

EXPLANATORY MEMORANDUM TO
THE SAFEGUARDING VULNERABLE GROUPS ACT 2006 (PRESCRIBED
CRITERIA) (TRANSITIONAL PROVISIONS) REGULATIONS 2008
2008 No. 1062

1. This explanatory memorandum has been prepared by the Department for Children, Schools, and Families and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. These draft Regulations set out criteria needed for the purposes of the Safeguarding Vulnerable Groups Act (Transitional Provisions) Order 2008, S.I. 2008/473 (“the TPO”). The Regulations will enable the Independent Barring Board (“IBB”) to identify people who are not to have the right to make representations as to their inclusion in the barred lists maintained by IBB under section 2 of the Safeguarding Vulnerable Groups Act 2006 (“the Act”). These Regulations will apply only to certain people whom IBB are required to include in those lists under the TPO.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1. These Regulations are subject to the affirmative resolution procedure.

4. Legislative Background

4.1. The Act reforms arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. The new arrangements it introduces will replace those provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002.

4.2. The Act creates the IBB to maintain a list of persons barred from work with significant access to each group, and to decide whether to include persons in one or both lists. Under the TPO, IBB will be required to include or consider including in these new lists people who are subject to disqualifications under the existing regime (i.e. who are included in the lists maintained under section 1 of the Protection of Children Act 1999 or section 81 of the Care Standards Act 2000, who are subject to a disqualification order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000, or who are subject to a direction made under section 142(1) of the Education Act 2002). The effect of articles 2(7) and 4(7) of the TPO is that anyone to whom those articles apply and who meets criteria prescribed for the purposes of those paragraphs is not to have the right to make representations as to their inclusion in the new barred lists. These Regulations prescribe those criteria.

4.3. These criteria are intended to be very similar to those which will in future (once the Act is implemented fully) determine whether a person will be

included in the new barred lists automatically without the right to make representations (see paragraphs 7.2 to 7.5 below). In relation to those criteria (which will be prescribed in a future set of regulations), the Government gave a commitment during the course of the Safeguarding Vulnerable Groups Bill to debate these prescribed criteria in draft. Lord Adonis said in the House of Lords “We will use the affirmative resolution procedure for agreeing the order necessary to specify the offences in question. The will of Ministers in a unilateral way will not hold sway in this matter, rather it will be the will of Parliament arrived at in a considered way after consultation”, in response to which, Baroness Walmsley said “I am very glad that we are to have the affirmative resolution concerning the offences that are to be included. That, at least, will provide another opportunity to talk about these matters” (Hansard, 2 May 2006: Column GC186 and GC189). In the House of Commons, Parmjit Dhanda MP said “The criteria that may be prescribed are set out in paragraph 19 of Schedule 2 and include cautions and convictions for certain offences, inclusion on an overseas list or being subject to an overseas order or direction. Following consultation, the offences will be included in regulations subject to the affirmative resolution procedure, as I believe was made clear in another place” (Hansard, Standing Committee B, Tuesday 11 July 2006; Column 42).

- 4.4. The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, S.I. 2008/474, which make provision relating to matters such as the time an individual is to be allowed in which to make representations and the time that must elapse before they are allowed to apply for permission to apply for a review of their inclusion in a barred list, will also apply for the purposes of the TPO.
- 4.5. Further detail on the legislative background to the Act is set out in an overarching explanatory memorandum on the implementation of the Act, at Annex 1 below.
- 4.6. These Regulations are the first to be made under paragraphs 1(1), 7(1), and 24(1) to (3) of Schedule 3 to, the Act.

5. **Extent**

- 5.1. This instrument extends to England and Wales.

6. **European Convention on Human Rights**

- 6.1. Kevin Brennan, Parliamentary Under Secretary of State for Children, Young People and Families, has made the following statement regarding Human Rights:

In my view the provisions of The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008 are compatible with the Convention rights as defined in section 1 of the Human Rights Act 1998.

