



Briefing for Third Reading of the Protection of Freedoms Bill

Changes to the Vetting and Disclosure System

We are a diverse group of organisations united by a belief in the importance of keeping children safe and keen to work with UK Government to ensure that the reforms to vetting and disclosure scheme strike the right balance to effectively protect children and vulnerable adults.

We welcome the Government's commitment to protecting children and vulnerable adults which should be the primary justification for decisions about vetting and disclosure arrangements. It is important that such arrangements prevent unsuitable people from gaining positions of trust that would expose children and vulnerable adults to an unacceptable level of risk.

Overall, we welcome Government's reforms of the vetting and barring and Criminal Record Bureau (CRB) disclosure arrangements which are contained in the Protection of Freedom's Bill. In the main, these create a simpler and streamlined vetting and disclosure system which still maintains many important safeguards. We particularly welcome the introduction of portable CRB checks which will make it easier for employees and volunteers to move between positions. However, there are some details of the scheme which we believe require further consideration to ensure it is as robust and effective as possible:

Definition of Regulated Activity

Clause 63 of the Protection of Freedoms Bill revises the definition of regulated activity which includes all the positions covered by vetting and barring arrangements. If positions are not included in regulated activity employers will not have to check people who work in these roles and even if they do, they will not be told if the individual is barred from working with children or vulnerable adults.

We are concerned that the proposed definition of regulated activity does not cover some groups of people who have frequent and close contact with children. This creates risks for children. Those who seek to harm children can be predatory and manipulative. If certain types of work are exempt from vetting and barring, in some sectors or settings, but not in others, dangerous adults are likely to target those organisations with weaker arrangements.

We welcomed the Government's decision during Committee stage to remove the proposed exemption for people working with 16 and 17 year olds. This means that these young people are now properly protected by the vetting and disclosure arrangements.

Our key outstanding concern is about the exclusion of supervised work from regulated activity: The Bill exempts many positions from regulated activity simply by virtue of them being under 'regular day to day supervision'¹. However supervised employees and volunteers are still able to

¹ Amendments made in Clause 63 of the Bill provide that regulated activity relating to children no longer includes any supervised teaching, training or instruction of children or the provision of care or supervision of children by a person who is being supervised by another. The only exceptions to this are

develop relationships with children which could be exploited. For example, a volunteer teaching assistant in a classroom of 30 children, with only light-touch supervision by the classroom teacher, has plenty of opportunity to develop inappropriate relationships and groom children.

The definition of 'regular day to day supervision' is not sufficient because it could be understood to include individuals who have a 'supervisor' on site, but who are able to work with groups of children on their own for significant period of time, with no one directly supervising their work. We believe these people should be included in Regulated Activity.

Whilst we welcome the Government's intention to issue guidance on this matter, we believe the Bill should be amended to be clear that only people who are under close supervision for the majority of the time will be exempt from regulated activity. Supervision should be close enough to ensure that the supervisor is aware of what the individual is doing and can intervene if behaviour is inappropriate. It is also important that there are not significant periods of time in which the individual is left alone with children when they might cause them harm.

Inclusion on Barring Lists

The Government's reforms of the barring system mean that people will only be placed on the barring list if the ISA has reason to believe that they are, have been, or might in the future work in regulated activity. We believe if adults are convicted of an offence that is sufficient for bar, then there is no reason why they should not be automatically placed on the barring list, as presently happens. It seems unnecessary for the ISA to have to spend time considering whether an individual might work in Regulated Activity. An online survey conducted by Fairplay for Children, found that 96.6% of respondents felt that adults convicted of offences against children should be placed on the barring list as soon as they are convicted².

It is important that any information about an individual held by the ISA is not lost, even if that individual cannot be included on the barring list. Our organisations would like to see clear processes and protocols for the retention of information and concerns about individuals who are referred to the ISA but not investigated because there is no reason to believe that they might work in Regulated Activity. It is important that this intelligence is retained and passed to the police so that any risk that the individual may pose is dealt with, and can be reflected in any disclosures in the future.

