

Council – 12<sup>th</sup> September 2007

Paper title: HPC's response to the Consultation on Implementing the Safeguarding Vulnerable Groups Act

Executive summary and recommendations

## **Introduction**

This paper is intended to provide the Council with an update on the implementation of the Safeguarding Vulnerable Groups Act and to ask Council to approve the Health Professions Council's (HPC) response to the consultation on implementing the Act. The consultation concerns the barring policy and processes, including the list of automatic barring offences under the new vetting and barring scheme to be introduced by the Safeguarding Vulnerable Groups Act 2006.

## **Background**

The Safeguarding Vulnerable Groups Act was created in response to the findings of the Bichard Inquiry, which was established in the wake of the Soham murders and in particular 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.’

The Act provides a new legislative framework in England, Wales and Northern Ireland for vetting and barring people who work with children and vulnerable adults.

The current system for vetting people who wish to work with children or vulnerable adults largely depends upon employers obtaining a Criminal Records Bureau (CRB) disclosure for applicants and taking account of any disclosed convictions in assessing the applicants' suitability for such work.

Furthermore, under the current system, three separate barring lists are maintained. They are the following:

- List 99, maintained under the Education Act 2002;
- The POCA List, maintained under the Protection of Children Act 1999: and
- The Protection of Vulnerable Adults (POVA) List; maintained under the Care Standards Act 2002.

The Bichard Inquiry Report, published in June 2004, identified systemic failures in the current arrangements, including:

- Inconsistent decision-making on the basis of CRB disclosure information;
- Inconsistencies between the three existing barring lists;
- Inconsistencies in exchange of information between police forces; and
- The reactive rather than preventative nature of the current system.

## **The New System**

The Safeguarding Vulnerable Groups Act provides the legal framework for the new Independent Safeguarding Authority (ISA) and scheme. The new arrangements are due to be introduced in a phased roll-out from Autumn 2008. The Department of Children, Schools and Families (DCSF – previously the Department for Education and Skills, DfES) the Department of Health (DH) and Home Office are currently preparing the regulations and guidance for the scheme.

There are a number of provisions within the Act which are set out below:

The ISA will be responsible for maintaining two aligned barred lists (one for those who are barred from working with children and one for those who are barred from working with vulnerable adults) and will make decisions about whether an individual should be included in either or both barred lists.

Certain offences will lead to automatic inclusion in the barred list(s), in some instances with no right for the person concerned to be able to make representations about their inclusion. In other cases inclusion will be discretionary, either based upon specific behaviour or an assessment of evidence which suggests that the person may present a risk of harm to children or vulnerable adults.

It will be a criminal offence for a person who is on one or both of the barred lists to undertake “regulated activity” in respect of children, vulnerable adults or both (as the case may be) and the Bill also makes it an offence for regulated activity providers to (1) fail to conduct barring checks on potential employees and (2) to permit a barred person to undertake a regulated activity.

The phrase “regulated activity” covers, among other things, the provision of any form of therapy or treatment to a child or vulnerable adult and the term “vulnerable adult” is defined to include any adult who is receiving any form of health care (which in turn is non-exhaustively defined to include any form of treatment, therapy or palliative care). Taken with the other activities covered in its definition in the Act, “regulated activity” encompasses most professional activities undertaken by HPC registrants.

The Act also includes provisions to refer information to the ISA.

## **Scotland**

The Protection of Vulnerable Groups (Scotland) Act 2007 completed its Parliamentary passage in March and became an Act in April 2007. It contains very similar provisions to that contained in the Safeguarding Vulnerable Groups Act and it is anticipated that the scheme will come into effect in Spring 2009. It is also anticipated that both schemes will exchange information with each other.

### **Impact on the HPC**

The Act places an obligation on certain regulators, including HPC, to inform the ISA about any individual who:

- Appears on the regulator's register;
- May satisfy any of the criteria for inclusion in a barred list;
- Is engaged or may engage in a regulated activity; and
- In the opinion of the regulator, the Authority may wish to include in a barred list.

The Home Secretary has a corresponding duty to advise regulators where a person who is or may be a registrant becomes barred. In such a case, the Secretary of State (in practice this function will probably be delegated to the Independent Safeguarding Authority) must also provide all the information on which the Authority relied in coming to its decision to bar. For example, HPC would be informed if an individual was barred because of instances of abuse. This will enable the regulator to make a decision about whether to remove an individual from its register or place conditions on their registration.

In addition, the Act makes two specific changes to the Health Professions Order 2001:

1. It amends Article 5 so that inclusion on a barred list is information which can be taken into account in determining whether a person is of suitable character to be registered.

Arrangements will need to be put in place to ensure that HPC has access to this information and the application process will need to be adapted so that applicants are obliged to declare this information. The Standards of Conduct, Performance and Ethics may also need to be amended in due course to make specific reference to barring.

2. It creates a new, free-standing allegation under Article 22(1) to the effect that a person's fitness to practise is impaired by reason of their inclusion in a barred list.

Given that it is an offence for a barred person to engage in "relevant activity", and that such activity is defined to cover most of the professional activities in which HPC registrants engage, clear advice will need to be given to FTP Panels on the disposal of such allegations, both by means of training for Panel chairs/members and legal assessors and by amending the Council's Sanctions Policy.

## **Decision**

The Council is asked to agree:

- HPC's response to the consultation; and
- that the Executive should provide further updates as necessary.

## **Background information**

More information about the scheme can be found at

[www.everychildmatters.gov.uk/independentsafeguardingauthority](http://www.everychildmatters.gov.uk/independentsafeguardingauthority)

## **Resource implications**

Implementing the requirements of the Act will impact many of HPC's department, including Fitness to Practise, Registration and Information Technology. It has been determined that implementing the requirements of the Act will be on the major projects list for 2008/2009

## **Financial implications**

Financial implications for HPC will be incorporated into the annual budget for 2008/2009. Preliminary estimates indicate that operating expenditure will be in the region of £25000 and capital expenditure £50000. It is anticipated that there will be a phased implementation of the requirements of the Act.

## **Appendices**

1. Consultation Document 'Implementing the Safeguarding Vulnerable Groups Act 2006 and the Northern Ireland Order 2007.

2. HPC's draft response to the consultation

## **Date of paper**

23<sup>rd</sup> August 2007

**Safeguarding Vulnerable Groups Act  
2006  
Safeguarding Vulnerable Groups  
(Northern Ireland) Order 2007  
Barring Consultation Document**

Appendix 1

## 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 a new vetting and barring 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 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 the barring process and the criteria which result in automatic barring on the new barred lists.

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.*

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 scheme, provided for under the Safeguarding Vulnerable Groups Act, represents further important progress and will significantly strengthen current vetting and barring arrangements. Its aim is to help avoid harm, or risk of harm, to children and vulnerable adults by preventing those who are unsuitable to work with them from gaining access to them through work, whether paid or unpaid.

