Safeguarding Vulnerable Groups Act 2006

Safeguarding Vulnerable Groups

(Northern Ireland) Order 2007

ISA scheme Consultation Document

Formal Government Response

30 May 2008

department for children, schools and families

Home Office

DH Department of Health

Contents

1 Background

1. The Safeguarding Vulnerable Groups (SVG) Act, which gained Royal Assent in November 2006, was introduced specifically in response to recommendation 19 of the 2004 Bichard Inquiry report. The Act provides the legal framework for the new Independent Safeguarding Authority (ISA) scheme. Provisions in the Act which do not extend to Northern Ireland were replicated in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, made on 2 May 2007.

2. The ISA scheme will prevent those who pose a risk of harm to children or vulnerable adults from gaining access to them via their work or through voluntary activities (see Section 1 of the consultation document for further information on how the scheme will operate).

3. The scheme will be launched in October 2009 in order to allow systems to be built, secondary legislation made and organisations prepared for the introduction of the most robust and thorough vetting and barring service yet. In preparing for this launch, the Government has undertaken two separate public consultations since the SVG Act gained Royal Assent and the SVG Order was made in respect of Northern Ireland.

The Barring Consultation (June 2007)

4. In June 2007, we launched a consultation which asked for views on the processes involved when people are being barred from working or volunteering with children or vulnerable adults. This document also set out the list of offences that, on conviction or the acceptance of a caution, will result in a person being automatically barred from working or volunteering with vulnerable groups.

5. The response to that consultation was published in November 2007 and can be viewed at the archive and results section of the Department for Children, Schools and Families website at http://www.dcsf.gov.uk/consultations/conArchive.cfm. Further to this, we have now made secondary legislation about individuals currently barred from working with children or vulnerable adults (i.e. on PoCA, PoVA, List 99, equivalent Northern Ireland lists, or subject to disqualification orders). Further secondary legislation will be made to allow the ISA to make new barring decisions.

ISA Scheme Consultation (November 2007)

6. In November 2007, a broader public consultation was launched which addressed a range of outstanding policy issues. This document can be viewed at the archive and results section of the Department for Children, Schools and Families website at http://www.dcsf.gov.uk/consultations/conArchive.cfm. The consultation

invited views on issues including:

- The definition of vulnerable adult
- The extent of regulated activity
- Who is eligible to make checks of a person's ISA status
- Controlled activity
- Applying to the scheme
- The phased introduction of the scheme
- Referring information to the ISA

7. This response sets out the results of the consultation and is structured around the questions posed in the document. It highlights key messages raised in responses, and indicates our approach in reply to some of the issues raised. This paper does not attempt to respond to every single point made in consultation responses, but it does address the main themes.

8. This response is not the 'final word' on policy to underpin the ISA scheme. This consultation provided us with an invaluable tool in informing discussions and decisions and highlighting issues which may not have otherwise come to the fore. In the next few months we shall address these issues. This response begins this process but is by no means the end point.

9. The sheer number of individuals who will fall within the provisions of the ISA scheme means that there is a range of ways in which the scheme will impact on different sectors and groups. We have always been committed to publishing guidance for each sector to help organisations develop policies and processes in keeping with the ISA scheme. Many questions not addressed in this response will be dealt with by guidance. We will develop guidance in the coming months and publish it with plenty of time for organisations to become familiar with it before the scheme goes live.

ISA scheme fee and go-live date

10. Further to the consultation, the Government announced on 1April 2008 that the go-live date would be in October 2009. Live applications to register with the scheme will be processed from that date.

11. The two new barred lists for workforces working with children and vulnerable adults respectively will from 12 October 2009 replace List 99, POCA and POVA lists, and disqualification orders (and Northern Ireland equivalent lists/orders) imposed by the courts. The ISA will over the coming months include, or consider including, all of the currently barred individuals on the new barred lists. The new barred lists will come into force on 12 Octobers 2009, replacing the existing barred lists from that date. The checks of existing barred lists will be replaced from that date by checks against the new barred lists and new wording on CRB/ANI Enhanced Disclosures (where applicable) on barred status. In the case

of Disclosures issued on or around 12 October, a form of words may be used which indicates the person's status both before and after that date. Further information will follow on these matters.

12. The application fee for those in paid employment will be £64: this is a one off payment, which will be made up of two elements. Of this £64, £28 will contribute to the running of the ISA, continuous updating and an online registration checking system. The remaining £36 covers the CRB's administration costs (equivalent to the cost of a CRB Enhanced Disclosure). In Northern Ireland, the application fee will be £28 for ISA costs, in addition to £30 for the ANI element, which is equivalent to the cost of a ANI Enhanced Disclosure, making a total of £58. In most cases we expect that applicants will be applying for a Enhanced Disclosure alongside ISA scheme membership and this will be included in the £64 or £58 respectively[1]. The current CRB/ANI application form will be revised so that it will be possible to apply for ISA registration at the same time, and using the same application form as an Enhanced Disclosure application. If an individual is already ISA registered and moves jobs they will be able to take their ISA registration with them. A subsequent employer will be able to check that they are ISA registered free on line. If they are required to do so, or choose to do so, they may carry out a Enhanced Disclosure check (current cost £36 CRB/£30 ANI).

13. The phasing principles, covered in pages 32-34, should allow employees in continuing employment to register with the scheme and obtain an Enhanced Disclosure at a time when employers might consider seeking a repeat Disclosure anyway. The fee has been set to enable the scheme's income to match costs over the first five years. We believe it is reasonable and affordable for all sectors in the workforce.

Overview of responses

14. The consultation received 326 responses, the vast majority of which were supportive of the proposed introduction of the ISA scheme. This included views from an extensive range of stakeholders, spanning both the paid and voluntary sectors. Views were received from organisations including local authorities, faith groups, educational establishments, sports and leisure associations, transport groups, NHS Trusts, primary care trusts, Health and Social Care Trusts, charities, Local Safeguarding Children Boards, regulatory bodies, private care providers and several others. A table of consultation questions and a statistical analysis of respondent answers is at Annex A.

15. The opportunity to comment on the scheme in advance of implementation was welcomed and many of the proposals were met with overwhelming levels of agreement.

[1] As is the case with CRB/ANI Enhanced Disclosures at the moment there is no eligibility for private individuals such as parents to obtain Enhanced Disclosures on people they chose to work with their children. Once the ISA scheme is implemented parents will be able eligible to check that those they use to work with their children are ISA registered.

16. There was a general sense that the scheme is complex, not least because of the wide variety of roles that will be affected by the scheme. Whilst the broadening of barring schemes to include new sectors was seen as a positive step in terms of protecting the vulnerable, clear guidance and communications will be needed to manage understanding. This guidance is something that the Government and the ISA is fully committed to and will be issued in time for organisations to digest and implement the advice.

17. The consultation was an extensive one covering a broad range of issues. This response will tackle these issues methodically, according to the order in which they were presented in the consultation. For each question, a summary of the responses is provided to give an indication of the levels of support or otherwise for the proposition. The key points raised are discussed and the Government's intentions by way of next steps in relation to each proposition are set out.

2 Vulnerable Adults

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

18. The definition of 'vulnerable adult' for the purpose of the ISA scheme is set out at section 59 of the SVG Act. Under the Act, adults are vulnerable where they are receiving one of the listed services or are in one of the listed settings or situations. In these settings and situations, adults need to be able to trust the people caring for them, supporting them and/or providing them with services.

19. Section 59 provides specific regulation-making powers to amend the definition of 'vulnerable adult'. The consultation document proposed using the regulation-making powers in the following ways:

20. **Supporting People services**[2] - to make regulations under section 59(1)(g) of the Act prescribing that the definition of 'vulnerable adult' also includes adults who are receiving Supporting People services. In Northern Ireland equivalent regulations will be made under article 3(1)(g) of the SVG (Northern Ireland) Order 2007;

21. **physical or mental health conditions** - not to make regulations under section 59(9) (c) of the Act or Article 3(9)(c) of the Order prescribing physical or mental health conditions. The effect of any such regulations if they were made would mean that everyone with one of the prescribed conditions who participates in an activity or receives a service targeted at people with such conditions would be a vulnerable adult;

22. **dyslexia** – to make an order under section 59(11) of the Act and article 3(11) of the Order specifying that adults participating in activities or receiving services targeted at people with dyslexia are not to be treated as vulnerable adults.

23. There was general agreement to the proposals for refining the definition of 'vulnerable adult'. A total of 69 per cent of respondents agreed with the proposals, 16 per cent disagreed and 15 per cent were not sure.

24. The general opinion was that the definition of 'vulnerable adult', while wide, was helpful. However, the width of the definition did cause concern and it was felt very important for guidance to be issued to support people in understanding the definition. There was also some concern that the SVG Act definition of 'vulnerable adult' is different from definitions already set out in legislation and Department of Health guidance.

[2] The Supporting People programme provides housing-related support to help prevent problems that can often lead to hospitalisation, institutional care or homelessness. For more information on Supporting People services please visit http://www.spkweb.org.uk/

25. **Supporting People services.** There was strong support for this proposed amendment, although some concern that it does not go far enough in that a number of services which are not funded through the Supporting People programme provide housing-related support to vulnerable adults and so would not be caught. Communities and Local Government are aware of this concern and we are working to address this through secondary legislation.

26. **Physical or mental health conditions.** There was general support for this proposal, although a small number of respondents were of the view that anyone receiving a service or participating in an activity targeted at people with a particular physical or mental health condition should be classed as a vulnerable adult. In view of the responses on this issue, we will proceed initially as proposed in the consultation document and keep the position under review.

27. **Dyslexia**. The proposed amendment to the definition was welcomed. However, some respondents from the higher education sector proposed that this should be extended to other related learning difficulties such as Irlen syndrome, dyscalculia and dyspraxia. In response to these concerns, we will make regulations to ensure that the amendment covers both dyslexia and other related conditions. The effect will be that adults who are receiving services or participating in activities targeted at people with one of the specified conditions will not be treated as vulnerable adults.

3 Frequency

Question 2: Are you content with our proposed understanding of frequently?

28. Seventy per cent of respondents agreed with the proposal that the meaning of frequent in relation to contact with the vulnerable groups should be clarified through guidance as meaning once a month or more often. The remaining 30 per cent were split between disagreeing and being unsure.