7. Policy Background

- 7.1. The broader policy objectives of the Act are set out in the accompanying over-arching explanatory memorandum (see Annex 1 below). In relation to these Regulations, two aspects of policy are particularly relevant.
- 7.2. Firstly, the intention is that anyone who is subject to a restriction or disqualification under the current regime (i.e. that provided for under the Protection of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002) should either be considered for inclusion in the new barred lists provided for under the Act, or should be included as soon as they are referred to IBB. This is provided for under the TPO. In most cases, individuals will be given the right to make representations as to why they should not be included, or continue to be included, in the new lists. In some cases, however, they will not have this right.
- 7.3. Secondly, there is the question of how people will be included in the new lists once the Act is implemented fully. This may happen in one of four ways. They may be included:
- automatically, without the right to make representations as to why they should be removed from the list;
 - automatically, but with the right to make representations as to why they should be removed from the list;
 - on the basis that they have behaved in a way that has endangered a vulnerable person; or
 - on the basis that IBB feels that they may behave in a way that would harm a vulnerable person or put that person at risk of harm etc..
- (In either of the last two situations, the person under consideration by IBB would have the right to make representations as to why they should not be included in one or both barred lists.)
- 7.4. People will only be included in the lists automatically where they meet criteria prescribed under the Act. The intention is that these criteria will catch people who have committed offences which, of themselves, create a presumption that the offender poses a risk of harm to children or vulnerable adults. In cases where the nature of the offence indicates that any offender would pose such a high risk to the vulnerable that they simply could not put a case as to why they should not be barred from working with one or both vulnerable groups, that person will be barred automatically without the right to make representations.
- 7.5. The intention is that the basis on which a person who is included in the new lists under the TPO will be denied the right to make representations will be as close as possible to that on which people in future cases will be included in the barred lists automatically without having that right. These regulations therefore lay the ground for the future regulations which will prescribe the criteria for automatic inclusion in the barred lists.

7.6. The Government formally consulted on the key aspects of its policy proposals behind regulations made under Schedule 3 to the Act. This included the criteria to be prescribed for the purposes of automatic barring. The title of the consultation document was “*Barring consultation: implementing the Safeguarding Vulnerable Groups Act 2006 and the Northern Ireland Order 2007*” and the consultation ran from 22 June to 14 September 2007

7.7. There were 182 responses to the consultation. These came from bodies including Local Authorities, Local Safeguarding Children Boards, voluntary sector organisations, unions, national and professional associations, and health and care sector organisations, as well as parents. Respondents broadly agreed with all the proposals put forward in the consultation document. No substantive points were raised on the Prescribed Criteria.

8. Impact

8.1. The impact assessment on the Act was published previously – see over-arching text, annexed. An updated assessment, giving the latest cost figures and other details, will be annexed behind the over-arching memorandum to accompany future S.Is in this group, after a related announcement by Home Office Ministers, at a date to be confirmed.

9. Contact

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DCSF, 27th February 2008

Annex: over-arching explanatory memorandum

EXPLANATORY MEMORANDUM ON THE IMPLEMENTATION OF THE SAFEGUARDING VULNERABLE GROUPS ACT 2006

1. The Department for Children, Schools and Families (DCSF) prepared this memorandum in consultation with the Home Office and the Department of Health, and submitted it voluntarily to Parliament.

2. Description

- 2.1 This over-arching explanatory memorandum explains the context to the first set of Statutory Instruments to be laid before Parliament under the Safeguarding Vulnerable Groups Act 2006¹ (“the Act”). These are:

- The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008,
- The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, and
- The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008.

These instruments are described in their respective explanatory memoranda.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 As noted in the explanatory memorandum relating to that Instrument, the draft Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008 are subject to the affirmative resolution procedure.

4. Legislative background

Introduction

- 4.1 The Act provides for a new scheme to replace the existing arrangements for safeguarding children and vulnerable adults from harm or the risk of harm by employees (paid or unpaid) whose work gives them significant access to these groups. A public consultation for the new scheme, “*Making Safeguarding Everybody's Business: A Post-Bichard Vetting Scheme*” (Ref: 1485-2005DOC-EN), ran in 2005. That consultation paper and a summary of responses are at www.dcsf.gov.uk/consultations
- 4.2 The purpose of the new scheme is to minimise the risk of harm to children and vulnerable adults from those who might seek to harm them through their work (paid or unpaid). It seeks to do this by barring unsuitable individuals not just on the basis of referrals, but also at the earliest possible opportunity, as part of a centralised vetting process that all those working closely with children and/ or vulnerable adults will have to go through. The new arrangements introduced by the Act will replace the existing arrangements provided for under the Protection

¹ 2006 c.47.

of Children Act 1999, the Care Standards Act 2000, the Criminal Justice and Court Services Act 2000 and the Education Act 2002.

