



## Safeguarding Vulnerable Groups

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Legislation to protect children and vulnerable adults places requirements on employers in certain circumstances to check current or prospective employees' criminal records and whether they are included on lists of people barred from working with vulnerable groups. At present there are provisions for three different levels of disclosure: basic, standard and enhanced disclosures. All disclosures are issued by the Criminal Records Bureau (CRB). Basic disclosures are not available in England and Wales. Standard and enhanced disclosures are only available for sensitive posts, for example those involving access to children or other vulnerable people. In no case is it possible for an employer to obtain a record without the individual's consent, although there are some jobs for which a criminal record check is a statutory requirement.

The *Safeguarding Vulnerable Groups Act 2006* provided for a new Vetting and Barring Scheme under which individuals who wish to engage in certain types of employment or activity involving contact with children or vulnerable adults will have to apply to be subject to monitoring by a government body: the Independent Safeguarding Authority (ISA). There will no longer be any ministerial role in deciding whether particular individuals should be barred from working with children or vulnerable adults. Inclusion on the new lists of individuals prohibited from taking part in "regulated" or "controlled" activity will take place on a case-by-case basis with provision for automatic inclusion in respect of individuals who have been convicted of certain offences. If someone is ISA registered this will mean that the ISA has found no known reason why the applicant should not work with children or vulnerable adults. The scheme is being reviewed by the current Coalition Government with certain aspects of the scheme's introduction being halted.

Information and guidance about the new rules is available from the [ISA website](#) and in the ISA publication *The Vetting and Barring Scheme: Guidance* (March 2010).

Library standard note [SN/HA/4317 Criminal Records](#) deals with related topics. An annexe at the end of this note deals with Parliamentary scrutiny of the *Safeguarding Vulnerable Groups Bill 2005-06*.

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# 1 Overview

## 1.1 Departmental lists

Prior to October 2009 legislation required the following lists to be maintained by government departments, with ministerial discretion as regards who should be included on them:

- Protection of Children Act (POCA) List;
- Protection of Vulnerable Adults (POVA) List; and
- Information held under section 142 of the *Education Act 2002* (formerly known as List 99) regarding those considered unsuitable for, or banned from, working with children.

The three former barred lists (POCA, Protection of Vulnerable Adults (POVA) and List 99) have been replaced by two new ISA-barred lists: one for people prevented from working with children and one for those prevented from working with vulnerable adults. Employers, local authorities, professional regulators and other bodies have a duty to refer to the ISA, information about individuals working with children or vulnerable adults where they consider them to have caused harm or pose a risk of harm.

## 1.2 The Independent Safeguarding Authority (ISA)

The ISA is a non-departmental public body, consisting of a small board of public appointees and approximately 300 employees who will be trained to make barring decisions. The overriding aim will be to prevent those who are deemed unsuitable to work with children and/or vulnerable adults from gaining access to them through their work.

Individuals working or wanting to work with children in either “regulated” or “controlled” positions will have to register with the ISA. “Regulated activities” broadly cover close contact work with children, work in settings such as schools and care homes and key positions of responsibility, such as the director of adult social services. “Controlled activities” cover ancillary work in education and health settings such as cleaning, catering and administration. Broadly, “regulated activities” come with more stringent requirements than “controlled activities”.

It will be a criminal offence for an employer to allow a barred person, or a person who is not yet registered with the ISA, to work for any length of time in any “regulated” activity. Similarly, it will be an offence for an employer to take on an individual in a “controlled” activity if they fail to check that person’s status.

It will also be a criminal offence for an employer to take on a person in a regulated activity if they fail to check that person’s status. An employer can permit a barred person to work in a controlled activity as long as safeguards are put in place.<sup>1</sup>

The cost of applying to register with the ISA will be £64. The fee will be a one-off payment and is intended to cover the applicant for the duration of their career in regulated activity. The fee will not apply to those involved in unpaid “voluntary activity”.<sup>2</sup>

The ISA’s website sets out how the new scheme will operate:

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<sup>1</sup> Independent Safeguarding Authority website, [Your legal responsibilities](#) [on 20 November 2009]

<sup>2</sup> Independent Safeguarding Authority website, [How much will it cost to apply to register with the Vetting and Barring Scheme?](#) [on 20 November 2009]

## **1. Making an application**

Those people who are applying to work or volunteer with children or vulnerable adults will have to apply to the vetting service via the Criminal Records Bureau (CRB). For individuals undertaking paid employment, there will be a registration fee of £64 per person - a one off payment which will cover an applicant for the duration of their career in regulated activity. Volunteers will have to apply in the same way as an employee however, will not be charged for registering. (Arrangements for those already working or volunteering with these groups will be published nearer the ISA launch.)

## **2. The vetting process**

The CRB will check whether there is any relevant information from the police or referred information from other sources, such as previous employers or professional bodies.

If there is no information the CRB will inform the applicant that they are ISA-registered.

If there is relevant information, the CRB will pass this to the ISA, who will decide whether the applicant should be placed on a Barred List.

Individuals placed on the ISA Barred Lists will have the right to make a representation against this decision and also to the Care Standards Tribunal, except where they have committed a serious offence.

## **3. Continuous monitoring**

All ISA-registered individuals are subject to continuous monitoring. This means that the ISA decision not to bar them could be reviewed in the light of new police or referral information. Where this happens the ISA will immediately notify the employer or service provider concerned, wherever they have registered an interest.

## **4. Online checking**

Subsequent employers or service providers will be able to check an individual's status online free of charge. In most cases they will also be able to seek Enhanced Disclosure (which will contain information on any criminal records) from the CRB. As is currently the case, certain employers will be required to obtain Enhanced Disclosure.<sup>3</sup>

Further clarification is provided to deal with common misconceptions about the scheme:

The ISA's role within the VBS is to make the barring decisions and place individuals on either the ISA's Children's Barred List or the ISA's Vulnerable Adult's Barred List, or both.

The application process for ISA-Registration will be handled by the Criminal Records Bureau (CRB).

Of the up to 11.3 million people that it is anticipated will register with the Scheme over the next five years, the ISA will only assess those individuals that are referred to us on the grounds that they pose a possible risk of harm to vulnerable groups.

It is therefore anticipated that only a relatively small percentage of all those working in regulated activity will be referred to and assessed by the ISA.

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<sup>3</sup> Independent Safeguarding Authority website, [FAQs](#) [on 20 November 2009]

Anyone the ISA is considering barring from working with children and vulnerable adults will know the reasons for that consideration. We will share with them all the information on which we rely.

Those we are considering barring have (except in the case of the most serious of criminal convictions where the ISA is under a statutory obligation to bar) the opportunity to make 'representations' and in doing so 'put their side of the story'. The ISA will take any information they provide into account when making a final decision – this may include gathering further information.<sup>4</sup>

## 2 Transition

The new system is being phased in. The new barred lists went live on 12 October 2009.<sup>5</sup> In the interim, since 20 January 2009 the ISA, rather than ministers took decisions as to who was to be included on the POCA and POVA lists and on List 99. The next steps were originally to be as follows:

- July 2010 – ISA registration opens for new entrants and employees looking to work or volunteer with vulnerable groups that wish to apply
- November 2010 – it becomes compulsory for new entrants to become ISA registered before starting work with vulnerable groups
- April 2011 – the phasing in process requiring other existing workers to become ISA-registered begins

However, the new government has halted the first part of the process (which was due in July 2010) of phasing in the scheme pending a review (see below). The remaining deadlines for mandatory registration have not been halted and are still expected to go ahead.

An ISA press release explained the changes which took effect from 12 October 2009:

Stricter controls now replace existing arrangements that determine who is unsuitable to work with children and vulnerable adults in England, Wales and Northern Ireland.

Increased safeguards based on a new system featuring 'regulated activity' come into being to further enhance protection of children and vulnerable adults. It is now a criminal offence for barred individuals to work or apply to work with children or vulnerable adults in a wide range of posts. Employers also face criminal sanctions for knowingly employing a barred individual across a wide range of work.

The additional jobs and voluntary positions that are now covered by the barring arrangements include most NHS jobs, Prison Service, education, childcare and moderators of internet chat rooms wholly or mainly for children.

- Barred individuals seeking to undertake work with vulnerable groups may face a prison sentence or a fine. Employers in regulated activity who knowingly employ barred individuals may face a prison sentence or a fine.
- The three former barred lists (POVA, POCA and List 99) are being replaced by two new barred lists, one for people prevented from working with children and one for those prevented from working with vulnerable adults, administered by the ISA

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<sup>4</sup> ISA, [Common Misconceptions about the Scheme](#)

<sup>5</sup> Home Office Press Release, [Go-live date announced for the Independent Safeguarding Authority](#), 082/2008  
1 April 2008

rather than several Government departments. From now on checks of these two lists can be made as part of an Enhanced CRB check.

- Employers are now eligible to ask for enhanced disclosures with barred list checks on anyone they are taking on in regulated activity. In Northern Ireland this eligibility also extends to controlled activity. However employers are not required to ask for an enhanced disclosure if they have no reason to believe that an existing employee is barred, unless there is a mandatory requirement to do so (e.g. Ofsted registered childcare).
- In certain circumstances, employers, local authorities, education and library boards, health and social care bodies and professional regulators have a legal duty to refer to the ISA, information about individuals who they believe have harmed or may pose a risk of harm to children or vulnerable adults.

The Vetting and Barring Scheme (VBS) has introduced genuine improvements to the safeguarding process together with duties to refer. People who pose a risk to children or vulnerable adults will now be taken out of the workplace.

Supporting materials available include: [Referral forms](#) and [Referral guidance](#) and [VBS Guidance](#) which covers the increased safeguards introduced from the 12<sup>th</sup> October 2009.

**New employees and those changing jobs in regulated activity do not need to start applying for ISA-registration until July 2010 and ISA-registration does not become mandatory for these workers until November 2010. All other staff will be phased into the scheme from 2011.** Further information on how to apply for registration will be provided in due course.<sup>6</sup>

### 3 Coalition Government policy

On 15 June 2010 the new Coalition Government issued the following ministerial statement:

#### **Vetting and Barring Scheme**

**The Secretary of State for the Home Department (Mrs Theresa May):** I am announcing today that the commencement of voluntary registration with the new vetting and barring scheme (VBS) in England, Wales and Northern Ireland, which was due to begin on 26 July, will be brought to a halt as of today.