29. Those who agreed felt that our understanding of frequency, combined with intensively (meaning on more than two occasions in a 30 day period, or overnight), would adequately encompass those situations where a relationship of trust could be built, without disproportionately burdening those who engage in 'one-off', or very irregular activities.

30. Where concerns were raised these were mostly around how the concept of 'frequently' would be applied and whether further guidance would be issued. Although we will not legislate as to what is meant by frequently we will provide thorough guidance, including examples of situations that would and would not meet the criterion.

31. Some respondents were concerned that the concept of 'frequently' would be open to abuse and create loopholes. Clearly it is of paramount importance that this should not be the case. It is for this reason that we have chosen not to define frequently in legislation as this would entail a level of inflexibility. By clarifying the term through guidance we will make clear our intention to those using the guidance. This will enable the courts to use their discretion where they believe a person is trying to avoid the system.

32. Conversely, some respondents suggested that the proposed guidance might lead to more people than necessary joining the scheme, to be sure that they would not fall foul of the frequency test.

33. Some respondents were unsure whether contact on different occasions had to be with the same member or members of the relevant vulnerable groups to count towards determining whether the frequency criterion is satisfied, or whether contact with different children or vulnerable adults (as appropriate) is sufficient. The answer is that contact with different children or vulnerable adults is sufficient. The reason for this is that what counts is the opportunity to form relationships with particularly vulnerable people in a setting, and this opportunity exists where there is frequent general access as well as access to individual members of the vulnerable groups.

34. For all of these reasons, **we propose to issue specific guidance in relation to the meaning of frequency. This guidance will include:**

- **Our intended clarification of ‘frequently’ (i.e. once a month or more)**
- **Examples of frequency in application**
- **What employers should do if they are unsure about the frequency of a person’s contact with vulnerable groups.**

4 'Merely Incidental'

Question 3: are there situations other than those described in paragraphs 3.8 to 3.12 where children are 'merely incidental' to the provision of regulated activity to adults?

35. Thirty per cent of respondents to this question said that there were other 'merely incidental' situations. Twenty five per cent said that there were no other such situations, and 45 per cent were not sure.

36. This pattern of responses reflects a degree of uncertainty, and some respondents criticised a lack of clarity in the text of the 'Merely Incidental' section of the consultation document. We hope that the following paragraphs will clarify matters.

The meaning of 'merely incidental':

37. A teaching, training, instruction, care or supervision activity which would otherwise have been regulated activity is not regulated activity if the presence of a child or children is merely incidental to the activity being provided to adults. In order to be merely incidental, the presence of a child or children must either have been unforeseen **or** have been dependent on the presence of an adult for whom the relevant activity was actually being provided. In other words, we are talking about situations where the activity has been provided and designed for adults, rather than children.

38. For example a local authority leisure centre sets up a ladies aerobics class. The class is directed at young mothers. There is no childcare facility but the information on the class makes it clear that if the mothers do not have childcare available then the children can come along and, if able, join in. In this example while the presence of the children is not unforeseen, any teaching of them that may occur is subordinate to, and dependent on, the activity being provided to adults. This is because were it not for the participation of the mothers the children would not be there.

39. A further example is that of a woodwork or operatic society which pitches the material for adults and expects adults to be subscribers. If an adult attendee brings a child along, then the child's attendance is merely incidental to any teaching or instruction of the adults. However if the children start to attend on a regular basis independently in their own right and come to take an active role in the society then their attendance is not incidental to that of adults.

40. However, if the activity was targeted at both adults and children, it would be regulated activity in respect of the children even if the number of children in the group was small. For example an aerobics class, drama club or hobby club may be targeted at all ages. In this case, the children

in the class have no lesser status than any other members and their presence is not dependent on the presence of an adult, for example their parent being trained and their having nowhere else to go.

41. With the passage of time, an activity originally targeted at adults might have acquired a number of adherents who are children. Their presence is no longer unforeseen because they have been attending for a period of time and the organisers expect them to turn up. This fact does not in itself mean that the activity automatically becomes regulated activity if the target group is still adults. But if children come to take an active part, their attendance is predictable and the planning of activities changes accordingly, then the activity may well then be regarded as regulated activity. In these circumstances providers should review the status of the activity from time to time. (However, please see the points at paragraphs 54-56 below).

42. It is important to note that some activities taking place in hobby societies etc. will not be regulated activity in any case because they do not comprise teaching, training or instruction, or care or supervision activity. For example an amenity society runs a series of open access evening talks or walks on local history. The group share their skills and knowledge on a generally ad hoc basis with fellow members. They are not teaching, training or instructing anyone here as members are just going along for pleasure and sharing their enthusiasm and knowledge with fellow members. Equally a railway society, astronomy society, or historical society may give regular talks on their subject matter to members of the group. Again people attend the talks or events for their own amusement and they are not being taught, trained or instructed.

43. In conclusion, whether one activity is incidental to the other will depend on the circumstances of the case and the intention of the person providing the activity as well as what happens in practice while carrying out the activity. We will aim to develop clear guidance with case studies in consultation with stakeholders. We are grateful to those stakeholders who have taken the time to send case studies of how their societies operate.

Proposals arising from the consultation document

44. There were a number of responses about the teaching, training and instruction of 16-17 year-olds, some criticising the clarity of the consultation text. The consultation document referred to examples of children or young people aged 16-17 taking part in higher education and mixed age sports teams and leisure activities. As the SVG Act stands such activity does not fall within the 'merely incidental' exemption because the activities in question are not aimed just at adults. The children's participation is not merely incidental, it is integral to the activity. The following paragraphs consider these activities as activities in which children may play a full part. In addition young people carry out work, which may be paid, volunteering or work experience: this is also

considered below.

Children in employment and work experience

45. Concerns have been expressed about the potential impact of the scheme on children in employment. As the consultation document noted, employers of children aged 16 and 17 in paid or unpaid activity will not be subject to the ISA scheme.

46. At present people employing individuals whose normal duties include caring for children in employment who are under 16, or for whom a substantial part of their normal duties include the training, teaching or supervision of under 16s during the course of those children's employment, are eligible to obtain CRB Enhanced Disclosures, but there is no requirement on them to do so. A person who is on the barred list is committing an offence if they offer to do such work, and obtaining an Enhanced Disclosure including a check of the current barred lists is the only way an employer can be sure that the individual is not barred. Neither the bar nor the ability to obtain Disclosures applies in respect of those working with 16 and 17 year olds in employment (except in the case of those training children in the armed forces).

47. We propose that in the case of children in employment aged under 16, including those in work experience, an employer would commit an offence if they knowingly used a barred person to instruct, train or teach such children where there are arrangements in place (whether in a job description or otherwise) for the employee to do this; and a barred individual would commit an offence if they put themselves forward for such an activity. However we propose that there should be no mandatory requirement on anyone in the setting to be to be ISA registered. The employer or the work experience placement organiser would decide who should be checked. At present in the case of work experience that decision is taken on a risk-based approach and these arrangements work well currently. Current guidance in the area or work experience will be updated to take into account the new ISA scheme.

48. We have reached this conclusion partly from our appraisal of the proportionality of the full impact of the ISA scheme in the context of economic and volunteering activity; and partly because workable safeguarding and health and safety measures are already in place in the work environment.

Higher Education Institutions

49. After considering the responses, we remain of the view that it is disproportionate to apply the ISA scheme requirements to all those who may teach, train or instruct students aged 16 or 17 as part of a higher education course in a higher education institution. These young people may have started on such courses because of their date of birth or because they skipped a year at school. The higher education institutions

know that this can happen so the participation of 16-17 year olds is not merely incidental to the participation of adults. However it makes sense that the full rigour of the ISA scheme should not apply to those teaching, training, instructing the 16 and 17 year olds, as the courses comprise students who are mostly 18 or older. In the rare cases of children aged 15 or younger embarking upon higher education, their teaching will be regulated activity and we do not intend to lift the SVG Act's requirements in the case of these students. This is because of the likely increased vulnerability of those aged under 16 in an adult setting.

50. Some respondents were concerned that a barred person might still have the opportunity to harm children in the circumstances described above. For this reason, although those teaching, training, or instructing the 16 and 17 years olds as part of a group will not be required to register with the ISA and their employer will not be required to check registration, it will be an offence for a barred person to carry out this activity or for an employer knowingly to employ a barred person in this activity.

51. We agree with respondents who state that summer schools, or widening participation taster sessions etc. offered by higher education institutions for 16-17 year olds or younger children will be regulated activity: employees providing these activities will need to be ISA registered and their employer will need to check that they are registered where they carry out the regulated activity frequently or intensively.

Further Education

52. Those who teach, train or instruct in courses in further education targeted at 16-17 year olds or younger, or targeted at both adults and 16-17 year olds or younger, will be required to be ISA-registered. This will include further education settings offering 14-19 provision such as GCSE, A Level and diplomas. This is because 16 and 17 year olds are typically more integral to the course and they are not in an adult setting just because of an early birthday or a skipped year at school.

53. In a further education college, any 16-17 year olds in classes targeted at adults can not be regarded as merely incidental because there is no reason why they should not in the normal course of events enrol in such classes. The activity will therefore be regulated activity and the staff concerned will need to the ISA-registered and checked. The presence in FE colleges of children as young as 14 strengthens the importance of relevant staff being ISA-registered.

Open age sport and leisure activity e.g. hobby clubs

54. Open age sports teams, by virtue of being open age, are not targeted at adults in particular, so the participation of children is not merely incidental and therefore as the SVG Act/Order stands the activity would be regulated activity in respect of under 18s. As in the case of higher education institutions we propose that there should be an exemption for

those teaching, training or instructing 16 and 17 year olds from the requirement to register with the ISA in these 'all age' circumstances. However if a barred person sought to undertake this activity involving 16 and 17 year olds he would commit an offence, together with anyone who knowingly permitted him to do so. We intend to retain the full requirements of regulated activity for the training or coaching of under 16s and those concerned will be required to register with the ISA scheme. The aim of our proposal is to maintain a sensible balance of intervention by the ISA scheme into normal social activities in which children should normally be well protected. Many children's sports coaches are CRB/Access NI (ANI) checked at present and these will be registering with the ISA. If individuals are teaching, training, instructing 16/17 year olds separately from adults, for example if children in open age teams are staying behind for targeted one-to-one coaching, the coach carrying out regulated activity would need to register with the scheme.