Information on CRB Certificates

Under the Government's proposals, if employers choose to perform a CRB check on someone working with children, but outside of regulated activity, they will not be able to see if that person is barred. For this reason, it is very important that all positions where people have close and frequent contact with children are included within regulated activity.

We are aware that there are cases where people are barred, without the police knowing that they pose a risk to children. Roger Singleton, Chair of the Independent Safeguarding Authority (ISA) has

certain types of personal care or health care provided to children, or where activities are carried out by a **paid** person in a specified place such as a school, childcare setting, children's home or children's centre.

² This survey asks the question "Should adults convicted of offences against children;" a) Be placed on the List barring them from working with children as soon as convicted as at present?; b) Only be placed on the barring List if they apply to work or volunteer with children, as the Government proposes?; or c) Not be placed on the barring List at all?. To date there have been 446 responses to the survey,

estimated that one in five people who are barred by the ISA have “not been near the police”.³ In these cases, the police will not be able to manage the risk that these individuals may pose to children or reveal this risk on CRB disclosures.

For this reason, it is very important that there is improved transfer of information between the ISA (and its successor) and the police. We welcome the Government amendment to the Bill which will facilitate the flow of information between the ISA, and police, prison and probation services. It will be important that the new powers and duties created by the Bill are used effectively. In Northern Ireland the ISA also has the power to pass information to social services and we would welcome if such powers were also included in this Bill.

It is also important that employers are encouraged to share concerns that they have about an individual with the police as well as the ISA. The Government have recognised this, and we call on them to ensure this message is effectively communicated to employers alongside other information about the implementation of the new arrangements.

Continuous Updating

We welcome the introduction of portability for CRB checks which should substantially reduce bureaucracy and delays for people starting work or moving between positions. It would be useful to have more clarity about how the proposed continuous updating of CRB checks will work in practice. We urge Government to ensure that the scheme is as simple as possible, and to reduce the risks that employers might be presented with incomplete, out of date or unsuitable information.

The Government have explained that when the new scheme is introduced, individuals will receive a copy of their own CRB disclosure certificate. They will be able to show this to employers, who will be able to check online to ensure that it is valid and up to date. As we understand it, there will be a cost for the disclosure and a separate cost and ongoing subscription to enable employers to check whether the disclosure is up to date and valid.

There is a risk that this may create a ‘two tier’ system, whereby some individuals who pay the ongoing subscription have disclosures that can be validated and continuously updated but others do not, particularly if volunteers can get their checks for free but have to pay for updating (as discussed below). We therefore believe that Government should encourage all individuals to opt into the ongoing subscription scheme, perhaps by making this a default option when people apply for disclosures.

The Government has also confirmed that enhanced CRB disclosures will be tailored for work with adults; work with children or both and will only be portable between positions in the same category. This also introduces some complexity into the scheme. For example, a person who works in a care home with adults may find that their CRB disclosure is not suitable when they apply to volunteer with children. Again, it would be better if everyone could have CRB certificates that reveal their suitability for both work with adults and children. This would reduce the risk that individuals end up with disclosures that are only partly portable or that employers receive a CRB disclosure that is not fit for purpose.

³ Evidence given to the Protection of Freedoms Bill Committee, 21st March 2011. This includes people barred for working with children and vulnerable adults.

In Committee, the Minister stated that individuals would have to apply separately for barring information and for CRB disclosures, and pay for both.

"...there are two systems, but they are completely different. The first system provides updates on the barred register; the other system, which is completely separate, is the CRB updating system under clause 80. I want to make it clear that the two systems are separate" "An employer who wants to register for updates on barring will pay one fee, and the fee for the updating service on the CRB system will be separate."⁴

This seems to run counter to the Government's aim of streamlining the vetting and disclosure systems. We believe Government should join the barring and disclosure schemes up for users so that if employers recruit someone into regulated activity they pay one fee to get all the disclosures and barring information they need.