The Government have made clear their intention to bring the criminal records and vetting and barring regimes back to common-sense levels. Until this remodelling has taken place, we have decided to maintain those aspects of the new scheme which are already in place, but not to introduce further elements.

The safety of children and vulnerable adults is of paramount importance to the new Government. We will therefore maintain the current arrangements under which the Independent Safeguarding Authority is able to bar from "regulated activities" those considered unsuitable to work with children or vulnerable adults, and appropriate cases must be referred to them. Criminal records checks will also remain available for those eligible to receive them, and will continue to be required for certain posts where regulations are already in place.

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<sup>6</sup> Independent Safeguarding Authority, [Improved safeguarding arrangements go live](#) [on 20 November 2009]

However it is vital that we take a measured approach in these matters. Vulnerable groups must be properly protected in a way that is proportionate and sensible. The remodelling of the VBS will ensure this happens.

The terms of reference for the remodelling of the VBS and of the criminal records regime are currently being considered and a further announcement will be made in due course.<sup>7</sup>

An article in the Guardian the same day reported some responses to the announcement as follows:

Martin Narey, Barnardo's chief executive, said the decision to review the scheme would be a popular move, but warned that the government would be "rash" to dilute it dramatically.

"It has the potential to restore parental confidence in the safety of their children and that is paramount," he said. "A robust system is needed to ensure effective barriers are in place to prevent people from negotiating themselves into positions of trust in order to sexually abuse children."

The Alzheimer's Society also warned against a less robust version of the scheme, arguing it was essential that people with dementia were not left at risk of neglect and abuse.

The new government's decision to look again at the vetting and barring scheme follows a high-profile campaign by children's authors, including Phillip Pullman and Michael Morpurgo, who argued that it was "outrageous and demeaning" that they should have to go through the £64 vetting checks before they could visit schools.

Headteachers also said the checks would "ruin school life" by putting in jeopardy foreign exchange trips and affecting parents who help out with school plays and sports teams.

The home secretary said she had halted the implementation of the scheme because it had become clear it was a draconian measure. "We were finding the prospect of a lot of people who do very good work up and down the country, were actually saying: 'I can't be bothered to if you are going to treat me like that'," said May.

"You were assumed to be guilty, in a sense, until you were proven innocent and told you could work with children. By scaling it back we will be able to introduce a greater element of common sense. What we have got to do is actually trust people again."

More than 66,000 education authorities, charities, and voluntary groups are now being contacted by the Home Office to inform them how the scheme is to be remodelled.

An independent review took place last year after complaints from authors and others. A further two million people who have contact with children less than once a week were also excluded from the scheme.

It was also made clear that the checks would not apply to those involved in private or family arrangements such as babysitting, doing the school run or taking a child's friends to play football in the park.

The Independent Safeguarding Authority said that it would continue to operate the official lists of people barred from working with children and vulnerable adults, adding

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<sup>7</sup> [HC Deb 15 June 2010 cc 46-7WS](#)



that the existing requirements for criminal record checks would continue to apply for those seeking such jobs.

The mandatory registration of new employees and job-changes is still due to come in November with that of all existing employees and volunteers to follow in 2011.<sup>8</sup>

## **4 The Safeguarding Vulnerable Groups Act 2006**

### **4.1 Overview of the Act**

The *Safeguarding Vulnerable Groups Act 2006* provides the legislative framework for a new vetting and barring scheme for people who work with children and vulnerable adults. The new system will be administered by the ISA (it is referred to as the “Independent Barring Board” in the Act but its name has since been changed). The Home Office estimated that the new vetting and barring scheme will cover 11.3 million people, whether employees or volunteers.<sup>9</sup>

### **4.2 The barred lists**

As set out in the 2006 Act, the two new barred lists will be:

- a list of people barred from working with children (replacing List 99, the POCA list and disqualification orders); and
- a list of people barred from working with vulnerable adults (replacing the POVA list).<sup>10</sup>

An ISA factsheet explains how the new lists will work:

#### **What are Barred Lists?**

The Safeguarding Vulnerable Groups Act 2006 contained the legislation to create two new Barred Lists. These are:

- a list of people barred from working with children (replacing List 99, the POCA list and disqualification orders); and
- a list of people barred from working with vulnerable adults (replacing the POVA list).

#### **What will these lists do?**

These lists will be separate but aligned. They will allow the Independent Safeguarding Authority (ISA) to keep a record of:

- individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults; and
- individuals who can only work with children and/or vulnerable adults in controlled activities with safeguards.

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<sup>8</sup> “Charities warn against scaling back vetting and barring scheme too far” *The Guardian*, 15 June 2010

<sup>9</sup> Home Office Press Release, *Go-live date announced for the Independent Safeguarding Authority*, 082/2008 1 April 2008; estimates have been revised following Roger Singleton’s review (see below): “in the range of nine million to 9.5 million”.

<sup>10</sup> Independent Safeguarding Authority, *Factsheet: The Independent Safeguarding Authority’s Barred Lists*, October 2007



Certain extremely serious offences result in automatic barring. These offences fall into two distinct categories:

- Automatic barring with no right to make representations

This list covers the most serious offences against children and vulnerable adults, which indicate that 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 ISA as to why they should not be barred because there can be no mitigating circumstances that might explain why these offences were committed.

- Automatic barring with the right to make representations

This list covers other serious offences that indicate a very probable risk of harm to children or vulnerable adults but not necessarily in every conceivable case. Therefore it is necessary to give individuals the opportunity to make representations. However, the ISA will not remove a bar unless it is satisfied that the individual does not pose a risk of harm to children or vulnerable adults.<sup>11</sup>

#### **How will the ISA make its decisions?**

The ISA will consider a range of information from the police and referrals from employers, regulatory bodies and other agencies as part of its decision-making process.

The ISA will consider:

- offences – convictions or cautions;
- evidence of inappropriate behaviour; and
- evidence of behaviour that is likely to harm a child or vulnerable adult.<sup>12</sup>

The ISA has been reviewing the status of all individuals who have been on List 99 and the POCA and POVA lists to determine whether or not they should be included on the new ISA lists. The review is based on an analysis of each individual's behaviour and/or offences and the circumstances surrounding them; individuals that the ISA proposes to include on the new lists have the opportunity to make representations as to why the bar should be lifted.<sup>13</sup>

#### **4.3 The role of the CRB**

The new scheme will not replace the current system of enhanced disclosures by the CRB but will operate alongside it. Statutory obligations on certain employers to obtain enhanced disclosure will continue to apply:

##### **Will I still need to get a Criminal Records Bureau (CRB) Enhanced Disclosure or can I rely on the new vetting service?**

A check will only show if a person is ISA-registered, which means the ISA has found no known reason why the applicant should not work with children or vulnerable adults. It also means that we will review their status if any new information becomes available.

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<sup>11</sup> The offences which will lead to automatic barring are set out in the *Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009, SI 2009/37*.

<sup>12</sup> ISA, *The Independent Safeguarding Authority's Barred Lists*, April 2009

<sup>13</sup> ISA, *Vetting and Barring Scheme (VBS) Update: The electronic newsletter for stakeholders*, April 2009, p5

It does not check for malpractice or all criminal convictions, and therefore registration with the ISA does not guarantee that a person has no criminal history.

A CRB check provides a fuller picture of a person's criminal history and allows employers to make informed decisions as to whether that person is suitable for a particular role or position.

For individuals registered with the Vetting and Barring Scheme, further Enhanced CRB checks will be at the employers' discretion and organisations may still wish to apply for CRB Enhanced Disclosure to obtain an applicant's full criminal record. However, where there is a legal requirement to check or they are required by a regulatory body (such as Ofsted), it is envisaged that the existing statutory requirements for CRB Enhanced Disclosures will still apply.<sup>14</sup>

#### **4.4 Regulated and controlled activity**

An individual who is on either of the barred lists will be prohibited from undertaking any "regulated" activity, but may still be able to undertake "controlled" activity if appropriate safeguards are put in place. The ISA website provides the following guidance on the two types of activity:

##### **What is regulated activity?**

Regulated activity is any activity which involves contact with children or vulnerable adults. This could be paid or voluntary work.

Such activities include:

- Any activity of a **specified nature** which involves contact with children or vulnerable adults frequently, intensively and/or overnight.
- Any activity allowing contact with children or vulnerable adults that is **in a specified place** frequently or intensively.
- **Fostering and childcare.**
- Any activity that involves people in **certain defined positions** of responsibility.

##### **Employers' duties and responsibilities**

It will be a criminal offence for an employer to allow a barred person, or a person who is not yet registered with the ISA, to work for any length of time in any regulated activity.

It will be a criminal offence for an employer to take on a person in a regulated activity if they fail to check that person's status.

##### **Employees' duties and responsibilities**

A barred individual must not take part in any regulated activity.

An individual taking part in a regulated activity must be registered with the ISA.

It will be a criminal offence for a barred person to take part in a regulated activity for any length of time.

##### **Domestic employment**

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<sup>14</sup> ISA website, [FAQs](#) [accessed on 25 August 2009]

Domestic employers (eg parents and carers) do not have to check that their employees are ISA-registered but the new scheme will give them the opportunity to check the status of an individual (with their consent) if they wish to do so.

It will be an offence for a barred person to take part in any regulated activity in a domestic circumstance.

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

Controlled activities include:

- Frequent or intensive **support work in general health settings, the NHS and further education settings.**
- People working for **specified organisations** with frequent access to sensitive records about children and vulnerable adults.
- **Support work in adult social care settings.**

### **Employers' duties and responsibilities**

It will be an offence for an employer to take on an individual in a controlled activity if they fail to check that person's status.

An employer can permit a barred person to work in a controlled activity as long as safeguards are put in place.<sup>15</sup>

In addition to the barred lists, the ISA will also operate a registration scheme under which it will be compulsory for anyone wishing to undertake a regulated activity to be registered with the ISA. The registration was intended to be phased in from July 2010 to be fully in place by April 2011.<sup>16</sup> However the new government has halted the process of phasing in the scheme pending a review (see above section 3). Details of how individuals can apply for registration will be posted on the [ISA's website](#) in due course as the vetting scheme is phased in.