- 4.3 The current system for vetting people who wish to work with children or vulnerable adults operates through employers obtaining criminal record certificates issued by the Criminal Records Bureau ("CRB disclosures") for new job applicants. CRB disclosures give employers information about an individual's criminal records history, which informs their assessments about the individual's suitability to work with children or vulnerable adults. They also show whether a person has been made subject to a disqualification order (see below) or is included in any of the three lists the Government maintains of persons barred from working with children or vulnerable adults. These lists, which are each subject to different legislation, criteria and procedures, are: "List 99" (a list of those in respect of whom a direction under section 142(1) of the Education Act 2002 has been made), the Protection of Children Act (POCA) List (kept under section 1 of the Protection of Children Act 1999) and the Protection of Vulnerable Adults (POVA) List (kept under section 81 of the Care Standards Act 2000). Disqualification orders made by a court (under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000) also bar individuals from working with children. We refer below to being on one of these lists or being subject to a disqualification order as being subject to an existing restriction.

Key features of the Act

- 4.4 When implemented fully, the Act will replace the existing arrangements with a scheme with the following key features:
- 4.4.1 an **Independent Barring Board** ("IBB"): IBB was established on 2nd January 2008. It is a non-departmental governmental body sponsored by the Home Office. Its primary functions will be to maintain the barred lists (see below) and to make decisions about whether individuals should be included in one or both lists;
- 4.4.2 **Barred lists**: there will be two barred lists - one of individuals barred from engaging in "regulated activity" (see below) with children (the "children's barred list"), and one of those barred from engaging in "regulated activity" with vulnerable adults (the "adults' barred list").
- 4.4.3 There will be **four routes to inclusion** in one or both barred lists:
- (i) automatic inclusion in one or both of the barred lists without the right to make representations or to appeal. Inclusion in the lists on this basis will happen only where a person has been convicted of, or received a caution in relation to, one of a list of specified offences, or meet other prescribed criteria (such as being subject to an order, foreign order or direction of a prescribed description, or being included in a specified foreign barred list) that indicate, of themselves, that any offender would pose such a high risk to vulnerable groups that they simply could not make a case as to why they should be allowed to engage in regulated activity;

(ii) automatic inclusion in one or both of the barred lists with the right to make representations as to why the person in question should be removed and a subsequent right of appeal following inclusion.

Inclusion in the lists on this basis will happen where a person has been convicted of, or received a caution in relation to, one of a further list of specified offences or as a result of having met some other prescribed criteria (which may be any of those described above);

(iii) inclusion on the basis that the person in question has engaged in “relevant conduct” i.e. broadly, that they have behaved in a way that has harmed a child or vulnerable adult, or could have done so, or in a way involving child pornography or inappropriate sexual behaviour. In this case, the relevant individual will have the opportunity to make representations before they are included in a list and will have a subsequent right of appeal;

(iv) inclusion on the basis that the person in question seems to IBB to pose a risk of harm to children or vulnerable adults. Again, in this case the relevant individual will have the opportunity to make representations before they are included in a list and will have a subsequent right of appeal.

- 4.4.4 When IBB receives any information, it must consider whether it is relevant to IBB’s consideration of whether the individual to which it relates should be included in either list.
- 4.4.5 **Appeals:** there will be a right of appeal (against inclusion in a barred list) to the Care Standards Tribunal, with the permission of the Tribunal, on a point of law or on a finding of fact made by IBB. On informing the barred person of IBB’s decision, the Government expects that IBB will follow current practice on e.g. List 99 barring decisions, where DCSF’s decision letter outlines the factors taken into account in arriving at the decision. The Government will shortly be making a set of regulations governing the procedure to be followed by the Tribunal in considering appeals under the Act (these regulations will be subject to the negative resolution procedure).
- 4.4.6 **Regulated activity:** this is defined in Schedule 4 to the Act. Broadly, it covers a range of specified activities that provide an opportunity for close contact with children or vulnerable adults, other activities in key settings such as schools and care homes which provide an opportunity for contact and key positions of responsibility such as the Children's Commissioner and the Director of Adult Social Services.
- 4.4.7 **Controlled activity:** this is defined in sections 21 and 22 of the Act. Broadly, it covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, e.g. education or social services records. The Secretary of State has power to make regulations determining who may engage in controlled activity, what steps must be taken by the person permitting them to do so and the

circumstances in which a person must not allow another person to engage in controlled activity.