Everyone has a responsibility in ensuring that children and vulnerable adults are safe and as such are able to offer important contributions to this consultation – we look forward to hearing your views.

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## Introduction

1. A new vetting and barring scheme covering those who work or volunteer, or seek to work or volunteer, with children or vulnerable adults is due to be introduced from Autumn 2008. The Safeguarding Vulnerable Groups Act 2006 (SVG Act) provides the legal framework for this new scheme. 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, thus introducing a seamless vetting and barring scheme across the jurisdictions.
2. 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 they are barred from working with children or vulnerable adults, if not they become a 'member' of the scheme. We expect there to be over 10 million members of the new scheme in due course.
3. There are four aspects of the new scheme that are key to the issues covered by this consultation:
  - i. It 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.
  - ii. Individuals will be placed on these lists (barred) either automatically – if they are convicted or cautioned for certain offences – or following a decision by the Independent Safeguarding Authority taking into account other offences or cautions, or relevant information. (*Section 2 provides more detail on automatic barring*).
  - iii. All barring decisions will be taken by the new Independent Safeguarding Authority that will be set up under the SVG Act. The Independent Safeguarding Authority, previously referred to 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 included in the new lists of people who will be barred from working with children and/or vulnerable adults
  - iv. New robust information sharing processes will be used. The scheme will continually review new relevant information about its members, allowing for more up to date risk assessments than ever before.

4. This consultation covers the barring process, and is in two parts:
  - **Section 1** – general barring processes
  - **Section 2** – automatic barring
  
5. Automatic barring, covered in Section 2, builds on the approach taken under the amended List 99 regulations which came into force on 28 February 2007. There was a consultation on the List 99 regulations between 13 October 2006 and 2 January 2007. This consultation covers the further developments to barring that will be introduced under the new vetting and barring scheme. The propositions on automatic barring in this document are modelled closely on the arrangements that are now in force for List 99. Note: Any queries regarding operation of List 99 and the Unsuitable Persons List (NI) in Northern Ireland should be directed to Mary Potter at 02891279386 or Dorina Edgar at 02891279346.

### **The Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (NI) Order 2007**

6. The Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (NI) Order 2007 are major elements of a wide-ranging and ambitious programme of work established across government 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.”*
  
7. 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 [link is <http://www.opsi.gov.uk>]

### **The Independent Safeguarding Authority**

8. The Independent Safeguarding Authority 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 a number of employees. These employees will all be public servants, and highly skilled and trained to make barring decisions.

9. The Independent Safeguarding Authority will make use of its extensive expertise to determine whether individuals should be barred 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.
10. The Independent Safeguarding Authority will work closely with the Criminal Records Bureau (CRB), an Executive Agency of the Home Office, to deliver the new service. The CRB will provide the administrative arm to the Independent Safeguarding Authority and manage the application processes. The CRB will also gather information in order to support the Independent Safeguarding Authority's function of taking barring decisions. The Independent Safeguarding Authority 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 Independent Safeguarding Authority will be subject to appeal to the Care Standards Tribunal on points of law or on the Independent Safeguarding Authority's findings of fact. The new disclosure body, Access NI will provide the gateway for applications from Northern Ireland.
11. More information on the new scheme and the Safeguarding Vulnerable Groups Act can be found at:  
<http://www.everychildmatters.gov.uk/vettingandbarring/>

### **Responses to the consultation**

Written responses should be sent by **14 September 2007** to: Consultation Unit, Area 1A, Castle View House, East Lane, Runcorn, Cheshire WA7 2GJ.

email to: [svgact-barring.consultation@dfes.gsi.gov.uk](mailto:svgact-barring.consultation@dfes.gsi.gov.uk)

### **Section 1 – Barring Processes**

12. Those who are unsuitable to work with children or vulnerable adults will be barred from doing so, and put on one or both of the new barred lists.
13. The Independent Safeguarding Authority will bar an individual, after hearing representations where made, if it is satisfied that any relevant information, including cautions or convictions, indicates that he or she presents a risk of harm to children or vulnerable adults. There are some offences, however, the commission of which by their nature establishes beyond doubt that the individual is a clear risk to children or vulnerable

adults. In these cases there is no necessity for the Independent Safeguarding Authority to make the barring decision, and the individual will be automatically barred – *section 2* of this document looks at automatic barring in more detail.

### **Time period to make representations**

14. It is important that the new scheme is not only robust but also fair and transparent, and, as with previous schemes, is focused on reducing the risk of harm to vulnerable people. Therefore in most cases an individual has the opportunity to make representations as to why he or she should not be barred.
15. Representations provide an opportunity for an individual to state their case in relation to the information on which the Independent Safeguarding Authority intends basing its decision (or the automatic barring offence/caution where representations are allowed). The Independent Safeguarding Authority will notify an individual where it is minded to bar him or her – or where he or she is automatically barred with the right to make a representation – and invite him or her to make a representation. However, the individual in question will need to satisfy the Independent Safeguarding Authority that he or she does not pose a risk of harm to children or vulnerable adults, before the Independent Safeguarding Authority will decide not to bar or to lift a bar (i.e. remove someone from the barred list).
16. When making representations, an individual is not able to challenge any findings of fact made by a ‘competent’ body as defined in the SVG Act, such as the General Teaching Council or the General Medical Council for example. Similarly, they are also not able to challenge a conviction or a caution. The reason behind this is that there is a reasonable presumption that facts have already been established in such cases and, in addition, where a person has been convicted of an offence his/her guilt has been established by a court. The Independent Safeguarding Authority will consider the case put forward and will decide whether the person should be included, or remain, on the barred list. Although the Independent Safeguarding Authority will treat all cases in a fair and transparent way its guiding principle is that an individual it is considering should be barred unless it is satisfied that he or she does not present a risk of harm to children or vulnerable adults.
17. A specific period of time is allowed for an individual to make a representation. This period should be short enough to prevent unnecessary delays in the operation of the scheme, but should be long enough to allow an individual to seek advice, gather facts, and obtain information from witnesses. Allowing sufficient time is important in ensuring that the process for making representations is fair. Gaining access to relevant advice or gathering information on an incident some way in the past may take some time.

18. Under PoCA and PoVA the period allowed for individuals to make representations is 28 days, although extensions to this time limit are often granted. Under List 99 the period is 8 weeks, and there are far fewer extensions. 8 weeks operates well in practice and we intend adopting it for the new scheme. In very exceptional circumstances the Independent Safeguarding Authority will be able to extend the 8 week period.