## **4.5 Automatic barring**

Certain extremely serious offences will result in automatic barring. These offences fall into two distinct categories; one where there will be a right to make representations to the ISA about the barring and where one where there is not:

### **Automatic barring with no right to make representations**

This list covers the most serious offences against children and vulnerable adults, which indicate that 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 ISA as to why they should not be barred because there can be no mitigating circumstances that might explain why these offences were committed.

### **Automatic barring with the right to make representations**

This list covers other serious offences that indicate a very probable risk of harm to children or vulnerable adults but not necessarily in every conceivable case. Therefore it is necessary to give individuals the opportunity to make representations. However, the

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<sup>15</sup> ISA website, [Your legal responsibilities](#) [accessed on 25 August 2009]. See also ISA, [Regulated and controlled activities](#), October 2007

<sup>16</sup> ISA website, [What happens next?](#) [accessed on 25 August 2009]

ISA will not remove a bar unless it is satisfied that the individual does not pose a risk of harm to children or vulnerable adults.<sup>17</sup>

The legislative detail of this aspect of the new scheme is contained in the [Safeguarding Vulnerable Groups Act 2006 \(Prescribed Criteria and Miscellaneous Provisions\) Regulations 2009](#), laid before Parliament by the Department for Children, Schools and Families (DCSF) in force from January 2009. The Explanatory Notes set out the legislative intention of the draft order:

These Regulations prescribe the criteria which determine whether a person should be included automatically in the children's barred list or the adults' barred list maintained by the Independent Barring Board under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47) (the Independent Barring Board is established under section 1 of that Act).

## 5 Criticisms

The ISA has attracted a great deal of public comment, particularly in relation to its scope and the ISA's use of non-conviction information when deciding whether to include an individual on the barred lists. For example, see the following press coverage:

- ["Vetting for restaurants and shops that hire children to work weekends"](#), *Times*, 10 April 2008
- ["Authors and MPs must be vetted before they can visit schools"](#), *Telegraph*, 8 November 2008
- ["The perfect host?"](#), *Guardian*, 24 February 2009
- ["Privacy watchdog sees risk of rumour in child abuse database"](#), *Guardian*, 13 June 2009
- ["There's no escape from the past in this kangaroo court"](#), *Guardian*, 17 June 2009 (see also ["Safety first"](#), *Guardian*, 24 June 2009, a letter to the *Guardian* from the chief executive of the ISA in response to this article)
- ["Eleven million names on school vetting database"](#), *Independent*, 17 July 2009
- ["Horrible Histories author Terry Deary attacks 'pompous' children's authors over child database fears"](#), *Telegraph*, 17 July 2009
- ["Writers should comply with schools vetting, says children's laureate"](#), *Guardian*, 17 July 2009
- ["Child database: danger of malicious reporting"](#), *Independent*, 18 July 2009
- ["A toxic culture of suspicion is souring our children's lives"](#), *Observer*, 19 July 2009 (see also ["Hearsay has no place at the ISA"](#), *Observer*, 26 July 2009, a letter to the *Observer* from the chief executive of the ISA in response to this article)
- ["Briefing: a check too far"](#), *Sunday Times*, 19 July 2009
- ["Tears of a clown who will have to pay to entertain children"](#), *Independent*, 25 July 2009

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<sup>17</sup> Independent Safeguarding Authority, [Factsheet: The Independent Safeguarding Authority's Barred Lists](#), October 2007

- “[School protection register is flawed](#)”, *Independent*, 6 August 2009

## 6 Review of the definition of frequent and intensive contact

Following this negative publicity, in September 2009 Children’s Secretary Ed Balls asked the Chair of the ISA, Sir Roger Singleton, to review whether the line was drawn in the right place in relation to the definition of frequent or intensive contact with children. Roger Singleton’s report, *Drawing the Line*, was published on 15 December 2009 and recommended that private arrangements between parents and friends should continue to remain outside the scheme.<sup>18</sup> However, where an organisation decides which adults should work with their children then the requirement to register will apply. The following ministerial statement set out the previous Government’s acceptance of the recommendations:

### Vetting and Barring Scheme

**The Secretary of State for Children, Schools and Families (Ed Balls):** I am today publishing Sir Roger Singleton's report on the vetting and barring scheme, "Drawing the Line", together with the Government's response. I am placing copies in the Libraries of both Houses.

Parliament legislated for the new scheme in the Safeguarding Vulnerable Groups Act 2006 and it received overwhelming support. We recognised then, as we do now, that it is essential to ensure that children and vulnerable adults are properly safeguarded and that we do everything we reasonably can to protect them from those who seek to do them harm.

Our aim throughout has been to develop an approach which is proportionate, balanced and effective, with the scheme operating in a way which is neither burdensome nor bureaucratic, or off-putting to potential volunteers in children's settings-while still meeting the concerns of parents.

We have found much support for the scheme as we have taken this work forward through a process of extensive consultation with those who run services and activities for children.

It has always been our intention that mutually agreed and responsible arrangements made between parents and friends for the care of their children should be excluded from the vetting and barring scheme. That principle is central to the 2006 Act.

However, some significant concerns have been expressed about the interpretation of one particular aspect of the scheme; the degree of contact with children which should trigger the requirement to register with the Independent Safeguarding Authority (ISA). Striking the right balance on where to draw the line that separates those situations that should be covered from those that should be excluded has undoubtedly been a difficult judgement.

In my letter of 14 September my hon. Friend the Member for Huddersfield (Mr. Sheerman), chair of the Children, Schools and Families Select Committee, I said that Baroness Morgan and I had asked Sir Roger Singleton to check that the Government have drawn the line in the right place on this issue.

We are very grateful to Sir Roger for his very thorough work on this over the last three months, during which he has consulted a wide range of key individuals and organisations, including relevant unions, inspectorates, voluntary organisations, faith

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<sup>18</sup> DCSF, [Drawing the line – A report on the Government’s Vetting and Barring Scheme](#), 15 December 2009

groups and local charities and clubs. His work was also informed by a survey of some 1,800 parents carried out by the National Confederation of Parent Teacher Associations.

I am therefore pleased to confirm that the Government welcome and accept all 10 of Sir Roger's recommendations to make sure that the vetting and barring scheme draws the line in the right place, protecting children without getting involved in private arrangements between parents and friends.

Taken together, we believe these recommendations strike the right balance between the need to protect the vulnerable on the one hand, and the importance of having a scheme which is proportionate and which is based on some fundamental guiding principles, consistently applied, on the other.

Sir Roger's report is based on two fundamental guiding principles which underpin both his overall approach and all his specific recommendations and which also underpin the Safeguarding Vulnerable Groups Act 2006.

The first principle is that where parents exercise their own judgment about who should care for their children that is entirely a private matter in which the scheme should not interfere. But where parents give that choice to an organisation, such as a school, club or group and cease to be able to make a personal decision about which adult provides the care or teaching etc, then registration should be required, subject to how often the contact takes place between the adults and the children.

The second principle is that the statutory requirements laid down should go no further than is necessary for the safety and protection of children, At the same time, it is also necessary, and appropriate, to recognise that some organisations will choose to require registration in situations of exceptional vulnerability, whether or not the frequency test is met; for example, if the person will be expected to provide intimate personal care for a severely disabled child. This allows for a degree of local flexibility and recognises everyone's responsibility for safeguarding.

As Sir Roger notes in his report, public misunderstanding has led to concerns that the scheme risks intruding inappropriately into family life. It is not and it never will be this Government's policy that this should happen. We therefore strongly welcome the recommendations in Sir Roger's report, which make this absolutely and unambiguously clear.

The Government welcomes Sir Roger's recommended adjustments to the scheme's requirements which include:

Where organisations such as schools, clubs or groups make the decisions as to which adults should work with their children then the requirement to register with the VBS should apply, subject to the frequent and intensive contact provisions;

The frequent contact test should be met if the work with children takes place once a week or more (at present the test is if activity happens as often as once a month). This covers regular repetitive activity;

The intensive contact test should be met if the work takes place on four days in one month or more or overnight. This change will make the scheme easier to understand and put into practice, since at present the test is three times in every 30 days or overnight. This covers the circumstances where there is contact over a short space of time which is not necessarily repeated;

Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive;

The minimum age of registration for young people who engage in regulated activity as part of their continuing education will be reviewed. The Government will change the rules so that 16, 17 and 18-year-olds in education will not be required to register;

Overseas visitors bringing their own groups of children to the UK e.g. to international camps or the Olympics, should have a three months exemption from the requirement to register for the work they do with the children or vulnerable adults they have brought to the UK; and

Exchange visits lasting less than 28 days, where overseas parents accept the responsibility for the selection of the host family, should be regarded as private arrangements and will not require registration.

We believe that these adjustments to the scheme are proportionate and that they will be supported by parents, employers and by those who work or volunteer with children and vulnerable adults. The changes they will bring about are faithful to the two fundamental principles of allowing parents to make their own private arrangements without interference, and ensuring that requirements set by the state do the minimum necessary to protect children and the vulnerable.

Sir Roger's report also invites the Government to undertake further work in three areas:

To review the registration requirements for self-employed private health practitioners. As the law currently stands, when a patient attends one of these practitioners it will be a private arrangement and therefore although the practitioners may register with the scheme, there will be no requirement for them to do so. However, the intimate nature of medical treatment may suggest that these practitioners should be registered. The Department of Health will lead on this review in collaboration with my Department and the health care regulators;

To review whether there is a continuing need for the separate class of work with different requirements, defined in the Safeguarding Vulnerable Groups Act 2006 as "controlled activity". Controlled activity refers to certain tightly defined ancillary and support activities, mainly in FE colleges, NHS settings and local authorities. Far fewer people are potentially covered by "controlled activity" than by "regulated activity". Sir Roger invites the Government to take stock of whether controlled activity is a necessary part of the scheme. My Department and the Department of Health will take this review forward together, in collaboration with the Department for Business, Innovation and Skills;

To review the statutory requirements, and the Government's advice, for CRB disclosures on those who work with vulnerable groups when they are already registered with the ISA. We had already undertaken to carry out this work once the scheme had settled in.