55. In the case of hobby clubs, if the activity is targeted at adults, then the activity is not generally regulated activity if children are present because the children's presence is merely incidental (see above). If a hobby club has a junior section, e.g. junior orchestra or junior swimming, then the person instructing the children will be undertaking regulated activity.

56. Where hobby events involve overnight stays, if children are accompanied by their parents or guardians there is no regulated activity by organisers in relation to care or supervision of those children. If children are unaccompanied, then organisers will need to register with the scheme where they are caring for and supervising the children.

5 Transporting vulnerable groups

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

57. The SVG Act/ Order provides that driving a vehicle being used only for the purpose of transporting children and/or vulnerable adults, and supervising or caring for them in the vehicle, will be regulated activity, subject to regulations which would prescribe circumstances for that.

58. We proposed that these regulations would clarify where it will be regulated activity when people exclusively transport children and/ or vulnerable adults - for example if a school or care home organise taxi or bus services for children or vulnerable adults, and the driver while driving them is not specifically caring for or supervising them. The regulations would clarify that even though such persons might not be caring or supervising, they are subject to regulated activity duties where they carry out this activity frequently or intensively (both of which relate to the person doing the activity, not whether it is always with the same child or vulnerable adult).

59. Following informal consultation with transport stakeholders in 2007, the formal consultation explained how the ISA scheme related to a parallel DVLA consultation on making CRB checks a requirement of PCV entitlement in order to protect the wider public; and why the scheme requires some but not all taxi/ bus drivers to register with the ISA. The Government stated to Parliament, during the passage of the Bill: "The regulations will not cover buses open to all members of the public that might pick up school students at particular points of the day, nor taxis hailed or hired by children independently". But companies should ISA-register a number of staff members, in case they receive a customer request to provide a registered person to transport e.g. vulnerable adults from a day care centre.

60. Most respondents (73 per cent) agreed with our proposals (consultation paras 3.24-3.25) for including, as regulated activity for children: transport to and from regulated activity by a vehicle operated by the activity provider; a vehicle formally and frequently commissioned by the activity provider; and escorts contracted by a local public authority; and for vulnerable adults: transport within the social care sector operated by the service provider; a vehicle formally commissioned (not one-off) by the activity provider; and all drivers of patients for the public or independent health/ care sectors; and for excluding privately-arranged carriage of a child or vulnerable adult, mainstream bus-routes, and e.g. coach holidays for older people.

61. A minority of respondents (12 per cent) disagreed and 15 per cent were unsure: Comments from 37 (14 per cent), of whom 5 were from the transport sector, wanted a wider range of taxi or bus driving to be regulated activity, because e.g. taxis were often used in emergencies or where regular arrangements had broken down; and on occasions, a child or vulnerable adult could be the only passenger on a bus route. These points go beyond the scope of the provision and intention of the SVG Act/ Order; DCSF will keep in touch with the Department for Transport (DfT) on how the ISA scheme fits with PCV, PHV and taxi licensing. Twenty (seven per cent) wanted informally-arranged transport to be regulated activity: in their view, it provided as much opportunity for harm as the forms of transport which we propose (above) as regulated activity. Respondents asked us to clarify if parents and others who volunteer must register; and for guidance and publicity to inform transport and service providers of their duties, and inform service users of which transport is regulated or not. We are exploring giving bodies such as licensing authorities, DVLA or the Traffic Commissioners access to vetting information - that is, whether a person is ISA-registered.

62. We are also grateful for and will act on a number of other useful comments received on points of detail, e.g. we agree that where there is a regulated activity at one end of the journey, we want the journey to be regulated activity: a local authority transport service might regularly contract for journeys taking children (e.g. from school or foster care) to activities such as contact visits with parents which are not regulated activities in themselves. We are still considering one or two others, e.g. whether “dial-a-ride” services should be regulated activity.

63. On parents, and informal arrangements, we will (in response to comments received) ensure that our published guidance includes these specific areas. It will cover:

    a. parents on behalf of e.g. a sports club, transporting others' children to training sessions or games such as an after school football match, whether requested by the school directly or arranged separately by a group of parents. We will make clear that it is a private arrangement where e.g. parents X and Y arrange to take it in turns to pick up their own and the other’s children, and so not subject to the scheme’s requirements. But if the club or school arrange the transport, and for volunteers to do it, then it is regulated activity and the club or school is the regulated activity provider;

    b. informal arrangements without a formal contract, which otherwise fit our proposals above e.g. by being frequent. Voluntary drivers in the social care sector work a great deal with vulnerable adults. We propose these will also be regulated activity, because they are not a “domestic” arrangement.

6 Children's Centres

Question 5: Do you agree that Children's Centres should be classed as establishments under the SVG Act in the same way as schools? Are there any other settings that should be covered? (Paragraphs 3.26 to 3.34)

64. There were 238 responses to this question: 219 (92 per cent) agreed, 1 (0 per cent) disagreed and 18 (8 per cent) were not sure.

65. The consultation document explained that Sure Start Children's Centres are settings which offer integrated services to improve outcomes for children from birth to five[3]. The consultation proposed that Children's Centres be included as 'establishments' under the legislation in the same way that establishments such as schools are already covered. The effect of this would be that a barred individual would not be able to carry out any activity in the Children's Centre where it gave the opportunity of contact with children and it was for the purposes of the Children's Centre. In addition an individual frequently or intensively working on the premises would be required to register with the ISA.

66. The vast majority (92 per cent) of respondents agreed with the rationale for classing Children's Centres as establishments under the SVG legislation, given their increasing number, functional similarity to schools and focus on the very young birth to five year olds. The nature of the activities carried out in Children's Centres, it was felt, demanded that they offered protection to children and reassurance for parents that safeguards were in place.

67. Bearing in mind responses to the question we propose to take forward including Children's Centres as establishments under the SVG Act and will bring forward legislation to this effect.

68. In answer to the question **whether there are any other settings which should be covered** respondents suggested there should be provision for regarding as regulated activity anywhere that existed for the purpose of providing services, care, support, training or supervision to children and families. Many settings that would be defined in this way are already

[3] More information about Children's Centres can be found at http://www.everychildmatters.gov.uk/earlyyears/surestart/centres/. Sure Start Children's Centres are defined in this way in England only. In Wales, Integrated Children's Centres offer as a minimum early years education, childcare, open access play and community training, and the relevant age range is wider. In Northern Ireland, while the development of Sure Start Centres is in its infancy, Sure Start programmes are available in the 20 per cent most disadvantaged areas. In such areas, all families with children under the age of 4, including pregnant women, have access to a range of services including early education and play, childcare, healthcare and family support. It is proposed that in Northern Ireland Sure Start Centres will also be classed as establishments under the SVG Order and legislation will be brought forward to that effect.

included.

69. Some respondents felt that settings relating to sports and leisure, such as: sports clubs, leisure centres, holiday camps, libraries, and museums should be classed as establishments under the SVG legislation. As these settings are aimed at the general public and in many cases the children are under the supervision of a parent or carer when they attend it would seem disproportionate to include a requirement that anyone who carried out any activity on the premises and had the opportunity of contact with a child/children should be required to register with the ISA. That said, individuals who carry out specific activity such as teaching or training of children would be required to register with the ISA. This would include people caring for children in a sports centre crèche or teaching children how to swim, people in museums teaching groups of school children about the artefacts or librarians who run homework clubs or book groups such as Chatterbooks reading groups, for example.

70. It was noted that settings to be classed as establishments should not be limited to those attended by children and that those which provided for vulnerable adults, such as day/support/advice centres and workshops for people with disabilities and or learning difficulties should also be included. Again while care homes are already included as establishments and individuals who are caring, supervising, training or instructing for example the vulnerable adults will be engaged in regulated activity, it seems disproportionate to include for example people who are cleaners in a community centre which offers workshops for people with disabilities.

7 Eligibility to make checks

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

71. The vast majority of respondents, 92 per cent, agreed with the proposal. They felt it was essential and strongly welcomed allowing endorsing bodies to check ISA status and register for notification of changes to an individual's ISA status where they endorsed them to work with children or vulnerable adults. One per cent of respondents disagreed with the proposal and seven per cent were unsure.

72. The SVG Act/Order includes categories of people who are eligible to receive 'vetting information'. It is an offence to seek to obtain 'vetting information', or 'suitability information' as included on an Enhanced Disclosure if you are not eligible to do so[4]. Broadly speaking, checks may be made by a person who 'permits, or is considering whether to permit', an individual to engage in regulated activity relating to children/vulnerable adults. However, in the case of many organisations who endorse suitability they are not the regulated activity provider (RAP) employing the individual, or strictly speaking 'permitting' them to engage in regulated activity. Because of this, under the provisions of the SVG Act/Order, they are not eligible to make checks of ISA registration and receive 'vetting information'. Equally it is intended that 'suitability information' is included on the Enhanced Disclosure, and RAPs will be eligible to receive this information. While the endorsing organisation may not be the RAP they are responsible for releasing the individual into regulated activity and they play an important role in assessing their suitability.

73. **Bearing in mind the positive responses we propose to allow endorsing organisations eligibility to receive 'vetting information' and 'suitability information' on those they endorse, license or register to engage in regulated activity with children/vulnerable adults.** This would be achieved by allowing endorsing organisations who are CRB/ANI Registered Bodies to obtain 'vetting information' and 'suitability information' where they make decisions about the suitability of the person to engage in regulated activity relating to children or vulnerable adults. In addition where an Umbrella Body is used it should be able to receive 'vetting information' and 'suitability information' and pass it on to the endorsing organisation, if it is the endorsing organisation making the suitability decision. The endorsing organisation or Umbrella Body as appropriate could then take the decision as to whether they should continue to endorse/register/license the individual and register an interest in the individual to be notified if ISA status changed.

[4] For an explanation of 'vetting information' and 'suitability information' please see Annex B.