**Q1. Should the period in which representations should be submitted by individuals to the Independent Safeguarding Authority be set at 8 weeks?**

**Minimum period before a review can take place (“minimum no-review period”)**

19. Once an individual is barred there will be a minimum length of time before the individual is able to apply for a review of his case – the “minimum no-review period”. Once this period has expired, there is a two stage process:
  - a. firstly, the individual applies to the Independent Safeguarding Authority for permission for a review. The Independent Safeguarding Authority can only allow a review of the case to take place if the individual’s circumstances have changed, and have changed in such a way that permission should be granted;
  - b. secondly, if the Independent Safeguarding Authority grants permission for a review, the individual must present a case for the bar to be lifted. The individual cannot challenge the original barring decision, and must provide new information to the Independent Safeguarding Authority which shows that the change in their circumstances is such that barring may no longer be appropriate. When reviewing an individual’s inclusion on a list, the Independent Safeguarding Authority will not remove that person from the list unless it is satisfied that he or she no longer poses a risk of harm to children or vulnerable adults.
20. The minimum no-review period therefore reflects a reasonable period of time within which the Independent Safeguarding Authority might expect an individual’s circumstances to change in a way that will satisfy the Independent Safeguarding Authority that a review should be granted.
21. Under existing schemes, where there is a provision for review, this minimum no-review period is 10 years for those aged 18 or over and 5 years for those aged 17 or younger at the time when the relevant offence or allegation occurred. The argument for having a shorter period for

young people is that they are still maturing and may not have developed a fixed pattern of thought or behaviour. Therefore, it is reasonable to set a shorter period as the time interval during which no significant changes can have taken place. We intend adopting the same periods under the new scheme, of 10 years for adults and 5 years for younger people, but are considering adopting a different age boundary.

### ***Age Boundary***

22. Having different minimum no-review periods for young people and for adults means that it will be necessary to define young people for this purpose. Under the current schemes, a person is regarded as an adult for all purposes, including the minimum no-review period, at age 18. This is fairly logical; 18 is the accepted age of adult responsibility in many areas, including important areas of the Criminal Justice System, such as the boundary between treatment as a juvenile and as an adult - although certain additional sentencing considerations apply to “young adults” aged 18 to 21.
23. We need to consider whether adopting the same age divide under the new scheme is fair to the individual and proportionate to risk. Advice from experts in child protection and sexual offending, including the Lucy Faithful Foundation, suggest that it may be more appropriate for people who are 24 or younger to be considered as a “young person” in terms of the minimum no-review period. Their advice is that under the age of 25, an individual’s patterns of behaviour are less settled and may be changing more quickly.
24. Decisions in relation to those who are 24 or younger when they are considered by the Independent Safeguarding Authority can be complex in many cases. There are a number of factors that need to be taken into account, including the emotional development, naivety, and maturity of the young person. These cases may also be characterised by other relevant factors, for example, with offences or information relating to sexual behaviour, the age difference between the individual and the child (for example, an 18 year old and his or her 15 year old boyfriend or girlfriend); and context (for example, they might be pupils at the same school).
25. Equally, there will be cases where the individual is under 25, and the behaviour or offence indicates a serious risk of harm to vulnerable people. A five-year minimum no-review period would not be a lessening of safeguarding in these cases, as this only relates to the right to apply for a review, and not to the bar being automatically lifted once this period has elapsed. As set out above, the Independent Safeguarding Authority will not remove the individual from the list if it feels that the person still poses a risk of harm to vulnerable people. Indeed the Independent Safeguarding Authority will not hold a review at all unless it is convinced

that the individual's circumstances have changed and that there is a case to be made.

26. We are therefore inviting views on whether the shorter minimum period after which a review of barring may be sought - 5 years - should come into play at age 18, as under the current schemes, or age 25.

### ***Subsequent No-Review Periods***

27. As mentioned above, if the Independent Safeguarding Authority decides not to remove an individual from the barred list following a review or decides not to grant permission for a review then an individual will not be able to apply for another review until a further minimum period of time has passed. This is in effect a subsequent minimum no-review period. We intend to adopt the same time periods as with the initial no-review period – 5 years for young people and 10 years for adults.

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

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

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

## Section 2 – Automatic Barring

28. This section covers automatic barring under the new vetting and barring scheme, and sets out (at annex 1) the list of offences where commission or caution will result in an automatic bar. There are two categories of automatic barring offences: the first where an individual does not have a right to make a representation; and the second where they do. These categories are explained in more detail in paragraphs 33 – 36.

### Background to Automatic Barring

29. The new List 99 regulations came into force on 28<sup>th</sup> February 2007 and fulfilled commitments in Ruth Kelly's statement of 19<sup>th</sup> January 2006 that made clear the Government's goal of improving the protection of children and young people in schools, with the decision to bar from working with children all those who are now convicted or cautioned for a specified sexual offence against children, whether the individual is on the Sex Offenders Register or not. She advised that regulations would be made to enter automatically on List 99 anyone who is convicted or cautioned for a specified sexual offence against a child or adult, even where they have no intention of working with children. It was her intention, by including cautions as well as convictions for automatic barring offences, that this would end the anomaly between offenders who are convicted and those who admit their guilt and accept a caution. She advised that persons who have committed such offences would have the right to make representations but they would need to prove that they were not a threat to children before they could work in a school or other educational establishment.

### Barring

30. The new scheme will have two barred lists: a list of those barred from working with children and a list of those barred from working with vulnerable adults. An individual may be barred from working with both children and vulnerable adults and therefore put on both barred lists.
31. When considering whether to bar an individual the Independent Safeguarding Authority will assess all the relevant information it has, including any offences for which the individual has been cautioned or convicted, in order to establish whether the individual poses a risk of harm to children or vulnerable adults. If it does establish that an individual poses a risk of harm it will bar them and put them on the appropriate barred lists. However there are some offences which by their nature already establish a risk of harm and it is therefore not necessary for the Independent Safeguarding Authority to make this assessment. In these cases the individual is automatically barred and these offences are known as 'automatic barring offences'.



32. Therefore there are two ways in which an individual can be barred from working with children and/or vulnerable adults: automatically or following a decision by the Independent Safeguarding Authority in cases that do not involve an automatic barring offence. The same bar is applied whether a person is barred automatically or following a decision by the Independent Safeguarding Authority: the individual is placed on the same list(s); he is barred from the same activities: and is subject to the same minimum no-review periods.

### *Automatic Barring Offences*

33. With some automatic barring offences there are absolutely no conceivable circumstances of commission which could possibly suggest that an individual does not pose a risk of harm to children or vulnerable adults. Therefore there is nothing an individual could say which might make the Independent Safeguarding Authority reconsider whether the bar is appropriate.

34. With other automatic barring offences it is extremely likely that there are no conceivable circumstances of commission which could possibly suggest that an individual does not pose a risk of harm to children or vulnerable adults, but perhaps not absolutely.

35. Therefore the list of automatic barring offences falls into two categories:

- i. *Automatic barring with no right to make representations* – covers specified offences against children and vulnerable adults which indicate an individual poses a risk of harm to children or vulnerable adults in every conceivable case. There is no opportunity for the individual to make representation to the Independent Safeguarding Authority as to why they should not be barred; and
- ii. *Automatic barring with the right to make representations* – covers offences which indicate a very probable risk of harm to children or vulnerable adults but potentially not in absolutely every conceivable case. Therefore it is necessary to provide for an opportunity to make representations. However, the Independent Safeguarding Authority will not remove a bar unless it is satisfied that the individual does not pose a risk of harm to children or vulnerable adults.