The Government will take forward these three reviews in the New Year.

The changes recommended by Sir Roger will impact on the numbers of people who will have to register. Initial estimates by the Home Office indicate that Sir Roger's recommendations will lead to approximately 2 million fewer individuals needing to register with the vetting and barring scheme. This suggests that the new figure of those



who will have to register with the scheme lies in the range of nine million to 9.5 million. The Government will publish a revised impact assessment shortly.

Sir Roger rightly underlines in his report the need for renewed efforts to communicate the details and safeguarding benefits of the scheme. The Government will therefore commission further communications activity to help explain the scheme. We will also act swiftly to dispel any myths and misunderstandings about the scheme with updates to the briefing notes that are on our website and which I have sent to hon. Members. The Government will also reflect all of Sir Roger's recommendations in the full guidance on the scheme that we intend to publish in the New Year.<sup>19</sup>

The definition of "frequent or intensive" is given in the updated March 2010 guidance as follows:

**The frequency and intensiveness tests**

Most work in any of the specified activities (see page 14) listed in this section is regulated activity if it is done frequently (once a week or more), intensively (on four days or more in a single month) or overnight. In health and personal care services, frequent is once a month or more. Work in any of the specified settings is regulated activity if it is done frequently or intensively. However, maintenance contractors who visit different care homes or children's hospitals will not meet the frequent or intensive tests if they visit several different care homes but do not work frequently in the same one. (See page 14 for examples and Annex B for statutory guidance.)

These limits were set in the Government's response to the December 2009 report by Sir Roger Singleton, Chairman of the ISA and the Government's Chief Adviser on the Safety of Children, into the boundaries of the Scheme. Sir Roger's report, *Drawing the Line*, is available at <http://publications.everychildmatters.gov.uk>.

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<sup>19</sup> HC Deb 14 December 2009 cc 50-53WS

## 7 **Annexe: The Safeguarding Vulnerable Groups Bill 2005-06**

### 7.1 **Overview**

The Library Research Paper on the Bill was produced prior to Second Reading in the Commons:

- [RP 06/35 The Safeguarding Vulnerable Groups Bill \[HL\], Bill No 194 of 2005-06, 15 June 2006](#)

The Bichard Inquiry report, published in 2004, identified systemic failures in the prevailing vetting and barring systems and recommended that a central body be established to administer a new register of those who wish to work with children. The *Safeguarding Vulnerable Groups Bill* was intended to implement the Labour Government's response to this recommendation. Prior to its introduction in the House of Lords there were further concerns about reports that individuals with convictions for sexual offences who had not been included on List 99 and had been working in schools. The central principles behind the Bill were expressed by the previous Government at second Reading in the Commons as follows:

The Bill is the centrepiece of our overhaul of the present system for vetting and barring, and it is underpinned by four key principles. The first is that the interests of the child and the vulnerable adult are paramount. As we said on 19 January, we need a system in which the protection of vulnerable people is the first consideration. Secondly, everyone has a responsibility for ensuring that children and vulnerable adults are safe. All must play their part, including the state and employers, as well as parents and families.

The third principle is that the new vetting and barring scheme is focused specifically on the world of work, both paid and unpaid. It does not intrude in family relationships.

The final principle that underpins the Bill is that the reform system needs to be proportionate. We intend the breadth of the bar to be proportionate to the risk, and the Bill establishes different vetting requirements for different work contexts, as I shall explain in a moment, in proportion to risk.<sup>20</sup>

The provisions are particularly concerned with two general categories of activity involving children and vulnerable adults which are expressed as "regulated activities" and "controlled activities". "Regulated activities" broadly cover close contact work with children, work in settings such as schools and care homes and key positions of responsibility, such as the director of adult social services. "Controlled activities" cover ancillary work in education and health settings such as cleaning, catering and administration. Broadly, "regulated activities" come with more stringent requirements than "controlled activities".

The Bill was broadly welcomed when it was introduced in the House of Lords on 28 February 2006. The *Explanatory Notes* set out the following key problems with the existing vetting and barring systems which had been identified by the Bichard Inquiry report:

- inconsistent decisions were being made by employers on the basis of CRB disclosure information
- CRB disclosure information is only valid on the day of issue

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<sup>20</sup> [HC Deb 19 June 2006 c1086](#)

- there are inconsistencies between the List 99, the POCA list and POVA list
- the current barring system is reactive to harmful behaviour rather than preventative
- there are inconsistencies in police disclosure of information between police authorities<sup>21</sup>

The Labour Government published a number of information notes on the policy behind different aspects of the Bill and the regulation making powers in it before the Bill's committee stage in the House of Lords. These notes were deposited in the Library.<sup>22</sup>

## 7.2 Lords debates

- Second Reading: [28 March 2006](#)
- Committee Stage: [2 May 2006](#) and [3 May 2006](#)
- Report: [24 May 2006](#)
- Third Reading: [7 June 2006](#)

In general, the focus of scrutiny in the Lords reflected concerns that the new scheme should be thorough and fair. There were few concerns expressed that the Bill would over-regulate. The debates concentrated mainly on the risks to children and vulnerable adults.

For example, Baroness Walmsley moved an amendment in response to requests from the NSPCC seeking to leave out the controlled activity category. This would have meant that there would only be regulated activity and that everyone who works with children in any capacity would be regulated.<sup>23</sup> The previous Government opposed the amendment:

We believe that there are activities covered by this clause which should not be regulated activities preventing all individuals who are placed on the children's barred list engaging in them. It may be possible for some to be employed safely in these posts because they do not entail any close involvement with children or vulnerable adults. Earlier the noble Lord, Lord Laming, gave us examples of where that might apply. We could multiply those instances. For example, an individual may be on the barred list because she lost her temper and hit a child while teaching in a school, but there is no evidence that she would present a risk of harm to children if she was, say, a receptionist in a dental surgery, which would be covered as a controlled activity. A reasonable person assessing the situation would agree that there is a distinction between those two types of activity which, in fairness and justice, is one that deserves to be made in the legislation. It is not right simply to treat all these activities simply as regulated activities.<sup>24</sup>

Baroness Walmsley did raise the general question of thresholds, an issue that recurred at various stages during the Bill's passage through Parliament:

We need a better definition of all the thresholds at which barring decisions will be made and the factors that lead to them. It is crucial that they are clear. They must be set at the right level and we need to know what those levels are. There is a need for balance and proportionality. It is important to avoid mistakes, to protect the innocent from ill-

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<sup>21</sup> *Explanatory Notes* paragraph 5

<sup>22</sup> Deposited Paper 06/860

<sup>23</sup> HL Deb 3 May 2006 c257-8 GC

<sup>24</sup> HL Deb 3 May 2006 c259 GC

founded allegations, to respect privacy and protect young people who make minor misdemeanours from being blighted in later life.<sup>25</sup>

Another concern focussed on the definition of “regulated activity provider” for the purpose of the Bill. A regulated activity provider is a person with responsibility for the management or control of regulated activity, who makes arrangements for another person to engage in that activity. The Explanatory Notes to the Bill made clear that the clause was not restricted to an employer-employee relationship, but that it also covers volunteers. Individuals making private arrangements for their own benefit would not, however, fall within the definition.

During the passage of the Bill through the Lords, Lord Rix expressed concern that the recipients of direct payments did not fall within the definition:

**Lord Rix:** At present under the Bill, the recipients of direct payments are not classified as regulated activity providers, which means that they do not have to check prospective employees against the list. Why should the employees of direct payment services be an unregulated workforce? Although it is important to ensure that it is as straightforward as possible for people to use the direct payment system, it is even more important to ensure that people on the adult barred list, who will not be able to find employment in most settings where they may have contact with vulnerable adults, do not gravitate to working for direct payment services instead, finding employment directly with vulnerable people who know absolutely nothing about their background. I am especially concerned about that because of the number of direct payment recipients who have a learning disability. It is vital that safeguards are in place to ensure that they are not exploited by abusers who, because of the regulations imposed across the rest of the care sector, cannot find work with vulnerable people elsewhere.<sup>26</sup>

It may be safer to start with the assumption that people employed by the recipients of direct payments should be checked, and then to allow the recipients of direct payments to opt out of checking their employees.<sup>27</sup>

An amendment tabled by Baroness Walmsley, requiring direct payment users to check prospective employees against the list of barred people, was rejected,<sup>28</sup> with the Labour Government spokesperson, Baroness Royall, arguing that “the purpose of direct payments was to put people in control of the care they received, so they should decide whether or not to check the list.”<sup>29</sup>

The exemption of certain providers from the requirement to make checks provoked some debate in the House of Lords and concern was expressed about several of the proposed exemptions. During the debate on the third reading of the Bill in the House of Lords the previous Government spokesperson for Health, Baroness Royall of Blaisdon, said the Labour Government had listened to these concerns and would be making various changes to the list of exempted providers.<sup>30</sup>

There was some debate around the general issue of whether the new system would be fair to those regulated under it. For example, concerns were raised by Baroness Walmsley as regards the compatibility of the automatic barring procedure with Article 6 of the *European*

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<sup>25</sup> HL Deb 28 March 2006 c731

<sup>26</sup> HL Deb 28 March 2004 c740-1

<sup>27</sup> *Ibid* c741

<sup>28</sup> HL Deb 3 May 2006 GC224-228

<sup>29</sup> *Community Care* magazine 11-17 May 2006

<sup>30</sup> HL Deb 7 June 2006 c1344-1346

*Convention on Human Rights* which guarantees a right to fair hearing in certain circumstances.<sup>31</sup>

Similarly at Report Stage in the Lords, Baroness Sharp moved an amendment to give those under the age of 18 the right to make representations in all circumstances. She felt that with regard to this age group the Bill could represent “a move away from a child welfare approach with regard to under-18s to a criminal justice approach”:

Our reason for asking this is that it is important to remember that these young children are not young sex offenders. Most are not motivated by a sexual preference for children, although such behaviour can become entrenched. Rather, the behaviour is the response of a very vulnerable set of children to their own experiences and difficulties; it is a way of expressing anger and exerting power on the part of those with complex issues and needs. Such children are still in the process of maturation, and can be helped away from spiralling patterns of sexual abuse. While we need to acknowledge the risk these children pose to others, we must also acknowledge that these are children with severe needs who need help and specialised services themselves. What is more, there is clear evidence that such help can and does change behaviour for the good.<sup>32</sup>

The previous Government rejected an amendment tabled by Baroness Buscombe intended to ensure that regulated activity providers would not be subject to new or additional financial or resource burdens in order to meet their duties under the Act.<sup>33</sup>

### 7.3 Commons debates

- Second Reading, [19 June 2006](#)
- Committee Stage:
  - [4th sitting](#) [13 July 2006 \(afternoon\)](#)
  - [3rd sitting](#) [13 July 2006 \(morning\)](#)
  - [2nd sitting](#) [11 July 2006 \(afternoon\)](#)
  - [1st sitting](#) [11 July 2006 \(morning\)](#)
- Report, [23 October 2006](#)
- Third Reading, [23 October 2006](#)

### 7.4 Second Reading<sup>34</sup>

Various concerns were expressed about the administration of a structure with two separate lists; one for children and another for vulnerable adults. As was the case with debates in the Lords much of the focus was on the risks to children and vulnerable adults rather than regulatory burdens and impacts. There were some questions about how the new scheme would be publicised and information about the requirements disseminated to employers and parents.