Costs

The Minister has explained that initial disclosures will be free for volunteers but that they may have to pay for the online checking/updating service. This is still to be confirmed⁵. We believe that all aspects of system should be free for volunteers, in line with the Government's commitment to remove any burdens for volunteers.

If volunteers have to pay for the updating service, but not for new checks, they may not subscribe to the updating service. This would again create a two tier system, where some people have portable checks which can be reviewed quickly but others need new certificates when they start a new position. As outlined above, this would negate some key benefits that come from reforming the scheme.

Merging the ISA and CRB

The Government amended the Protection of Freedoms Bill during Committee to create a new organisation, the Disclosure and Barring Service (DBS). This will be a Non Departmental Public Body which carries out the functions of both the CRB and ISA

We support this merger, which should make the vetting and disclosure system more efficient and improve flows of information about individuals who may pose a risk to children and vulnerable adults. To ensure that decisions are transparent, fair and consistent, we believe it is important that barring decisions are taken by experts who have some independence from Government.

Therefore we welcome the fact that the DBS will be a Non Departmental Public Body.

It is important that the merger of the CRB and ISA is well managed so that it does not introduce delays or problems in the disclosure or barring processes during the transition period. It is also critical that the specialist skills and expertise within the ISA are not lost.

Statutory Guidance

⁴ Lynne Featherstone in Protection of Freedoms Bill Committee, 10th May 2011

⁵ "As now, volunteers will not be required to pay for criminal record checks. At present, it is envisaged that if a volunteer wants to subscribe to the voluntary updating service, they will have to pay a subscription fee." Lynne Featherstone in Protection of Freedoms Bill Committee, 10th May 2011

Barring and checking will only help to keep children safe if employers and voluntary organisations use the systems properly: seeking out information on individuals who work with children and using this information to make sensible decisions about recruitment and management of staff. The reformed scheme places increased responsibilities on employers to ensure that disclosures are conducted appropriately. Therefore it is critically important that the Government communicates reforms to the scheme properly to all individuals and organisations that will be affected. Our organisations are very willing to advise and support the Government in this task.

We welcome the Government's commitment to create guidance for employers and voluntary organisations about the new scheme. We strongly believe that there should be statutory guidance about the scheme, so that employers and volunteering organisations take it seriously; it is critically important that the scheme is understood properly and implemented consistently.

Amongst other things, we believe that the guidance should:

- Provide employers and voluntary organisations with clear guidance about how to assess whether a position counts as regulated activity.
- Encourage employers to carry out enhanced CRB checks for all individuals who work with children, particularly those in positions that currently count as regulated activity but will not do so as a result of this Bill including trustees of charities for children or vulnerable adults⁶.
- Provide clear directions that employers should not allow people to work with children until employers have seen and checked their disclosures and provide advice on how to deal with such situations.
- Demonstrate to employers what disclosure certificates will look like and how to verify that they are valid.
- Make clear recommendations about how often employers and voluntary organisation should re-check or update checks for existing staff.
- Help employers understand what the information on CRB or AccessNI disclosures means and what they should do as a result of having this information.
- Encourage employers to report concerns about an individual to both the police and the ISA (or its successor).
- Encourage employers to ensure they have robust child protection policies in place which go beyond initial recruitment processes and are embedded in induction and ongoing supervision and management processes.

⁶ It is important that Government guidance strongly encourages organisations to check leaders, managers and trustees who may not be working directly with children, but whose behaviour has a huge impact on the culture of an organisation. If unsuitable people gain such positions, it may be more likely that a culture develops in the organisation in which harm to children is accepted. People in senior positions are also more likely to be trusted, and less likely to be challenged. This means that if unsuitable people do gain and abuse such positions, they may be able to continue to harm children without confrontation.