36. The list of proposed automatic barring offences<sup>1</sup> is at annex 1, and is in two sections:

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<sup>1</sup> Service offences equivalent to those listed are also proposed for inclusion: that is, the corresponding civil offences under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 and section 42 of the Naval Discipline Act 1957; and offences under section 42 of the Armed Forces Act 2006, the corresponding offences under the law of England and Wales of which are those listed.

- i. Automatic Barring Offences in relation to the children's list – without and with representations
- ii. Automatic Barring Offences in relation to the vulnerable adults' list – without and with representations

37. As part of this consultation we also intend to include the equivalent automatic barring offences for Northern Ireland. The relevant lists will be produced as an addendum to the consultation shortly.

**Questions to consider (please refer to Annex 1)**

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

**Q6: Do you agree with the list of offences that would result in automatic barring from working with vulnerable adults?**

**Please provide any other comments on the automatic barring offences lists in Annex 1.**

***List of Abbreviations and Terms:***

|                |   |
|----------------|---|
| <b>CRB</b>     | Criminal Records Bureau   |
| <b>List 99</b> | A list of those barred from working with children in education settings |
| <b>PoCA</b>    | Protection of Children Act (scheme)                                     |
| <b>PoVA</b>    | Protection of Vulnerable Adults (scheme)                                |
| <b>SOA</b>     | Sexual Offenders Act  |
| <b>SVG</b>     | Safeguarding Vulnerable Groups  |

***Summary of Consultation Questions:***

- Q1. Should the period in which representations should be submitted by individuals to the Independent Safeguarding Authority be set at 8 weeks?**
- Q2. Should the new scheme differentiate between young people and adults for the purposes of the minimum no-review period?**
- Q3. Should the new scheme adopt the same minimum no-review periods as current schemes: 10 years for adults and 5 years for younger people?**
- Q4. Under the current schemes, the age boundary for the purpose of the minimum no-review period is 18. Should it remain at 18 or should it be raised to 25?**
- Q5: Do you agree with the list of offences that would result in automatic barring from working with children?**
- Q6: Do you agree with the list of offences that would result in automatic barring from working with vulnerable adults?**

## Annex 1

### Proposed list of offences giving rise to automatic bars without and with representations

#### Children’s Automatic Barring Offences

| <b>Children’s Automatic Barring Offences – with no right to representations</b> |                |   |
|---|----------------|---|
| <b>Act</b>  | <b>Section</b> | <b>Offence</b>  |
| Sexual Offences Act 1956  | 1(1)           | Rape [of a child]   |
| Sexual Offences Act 1956  | 5              | Sexual intercourse with a girl under the age of thirteen  |
| Sexual Offences Act 2003  | 1              | Rape [of a child]   |
| Sexual Offences Act 2003  | 2              | Assault by penetration  |
| Sexual Offences Act 2003  | 5              | Rape of a child under 13  |
| Sexual Offences Act 2003  | 6              | Assault of a child under 13 by penetration  |
| Sexual Offences Act 2003  | 7              | Sexual assault of a child under 13 [ <i>Intentionally touched a girl/boy and the touching was sexual</i> ]                      |
| Sexual Offences Act 2003  | 8              | Causing or inciting a child under 13 to engage in sexual activity   |
| Sexual Offences Act 2003  | 30             | Sexual activity with a person with a mental disorder impeding choice [where the victim is a child]                              |
| Sexual Offences Act 2003  | 31             | Causing or inciting a person with a mental disorder impeding choice, to engage in sexual activity [where the victim is a child] |
| Sexual Offences Act 2003  | 32             | Engaging in sexual activity in the presence of a person with a mental disorder impeding choice [where the victim is a child]    |
| Sexual Offences Act   | 33             | Causing a person, with a mental disorder impeding   |

|   |                |  |
|---|----------------|--|
| 2003  |                | choice, to watch a sexual act [where the victim is a child]  |
| Sexual Offences Act 2003  | 34             | Inducement, threat or deception to procure sexual activity with a person with a mental disorder [where the victim is a child]  |
| Sexual Offences Act 2003  | 35             | Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception [where the victim is a child]  |
| Sexual Offences Act 2003  | 36             | Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder [where the victim is a child]   |
| Sexual Offences Act 2003  | 37             | Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception [where the victim is a child]   |
| Sexual Offences Act 2003  | 38             | care workers: sexual activity with a person with a mental disorder [where the victim is a child]   |
| Sexual Offences Act 2003  | 39             | care workers: causing or inciting sexual activity [where the victim is a child]  |
| Sexual Offences Act 2003  | 40             | care workers: sexual activity in the presence of a person with a mental disorder [where the victim is a child]   |
| Sexual Offences Act 2003  | 41             | care workers: causing a person with a mental disorder to watch a sexual act [where the victim is a child]  |
| <b>Children's Automatic Barring Offences – with right to make representations</b> |                |  |
| <b>Act</b>  | <b>Section</b> | <b>Offence</b>   |
| <i>Common law</i>   |                | Murder   |
| <i>Common law</i>   |                | Kidnapping   |
| <i>Common law</i>   |                | False Imprisonment   |
| <i>Common law</i>   |                | Infanticide  |
| Children and Young Persons Act 1933   | 1              | Cruelty to children [ <i>Being a person 16 years or over having responsibility for a child under 14/young person under 16 wilfully assaulted/ill treated/neglected/abandoned/exposed the child/young person in manner likely to cause unnecessary suffering/injury to health</i> ] |
| Infanticide Act 1938  | 1              | Infanticide [ <i>Caused the death of own child under age 12 months by wilful act/omission whilst balance of mind disturbed by offender not having recovered from giving birth to the child/effect of lactation consequent upon birth of the child</i> ]                            |