A particular set of issues raised by the opposition concerned the way in which information would be gathered and evaluated by the new authority and how decisions would be made. Maria Miller said:

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<sup>31</sup> HL Deb 2 May 2006 c181GC

<sup>32</sup> HL Deb 24 May 2006 cc839-40

<sup>33</sup> [HL Deb 3 May 2006 c229GC](#)

<sup>34</sup> [HC Deb 19 June 2006 c1086](#)

There is a third area in the Bill where we would benefit from further detail. In his report, Sir Michael Bichard said that effective vetting depended on information, much of which inevitably comes from the police. At present, the only provision in the Bill on data collection is that it can be outsourced by the independent barring board to the Criminal Records Bureau.

Data is the IBB's lifeblood. It has been at the root of many of the concerns in the reports produced in recent years by Sir Michael Bichard, Chris Kelly and Ronnie Flanagan. To be effective, IBB data must be of the highest quality. Those who are monitored need to have confidence in the way in which the data are collected, stored and updated. The IBB needs to have a quality control role on data, which it does not have at present given the way in which the Bill is constructed.

That is particularly important when we consider the scale of changes that are happening to data collection, particularly in respect of the police. Hon. Members will be aware that the CRB has been criticised widely in the press for wrongly categorising 3,000 people as criminals since it was set up two years ago. That is a concern and I know the CRB that has been working on it. Given the volume of applications that it works with, it is perhaps in some ways inevitable.

In terms of the data that the IBB will be dealing with, who will be weeding soft data? Many of the advances in the Bill concern the fact that the IBB can accept soft data that is not necessarily connected with a conviction or caution. Yet there is little clarity in the Bill about how that data will be dealt with, especially when perhaps soft data that are received are not felt to be information required to be kept on a person's record.

Who will monitor the reliability of the new PLX—police local cross-check—system, which is the police flagging system to which reference has been made? It is new and I have heard that it has questionable reliability at times.<sup>35</sup>

There was some consensus that the system should operate on a broadly precautionary basis:

**The Parliamentary Under-Secretary of State for Education and Skills (Mr. Parmjit Dhanda):** On CRB checks, I am sure that the hon. Lady agrees that it is important that the CRB always errs on the side of caution. Last year alone, it interrupted about 25,000 people who may well have ended up working in areas where they should not have been by being thorough in its checks.

**Mrs. Miller:** The Minister makes a good point. It is important that the CRB errs on the side of caution. It has been effective in ensuring that people who are inappropriate do not work with children and vulnerable adults. However, 3,000 people found it difficult to gain employment, because their records had been erroneously marked as containing a criminal element. The IBB must deal with that and act as a quality control to ensure that the Criminal Records Bureau does everything that it can to tighten its procedures so that instead of a 0.03 per cent. failure rate it has a zero rate, otherwise people's confidence in records will be undermined. Those are important points of detail but, unfortunately, the Bill does not deal with them.<sup>36</sup>

However, concerns were voiced by the Conservatives about the meaning of "occasional contact" and "frequent contact":

The Bill relies on employers and organisations understanding their responsibilities, but they may not have access to a legal team such as the one available to the Government

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<sup>35</sup> [HC Deb 19 June 2006 c1100](#)

<sup>36</sup> [HC Deb 19 June 2006 c1101](#)

to help them understand its nuances. Indeed, Lord Adonis has sent out a raft of notes—I have collected them in a large file—to try to explain some of the terms in the Bill. We must take the opportunity in Committee to ensure that the Bill does not remain in its present form, and that those terms are clearly articulated.

Indeed, as a basic principle, who needs to be monitored? The Bill refers to occasional and frequent contact. The meaning of those terms was discussed in the Lords, and the Minister spoke of occasional contact as less than one contact a month or contact on no more than five days in a row. The Minister of State gave us an assurance that no sex offenders could work in schools again, as a result of the measures that she put in place, yet the loophole in the definition of monitoring potentially allows organisations to run five-day half-term clubs in schools, employing people who are not monitored under the scheme. It is important that we deal with such a serious loophole and iron out the definitions in Committee.

What does it take for someone to be reported to the IBB for barring? The Bill clearly outlines four types of behaviour, but it is still uncertain what the threshold for reporting is. At one level of reporting, someone may feel that an individual may harm a child, or an employer may think that a person has done something that would lead to them being barred. More certainty about these terms is needed if we are not to leave employers in difficulty. I endorse the Minister's view that it is important for employers to take responsibility for their actions, but it is equally important for the Government not to couch the terms in such vagueness. We need certainty in the Bill. To some extent, it is lack of certainty that has led us to where we are today.

Under the Bill, a barred person can work in a controlled job under supervision, but as I pointed out earlier, there is no offence relating to supervision and no detail about what supervision means. We are creating a morass of vague terms for others to interpret, and that is not acceptable in an area where vagueness has created so many problems in the past. Organisations will need an army of lawyers to unpick what is meant by the Bill. It is important that we deal with these issues to help those who will have to implement the measure.<sup>37</sup>

The following programme motion was passed without debate:

#### SAFEGUARDING VULNERABLE GROUPS BILL [ LORDS] (PROGRAMME)

Motion made, and Question put forthwith, pursuant to Standing Order No. 83A(6) (Programme motions),

That the following provisions shall apply to the Safeguarding Vulnerable Groups Bill [Lords]:

#### Committal

1. The Bill shall be committed to a Standing Committee.

#### Proceedings in Standing Committee

2. Proceedings in the Standing Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 13th July.

3. The Standing Committee shall have leave to sit twice on the first day on which it meets.

#### Consideration and Third Reading



4. Proceedings on consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.

5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on consideration and Third Reading.

Other proceedings

7. Any other proceedings on the Bill (including any proceedings on consideration of any Message from the Lords) may be programmed. —[Mr. Heppell.]

Question agreed to.<sup>38</sup>

## 7.5 Committee Stage

### ***Scope of “regulated activity”***

Particular concerns were voiced about the order making powers given to the Secretary of State to define the scope of regulated activity. These powers were described by the previous Government as follows:

Mr. Dhanda: Clause 5 provides that regulated activity relating to children and vulnerable adults will be set out in schedule 3. Regulated activity is a key term in the Bill. It is activity that will be prohibited for an individual on a barred list. Broadly speaking, it represents work involving close contact with children or vulnerable adults.

The clause will allow the Secretary of State to amend the definition of “regulated activity” by order, providing the flexibility to respond to changes in the work force and in how services are provided. Clause 46(3) provides that any order made under clause 5(3) to vary the meaning of regulated activity must be subject to the affirmative resolution procedure. The definition is key to the scheme.<sup>39</sup>

An amendment was tabled by Tim Loughton with regard to these powers. He explained the relevant issues as follows:

Amendment No. 119 refers to clause 5. It would pin down some detail of how the Secretary of State can be scrutinised. Clause 5(3) gives an enormous power to the Secretary of State. It states:

“The Secretary of State may be order amend that Schedule so as to vary the meaning of—

(a) regulated activity relating to children;

(b) regulated activity relating to vulnerable adults.”

The definition of regulated activity is important. We need to know what occupations and activities are covered by the Bill. Such detail needs to be available at the outset.

The clause gives the Secretary of State the power to change the whole meaning of regulated activity, which is core to what the Bill wants to achieve. A change can be

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<sup>37</sup> [HC Deb 19 June 2006 c1102](#)

<sup>38</sup> [HC Deb 19 June 2006 cc 1153-4](#)

<sup>39</sup> [SC\(B\) Deb 11 July \(Afternoon\) c75](#)

made purely by order. Again, we believe that there should be regulations subject to affirmative resolution of the House so that matters can be properly scrutinised in Committee in a timely fashion, otherwise we are giving considerable powers to a Secretary of State who may choose for whatever reason to change the ground rules. For example, the IBB might have made a hash of matters and not acted as intended under the Bill. If that were the case, Parliament would need to know about it. Parliament needs to know that the IBB, which has been charged to set up an important initiative and has considerable powers, is capable of getting it right and will not be subject to having its ground rules changed at the whim of the Secretary of State without due scrutiny by Parliament.

On that basis, these are helpful amendments that try to take further the sort of detail that we have been asking for all through the parliamentary stages of the Bill. At the very least, if we are not to have the detail concomitant with the passage of the Bill, we need to know that the Secretary of State will be subject to further full and proper parliamentary scrutiny if he chooses to change definitions and procedures.<sup>40</sup>

The Liberal Democrats tabled amendments about the meaning of “frequent” contact. Annette Brook explained these concerns as follows:

**Annette Brooke:** I shall address only amendments Nos. 112 and 113. It is a long string of amendments, and I want to concentrate on our two amendments. They are quite complex but nevertheless important.