74. 'The consultation included the example of the Registrar of Potential Driving Instructors (PDI) and Approved Driving Instructors (ADI). The Registrar currently carries out CRB checks in order to assess whether the PDI or ADI is a 'fit and proper person' to instruct people how to drive. **Given the positive responses to the consultation we propose that when the new scheme is implemented a body such as the Registrar will be eligible to receive 'vetting information' and 'suitability information' as part of their existing regulatory "fit and proper" check.** Driving Instructors will be undertaking regulated activity in relation to children where they are instructing someone under the age of 18 and as many driving instructors are freelance or self-employed the Registrar has an important role to play in checking suitability. In this example being barred from working with children would not automatically mean that an individual is not suitable to teach adults how to drive. It would be for the relevant Registrar to decide whether an additional CRB/Access Northern Ireland Disclosure should be carried out, where an individual's ISA-registration status changes, to assess whether they remain a "fit and proper person" to teach the general public. Regardless of whether the Registrar decides to deregister the individual or carry out any further checks, a barred individual will commit an offence should they continue to engage in regulated activity such as teaching 17 year olds how to drive. **Similarly 'suitability information' and 'vetting information' should be available to those who are not the regulated activity provider but approve people to provide Compulsory Basic Training to children on how to ride motorbikes and mopeds.**

75. Allowing access to 'vetting information' and 'suitability information' also means that bodies such as the Lawn Tennis Association, the Irish Football Association and the Football Association will continue to have a role to inform those within their sport if an individual is professionally unsuitable to act as a coach working with children or vulnerable adults. Their role is particularly important in the cases where they help support networks of small, voluntary clubs, and individuals working as volunteers in the clubs, or fill the gap where there is no RAP e.g. in the case of private tutors or coaches employed by parents to work with their children. It also ensures that existing safeguarding systems are not diminished, as Enhanced Disclosure information and checks against the current barred list are used at the moment to aid the decision about whether an individual is suitable for them to endorse/license/register to act as a private tutor, sports coach etc.

76. There was some concern that a responsibility placed on regulated activity providers to check ISA status might deter volunteers, such as small clubs from working with children or vulnerable adults. It was suggested that sports governing bodies might be better resourced to take on the role of checking ISA registration and handling the administration involved. Under the ISA scheme, sports clubs etc. will be required to check individuals where they are the regulated activity provider, and where they manage or control the individuals' engagement in regulated activity. This could occur where they use a personal trainer,

aerobics instructor, sports coach to work with children or vulnerable adults and for example, arrange/organise the bookings, promote the activity, and take the money for the class from the customers. In these circumstances they are managing the individuals' involvement with the children or vulnerable adults and they are required to check those they use are ISA-registered.

77. The ISA scheme should make the process straightforward. For example, where an individual is already ISA registered because he is a member of an endorsing organisation such as a sports governing body that has carried out a check, the club will be able to verify they are ISA registered by making a free online check and registering its own interest in the individual so it is notified if the ISA status changes. Where individuals work for a number of sports centres or clubs, each RAP will be able to register an interest in the individual and check they are ISA registered without having to put the coach through the ISA scheme separately. The RAP may be interested in information which goes beyond risk of harm to children or vulnerable adults. For example, if the coach frequently drives children, then they may wish to obtain an Enhanced Disclosure in order to get additional information such as driving convictions which may not directly relate to risk of harm.

78. **We appreciate that more information will be needed in the form of guidance for self-employed, freelancers and domestic employers and we will work on developing this over the coming months.**

8 Adoption

Question 7: Do you agree that adoption agencies should be able to check ISA status on the groups set out in paragraph 4.12 – 4.17 (prospective adoptive parents and adult members of the household)? Do you have any other comments on these proposals?

79. Although adoption is not regulated activity because it falls within family and personal relationships, 88 per cent of respondents agreed that adoption agencies should be able to check the ISA status of prospective adopters and adult members living in the household. Zero per cent of respondents disagreed. Twelve per cent of individuals said that they were unsure about the proposals.

80. One concern was that the agency should not maintain an interest in the prospective adopter and adult members of the household once the adoption order had been finalised. **We agree that guidance should make clear that adoption agencies do not have a legitimate interest in the ISA-registration status of the individual and adult household members once the adoption order has been finalised and that they should then deregister their interest for the purposes of that adoption**. The parents and adult members of their household may wish to remain ISA registered if they are engaged in, or will seek to engage in regulated activity, through other work be it paid or voluntary, such as a teacher or scout leader, where they would need to be ISA registered.

81. Some respondents felt it was important that there should be checks for members of the extended family as well as frequent visitors to the adopters' home. We do not propose to extend the existing requirements for Enhanced Disclosures in adoption[5].

82. There was also some concern from British Association for Adoption & Fostering (BAAF) who felt it could be harmful to revoke approval of a placement of a child, especially if they had settled within the household. It was felt that there may be a small number of exceptional cases where, despite the barring it nevertheless remained in the child's interests to stay in the household. Where the barring related to a member of the household, for example, it could be that it is a sibling of the child (by birth or perhaps another adopted child of the prospective adopters) who has committed the offence that has led to the barring. Because of these sorts of exceptional cases we agree that there should be no absolute duty for an agency to rescind approval should an individual be barred or be no longer ISA-registered because they have become barred.

83. Therefore we propose that adoption agencies should be entitled to

[5] The glossary to the statutory adoption guidance defines "household" as "a group of two or more people who live together in the same home, though this may include others who do not reside in the home but are considered by an agency to be members of the household as they often stay in or visit the home

vetting information and suitability information[6] on prospective adopters and members of their household aged 18 or over. We also propose that the Adoption Agencies Regulations 2005 will continue to require an adoption agency to take steps to obtain an Enhanced Disclosure on prospective adopters and adult members of the household. (The Northern Ireland Executive will consider further the arrangements for vetting other members of the household, see end of para 89.) In addition when they carry out the Enhanced Disclosure check they must check whether those groups are ISA-registered. If they are not ISA registered those groups should apply to become ISA registered at the same time as applying for the Enhanced Disclosure and the agency should register an interest in them. Where they are not ISA registered because they are barred the Enhanced Disclosure will state the reason for the bar so that the adoption agency may take this information into account.

84. Some respondents asked for clarification about non-agency cases where the child is not placed by an adoption agency. (Northern Ireland is considering further this area, see end of para 89.) Under current regulations the local authority submitting a report to the court is obliged to obtain an enhanced disclosure check on the applicant(s) and all adult members of the household aged 18 and over, but there is no restriction on the grant of an adoption order even if there is a relevant conviction. It is possible to envisage, for example, a situation where a parent's partner applies to adopt, and it is the parent who is barred. Refusal of the adoption order would not provide any additional safeguard for the child. **In the case of non-agency adoption we recommend that when an enhanced disclosure is sought there should be eligibility for it to disclose suitability information. However we do not propose that there be any requirement for these groups to apply for ISA registration or be ISA registered.**

[6] See Annex B for an explanation of 'vetting information and suitability information'

9 Childminders

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

85. The consultation noted that those working on the childminding premises and the childminder themselves were already engaged in regulated activity so there is already a requirement that they are ISA registered. Ninety per cent of respondents agreed that it should be possible to check ISA status of those living on childminding premises aged 16 or over, as this would provide reassurance for those parents entrusting the childminder with the care of their children and would mean current safeguards are not diminished. Zero per cent disagreed and 10 per cent were unsure.

86. There was a certain amount of confusion in the responses around how checks on childminders are currently carried out. To clarify, in England registered Childminding is regulated by Ofsted who carry out CRB checks, and checks against the current barred list on the childminder and those aged 16 and above who live or work on the childminding premises as part of the childminder's registration. An individual who is listed on the current barred list or who lives with an individual on the current barred list is disqualified from acting as a registered childminder. In Northern Ireland childminding is currently regulated by the Health and Social Care Trusts who carry out checks through Access NI, for those aged 10 and above who live on the childminder's premises. An additional check with Social Services is carried out by the Trusts.

87. The cost of Enhanced Disclosure checks is currently subsidised by the Department for Children, Schools and Families and makes up part of the childminder's Ofsted registration fee. Some respondents raised concerns about the cost of the ISA registration: in cases where there were a number of people living in the household who needed to be checked, it was thought that the cost could deter and could potentially reduce the number of childminding placements. The Government has no current plans to remove the subsidy of CRB checks, but will review the position when the details underpinning the ISA Scheme are settled.

88. A small number of respondents felt that any child on the premises over 10 years of age should be ISA registered given that they could feasibly cause harm to other children. This is the current practice in Northern Ireland where Access NI checks are currently made of all household members aged 10 and over by Health and Social Care Trusts. It is proposed to carry out a review of this policy as it applies to childminding, fostering and adoption. However, until such time as this has been completed, current practice to check those over age 10 will continue in Northern Ireland. Under the SVG Act and Northern Ireland Order there is no requirement for any individual aged under 16 to be ISA registered before they engage in regulated activity such as teaching children how to read in a playgroup. We do not propose to introduce CRB or ISA

registration requirements with regard to those aged under 16 who live or work on childminding premises in England and Wales. To start to undertake CRB checks on all under 16 year olds living or working in childminder households in England and Wales would in our view be disproportionate to the very small risk that a young person has committed a disqualifiable offence and has unsupervised access to children.

89. **Given the consultation responses we therefore propose that Enhanced Disclosures should be obtained for household members aged 16 or over, given the potential risk to children in those settings; withholding consent would then lead to a childminder's application for registration being refused or cancelled by Ofsted or the Health & Social Services Trust. With regard to childminders in England the childcare regulations would require that those aged 16 and over living on the childminding premises be ISA registered and Enhanced Disclosure checks be obtained. In Northern Ireland, the current practice of conducting checks on those aged over 10 in a childminding, fostering or adoption household will continue and the policy will be subject to review.**

10 ContactPoint

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

90. There were 219 responses to this question: 174 (79 per cent) agreed, 5 (2 per cent) disagreed and 40 (19 per cent) were not sure.

91. ContactPoint is one of the tools that will help frontline services work together more effectively to meet the needs of children, young people and their families. It will hold basic information for all children in England (up until their 18th birthday) including:
    - name
    - address
    - gender
    - date of birth
    - a unique identifying number
    - contact details for their:
        a. parent / carer
        b. school or other educational establishment
        c. GP or other primary medical services provider
        d. other "targeted" service providers
        e. lead professional (if applicable)
    - date of death (if applicable)
    - the name of the local authority that is responsible for the child's record

92. As the SVG Act stands, operators of ContactPoint (data managers, administrators etc.) are engaged in regulated activity. Those who grant an operator access to ContactPoint can register an interest in them and receive updates on their ISA registration status. The consultation proposed that ContactPoint users should also be ISA registered and those that have granted ContactPoint access to that user will receive updates should there be a change in their ISA registration status.