|                          |       |  |
|--------------------------|-------|--|
| Sexual Offences Act 1956 | 1(1)  | Rape [of an adult]   |
| Sexual Offences Act 1956 | 2     | Procurement of a woman by threats <i>[By threats or intimidation procured a woman/child to have unlawful sexual intercourse]</i><br><i>Repealed by s.140 of and Schedule 7 to the Sexual Offences Act 2003</i>   |
| Sexual Offences Act 1956 | 3     | Procurement of a woman by false pretences <i>[Procured a woman/child to have unlawful sexual intercourse]</i><br><i>Repealed by s.140 of and Schedule 7 to the Sexual Offences Act 2003]</i>   |
| Sexual Offences Act 1956 | 4     | Administering drugs to obtain or facilitate intercourse  |
| Sexual Offences Act 1956 | 6(1)  | Sexual intercourse with a girl under the age of sixteen  |
| Sexual Offences Act 1956 | 7     | Intercourse with defective*  |
| Sexual Offences Act 1956 | 9     | Procurement of defective*  |
| Sexual Offences Act 1956 | 10(1) | Incest by a man <i>[Being man/boy had sexual intercourse with woman/girl he knew to be grand daughter/mother/sister/half-sister/daughter]</i>  |
| Sexual Offences Act 1956 | 11(1) | Incest by a woman <i>[Being a woman with consent permitted a man you knew to be your grandfather/father/ brother/half-brother/son to have sexual intercourse with you]</i> <i>Repealed by s.140 of and Schedule 7 to the Sexual Offences Act 2003]</i> |
| Sexual Offences Act 1956 | 12(1) | Buggery  |
| Sexual Offences Act 1956 | 13    | Indecency between men <i>[man aged 18/19/20 years or man over 21 years committed gross indecency with man under 16 years]</i><br><i>Repealed by S.140 of and schedule 7 to the Sexual Offences Act</i>   |
| Sexual Offences Act 1956 | 14(1) | Indecent assault on a woman  |
| Sexual Offences Act 1956 | 15(1) | Indecent assault on a man  |
| Sexual Offences Act 1956 | 16(1) | Assault with intent to commit buggery  |
| Sexual Offences Act      | 17    | Abduction of a woman by force of for sake of her property  |

|                                  |           |  |
|----------------------------------|-----------|--|
| 1956                             |           |  |
| Sexual Offences Act 1956         | 19        | Abduction of unmarried girl under 18   |
| Sexual Offences Act 1956         | 20        | Abduction of unmarried girl under 16   |
| Sexual Offences Act 1956         | 21        | Abduction of defective* from parent or guardian  |
| Sexual Offences Act 1956         | 22        | Causing prostitution of women  |
| Sexual Offences Act 1956         | 23        | Procuration of girl under 21   |
| Sexual Offences Act 1956         | 24        | Detention of a woman in a brothel or other premises  |
| Sexual Offences Act 1956         | 25 and 26 | Permitting girl, under 13, or between 13 and 16, to use premises for intercourse               |
| Sexual Offences Act 1956         | 27        | Permitting defective* to use premises for intercourse  |
| Sexual Offences Act 1956         | 28        | Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16 |
| Sexual Offences Act 1956         | 29        | Causing or encouraging prostitution of defective   |
| Sexual Offences Act 1956         | 30        | Man living on earnings of prostitution   |
| Sexual Offences Act 1956         | 31        | Woman exercising control over prostitute   |
| Mental Health Act 1959           | 128       | Sexual intercourse with patients   |
| Indecency with Children Act 1960 | 1(1)      | Indecency with children under the age of sixteen   |
| Sexual Offences Act 1967         | 4         | Procuring others to commit homosexual acts   |
| Sexual Offences Act 1967         | 5         | Living on the earnings of male prostitution  |
| Theft Act 1968                   | 9(1)(a)   | Burglary [with intent to rape]   |

|  |       |  |
|--|-------|--|
| Misuse of Drugs Act 1971                     | 4(3)  | [Supply of drugs to children]  |
| Criminal Law Act 1977                        | 54(1) | Inciting a girl under the age of sixteen to have incestuous sexual intercourse   |
| Protection of Children Act 1978              | 1(1)  | Take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; distribution or possession of indecent photograph of a child  |
| Mental Health Act 1983                       | 126   | Making or possessing false or forged medical, etc. documents   |
| Mental Health Act 1983                       | 127   | Ill-treatment or wilful neglect of a patient with a mental disorder  |
| Mental Health Act 1983                       | 128   | Induce or knowingly assist a patient under guardianship or a person in 137 custody to absent themselves without leave; or knowingly harbours a patient who is absent without leave.  |
| Mental Health Act 1983                       | 129   | Refuses to allow the inspection of any premises; or to allow the visiting, interviewing or examination of any person by a person authorised; or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or otherwise obstructs any such person in the exercise of his functions. |
| Child Abduction Act 1984                     | 1     | Abduction of a child by parent   |
| Child Abduction Act 1984                     | 2     | Abduction of child by other persons  |
| Criminal Justice Act 1988                    | 160   | Possession of indecent photographs of children   |
| Sexual Offences (Amendment) Act 2000         | 3     | <i>Abuse of trust [Being a person aged eighteen years or over in a position of trust has sexual intercourse/engage in sexual activity with a person under 18]<br/>Repealed by s. 140 of and Schedule 7 to the Sexual Offences Act 2003</i>   |
| Nationality, Immigration and Asylum Act 2002 | 145   | Traffic in prostitution  |
| Sexual Offences Act 2003                     | 1     | Rape [of an adult]   |
| Sexual Offences Act 2003                     | 2     | Assault by penetration   |
| Sexual Offences Act 2003                     | 3     | Sexual assault   |
| Sexual Offences Act 2003                     | 4     | Causing a person to engage in sexual activity without consent  |



|                          |    |  |
|--------------------------|----|--|
| Sexual Offences Act 2003 | 9  | Sexual activity with a child   |
| Sexual Offences Act 2003 | 10 | Causing or inciting a child to engage in sexual activity   |
| Sexual Offences Act 2003 | 11 | Engaging in sexual activity in the presence of a child <i>[being a person aged eighteen years or over for the purpose of obtaining sexual gratification intentionally engaged in sexual activity in the presence of / a place where you could be observed by a child under 13 OR 13/14/15 years knowing / believing that the child was or intending that the child should be aware that you were engaging in that activity]</i>  |
| Sexual Offences Act 2003 | 12 | Causing a child to watch a sexual act <i>[being a person aged eighteen years or over for the purpose of obtaining sexual gratification intentionally caused a child under 13 OR 13/14/15 years whom you did not reasonably believe was aged 16 years or over to watch a third person/look at an image of any person engaging in a sexual activity]</i>   |
| Sexual Offences Act 2003 | 14 | Arranging or facilitating commission of a child sex offence  |
| Sexual Offences Act 2003 | 15 | Meeting a child following sexual grooming <i>[Being a person 18 or over having on at least two earlier occasions met/communicated with a girl/boy under 16 and who you did not reasonably believe was 16 or over intentionally met/travelled with the intention of meeting that girl/boy and at the time you intended to do anything to / in respect of her/him during/after the meeting and in any part of the world which if done would have involved the commission by you of a relevant offence]</i>   |
| Sexual Offences Act 2003 | 16 | Abuse of position of trust: sexual activity with a child   |
| Sexual Offences Act 2003 | 17 | abuse of position of trust: causing or inciting a child to engage in sexual activity   |
| Sexual Offences Act 2003 | 18 | abuse of position of trust: sexual activity in the presence of a child <i>[Being a person 18 or over in a position of trust in relation to a child under 13 for the purpose of obtaining sexual gratification intentionally engaged in sexual activity the presence of/where you could be observed by that child knowing or believing that the child was / intending that the child should be aware that you were engaging in that activity or caused that child to watch a third person / look at an image of any person engaging in a sexual activity]</i> |
| Sexual Offences Act 2003 | 19 | abuse of position of trust: causing a child to watch a sexual act <i>[Being a person 18 or over in a position of trust in relation to a child aged 13/14/15/16/17 whom you did not reasonably believe was aged 18 or over or the purpose of obtaining sexual gratification intentionally caused that child to</i>  |