The amendments seek to address the concerns that I mentioned on Second Reading about the definition of “frequency”. I have great concerns about it. I have read closely the notes issued by Lord Adonis, and the more I read them, the more I become convinced that there are potential loopholes. If you will forgive me, Mr. Martlew, I will go through the matter in some detail, because I sincerely believe that there is a big potential loophole in the protection of vulnerable people.

It is important to consider the two amendments together and to see the need for flexibility, particularly in monitoring. A consequence of the Bill for flexibility in monitoring is that it could impose a huge administrative difficulty on organisations for one often limited contact. I understand that that is why the clause includes the rather tortuous “frequent and occasional”—to get the right balance so that it does not impose too much Column number: 76bureaucracy. Proportionality and balance are an issue, but if the loophole is present, one would have to err at the end of the day toward less flexibility. I shall consider some examples of what could happen.

It is possible, for example, that a barred individual who has harmed children and poses a risk could get access to regulated activity lasting less than a week. That is the main problem. As I read the suggested regulations, “frequently” could mean once every six months or once a month, but it must be less than a week. If that is accepted and the word “frequently” is included in the clause, I envisage that a holiday play scheme lasting five days could pose a real danger.<sup>41</sup>

She also addressed concerns about the meaning of “occasional” contact:

Within the many settings to which the Bill will apply, the definition of “occasional” could vary. In some organisations, an individual working with children for five days alongside a member of staff would not cause any problems. As a school governor myself, I have seen instances in which outside organisations have come into the school without ever

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<sup>40</sup> [SC\(B\) Deb 11 July \(Afternoon\) c65](#)

<sup>41</sup> [SC\(B\) Deb 11 July \(Afternoon\) c75](#)

being left in sole charge of the children with whom they come into contact. There will be activities that do not need to be monitored, but equally there will be circumstances, such as those outlined today, that would fall foul of Lord Adonis's definitions of "frequently" and "occasionally." Those terms do not help to clarify the situation.<sup>42</sup>

Amendments were introduced by the Labour Government that were intended to address concerns over the scope of regulated activity. These were explained by the Minister, Mr Dhanda, as follows:

Amendments Nos. 112 and 125 to 127 focus on a key element of the Bill—the definition of "regulated activity", which underpins the effective functioning of the new vetting and barring scheme. It is important that we get the definition right, and I welcome the opportunity that the amendment affords us to debate the issue. The group of amendments focuses on a central element of the definition of regulated activity, namely the frequency test.

The intention behind the group of amendments is to disapply the test in a range of circumstances, so that specified activities in relation to children and vulnerable adults are classified as regulated activities, regardless of whether they are carried out frequently. For example, certain activities that bring an individual into close contact with children and vulnerable adults—such as teaching, caring, advising and supervising—have to be carried out frequently to be defined as a regulated activity.

An individual who was not engaged in those specific types of activity but who still worked in a specified setting—for example, a care home or a school that gave them access to children or vulnerable adults—would also have to be carrying out their duties frequently for that to be classified as a regulated activity. The amendments have major implications for the circumstances in which a barred individual may engage in regulated activity during which they are subject to monitoring and the employer has to check their status in the scheme.

On the frequency test and the scope of the bar, I recognise the concerns of hon. Members that if an activity—for instance, teaching children, caring for a vulnerable adult or rebuilding a school history block while having access to pupils—is carried out on an occasional basis, it might fall outside the definition of regulated activity. I recognise also that risks are associated with a barred individual working with children or vulnerable adults, even on a one-off basis.

I should like to reassure hon. Members that protecting children and vulnerable adults from those who work with them is the most important consideration of the scheme. However, it is important also that we do not place unreasonable burdens on employers, managers and employees, as well as on volunteers—the latter are important. We should not make the lives of individuals impossible. We want the scheme to be proportionate.

I have some examples: should an aerobics teacher on the children's barred list be charged with an offence if a 16-year-old turns up occasionally for their class, which is otherwise made up of adults? Should a TV producer on the barred list be charged with an offence if they instruct a school group that comes to the TV studios to learn how TV is produced? Should a nurse in a care home barred from working with children be charged with an offence if they treat in an emergency a child visitor who has fallen over

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<sup>42</sup> [SC\(B\) Deb 11 July \(Afternoon\) c77](#)

in the care home? I am sure that hon. Members will agree that those are not easy questions with which to grapple.<sup>43</sup>

Further amendments were introduced by the previous Government designed to “improve the Bill’s coverage by ensuring that the definitions of regulated activity relating to children and requirements to check are focused where individuals have the greatest opportunity to harm children.”<sup>44</sup>

### ***Parliamentary scrutiny***

Tim Loughton drew attention to the need for Parliament to scrutinise the detail of the provisions to be made by order:

I remind the Minister that the Secretary of State is being given powers to make regulations that, the Minister says, will be published after Royal Assent. I do not argue about that; it is the case with all Bills. It would be desirable if a Standing Committee could look at the regulations in tandem with the Bill that gives them effect. That rarely happens, and in this case it was even less likely to happen because of the necessary speed with which the Bill was introduced after the Government had been rather dilatory in responding to the Bichard recommendations.

Let us remind ourselves that the Bichard report was published in June 2004. It was only the scandals that hit the headlines at the beginning of this year about paedophiles and other dubious individuals working in privileged positions, particularly in schools alongside children, that prompted the Bill. We welcome it, albeit rather late in the day after the Bichard report. However, the lead time between the Government announcing that they would introduce the Bill and their producing it has necessarily been truncated because of the urgency of the situation. We welcome that.

The point that I am trying to make is that in those circumstances—less so than those with other Bills that have been on the back burner for many years—it would not be reasonable to expect all the regulations to have been done and dusted and thought through. That is why it is important to tease out some of the Government’s thinking, to give us an indication of whether we think that they are going far enough and will achieve the right balance between protection and the civil rights of individuals who are in the frame.

Nothing we are suggesting limits the flexibility of the board to do its job when it is up and running. We are purely asking for checks and balances on the Secretary of State in what is currently a grey area. Secretaries of State might find it inconvenient to have to appear before regulation Committees occasionally. However, it is preferable that they are put on the spot to justify why various regulations are being fashioned in the way that the Government propose than to let those regulations go through without the proper scrutiny that they require.

This is pioneering territory. The board is a new body. We welcome it, but it is particularly important that we get it right. We are not just talking about the initial regulations that the Secretary of State will fashion after the Bill receives Royal Assent; the Bill will also give him powers to change those initial regulations. He can change the regulations for the procedures to be followed, the terms of reference on which certain people are referred to the board and subsequently barred, and the timescale over which they may be barred. He is being given the powers to change an awful lot of things even after he first sets them out in regulations after Royal Assent.

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<sup>43</sup> [SC\(B\) Deb 11 July \(Afternoon\) c79](#)

<sup>44</sup> [SC\(B\) Deb 11 July \(Afternoon\) c83](#)

It is important that, where possible, the Secretary of State should ensure that those regulations and subsequent changes to those regulations are subject to full and proper timely scrutiny by the House. That is what the amendments are all about, and that is a point worth making. The Minister is quite understandably trying to give us reassurances about when those regulations would be proposed, but that is entirely irrelevant, given the various points that I have just made. I want to put that on record.

I know that we will not get anywhere if we seek a vote on the amendment, but it is important. These are enormous powers, the manifestations of which both ourselves and the Minister are unclear about at this stage, because the provision has not been completed. That is why we need to make sure that they are scrutinised properly. On that basis, I beg to ask leave to withdraw the amendment.<sup>45</sup>

## 7.6 Report stage

### *Insufficient scrutiny*

Both the Conservatives and the Liberal Democrats raised concerns about the amount of time available for report:

Michael Jack said:

**Mr. Michael Jack (Fylde) (Con):** On a point of order, Mr. Speaker. You will be aware of the importance of scrutiny, one of our basic jobs in the House of Commons, so I seek your guidance as to whether there is a printing error in the second item of business listed on the Order Paper. I see that consideration of the amendments on report of the Safeguarding Vulnerable Groups Bill is to be concluded, according to the Order Paper, at 9pm, which allows the House less than a minute per item to consider the amendments. Surely, Mr. Speaker, there must be an error.

**Mr. Speaker:** There is no error. If the right hon. Gentleman has any complaint he should take the matter to his Whip who will take it up with the usual channels.<sup>46</sup>

Tim Loughton said:

I shall not detain the House long, not least because of the enormous number of amendments – some 207 amendments and 23 new clauses have been tabled by the Government, and nearly all were tabled during the past few days, despite the fact that the Bill completed its Committee stage some months ago. The short time available raises questions about the ability of the House properly to scrutinise the radical amendments submitted by the Government.<sup>47</sup>

Annette Brooke said:

Many amendments have been tabled for consideration today, and in so far as they respond to the points made on Second Reading and in Committee we must welcome them. Whether we have the time to scrutinise the brand new amendments, however, is a real issue. If it has suddenly been decided that we must consider foster parents, which sounds fairly obvious, what other groups have we forgotten? Can we really put the Bill to bed tonight and feel that we have done a thorough job? I do not think so, and I am very concerned about that. Getting to grips with the vast number of Government amendments has been an enormous burden for a relatively small party such as ours.<sup>48</sup>

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<sup>45</sup> [SC\(B\) Deb 11 July \(Afternoon\) cc69-70](#)

<sup>46</sup> [HC Deb 23 Oct 2006 c1232](#)

<sup>47</sup> [HC Deb 23 Oct 2006 c1233](#)

<sup>48</sup> [HC Deb 23 Oct 2006 c1246](#)

### **Scope of “regulated activity”**

- New Government clause 1 to bring fostering within the scope of regulated activity. The new clause made it an offence for a barred person to foster or provide care and accommodation to children, for a ward, or through arrangements made by an organisation.<sup>49</sup>
- Government amendments to ensure that the following categories of people would also be covered by the “regulated activity” aspect of the scheme:
  - school bus and minibus drivers who take vulnerable adults on day trips;
  - staff members of the Independent Barring Board;
  - chatroom moderators (but not IT staff who do not see the content of the messages and who do not contact service users);
  - local councillors who have responsibility for social services;
  - trustees of vulnerable adults’ charities;
  - the Commissioner for Older People in Wales;
  - all Commission for Social Care Inspection inspectors; and
  - all prison and probation officers.<sup>50</sup>
- Government amendments to allow the definition of “regulated activity” for the purpose of barring to be amended by the affirmative resolution procedure. The following exchange took place between the Minister for Education and Skills (Parmjit Dhanda) and Maria Miller:

**[Mr. Dhanda:]** The Bill provides the power to amend the definition of regulated activity by order so that new categories of work can be added, providing the flexibility to respond to new types of services and new ways of working with children. We will use the power where it is appropriate. I should also respond to questions about the regulations on regulated activity. I can confirm that the affirmative process would be used to ensure that a wider debate took place in this House.

