred to the ISA
- Any findings of fact and decision made by the Keeper of Register or any of its committees

**vii) Registers: Duty to Provide Information on Request:**

- Any information prescribed under vi) which is requested by the ISA.
- Any information on which a decision about the person is based, including records of hearings records of investigations, evidence presented, etc...

**viii) Supervisory Authorities: duty to refer/ Power to provide information:**

- Identifying Information
- Any information of the type prescribed in i), relating to harm or risk of harm that the Supervisory Authority believes has not already been referred to the ISA
- Details of any complaint received by the SA and the action taken by the SA
- Inspection reports or other such evidence (including any interviews or documentation obtained through the function of the SA that relates to the incident or a related incident) gathered through inspection, as part of the SAs complaints procedure or otherwise that would assist the decision making process of the ISA

**ix) Supervisory Authorities: duty to provide information on request:**

- Any information prescribed under viii) that is requested by the ISA
- Inspection reports or other such evidence (including any interviews or documentation obtained through the function of the SA that relates to the incident or a related incident) gathered through inspection, as part of the SAs complaints procedure or otherwise that would assist the decision making process of the ISA