|                          |    |   |
|--------------------------|----|---|
|                          |    | <i>watch a third person / look at an image of a person engaging in sexual activity]</i>   |
| Sexual Offences Act 2003 | 25 | sexual activity with a child family member  |
| Sexual Offences Act 2003 | 26 | inciting a child family member to engage in sexual activity   |
| Sexual Offences Act 2003 | 30 | Sexual activity with a person with a mental disorder impeding choice [where the victim is an adult]   |
| Sexual Offences Act 2003 | 31 | Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity [where the victim is an adult]   |
| Sexual Offences Act 2003 | 32 | Engaging in sexual activity in the presence of a person with a mental disorder impeding choice [where the victim is an adult]   |
| Sexual Offences Act 2003 | 33 | Causing a person, with a mental disorder impeding choice, to watch a sexual act [where the victim is an adult]  |
| Sexual Offences Act 2003 | 34 | Inducement, threat or deception to procure sexual activity with a person with a mental disorder [where the victim is an adult]  |
| Sexual Offences Act 2003 | 35 | Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception [where the victim is an adult]  |
| Sexual Offences Act 2003 | 36 | Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder [where the victim is an adult]   |
| Sexual Offences Act 2003 | 37 | Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception [where the victim is an adult]   |
| Sexual Offences Act 2003 | 38 | Care workers: sexual activity with a person with a mental disorder [where the victim is an adult]   |
| Sexual Offences Act 2003 | 39 | Care workers: causing or inciting sexual activity [where the victim is an adult]  |
| Sexual Offences Act 2003 | 40 | care workers: sexual activity in the presence of a person with a mental disorder <i>[Being a care worker involved in the care of a person who could reasonably be expected to have known had such a disorder intentionally engaged in an activity for the purpose of obtaining sexual gratification in the presence of/a place where you could be observed by that person knowing/believing that she/he was aware/intending that she/he should be aware that you were engaging in it]</i> |
| Sexual Offences Act 2003 | 41 | care workers: causing a person with a mental disorder to watch a sexual act <i>[Being a care worker involved in the care of a person in a way which falls within s.42 of the SOA 2003 who had a mental disorder and who you knew/could</i>  |

|                                 |           |   |
|---------------------------------|-----------|---|
|                                 |           | <i>reasonably be expected to have known had such a disorder intentionally caused him/her to watch a third person/look at an image of a person engaging in a sexual activity]</i>  |
| Sexual Offences Act 2003        | 47        | Paying for sexual services of a child   |
| Sexual Offences Act 2003        | 48        | Causing or inciting child prostitution or pornography   |
| Sexual Offences Act 2003        | 49        | Controlling a child prostitute or a child involved in pornography   |
| Sexual Offences Act 2003        | 50        | Arranging or facilitating child prostitution or pornography   |
| Sexual Offences Act 2003        | 52        | Causing or inciting prostitution for gain   |
| Sexual Offences Act 2003        | 57        | Trafficking into the UK for sexual exploitation   |
| Sexual Offences Act 2003        | 58        | Trafficking within the UK for sexual exploitation   |
| Sexual Offences Act 2003        | 59        | Trafficking out of the UK for sexual exploitation   |
| Sexual Offences Act 2003        | 61        | Administering a substance with intent intentionally <i>[administered a substance to OR caused a substance to be taken by another person knowing he/she did not consent and with the intention of stupefying/overpowering him/her so as to enable any person to engage in a sexual activity involving him/her]</i> |
| Sexual Offences Act 2003        | 62 and 63 | Committing an offence or trespassing with intent to commit a sexual offence   |
| Sexual Offences Act 2003        | 66        | Exposure <i>[Intentionally exposed genitals intending someone would see them causing alarm/distress]</i>  |
| Sexual Offences Act 2003        | 67        | Voyeurism <i>[For the purpose of obtaining sexual gratification observed/operated equipment/recorded/installed equipment OR constructed/adapted a structure /part of a structure (to observe) – another person doing a private act knowing that the person did not consent to being observed]</i>                 |
| Asylum and Immigration Act 2004 | 4         | Trafficking people for exploitation   |

|   |    |  |
|---|----|--|
| Domestic Violence, Crime and Victims Act 2004 | 5  | Causing or allowing the death of a child or vulnerable adult |
| Mental Capacity Act 2005                      | 44 | Ill-treatment or wilful neglect                              |

### Vulnerable Adults Automatic Barring Offences

| <b>Vulnerable Adults Barring Offences – with no right to make representations</b> |                |   |
|---|----------------|---|
| <b>Act</b>  | <b>Section</b> | <b>Offence</b>  |
| Sexual Offences Act 2003, Part 1  | 30             | sexual activity with a person with a mental disorder impeding choice [where the victim is child or adult]                     |
| Sexual Offences Act 2003  | 31             | causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity                            |
| Sexual Offences Act 2003  | 32             | engaging in sexual activity in the presence of a person with a mental disorder impeding choice                                |
| Sexual Offences Act 2003  | 33             | causing a person, with a mental disorder impeding choice, to watch a sexual act   |
| Sexual Offences Act 2003  | 34             | inducement, threat or deception to procure sexual activity with a person with a mental disorder                               |
| Sexual Offences Act 2003  | 35             | causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception |
| Sexual  | 36             | engaging in sexual activity in the presence, procured by  |

|  |                |  |
|--|----------------|--|
| Offences Act 2003  |                | inducement, threat or deception, of a person with a mental disorder                              |
| Sexual Offences Act 2003   | 37             | causing a person with a mental disorder to watch a sexual act by inducement, threat or deception |
| Sexual Offences Act 2003   | 38             | care workers: sexual activity with a person with a mental disorder                               |
| Sexual Offences Act 2003   | 39             | care workers: causing or inciting sexual activity  |
| Sexual Offences Act 2003   | 40             | care workers: sexual activity in the presence of a person with a mental disorder                 |
| Sexual Offences Act 2003   | 41             | care workers: causing a person with a mental disorder to watch a sexual act                      |
| <b>Vulnerable Adults Barring Offences – with right to make representations</b> |                |  |
| <b>Act</b>   | <b>Section</b> | <b>Offence</b>   |
| <i>Common law</i>  |                | Murder   |
| <i>Common law</i>  |                | Kidnapping   |
| <i>Common law</i>  |                | False Imprisonment   |
| <i>Common law</i>  |                | Infanticide  |
| Children and Young Persons Act 1933  | 1              | Cruelty to children  |
| Infanticide Act 1938   | 1              | Infanticide  |
| Sexual Offences Act 1956   | 1(1)           | Rape [of a child]  |
| Sexual Offences Act 1956   | 2              | Procurement of a woman by threats  |
| Sexual Offences Act 1956   | 3              | Procurement of a woman by false pretences  |
| Sexual Offences Act 1956   | 4              | Administering drugs to obtain or facilitate intercourse  |
| Sexual Offences Act  | 5              | Sexual intercourse with a girl under the age of 13   |