**Mrs. Miller:** I wish to clarify what the Minister has just said. Is it the case that amendments on the scope of regulated activity would be introduced only if they were related to developments in technology that might occur in the future?

**Mr. Dhanda:** No, I do not wish to define today what we may set down as regulated activities tomorrow. To relate that only to new technology would unfairly fetter the Bill and prevent us from adding other aspects to the regulated activities. Our stakeholders may come to us, for example, with a request to add to the regulated activities, so it would be overly prescriptive to limit any change to new technology.<sup>51</sup>
- Government amendment to define “frequently” more closely. Conservatives (Maria Miller) commented:

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<sup>49</sup> [HC Deb 23 Oct 2006 cc1238-1239](#)

<sup>50</sup> [HC Deb 23 Oct 2006 cc1239-1240](#)

<sup>51</sup> [HC Deb 23 Oct 2006 c1252](#)

Amendment No. 59 introduces a closer definition of frequency, which my hon. Friends and I welcome inasmuch as that has been talked about from the beginning of the debate on the Bill – particularly by Lord Adonis in the other place. Bringing in some clarification at this point is useful. However, although amendment No. 59 contains a definition of frequency that involves the same person carrying out an activity

“on more than two days in any period of 30 days”,

it also still includes the term “frequently”, almost as if that were a separate issue. I would welcome clarification from the Minister on whether the Government intend to have two meanings for the word “frequently”: the tighter meaning of

“more than two days in any period of 30 days”,

and also an alternative meaning. If the Government do not intend there to be two meanings, why are both terms referred to quite specifically in the same amendment? We would have hoped to tease that out in Committee, but the provision was not in the Bill at that point.<sup>52</sup>

A further exchange between Maria Miller and Parmjit Dhanda followed:

**Mrs. Miller:** Given that it is highly improbable that we will reach those amendments because of the mountain of amendments we have to deal with, and the level of interest in the House, it would be helpful if the Minister could clarify the use of the term “frequency” or “frequently”. That does fall within this group of amendments and those who read the report of the debate would benefit from understanding the Government’s intention, especially if the term will be defined as having a particular meaning.

**Mr. Dhanda:** If you, Madam Deputy Speaker, do not mind me straying on to that ground to answer the hon. Lady’s point, I am happy to say that it is our intention that “frequently” should take its normal meaning. However, we have specified a period condition, which is any work that takes place for more than two days, or overnight, in a 30-day period. That will be specified in the Bill, but the term “frequently” will take its normal meaning.<sup>53</sup>

- General comment from the Conservatives (Maria Miller) regarding the scope of the scheme:

The Bill as drafted will result in almost 10 million people being vetted, and under the amendments that we are considering today a great many more people would be covered. We hope that the Minister will follow the principle set out by the Minister for Children and Families ... that the breadth of the bar is proportionate to the risk that is posed.

(...)

Throughout the debate on the Bill, we have all agreed with the Government’s intention that the breadth of the bar should be proportionate to the risk involved. Indeed, that is one of the Government’s key principles. The amendments, however, give almost unfettered power to the Secretary of State to extend the Bill’s scope in a way that would require very little debate on the Floor of the House. The Minister owes it to the House to explain that.<sup>54</sup>

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<sup>52</sup> [HC Deb 23 Oct 2006 c1243](#)

<sup>53</sup> [HC Deb 23 Oct 2006 c1253](#)

<sup>54</sup> [HC Deb 23 Oct 2006 cc1241-1242](#)



- Debate and Government amendments on whether barred people should be allowed to carry out any form of regulated activity, for however brief a period, and on the definition of “frequency”. Parmjit Dhand explained the amendments in the following terms:

**Mr. Dhand:** As the Bill has progressed through both Houses, few matters have been more subject to debate and examination than what has come to be known as the “frequency test”. Similarly, many of our key stakeholders have engaged us in constructive discussions about our intentions for that.

In the Bill, “frequently” is key to the definition of most forms of regulated activity. For the bar, the requirements to check and the requirements to be subject to monitoring to apply, the activity in most contexts has to be carried out frequently. Debate has focused on two critical issues: first, whether barred individuals should be able to undertake any work involving close contact with vulnerable groups, and secondly, how employers and individuals should interpret the term “frequently”. The Government amendments cover both issues.

For the application of the bar, the concern put to us is that even very brief or occasional contact with a barred person constitutes too great a risk. We have received several representations from stakeholders, including the NSPCC, about that. We have listened carefully to the debate and further considered our original position. Consequently, I am now moving amendments that would prevent people on a barred list from engaging in regulated activity and make it a criminal offence for an employer to engage them, even when the activity was brief or occasional. I hope that the House will support that, although, after dividing on amendment No. 201, I am not sure whether that will happen. However, that is the rationale behind amendments Nos. 29 and 38, the result of which would be that, when an individual was barred, he would be barred—full stop. That is the right way forward. It means that a barred volunteer would be prevented from helping out at a summer youth camp, even if it took place over only a day or two.

However, we recognise that, in an emergency, it may be necessary for barred individuals to engage in a specific regulated activity and that to criminalise them for doing so would be counter-productive. Amendments Nos. 28 and 37 create a defence when a barred individual has to engage in regulated activity to prevent harm and when no one else is around who could engage in that specific activity. That is intended to cover only a limited range of situations, for example, when a doctor barred from working with children has to administer first aid to a child who has had an accident in the street.

Amendments Nos. 31, 43, 48, 141, 145, 146, 149, 156 and 159 will make consequential changes on that modified approach to the application of the bar elsewhere in the Bill. I should also mention that amendment No. 42 means that the frequency of an activity will also be irrelevant in relation to the requirement on personnel suppliers to ensure that an individual whom they supply is subject to monitoring.

Also in that territory, amendments Nos. 143 and 158 are intended to ensure, for example, that a barred parent can enter a school to attend their child’s parents’ evening or that an individual on the adults’ barred list can visit their sick mother in a care home. However, a barred person who carries out an activity in a school, for example, with the opportunity for contact with vulnerable groups will be prevented from doing so where the activity involves work, paid or unpaid, in connection with the purposes of the school.

While a barred person will now be barred from regulated activity of any duration, we believe that the requirements to check and to be subject to monitoring should still apply only when the amount of contact is above a certain threshold. Our amendments will clarify that threshold, taking on board our debates on the issue.

Amendments Nos. 140, 142, 153, 157 and 169 set out the circumstances in which the Government intend that the requirements to check and to be subject to monitoring should kick in. They ensure that activities that take place overnight will be regulated activity. They also define contact taking place on three or more days in a 30-day period as regulated activity. Those circumstances are referred to in amendment No. 169 as the “period condition”. Similar revisions are made to the definition of controlled activity by amendments Nos. 56, 57 and 64.

That means that employers will be required to check, and individuals will need to be subject to monitoring, if they are operating, for example, a conference crèche for children that lasts for three days or longer.

(...)

Similarly, a volunteer helping out at a school campsite will need to be subject to monitoring if they are looking after the children overnight. It will be optional for employers to check individuals engaged in regulated activity lasting less time than those circumstances specified in the “period condition”, to which I think the hon. Member for Basingstoke (Mrs. Miller) will refer.

Beyond those situations, the requirements to check and to be subject to monitoring will still apply when an activity is carried out “frequently”. The word “frequently” will take its normal meaning and, as I have said previously, guidance will set out the Secretary of State’s broad interpretation that the term will cover activities that are carried out once a month or more often. However, to provide a measure of protection for employers and individuals who follow that guidance, we have tabled amendments Nos. 33, 45 and 49, which will require the court to take into account when imposing penalties for failure to comply with the regulated activity requirements the extent to which employers and individuals have followed the Secretary of State’s guidance.

We have listened carefully to previous debates, and I believe that those amendments will be welcomed, as they ensure that being barred means precisely that. They clarify when the requirements to check and to be subject to monitoring apply, and they reduce the risk of employers and individuals being unfairly penalised in circumstances where they have followed the Secretary of State’s guidance. On that basis, I commend the amendments to the House.<sup>55</sup>

In response, Maria Miller described the terms “frequent” and “occasional” as among the most problematic terms in the Bill:

The Government’s original position in Committee, when they were pressed on the matter, and indeed on Second Reading, was that those definitions did not require further clarification because they would take their “everyday meaning”—despite the fact that both terms are relative and that there is no generally accepted everyday meaning for either “frequent” or “occasional” in English law.

Many hon. Members, including those on the Conservative Benches, felt that to leave such a key concept undefined would be to store up a great deal of trouble, not to mention create extra work for the army of lawyers that has clearly been involved in drafting the Bill. Therefore, we are glad that the Government have worked over the

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<sup>55</sup> [HC Deb 23 Oct 2006 cc1317-1319](#)

summer, through a working party including many reputable organisations, to reconsider the position and take into account some of the debate in Committee. The tabling of amendments Nos. 56, 57 and 64, which tightly define “frequently” as any two-day period occurring in a 30-day period, has allowed us to start to get a feeling for what is meant here.

Amendment No. 169 takes that welcome clarification a little further by specifying that that new “period condition”, as it is called, is also satisfied if the activity in question occurs between 2 am and 6 am, covering another area that was debated hotly in Committee regarding overnight stays. That activity also needs to give the opportunity for face-to-face contact with children or vulnerable adults.