93. ContactPoint users are practitioners such as doctors, social workers or teachers who, because of their role within the organisation, will already be engaged in regulated activity. There may be a small number of users (for example data administrators) who are not practitioners who will nonetheless be required to be ISA registered as a condition of access to ContactPoint.

94. Only 2 per cent of respondents disagreed with our proposal that:
    - a person who has access to ContactPoint will have to be ISA registered
    - those who permit a person to access the database should be eligible to register an interest in the ContactPoint user and make an ISA check on them.

95. The general consensus was that access to ContactPoint data warranted measures to ensure that all users were ISA registered.

96. For these reasons we intend that those with access to ContactPoint, including users, operators or administrators, will be subject to ISA registration in addition to Enhanced Disclosure checks.

11 Controlled Activity

Questions 10 – 13 of the consultation

97. Controlled activity is a distinct category of work with children and/or vulnerable adults and is defined in sections 21 and 22 of the SVG Act and articles 25 and 26 of the SVG Order. Controlled activity is much more limited in its application than regulated activity and applies only in the following sectors – further education, health care, regulated social care and family court proceedings. It applies to activities in these sectors which are not regulated activity but which provide the opportunity for contact with children or vulnerable adults or to access records about children or vulnerable adults. It also includes the day-to-day management or supervision of staff carrying out controlled activity. For an activity to be classed as controlled activity it or its day-to-day management must be carried out frequently or intensively.

98. The key difference between controlled activity and regulated activity is that an employer may employ a barred individual in controlled activity, provided that they put appropriate safeguards in place. The consultation document sought views on a number of points about appropriate safeguards and the process for putting them in place.

Q10: Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity?

99. There was strong support for this proposal, with 92 per cent of respondents agreeing that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity. Three per cent disagreed and the remaining 5 per cent were unsure. The respondents who agreed felt that it was vital to obtain a Disclosure so that the barred individual's suitability for the post could be assessed. A small number of respondents commented that a barred individual should not be employed in controlled activity in any circumstances, regardless of whether an Enhanced Disclosure had been obtained.

Q11: Are there good reasons for employers in controlled activity to have access to Enhanced Disclosures for individuals who are not barred and who are ISA-registered? If so, for what purpose would the information provided on the Disclosure be used?

100. There was general agreement to this proposal. A total of 62 per cent of respondents agreed with the proposal, 19 per cent disagreed and the remaining 19 per cent were unsure. Those who felt that employers should have access to Enhanced Disclosures stated that the information provided on the Disclosure would be relevant to the employment decision for some job roles. Frequently quoted examples of information that would be relevant included financial impropriety, driving convictions

and drugs convictions. Respondents expected the ISA barring threshold to be set at a relatively high level and felt that the employer should be able to judge the risks associated with the lower level information included on the Disclosure. A small number of respondents commented that there was no need for employers to have access to Enhanced Disclosures, as they felt that confirmation of registration with the ISA removes the need for a Disclosure. **We will take account of the responses to this question when considering the extent to which non-barred individuals working in controlled activity should be eligible for Enhanced Disclosures.**

Q12a: Do you agree that employers, before employing a barred person in controlled activity, should be required to conduct, make a record of and retain a copy of a risk assessment?

101. There was strong support for this proposal – 93 per cent of respondents agreed, 2 per cent disagreed and 5 per cent were not sure. Some respondents suggested that standard risk assessment forms should be made available and there was a strong call for guidance to support employers in carrying out the risk assessment. There were some questions about the length of time employers would be able to retain the risk assessment but we can confirm that employers will be able to retain the risk assessment for their own use. Those who disagreed generally opposed the employment of barred individuals in controlled activity in any circumstances.

Q12b: Do you agree that employers, before employing a barred person in controlled activity, should be required to ensure the barred person will be appropriately supervised?

102. There was also strong support for this proposal, with 92 per cent of respondents in agreement. 3 per cent disagreed and 5 per cent were not sure. There was a further call for guidance to support employers in determining appropriate supervision arrangements. Again, those who disagreed generally opposed a barred person being employed in controlled activity in any circumstances. A small number of respondents felt that the need for supervision arrangements should be determined on a case by case basis, in line with the outcome of the employer's risk assessment and the particular job role.

Q12c: Should the employer be required to record these supervision arrangements in the risk assessment?

103. Support for this proposal was very strong – 95 per cent of respondents agreed, 2 per cent disagreed and 3 per cent were not sure. Some respondents again challenged the justification for employing a barred person and suggested that carrying out and recording the risk assessment would place too great a burden on employers.

Q13: Do you agree that the employer should be required by

regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals?

104. There was general support for this proposal – 79 per cent of respondents agreed, 8 per cent disagreed and 13 per cent were not sure. Respondents generally favoured obtaining an Enhanced Disclosure and repeating the risk assessment at either annual or three-year intervals. Some respondents suggested that an annual repeat of the risk assessment would enable the employer to link this into their staff appraisal process, while Enhanced Disclosures could be obtained at three-year intervals in line with current practice in some sectors. Other respondents suggested that the intervals should be left to the employer's discretion. There was some note of the cost implications for employers of obtaining Disclosures at regular intervals.

105. The Government will proceed on the basis of the consultation proposals, taking the responses to questions 10 to 13 into account in developing the regulations and accompanying guidance to employers on employing barred and non-barred individuals in controlled activity. The guidance will cover in more detail the process for carrying out and recording a risk assessment and for putting in place appropriate supervision arrangements. The Government will also ensure that the burdens on employers wishing to employ barred individuals in controlled activity are kept to a minimum. However, given the relatively low number of barred people expected to be working in controlled activity, the burden on employers of meeting the requirements set out in the regulations is not expected to be significant. Wales have consulted separately on proposals for those engaged in controlled activity and will publish the results of the consultation in due course.

12 Phased applications to the scheme

Q14. Do you agree with our proposed phasing principles? Are there particular issues for certain sectors? (paragraphs 7.1 to 7.4)

106. The consultation document set out the following proposed principles that might underlie the detailed arrangements for registering with the scheme a workforce of around 11 million:

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

107. These principles seek to provide a balance between the risk of harm to the vulnerable groups resulting from delayed barring decisions, the management and capacity of the scheme, and the management of the cost of the fee[7] to employers and people who work with children or vulnerable adults. The consultation asked, first, whether respondents agreed with the phasing principles.

108. Some 76 per cent of respondents agreed with the proposed phasing principles, 9 per cent disagreed and 15 per cent were not sure.

109. Of the respondents who gave a reason for disagreeing or being unsure, the main reason was that 5 years seemed to be too long a period in which to phase in the scheme; it was not satisfactory for registered and unregistered people to work together for so long; and there was a danger of people who posed a risk avoiding registration for too long a period of time. A view was expressed that those in controlled activity might pose a greater risk than those in regulated activity, because it will be possible to use barred people in controlled activity, and

[7] For further information on the fee see page 4

their registration should not therefore be deferred until the end of the phasing in period. There were a few calls for particular sectors of the workforce to be given priority on the grounds that the nature of their work exacerbated any risk that employees might pose. We do not agree that workers in certain sectors are inherently riskier than others, as unsuitable individuals could seek to cause harm in any sector. Many respondents hoped for very clear information and guidance about the phasing arrangements.

110. Of the majority of respondents who agreed with the phasing principles, those who made comments thought that the principles were sensible and acknowledged the constraints which prevented the CRB, ANI and the ISA from dealing with 11 million applications in a shorter period of time.

111. We conclude that we should proceed with the phasing principles as set out above. The CRB and ANI will work closely with its network of registered and umbrella bodies on the operation of the phasing principles, testing of the application form and the flow of applications to register with the scheme. In parallel, we will continue to speak to other stakeholders and will issue information and guidance as and when necessary in the run-up to the go-live date and thereafter, so that people will know what is expected of them.

112. There were numerous responses to the second consultation question, which was “Are there particular issues for certain sectors?” Some of these related to section 6 of the consultation document, on applying to the ISA scheme and how the scheme assesses information about the applicant. This response deals with the most significant issues raised which are not covered in other sections of this document.

113. We will provide further information in due course on the registration of school governors.

114. Entrants to higher education training programmes for teaching, medicine and allied professions and social work in autumn 2009 will not be required to register with the ISA in advance. They will have had CRB disclosures earlier in 2009 in respect of training placements that entail contact with the vulnerable groups, and as they will have already started their courses, will be deemed to be members of the existing workforce as of the go-live date. The operation of the phasing principles means that they will not therefore need to register until they take up their first professional post after training. The first cohort of new trainee entrants to register in advance of the course will be those starting their courses after October 2009. In practice therefore the first large group of students to apply for ISA registration will be in autumn 2010.

115. The phasing principles will apply to volunteers in the same way as to the paid employees, the difference being that volunteers will not have to pay the application fee. Applicants who apply for registration as volunteers but are subsequently checked by an employer for paid work

will be required to pay the fee at that stage. We will produce specific guidance on this.

116. The ISA will share information as appropriate with the regulatory bodies such as the General Teaching Councils and the Nursing and Midwifery Council. If a regulatory body de-registers someone, it may be appropriate for the ISA to consider whether a wider bar is appropriate depending on the circumstances. If on the other hand the ISA bars someone who is on a register, the regulatory body will wish to consider them for deregistration – this will not necessarily be a foregone conclusion if the registrant is, for example, a researcher with no access to the vulnerable groups. Registrants will be subject to the same phasing principles as other members of the workforce.

117. Seasonal, temporary staff who carry out regulated activity will need to register with the scheme. Registration will take a week or so and employers may wish to supervise such staff until the CRB Enhanced Disclosure comes through. If, over time, such individuals have already registered with the scheme because of some other, earlier, engagement in regulated activity, the employer will be able to check their status in the scheme quickly and employ them straightaway. If the staff in question are provided by agencies, the agencies will be able to facilitate their registration. In Northern Ireland, the arrangements for employment prior to receipt of an Enhanced Disclosure are being considered.