|                          |       |  |
|--------------------------|-------|--|
| 1956                     |       |  |
| Sexual Offences Act 1956 | 6(1)  | Sexual intercourse with a girl under the age of sixteen  |
| Sexual Offences Act 1956 | 7     | Intercourse with defective*  |
| Sexual Offences Act 1956 | 9     | Procurement of defective*  |
| Sexual Offences Act 1956 | 10(1) | Incest by a man  |
| Sexual Offences Act 1956 | 11(1) | Incest by a woman  |
| Sexual Offences Act 1956 | 12(1) | Buggery  |
| Sexual Offences Act 1956 | 13    | Indecency between men <i>[man aged 18/19/20 years or man over 21 years committed gross indecency with man under 16 years]</i><br><i>Repealed by s.140 of and Schedule 7 to the Sexual Offences Act 2003</i>  |
| Sexual Offences Act 1956 | 14(1) | Indecent assault on a woman  |
| Sexual Offences Act 1956 | 15(1) | Indecent assault on a man  |
| Sexual Offences Act 1956 | 16(1) | Assault with intent to commit buggery  |
| Sexual Offences Act 1956 | 17    | Abduction of a woman by force of for sake of her property <i>[took away/detained a woman against her will and by force with intention she should marry/ have unlawful sexual intercourse with self/another person]</i><br><i>Repealed by s.140 of and Schedule 7 to the Sexual Offences Act 2003</i> |
| Sexual Offences Act 1956 | 19    | Abduction of unmarried girl under 18   |
| Sexual Offences Act 1956 | 20    | Abduction of unmarried girl under 16   |
| Sexual Offences Act 1956 | 21    | Abduction of defective* from parent or guardian  |
| Sexual                   | 22    | Causing prostitution of women  |

|                                  |           |   |
|----------------------------------|-----------|---|
| Offences Act 1956                |           |   |
| Sexual Offences Act 1956         | 23        | Procuration of girl under 21  |
| Sexual Offences Act 1956         | 24        | Detention of a woman in a brothel or other premises   |
| Sexual Offences Act 1956         | 25 and 26 | Permitting girl, under 13, or between 13 and 16, to use premises for intercourse  |
| Sexual Offences Act 1956         | 27        | Permitting defective* to use premises for intercourse   |
| Sexual Offences Act 1956         | 28        | Causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16  |
| Sexual Offences Act 1956         | 29        | Causing or encouraging prostitution of defective*   |
| Sexual Offences Act 1956         | 30        | Man living on earnings of prostitution  |
| Sexual Offences Act 1956         | 31        | Woman exercising control over prostitute  |
| Mental Health Act 1959           | 128       | Sexual intercourse with patients  |
| Indecency with Children Act 1960 | 1(1)      | Indecency with children under the age of sixteen  |
| Sexual Offences Act 1967         | 4         | Procuring others to commit homosexual acts  |
| Sexual Offences Act 1967         | 5         | Living on the earnings of male prostitution   |
| Theft Act 1968                   | 9(1)(a)   | Burglary [with intent to rape]  |
| Misuse of Drugs Act 1971         | 4(3)      | [Supply of drugs to children]   |
| Criminal Law Act 1977            | 54(1)     | Inciting a girl under the age of sixteen to have incestuous sexual intercourse  |
| Protection of Children Act 1978  | 1(1)      | Take, or permit to be taken, or to make any indecent photograph or pseudo-photograph of a child; distribution or possession of indecent photograph of a child |

|  |     |   |
|--|-----|---|
| Mental Health Act 1983                       | 126 | Making or possessing false or forged medical, etc. documents <i>[to falsely detain a patient through obtaining or possessing false medical documents]</i>   |
| Mental Health Act 1983                       | 127 | Ill-treatment or wilful neglect of a patient with a mental disorder   |
| Mental Health Act 1983                       | 128 | Induce or knowingly assist a patient under guardianship or a person in 137 custody to absent themselves without leave; or knowingly harbours a patient who is absent without leave <i>[removing a person from a hospital or the specified place where they are living (or preventing their return) places the patient at serious risk of harm]</i>  |
| Mental Health Act 1983                       | 129 | Refuses to allow the inspection of any premises; or to allow the visiting, interviewing or examination of any person by a person authorised; or to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or otherwise obstructs any such person in the exercise of his functions <i>[to prevent the Healthcare or the Mental Health Commission from carrying out their statutory functions in inspecting premises where patients have been detained]</i> |
| Child Abduction Act 1984                     | 1   | Abduction of a child by parent  |
| Child Abduction Act 1984                     | 2   | Abduction of child by other persons   |
| Criminal Justice Act 1988                    | 160 | Possession of indecent photographs of children  |
| Sexual Offences (Amendment) Act 2000         | 3   | Abuse of trust  |
| Nationality, Immigration and Asylum Act 2002 | 145 | Traffic in prostitution   |
| Sexual Offences Act 2003                     | 1   | Rape [of a child]   |
| Sexual Offences Act 2003                     | 2   | Assault by penetration  |
| Sexual Offences Act 2003                     | 3   | Sexual assault  |
| Sexual Offences Act 2003                     | 4   | Causing a person to engage in sexual activity without consent   |



|                          |    |  |
|--------------------------|----|--|
| Sexual Offences Act 2003 | 5  | Rape of a child under 13   |
| Sexual Offences Act 2003 | 6  | Assault of a child under 13 by penetration   |
| Sexual Offences Act 2003 | 7  | Sexual assault of a child under 13   |
| Sexual Offences Act 2003 | 8  | Causing or inciting a child under 13 to engage in sexual activity                    |
| Sexual Offences Act 2003 | 9  | Sexual activity with a child   |
| Sexual Offences Act 2003 | 10 | Causing or inciting a child to engage in sexual activity                             |
| Sexual Offences Act 2003 | 11 | Engaging in sexual activity in the presence of a child                               |
| Sexual Offences Act 2003 | 12 | Causing a child to watch a sexual act  |
| Sexual Offences Act 2003 | 14 | Arranging or facilitating commission of a child sex offence                          |
| Sexual Offences Act 2003 | 15 | Meeting a child following sexual grooming  |
| Sexual Offences Act 2003 | 16 | Abuse of position of trust: sexual activity with a child                             |
| Sexual Offences Act 2003 | 17 | abuse of position of trust: causing or inciting a child to engage in sexual activity |
| Sexual Offences Act 2003 | 18 | abuse of position of trust: sexual activity in the presence of a child               |
| Sexual Offences Act 2003 | 19 | abuse of position of trust: causing a child to watch a sexual act                    |
| Sexual Offences Act 2003 | 25 | sexual activity with a child family member   |
| Sexual Offences Act 2003 | 26 | inciting a child family member to engage in sexual activity                          |