No doubt the wording is better than the original, but Conservative Members feel that there is room for a little more improvement.<sup>56</sup>

### ***Knowledge and intent***

The Conservatives tabled an amendment (201) aimed at ensuring that individuals who “inadvertently” undertook a regulated activity while barred would not have committed a criminal offence. Tim Loughton said:

I shall now deal with amendment No. 201—the only one in the large group tabled by myself and my hon. Friends. We are minded to divide the House on the amendment, which we believe deals with an important principle, and hope to have the opportunity to do so at some stage.

The amendment is designed to help the Minister in his inadvertent failure, seen rather glaringly earlier, to decide what is inadvertency and what is not. It is an important point because many people—some have calculated that it could be as many as a third of the adult working population—are inadvertently going to be covered and may become subject to continuous criminal record vetting. Given that 10 million Criminal Records Bureau checks have taken place since 2002, a very large number of the population could now be subject to prosecution if they do not take notice of—and, potentially, take action on—the new legislation.

The Minister will no doubt agree with our contention—he acknowledged in Committee that the principle was right—that it is unfair to penalise individuals who did not know that they were barred from engaging in an activity. As it stands, there are three main circumstances in which someone commits an offence. Under clause 7, an individual commits an offence if he

“seeks to engage in regulated activity from which he is barred”,

or

“offers to engage in regulated activity from which he is barred”

or

“engages in regulated activity from which he is barred”,

which is pretty all encompassing. Furthermore, the guilt test is fairly low and the onus of proof lies on the individual to show that they did not know that they were committing an offence, rather than the other way round, whereby it would have to be proved that they were acting misleadingly in trying to disguise committing or intending to commit an offence.

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<sup>56</sup> [HC Deb 23 Oct 2006 cc1319-1320](#)

As the Minister acknowledged in Committee, it is not the Bill's intention to criminalise people who may have been barred but who are not aware, for whatever reason, of the position. Schedule 3, which provides the guts of the legislation, has a very broad scope of regulated activities and will potentially catch thousands of people who are not directly involved in teaching or caring occupations, which form the focus of many of the activities at which the Bill is targeted.<sup>57</sup>

Similar amendments (254 and 255) were also tabled by the Liberal Democrats. The amendments aimed to restrict the offence of a barred person engaging in a regulated activity to situations in which there was an intention to mislead. Sarah Teather said:

We have had an extensive debate about many of the confusions in this extremely complicated Bill. If the scope of regulated activity is enlarged by the Secretary of State during the making of regulations, it is likely that people will not know the full extent of such activity that may apply to them. If there is a decent vetting procedure, it should prevent people who are barred from getting through, so the purpose of the provision should be to criminalise those who act in a misleading way—for example, by giving a false name in a job application—not those who may inadvertently get something wrong.<sup>58</sup>

In response, Parmjit Dhanda said:

Amendment No. 201 provides for a defence where a barred individual seeks to engage in activity without realising that it was regulated activity. As well intentioned as the amendment is, it is unnecessary and could introduce a dangerous loophole that Opposition Members are on the verge of voting to support. We certainly do not wish to criminalise individuals unfairly, so we will ensure that the scheme is well understood. Before the commencement of the Act, guidance will be issued that will provide further detail about what type of activity will be covered by regulated activity. We will consult stakeholders about the most effective means of ensuring that all those subject to the requirements of the scheme are aware which roles will be covered by the definition of regulated activity. We will also provide an advisory facility to employers and individuals to help them comply with the requirements of the scheme.

In addition, when an individual is informed that they are barred, the intention is that this communication will include an explanation of the types of activity from which they are barred. Setting this out clearly for newly barred people will help to minimise the risk that the amendment seeks to address. The amendment could in fact introduce a different risk—that unscrupulous barred individuals would seek to escape the offence in the Bill by arguing that they did not know that a particular activity was a regulated activity. That is what Opposition Members are considering supporting in the Lobby this evening. We are trying to keep devious paedophiles out of our schools, and the possibility opened up by the amendment is too great a risk. Hon. Members need to consider their position on the issue.<sup>59</sup>

Amendment 201 was negated on division by 274 votes to 185.<sup>60</sup>

### ***Fees and funding***

Government amendment 68 clarified the Secretary of State's power to waive the fee for those who undertake regulated activity on a voluntary basis. More general information regarding fees and funding was set out in the following exchange:

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<sup>57</sup> [HC Deb 23 Oct 2006 c1284](#)

<sup>58</sup> [HC Deb 23 Oct 2006 c1288](#)

<sup>59</sup> [HC Deb 23 Oct 2006 cc 1291-1292](#)

<sup>60</sup> [HC Deb 23 Oct 2006 c1313](#)

**[Mr. Dhanda:]** To answer the hon. Lady's question about regular reviews, it is the intention to have an annual review of that fee, as it is in respect of the CRB fee. We were quite clear about our intentions for funding the scheme when responding to questions raised in previous debates. We have realised that the Bill's provisions could be clarified. For example, we repeatedly stated that the fee for volunteers will be waived, and we are now making the ability to do so explicit. I am sure that that clarification is welcomed.

**Anne Main:** Is the Minister completely satisfied that it is clear what the funding is intended to pay for? For example, is it intended to pay for updating all the computer systems and for any programming required in the regular progress updates that are so important if employers are to make checks? Given the big overruns in computer costs that have occurred, is he satisfied that the fee levied will be enough to cover the entire programme, including staffing costs?

**Mr. Dhanda:** It is for the entire funding of the IBB and its processes, which includes its computers. It is important to remember that this is about not just the costs incurred but the extra powers and securities that the Bill will give to vulnerable groups. It will also help employees by ensuring portability—they will pay a fee to get on to the scheme and will not have to pay another—and there is the added benefit of online checks. The vetting and barring scheme fee will be paid once when a person enters the scheme; there will be no new VBS fee when they change jobs. The new employer will be able to use the online check to confirm the person's status in the scheme. As with the CRB disclosure fee, the VBS fee will be the individual applicant's responsibility, but it will be open to the employer to pay the fee.<sup>61</sup>

## 7.7 Third reading

Maria Miller commented on the last-minute tabling of Government amendments, the lack of definition of some key terms in the Bill, and the issue of proportionality:

The Bill has been expected and consulted on for more than two years, and has been debated since February. It is therefore difficult to understand why so many Government amendments were tabled at the eleventh hour. Many provide the basic details of how the vetting and barring scheme will work. We have been asking for those details for the past six months, and they should have been thought through before, rather than after, the Bill was presented to us. With that in mind, I thank the teams from the Department for Education and Skills and the Public Bill Office, who have worked tirelessly and often under great pressure as a result of the Government's late tabling of amendments. They have, as always, been an integral and invaluable part of the process.

(...)

We were presented with a somewhat hollow Bill in February, despite the two years that had elapsed since the Bichard report. There was a lack of definition, a lack of detail on the processes to be followed and a disregard for many of the findings in the consultations that had been held—specifically the DFES's own post-Bichard consultation, which called for much of the clarity in terms and definitions for which we, and other Members, have continued to press today. Even after more than six months, there are still no definitions of some of the key terms in the Bill.

(...)

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<sup>61</sup> [HC Deb 23 Oct 2006 cc1257-1258](#)

Conservative Members remain concerned about clauses dealing with the position of those who are barred if they inadvertently apply for monitored jobs, and we have debated the issue extensively. We are also concerned, as we stated clearly in Committee, about the Government's intention to expand the number of people monitored under the Bill in future. As we know, the Government have the ability to achieve that without much further debate in the House. We shall certainly monitor that matter closely. When the Bill was introduced, the right hon. Member for Stretford and Urmston (Beverley Hughes) firmly stated that one of the principles behind the Bill was that the breadth of the bar imposed should be proportionate to the risk. I hope that Ministers continue to adhere to that and that they are open to revisiting the provisions if they appear to have created unintended consequences, perhaps along the lines that we have discussed today.

The amount of reworking of the Bill at such a late stage is also worrying because a number of areas require further attention. We have already mentioned the use of vague terms and we have had little time properly to debate critical issues such as the development of the IMPACT police national database. It is now delayed until 2010, yet it was one of Bichard's key criticisms of the progress that the Government have made so far. Overseas workers is another matter—we debated it earlier—that was virtually ignored in the later stages of our debate on the Government amendments.

We wish the Bill well as it passes from here to wherever it goes next, but there remains a need for a fundamental change to the process of vetting and monitoring. We all agree that it needs to take place, but we urge the Government closely to watch the impact of the Bill in practice. We support the intention to make the vetting system better, but we do not want the Bill to become an unwieldy instrument that, instead of simplifying the position, adds even more complexity. In short, we simply hope that the Bill does not become a sledgehammer to crack a nut. We hope that the Government will monitor the impact in as much detail as possible as the Bill is implemented.<sup>62</sup>

Annette Brooke raised similar concerns:

The Under-Secretary of State for Education and Skills, the hon. Member for Gloucester (Mr. Dhanda), said that the legislation is complex, but that might prove to be an understatement. It is very complex and that has to be a concern for us all. From the start, we have all seen the Bill as being of great importance and significance. We will all always remember the events at Soham and the revelation that some information could have been passed on. In fact, there was lots of information around, but it had not gone through the various channels or been put together so as to lead to someone taking action. We have many examples of similar situations in world history and that was another example of failure of communication. Given the system that was in place, it was impossible for anybody to put together all the pieces of information available.

It seems a long time since the Bichard report in 2004 and there has been much consultation on the Bill. Have we achieved what we set out to do? That is a difficult question to answer and I have to admit to some nagging doubts. Because we have had so many Government amendments, I am not convinced that we have been able to scrutinise them properly in the short time available. There may well be unintended consequences that we have not envisaged tonight. That is a serious issue and I hope that Ministers will reflect on that and carry out some of the monitoring that the hon. Member for Basingstoke (Mrs. Miller) suggested.<sup>63</sup>

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<sup>62</sup> [HC Deb 23 Oct 2006 cc1349-1350](#)

<sup>63</sup> [HC Deb 23 Oct 2006 cc1351-1352](#)

## 7.8 Impact assessment

The following impact assessments were produced:

- DCSF, *Making Safeguarding Everybody's Business: A Post-Richard Vetting and Barring Scheme*, March 2006
- Home Office, *Amendment to Safeguarding Vulnerable Groups Act 2006 (SVGA)*, 18 December 2008