118. When an individual first applies to register with the scheme, both s/he and the CRB/Access NI registered body will be notified of registration within a week or so. Individuals will be registered with the scheme on the basis of an absence of any immediate reason in centralised police records to bar them. The Enhanced Disclosure will follow with any other local police information: guidance will make clear that the initial registration is made in the absence of that information, and employers will be able to put in place any safeguards they think fit or employ the individual on a temporary basis until the Enhanced Disclosure comes through. If there is any decision to bar, either in advance of or after the Enhanced Disclosure is received, the employer will be notified. The ISA will also notify the employer if it is actively considering an individual for barring.

13 Personnel Suppliers

Question 15: Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational institutions? If not, why?

119. There were 259 responses to this question. Seventy eight per cent agreed with the proposals. Nine per cent disagreed with the proposals and 13 per cent were unsure.

120. The proposals for educational institutions/training providers were welcomed. The consultation proposed that an institution/training provider should be required to check the student is ISA-registered and register an interest in a student before placing them in regulated activity setting, e.g. a trainee teacher getting experience in a school or a social care student gaining experience in a care home.

121. It was noted that the educational institution/training provider could be liable for checking students for up to four years depending on the length of the course. **We agree that an educational institution/training provider should be required to register an interest in the student/trainee for the duration of the student/trainee's course with them. However the educational institution/training provider should deregister their interest once the student/trainee has left the institution/provider.** The effect of this would be that educational institutions/training providers which place students in regulated activity (such as nurses on work placements in the NHS, or teachers to schools) should be required to check that the student is ISA registered. The employer would then be able to rely on the written confirmation of the education institution or training provider. This would have the advantage that where a student is placed in a number of different work placements, it would mean a single check by the education institution/training provider, at the beginning of the course, rather than repeated checks by various employers. (See also paragraph 114 on phasing proposals for students/trainees.)

122. The consultation proposed that regulations be amended so that where an Enhanced Disclosure has been carried out by an education institution/training provider as part of initial teacher training a school which goes on to employ the teacher will not, where there is "continuity of employment", be required to obtain an additional Enhanced Disclosure in addition to checking that the teacher is ISA-registered and registering their own interest in the individual. Respondents requested clarification as to whether the three month continuity of employment would apply where a student has been on placement in the employing school in the three months prior, or if it would also apply where there is continuity of employment if a student has been on placement in any school, and has been appointed to a post in a different one. **Our proposal is that even if the student/trainee goes on to be employed by a different school, that school should not be required to carry out an additional**

CRB/ANI check where the student's placement finishes and they start work the following term. **We further propose to look at the 'continuity of employment' 3 month rule in the light of students whose jobs start in September but whose course finished in May[8]. This proposal relates to England only. With the implementation of the Safeguarding Vulnerable Groups (NI) Order and the establishment of Access NI, the Department of Education will review existing policies for requesting criminal record disclosures on those working in the education sector in Northern Ireland.**

123. Where concerns were raised these were in relation to proposals for 'employment agencies' and the transfer of responsibility from the employment agency to the employer for checking that an employee is ISA registered. Some respondents considered that it was not unreasonable to expect the agency to take responsibility for ensuring that the staff they supplied were suitable to work in regulated activity. Other respondents were concerned that employment agencies are not required by the SVG Act/Order to verify that an individual is ISA registered before supplying them to regulated activity. Conversely others felt that expecting an employment agency to check whether an individual is registered where the contract would be with the employer was unreasonable.

124. To clarify, an 'employment agency' is defined as the business of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. In broad terms, an employment agency introduces workers to client employers for direct employment by those employers. In practice this means that an employment agency is an agency that introduces an individual to an employer and, once the employer has taken on that individual, then ceases to have any contractual relationship with them. Under the employment agency arrangement the individual's contract is with the employer and not with the agency. An employment agency will commit an offence if they supply an individual they know to be barred or not ISA registered to regulated activity: therefore they will only be able to supply suitable individuals.

125. If the employer/hirer decides that they do not wish to make their own check on an individual they use frequently or intensively, they can choose to rely on written confirmation from the agency that the agency has carried out their own check and registered an interest in the individual so that they can tell the hirer if the ISA registration status changes. There were concerns raised that the passing of responsibility for checking from an employment agency to the employer could result in duplication or failure of both parties to act. **We agree that contracts**

[8] An ITT student deregisters from the course on the date the course officially finishes. Institutions have different start and finish dates. Course finish dates are generally between May and July but courses mostly finish in June. Although teachers' contracts mostly start on 1 September some (a few) will start in August.

must ensure that both parties are aware of where checks are being made and where the accountability lies, and we will make this clear in guidance. It would seem a sensible approach that if an employer/hirer is relying on written confirmation, then the contract with the agency ensures that the agency has verified the ISA registration of those it supplies to regulated activity and has registered its interest in the individual, and specifies whether the cost of the checks is included within the tender/contract price**.**

126. Some respondents said that to avoid confusion the same requirements should apply to employment businesses and employment agencies. However, we do not agree that it is proportionate to put an ongoing requirement on employment agencies to have a continuing interest registered in an individual for more than 3 months after they have supplied them to the hirer (the Conduct of Employment Agencies and Employment Businesses Regulations requires employment agencies to inform the hirer of any information it obtains or receives that suggests a work-seeker is or may not be suitable for a period of 3 months from the introduction of the worker)[9]. This is because employment agencies do not have an ongoing relationship with the individual, as the employer rather than the agency makes payment and the agency may have nothing further to do with the individual. Therefore if an employer is using an individual for three months or more they are required to carry out their own check of ISA-registration. This will be relatively straightforward, as the individual will already have been ISA registered and checked by the agency prior to being supplied into regulated activity. Therefore an employer/hirer could make the free online check to verify that the individual is registered and register their own interest in the individual so that they are made aware if the individual's ISA registration status changes.

127. In the case of employment businesses, an employment business engages workers under either a contract for services or a contract of employment, and supplies those workers to client hirers for temporary assignments or contracts where the workers will be under the hirers' supervision or control. This covers the hiring out of workers on a temporary basis. In practice this means that an employment business will place an individual with an employer to work but the individual's contractual arrangement remains with the employment business and the employment business is responsible for paying them. As they have an ongoing relationship with the individual it is reasonable and proportionate that they remain registered in relation to the individual.

128. **The consultation document proposed that in the majority of cases an employment business will be required to obtain an Enhanced Disclosure on an individual on the same basis as the**

[9] The 3 months is calculated from the date of introduction of the work-seeker by an agency to a hirer. So, if the agency introduces the work-seeker on 1 May, then this obligation lasts till 1 August. In the example above, if the worker's employment ceased on 1 June, and then the agency introduced them again on 1 July, a new 3 month period would start then.

requirement would apply to other employers. An employment business will not be required to obtain a new Disclosure every time it supplies an individual to a new employer, so long as an Enhanced Disclosure had been obtained within a prescribed period of time. **We proposed that where there is a pre-existing requirement for a Disclosure, the time period for getting a new Disclosure should be three years. This fits with guidance for employment businesses in the education sector to obtain new CRB Enhanced Disclosures triennially.** Where respondents disagreed they felt that three years was too long between carrying out repeat CRB/ANI checks as there may be new information on an individual in the meantime. However, given that new relevant information relating to risk of harm to children and/or vulnerable adults will be assessed by the ISA and the employment business will be registered to be notified of changes to ISA registration status it does not seem appropriate to require employment businesses to carry out CRB/ANI checks on a more frequent basis.

14 CRB/ANI Enhanced Disclosures

Question 16: Do you agree with our proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA scheme?

129. The majority of respondents, 78 per cent, agreed with proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements to obtain Enhanced Disclosures as part of the ISA scheme. Eleven per cent indicated that they disagreed with the proposal and 11 per cent indicated that they were unsure.

130. There was a mix of comments on the issue of requesting Enhanced Disclosures in addition to ISA registration status. One school of thought deemed it essential that Enhanced Disclosures were sought, believing that ISA registration provided insufficient information to judge a person's suitability. Others considered it inappropriate to continue to obtain Enhanced Disclosures, stating that the continuous monitoring aspect of the ISA scheme should remove the need for employers to continue to request Enhanced Disclosures. It was highlighted that administrative burdens should be kept in check so long as protection is not compromised and that continuous monitoring should obviate any need for repeat checks at three or five year intervals. Others felt that the existing statutory requirements should be kept in place until the impact of the ISA Scheme can be seen/reviewed effectively, particularly given a five-year phasing period.

131. **In the light of the responses to the consultation we propose not to add any further requirements for Enhanced Disclosures as part of the ISA scheme. Generally the approach will be to retain the existing statutory requirements for Enhanced Disclosures, apart from the modification in relation to student teachers moving directly into teaching posts (see section on personnel suppliers). We will review the use of Enhanced Disclosures once ISA roll out is complete.**

132. Some respondents found the area surrounding the need for Enhanced Disclosures confusing and said that simple guidance was needed. The guidance, it was felt, should clearly outline when ISA registration was required and when Enhanced Disclosures are required in addition to ISA registration. Respondents' comments indicated that there needed to be more communication, which explains how the application for ISA registration fits with the Enhanced Disclosure process. Guidance was also needed so that employers and others understand the role of the ISA and what ISA barring means. It was stressed that ISA registration and the checking of ISA registration needs to be put in the context of safer recruitment practices more widely.

133. Respondents further stressed that a clear message was essential as many could view the introduction of the ISA scheme as a replacement for

Enhanced Disclosures checks, resulting in Disclosures not being carried out. Conversely, it was noted that there would also be occasions where Enhanced Disclosures were obtained unnecessarily where employers were unsure of their statutory obligations.

134. Many felt it vital that staff were able to take up employment as quickly as possible, and the ability to commence work following an online check to verify ISA registration was essential. This was also felt to be important in relation to volunteers, where volunteers are lost if they cannot take up their volunteering in a timely manner. **For this reason we confirm that under the SVG Act/Order a person will be able to engage in regulated activity once they are ISA-registered and prior to the Enhanced Disclosure being received**. So for example an individual who is ISA registered and wanted to volunteer to help at the local Sunday school could be used, without an Enhanced Disclosure being received, once the church leader verified them to be ISA registered. In education, an individual who is new to the workforce will be able to start work after a check has been made of their ISA registration and an Enhanced Disclosure has been applied for but prior to the Enhanced Disclosure being received by the employer[10]. Other employers who are not required by law to carry out Enhanced Disclosure checks prior to appointment may also wish to have an individual in post prior to an Enhanced Disclosure being received. Employers who need the information in the Enhanced Disclosure to assess suitability for a particular role (e.g. driving convictions for an employee who takes children out on day trips) may wish to put extra supervision or other safeguards in place until the Enhanced Disclosure is received and the information in it can be assessed.