|   |           |   |
|---|-----------|---|
| Sexual Offences Act 2003                      | 47        | Paying for sexual services of a child                                       |
| Sexual Offences Act 2003                      | 48        | Causing or inciting child prostitution or pornography                       |
| Sexual Offences Act 2003                      | 49        | Controlling a child prostitute or a child involved in pornography           |
| Sexual Offences Act 2003                      | 50        | Arranging or facilitating child prostitution or pornography                 |
| Sexual Offences Act 2003                      | 52        | Causing or inciting prostitution for gain                                   |
| Sexual Offences Act 2003                      | 57        | Trafficking into the UK for sexual exploitation                             |
| Sexual Offences Act 2003                      | 58        | Trafficking within the UK for sexual exploitation                           |
| Sexual Offences Act 2003                      | 59        | Trafficking out of the UK for sexual exploitation                           |
| Sexual Offences Act 2003                      | 61        | Administering a substance with intent intentionally                         |
| Sexual Offences Act 2003                      | 62 and 63 | Committing an offence or trespassing with intent to commit a sexual offence |
| Sexual Offences Act 2003                      | 66        | Exposure  |
| Sexual Offences Act 2003                      | 67        | Voyeurism   |
| Asylum and Immigration Act 2004               | 4         | Trafficking people for exploitation   |
| Domestic Violence, Crime and Victims Act 2004 | 5         | Causing or allowing the death of a child or vulnerable adult                |
| Mental Capacity Act 2005                      | 44        | Ill-treatment or wilful neglect   |

\* *Defective means a person suffering from a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.*

| Date       | Ver. | Dept/Cmte | Doc Type | Title                        | Status            | Int. Aud.          |
|------------|------|-----------|----------|------------------------------|-------------------|--------------------|
| 2007-08-29 | a    | F2P       | AGD      | Appendix 1 -Implementing SVG | Final<br>DD: None | Public<br>RD: None |

12 July 2007

## **HPC's Response to the Consultation on Implementing the Safeguarding Vulnerable Groups Act 2006 and the Northern Ireland Order 2007**

The Health Professions Council welcomes the opportunity to respond to this consultation.

The Health Professions Council is a statutory UK wide healthcare regulator, governed by the Health Professions Order 2001. We regulate the members of 13 healthcare professions. We maintain a register of health professionals, set standards for entry to our register, approve education courses for registration which meet our standards and deal with concerns where a health professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants' services.

The following are the comments that we would wish to make on the consultation document. We have answered several questions and also provided general comments.

### **Comments in response to the consultation questions**

We note with interest that the consultation suggests eight weeks as the period in which representations should be submitted by individuals to the independent barring board. Under the Health Professions Order registrants have four weeks in which to submit written representations in response to an allegation (Article 26(2)) and four weeks in which to appeal against a decision made against them (Article 29(10)). We do receive requests for extensions to these timescales. However, we only grant extensions where the requests meet our clearly defined criteria. We believe that allowing eight weeks for submission of representations is too long and could create potential backlogs. Instead, a four week period for submission of representations with appropriate safeguards and clear criteria on granting extensions would be more effective. (Question 1)

A number of the proposals made in this consultation use the age of an individual as the basis for how they are treated. For example, it is proposed that the independent barring board intends to distinguish between young people and adults when imposing the no-review period. The difference in treatment dependent upon age raises concerns for us as we do not differentiate on the basis of age. Under Article 33 (2a) (2001 Order), a registrant who is struck off the register can apply for restoration to the register no less than five years after removal. This no-review period of five years applies to all registrants, irrespective of age. (Question 3) We would suggest that specific advice is sought on the impact of the recent age discrimination legislation.

The board proposes that an age boundary for distinguishing between young people and adults should be set at 25. This echoes the age distinction made within the criminal justice system. Many of those joining our register are recent graduates from university, who may be in their early twenties. We believe that the age boundary for distinguishing between young people and adults should remain 18. We are concerned that as a result of this age boundary, a registrant could be treated as an adult by us whilst being treated as a young person by the independent barring board. This difference in the way in which a registrant was treated could cause serious difficulties and create confusion across the different organisations. (Question 4)

The consultation documents proposes that there should be a list of offences which would result in automatic barring without allowing individuals the right to make a representation to the board. Under Article 32 (f) (2001 Order), all registrants have a right to attend their hearing and submit evidence, irrespective of the nature of the allegation that is being investigated. This is in line with Article 6 of the European Convention on Human Rights. We do not have a list of offences that would automatically lead to a registrant being struck off as all registrants have the right to make representations. In addition, the individual circumstances of each case are considered during the fitness to practise process.

If a registrant commits an offence which results in automatic barring they would not have the right to representation before the independent barring board. However, the individual would have the right to representation at the hearing convened to consider the allegation that the individual had been barred. We are concerned that the difference in procedures creates a contradiction between the two systems. In addition, we are also concerned that having a list of offences which would result in automatic barring would impinge upon an individual's right to represent themselves. (Question 6 and 7)

## **General Comments**

Overall, we are pleased to welcome the proposals for implementing the Safeguarding Vulnerable Groups Act. We believe that the Act will improve the protection of vulnerable groups. Obviously, as a statutory regulator, we will have responsibilities under the changes to legislation, and anticipate both receiving and feeding in information to the new systems and the Independent Barring Board.

As a consequence of the Safeguarding Vulnerable Groups Act, a new category of allegation will be added to the Order (2001). This new category will state that a registrant's fitness to practise is impaired by reason of being barred by the Independent Barring Board. Under the Order, we would hold a hearing to investigate this allegation and during this hearing the registrant would have the right to make a representation.

Following the representations from both parties, the panel would make a decision as to whether the registrant's fitness to practise was impaired by means of being barred by the independent barring board. If the allegation was considered to be 'well-founded' then the panel would consider all the sanctions available to them. However, for the majority of our registrants, working in a regulated activity (as

defined by the Safeguarding Vulnerable Groups Act), this would be the only allegation where the sole sanction that the panel could use would be to strike an individual off the register. This is because, being barred by the independent barring board would prevent the registrant from continuing to work within a healthcare environment in their current capacity.

We would also be happy to provide any further information on the processes we currently run, particularly fitness to practise, if this would be helpful in planning implementation.

If you wish to discuss any of the issues in this response in more detail, please don't hesitate to contact us.

Yours sincerely,

Kelly Johnson  
Director of Fitness to Practise

Charlotte Urwin  
Policy Officer