135. **We will clarify in communications and guidance that for areas where both ISA registration and an Enhanced Disclosure are mandatory, both should be issued via an Enhanced Disclosure, under one fee (£64 in England and Wales or £58 in Northern Ireland). We will make clearer in communications the purpose of checking ISA registration status and of carrying out Enhanced Disclosure checks so that employers and applicants understand what information they are getting from each.**

[10] In England this will be achieved by amending the requirements in the school staffing regulations. Wales and Northern Ireland will be reviewing their own requirements.

15 The 'harm test'

Question 17: Should anything be added to our proposed understanding of harm?

136. Responses to this question were split, suggesting that further modifications may be needed in order to develop an appropriate understanding of harm insofar as it relates to the ISA scheme.

137. Forty four per cent of respondents agreed that we did not need to add to the proposed meaning of harm, whilst 41 per cent believed that the current explanation was not sufficient. The remainder were unsure on this issue.

138. Whilst a whole range of suggested additions were mooted, neglect was certainly the most frequent. Our and the ISA's intention has always been that the ISA would view neglect as a cause of harm.

139. As was highlighted in the responses, there are many Acts of Parliament and pieces of guidance which conceptualise harm in different ways. Some notable examples include the *Children Act 1989*, *No Secrets* and the *Mental Capacity Act and the Children (Northern Ireland) Order 1995.* However these various views on harm mean that any attempt to marry them all into one definition would be problematic.

140. Therefore, the intention is that our interpretation will build on the work done by these other pieces of legislation and guidance and develop a broad but specific understanding of harm.

141. As with frequency, **we will address the issue of harm through guidance and explain the meaning of harm as clearly as possible.** This will incorporate, but not be limited to, the definition proposed in the consultation. In addition **we will ensure the guidance takes appropriate account of neglect, financial harm, abuse of power/trust and behaviour relating to grooming.** The guidance will not be limited to this and we will continue to take advice on the most appropriate way in which to help those who will need to work with the ISA to understand this important term.

16 Referring Information to the ISA

Q18. Do you agree that the list at Annex G (of the consultation document) will capture all the information that the ISA would require to make barring decisions?

142. There were 260 responses to this question. Seventy three per cent of the respondents agreed that this list was sufficient. Eight per cent disagreed whilst the remaining 19 per cent were unsure.

143. It is perhaps useful to first re-iterate some of the key principles of the duties to make referrals that are incumbent on those who provide regulated and controlled activity as part of the ISA scheme.

Duty on regulated/controlled activity provider to refer

144. A referral **must** be made by a regulated/controlled activity provider if a person is removed from regulated/controlled activity, or would have been removed had they not left voluntarily because they harmed or posed a risk of harm to children or vulnerable adults (see section 15 for further information on 'harm'). When this duty applies, the person or organisation making the referral **must** provide all the information it has from the list that will be prescribed. This list is the subject of the current question. It comprises some items of information to establish the identity of the individual, and some items of information about the conduct or allegation that has led to the referral.

145. It is important to note that there are **no specific duties under this legislation to seek or obtain any further information beyond that which the organisation already holds.** The express intention here is to minimise administrative burdens on those who are required to make referrals. The consequence of this is that the referrer needs to provide the fullest level of information from the prescribed list of contents of referrals, but there is no requirement to refer information which the referrer does not hold.

146. A regulated/controlled activity provider also **must** provide specific information when requested to do so by the ISA. Again, the requirement is to provide as much information as held from the prescribed list of contents.

147. So the lists under discussion here relate explicitly to the fullest range of information that must be referred when the duty applies.

Responses to the consultation proposals

148. The majority of respondents (73 per cent) felt that the lists of contents of referrals were sufficient and would cover a range of information held at a local level for the ISA to inform their suitability assessments. Several

comments suggested that the proposed lists strike an appropriate balance between the need to develop appropriate safeguards without over-burdening the system.

149. Whilst many respondents were in agreement with the proposed list of contents, a significant number were unsure about the range of information provided. In general, respondents wanted to add information items to the list rather than overhaul the list proposed. These contributions have proven extremely useful and have highlighted information that will be of potential relevance to the ISA that might otherwise not have been included. As the list specifies the fullest range of information and referrers need only provide as much as they hold, it seems sensible to ensure a wide range of information is included, even if it is unlikely that many referrers will have access to some pieces of information.

150. Some information suggested in responses to the consultation will already be provided to the ISA under the legislation. For example, all information held by the police about a scheme member, and deemed relevant by the local chief constable, will be available to the ISA. This includes locally held 'soft intelligence' (i.e. information that did not necessarily lead to caution or conviction). However, it is useful to re-iterate and understand that the intention is indeed that the ISA has access to any information, regardless of the source, that will aid its decision-making process.

151. Other information that would be helpful for the ISA, as suggested by respondents include:

- Witness statements
- Any written response to the allegation
- Details of any other known employment
- Details of previous allegations and the outcome
- Minutes of child protection strategy meetings

152. It is clearly important to the ISA's decision making that they have access to these types of information. **Therefore, as we draft the regulations in relation to the referrals process, we will ensure that the requirement is sufficient to catch all this information**

153. Clearly in any questions regarding the making of referrals to the ISA, people need to understand the process involved. Respondents commented that at this stage, it was not entirely clear how the mechanics of making referrals would work and that guidance in this area would be very welcome.

154. As referrals will come through a range of organisations, some of whom will be dealing with the same case, this process will need to be made clear so as to avoid unnecessary and unwieldy duplication of work. Whilst the ISA will need to ensure it receives the full range of available

information, it does not wish to over-burden the system. **We will work with interested parties, including local authorities, the police, regulatory bodies and employers groups to issue guidance and develop a process which is clear, transparent and user-friendly.**

155. We intend to develop a standard, downloadable pro-forma, available from the ISA website that will detail the range of information that must be referred if held.

17 ISA consideration: notification of employer

Question 19a): At what stage in the ISA's consideration do you believe employers should be notified?

156. The consultation document said that we believe it is important that the ISA can notify employers as soon as they establish that the person poses a risk of harm.

157. Responses reflected a range of perspectives, from immediate notification of the employer as soon as the ISA receives a referral from an employer or other source, or notice that a scheme member has committed an offence, to notification when the ISA has formed an initial view of the information, or has assembled evidence and decided that there is a substantive case, or has formed a view that the person poses a risk, or has actually barred the person. Roughly speaking, about 30 respondents thought that employers should be informed immediately a referral is made to the ISA or as soon as possible thereafter; around 50 thought notification should take place at a point on the spectrum between the ISA finding that the referral required investigation and finding that there is a substantive case against the person; and 20 thought notification should take place at the point the ISA is minded to bar and seeks representations or the point at which the bar is actually applied.

158. The grounds for early notification are to enable the employer to carry out a risk assessment and put appropriate safeguards in place without delay. It was also suggested that an employer without previous knowledge of the referral might be able to help the ISA by offering new information. However it was noted that the subject of a referral might actually be innocent of the allegation and that employer and employee could be subjected to unnecessary inconvenience and distress if an unfounded referral were to be given credence and made available to the employer. Indeed it is possible that an allegation is not only unfounded but malicious, in which case it need not be notified to the employer at all. Another potential difficulty is that if the ISA has not had time to clarify the substance of an allegation before releasing it to an employer, the employer will not necessarily know how best to assess risk and put safeguards in place.

159. Grounds for suggesting later notification, at minded to bar or barring stage, were essentially that that would strike a balance between the rights of the individual and the risk to the vulnerable groups; or that an employer would not be able to do much with the information that an individual was under consideration. Some of the responses recognised the difficulty of sustaining this position if the facts of an allegation were known to the ISA but not the employer for a period of time before the barring decision was made.

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

160. Responses again reflected a range of views, and may be broken down in broad terms into

- 15 or so who said that all available information or as much information as possible should be passed to employers;

- 40 who used language such as brief details, brief indications, basic facts, reasons for and nature of the cause for concern, the category of abuse or harm, the nature of the allegation, or sufficient information to enable the employer to carry out a risk assessment;

- 25 who said that a bare minimum of information should be passed to employers, such as that the individual is under consideration for one or other of the barred lists;

- 12 who said that only the information that an individual is barred should be passed to the employer, consistent with their responses to question 19a) that information should only be transferred at that stage;

161. Responses to question 19b) were broadly consistent with responses to question 19a), insofar as some respondents who were concerned to receive as much information as possible as quickly as possible or as little as possible as late as possible – that the person is barred, at the point of barring. A handful of respondents made the point that it is difficult to be too prescriptive about these matters, and that employers should be told what they need to know, when they need to know it, depending on the circumstances.

162. **Bearing in mind the responses to questions 19a) and 19b), we propose that an employer should be informed that an individual is under consideration at the point where the ISA has satisfied itself that the conduct or allegation is both sufficiently serious for a barring decision, and that it is not clearly unfounded or malicious.** The ISA should be able to reach a view quickly on these matters, so this point may occur before the ISA is ready to take its barring decision. Employers should then be able to seek any necessary further information that the ISA considers relevant for the purpose of assessing the risk of harm posed by the individual to the vulnerable groups, in order to decide what safeguards to put in place. Employers will be placed under a requirement not to pass this information on to a third party. The exception will be personnel suppliers who must pass the information on to those to whom the employer has been supplied, so that the hirer knows what safeguards to put in place.

Annex A - list of consultation questions and responses

ISA scheme consultation question	Response to question asking respondents to indicate yes, no, not sure to question
1) Do you agree with the proposals for refining the definition of **vulnerable adults**?	69% yes 16% no 15% not sure
2) Are you content with our proposed understanding of frequently?	70% yes 17% no 13% not sure
3) Are there situations other than those described in paragraphs 3.8-3.12 where children are '**merely incidental'** to the provision of regulated activity to adults?	30% yes 25% no 45% not sure
4) Do you agree with our proposals to include and exclude those forms of **transport** specified in paragraphs 3.24-3.25 as regulated activity?	73% yes 12% no 15% not sure
5) Do you agree **Children's Centres** should be classed as establishments under the SVG Act in the same way as schools? Are there any other settings that should be covered?	92% yes 0% no 8% not sure
6) Do you agree that **endorsing organisations** should be able to check ISA status of the groups specified in paragraphs 4.2-4.11?	92% yes 1% no 7% not sure
7) Do you agree that **adoption agencies** should be able to check ISA status on the groups set out in paragraphs 4.12-4.17?	88% yes 0% no 12% not sure
8) Do you agree that it should be possible to check ISA status on the groups set out in paragraphs 4.18-4.21? (**childminders and their households**)	90% yes 0% no 10% not sure
9) Are you content with our proposals relating to **ContactPoint** in paragraph 4.25?	79% yes 2% no

	19% not sure
10) Do you agree that employers should be required to obtain an ED before employing a **barred** individual in **controlled activity**?	92% yes 3% no 5% not sure
11) Are there good reasons for employers in **controlled activity** to have **access to EDs** for individuals who are not barred and who are ISA-registered? IF so, for what purpose would the information on the Disclosure be used?	62% yes 19% no 19% not sure
12a) Do you agree that employers, before employing a **barred person in controlled activity**, should be required to conduct, make a record of and retain a copy of a risk assessment?	93% yes 2% no 5% not sure
12b) Do you agree that employers employing a **barred person in controlled activity**, should be required to ensure that the person will be appropriately supervised?	92% yes 3% no 5% not sure
12c) Should the employer be required to **record the supervision arrangements** in the risk assessment?	95% yes 2% no 3% not sure
13) B**arred person in controlled activity:** Do you agree that the employer should be required by regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals? If so how frequently should it be repeated?	79% yes 8% no 13% not sure
14) Do you agree with our proposed **phasing** principles? Are there particular issues for certain sectors?	76% Yes 9% no 15% not sure
15) Do you agree with the proposals regarding the **checking arrangements for personnel suppliers** including educational establishments?	78% yes 9% no 13% not sure
16)Do you agree with our proposals to retain **existing statutory requirements for Enhanced Disclosures** and not add any further requirements as part of the ISA scheme?	78% yes 11% no 11% not sure

17) Should anything be added to our proposed understanding of harm?	44% yes 41% no 15% not sure
18) Do you agree that the list at Annex G will capture all the information that the ISA would require to make **barring decisions**?	73% yes 8% no 19% not sure
19a) At what stage in the ISA's consideration process do you believe ISA should notify employers that is **considering barring**?	Free form comments
19b) What **information to employers** should the ISA pass on at this stage?	Free form comments

Annex B - Areas where respondents have asked for further clarification

Frequency (see page 9)

We propose to issue specific guidance in relation to the meaning of frequency. This guidance will include;

- Our intended definition of frequently (i.e. once a month or more)
- Examples of frequency in application
- What employers should do if they are unsure about the frequency of a person's contact with vulnerable groups.

By defining the term through guidance we will make clear our intention to those using the guidance. This will enable the courts to use their discretion where they believe a person is malevolently trying to avoid the system.

Harm (see page 41)

As with frequency, **we will address the issue of harm through guidance and provide as clear as possible an explanation of our meaning.** This will incorporate, but not be limited to, the definition proposed in the consultation. In addition **we will ensure the guidance takes appropriate account of neglect, financial harm, abuse of power/trust and behaviour relating to grooming.** The guidance will not be limited to this and we will continue to take advice on the most appropriate way in which to help those who will need to work with the ISA to understand this important term.

Merely Incidental (see page 11)

We shall provide, in consultation with stakeholders, guidance with case studies on the application of merely incidental.

The meaning of 'vetting information' and 'suitability information'

'Vetting information' is whether an individual is ISA-registered (and therefore not barred as a risk of harm) with regard to regulated activity relating to children and/or vulnerable adults. Individuals who are eligible to receive vetting information can register an interest to be notified if the individual's ISA status changes, for example because they have been barred by the ISA or have voluntarily decided to remove themselves from the scheme. Those registered will also be told if the individual is under active consideration by the ISA for barring.

Once the ISA scheme has been implemented the Enhanced Disclosure will include '**suitability information'** where appropriate, along with the criminal

history. Suitability information relating to children/vulnerable adults is

a) whether the applicant is barred from regulated activity related to children/vulnerable adults

b) if barred details as to the circumstances in which he became barred (intended to be a broad category for bar e.g. Financial abuse)

c) whether the applicant is ISA-registered in relation to children/vulnerable adults

d) whether the ISA is considering whether to consider to include the individual on the children's barred list

Registration and employer issues

We shall stress in guidance that employers should make clear in recruitment literature and in employment contracts that where a job is in regulated activity, registration with the ISA is compulsory.

Referrals (see page 42)

Other information, in addition to that which we listed, that would be helpful for the ISA, as suggested by respondents include;

- Witness statements
- The person's response to the allegation
- Details of any other known employment
- Details of previous allegations and the outcome
- Minutes of child protection strategy meetings

It is clearly important to the ISA's decision making that they have access to these types of information. **Therefore, as we draft the regulations in relation to the referrals process, we will ensure that the requirement is sufficient to catch all this information**

As referrals will come through a range of organisations, some of whom will be dealing with the same case, this process will need to be made clear so as to avoid unnecessary and unwieldy duplication of work. Whilst the ISA will need to ensure it receives the full range of available information, it does not wish to over-burden the system. **We will work with interested parties, including local authorities, the police, regulatory bodies and employers groups to issue guidance and develop a process which is transparent and user-friendly.**

Sector specific guidance

We will be working over the coming months with stakeholders to develop

sector specific guidance. The following issues were raised in response to the consultation proposals and we will take these into account when writing the guidance.

FE

Respondents require more information and guidance about regulated and controlled activity in further education. We will consider this further in conjunction with the relevant stakeholders and produce appropriate sector specific guidance.

Adoption Agencies

Guidance should make clear that adoption agencies do not have a legitimate interest in the individual and adult household members once the adoption order has been finalised and that they should then deregister their interest for the purposes of that adoption

Office Holder (including school governors)

We will be producing further information on in due course on the registration of school governors. We will also be talking to relevant stakeholders about the ISA registration of other office holders listed in the SVG Act/Order for example Director of Children's Services and trustees of vulnerable children and adult charities.

Domestic Employment

Some respondents asked for information on domestic employment. To clarify individuals are not required to register with the ISA where they are employed by parents to work with their children. This includes people such as such as babysitters, private coaches, or private tutors. We agree with respondents who highlighted that communications will need to make the general public, particularly parents, aware that they can make checks on individuals they choose to work with their children.

Conversely some felt that private tutors and others who had worked with children for a number of years would feel unsettled by parents enquiring whether they were ISA registered. It is important that communications make clear that just because a person is not ISA-registered it does not mean they are on the barred list. This is particularly true in the first few years of roll-out where it is likely to mean they have not applied to register with the ISA scheme. This could be because they are not required to or they have chosen not to, or not to do so yet.

It should, however, be noted that these individuals are engaged in regulated activity where they work with children regardless of whether or not they have to register, or choose to register with the ISA. Any individual who is on the barred list will commit an offence should they seek to work as a babysitter, private coach, or private tutor with children or vulnerable adults

ISA Application Process for self-employed and freelancers

Some respondents asked for information on how application process would work for the self-employed and freelancers. The following is intended to clarify the process.

When the ISA scheme has been implemented the private tutor, sports coach or other self-employed or freelance individual will be able to apply with the help of an endorsing organisation (see page 20 for endorsing body proposals) or apply direct through a CRB/ANI umbrella body. For example a piano tutor or football coach may go to an endorsing organisation such as the Musicians' Union or the Football Association who have arrangements in place with a CRB/ANI umbrella body to carry out CRB/ANI checks for their members. Once the ISA scheme has been implemented these bodies will also be able to handle applications to apply for ISA registration, either as a stand alone application for ISA registration or as part of an application for an Enhanced Disclosure check.

If an individual does not have an endorsing body or a RAP they will still be able to go direct to an umbrella body to process their application to register with the ISA. To accommodate this, the umbrella body database, on the CRB website, will be amended to allow searches that will identify which umbrella bodies will process these types of applications. The Access Northern Ireland website also provides details of umbrella bodies. Once they are ISA registered they will be able to provide that additional assurance to parents. Domestic employers such as parents are not eligible to receive 'suitability information' or Enhanced Disclosures. However parents and those with parental responsibility will be eligible to receive 'vetting information' on those they engage to work with their children. They will need the individual's consent and they will then be able to check online to confirm the individual is ISA-registered and relevant information on them has been assessed by the ISA.

Does this replace the CRB/ANI check?

A number of the respondents asked whether the ISA scheme replaces the need to carry out CRB/ANI checks. To clarify checking an individual is ISA registered is a mandatory check to improve safeguarding systems. It is not intended to be, nor can it be, a replacement for safe recruitment practice such as checking references and unexplained gaps in employment history. .

For these reasons an employer or a manager of volunteers might wish to carry out CRB/ANI checks on some employees whom by law they can check, where information not necessarily conveying a direct risk of harm (e.g a driving conviction) is relevant to their specific post; and will have to carry out CRB/ANI checks where the law requires it; e.g. in staffing regulations for education, or under the Care Standards Act for care workers.

However, at the same time

- the ISA will be an expert panel who take decisions to filter out those who pose a risk of harm, based on information held;
- ISA registration means that ISA has checked any record which an individual has, and checked any relevant offences;
- so, for a post where risk of harm is the only issue, and you do not have to do a CRB/ANI check, you might decide that ISA registration is enough, and you do not want a CRB/ANI check.
- Equally for people who choose to carry out repeat Enhanced Disclosures checks on a annual basis or every three years they will need to take a view on the basis of the specific job about whether information beyond risk of harm which may appear in the Disclosure is enough of a reason to continue with such checks.

We will continue to work with stakeholders on making clearer when ISA registration is required and when Enhanced Disclosures are required in addition to ISA registration. Respondents' comments indicated that there needed to be more communication, which explains how the application for ISA registration fits with the Enhanced Disclosure process and guidance to help employers and others understand the role of the ISA and what ISA barring means.