4.4.8 **Monitoring:** to become “subject to monitoring”, individuals will make an application to the Secretary of State - in practice, to the Criminal Records Bureau (CRB). The CRB will check for any information relating to the individual and pass any that it discovers to IBB. IBB will then consider whether the person should be barred from working with children and/ or vulnerable adults, or bar them automatically, where appropriate. The CRB must repeat these checks at intervals for as long as the individual remains subject to monitoring, again, passing on any information that it discovers to IBB.

4.4.9 **Offences:** there will be a series of criminal offences to:

- prevent barred individuals from engaging in regulated activity in relation to children or vulnerable adults;
- ensure that people permitted to engage frequently or intensively in regulated activity in relation to children or vulnerable adults with the permission of a “regulated activity provider” (usually, the employer) are “subject to monitoring” (see below);
- ensure that relevant employers check an individual's status in the scheme before permitting an individual to engage in regulated activity in relation to children or vulnerable adults.

Transition

4.5 Schedule 8 to the Act makes provision for the transition from the current system to the new arrangements provided for under the Act. During the period leading up to the full implementation of the Act, this will have two main elements. Firstly, all those who are subject to an existing restriction must be included, or considered for inclusion, in the new barred lists kept under the Act. This will happen in accordance with The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008, by reference to the criteria set out in The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations 2008, and subject also to the provisions of The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008. Secondly, IBB will have to give the Secretary of State advice, on request, in relation to outstanding cases under the existing arrangements (see paragraph 1 of Schedule 8).

4.6 Further detail on how the new scheme will work is in Explanatory Notes to the Act at http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060047_en.pdf (36 pages).

Grouping of implementation of secondary legislation

4.7 The Government proposes two main groups of secondary legislation:

- The first, creating IBB as a Non-Departmental Public Body and providing for people subject to existing restrictions or whose cases are being considered under the existing arrangements to be included or considered for inclusion in one or both of the two new lists;
- The second, providing for the full commencement of the Act, the repeal of the legislation underpinning the existing arrangements, and the phasing-in of the duties under the Act in relation to different groups of employees who are seeking or engaged in regulated activity or controlled activity, all to start to take effect from a “go-live” date (i.e. the date from which inclusion in a barred list will take effect to bar individuals from engaging in regulated activity).

4.8 For each Statutory Instrument, the lead Department will submit an individual explanatory memorandum setting out the detail of the SI, and where relevant, an update of the Regulatory Impact Assessment completed for the Act. Government consultation on policy issues in these S.Is included a formal consultation document in summer 2007 – details below.

4.9 The Statutory Instruments for the first group will be as follows:

- 4.9.1 The Safeguarding Vulnerable Groups Act 2006 (Commencement No.1) Order 2007, S.I. 2007/3545, which was made on 17th December 2007, and The Safeguarding Vulnerable Groups Act 2006 (Barred List Prescribed Information) Regulations 2008, which were made on 8th January 2008 (these specify information which IBB must keep about people included in the barred lists);
- 4.9.2 The Safeguarding Vulnerable Groups Act 2006 (Transitional Provisions) Order 2008 (“the TPO”), which is to be made and laid subject to the negative resolution procedure and, as described above, will require IBB to transfer, or consider transferring, all those subject to existing restrictions to the new barred lists. Cases considered under this Order will be handled in accordance with the procedural regulations referred to at paragraph 4.9.3 (and which are referred to in, and applied by, the Order) and by reference to the regulations referred to at paragraph 4.9.4;
- 4.9.3 The Safeguarding Vulnerable Groups Act 2006 (Barring Procedure) Regulations 2008, which are also to be made and laid subject to the negative resolution procedure and will make provision in relation to the making of representations, and the periods that must elapse before a person may apply for permission to apply for a review of their inclusion in one of the barred lists;
- 4.9.4 The Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria) (Transitional Provisions) Regulations, and which will specify the criteria which will enable IBB to identify which of the people it considers in accordance with the TPO will not have the right to make representations as to their inclusion in the new lists.

4.9.5 In addition, a further set of regulations will be made, subject to the negative resolution procedure, which will set out the procedure to be followed by the Care Standards Tribunal when considering appeals against decisions taken by IBB.

4.10 The intention is that the S.I.s referred to in paragraphs 4.9.2 to 4.9.4 should come into force in early April 2008.

5. Extent

5.1 The Act mainly extends to England and Wales. The main provisions of the Act which also extend to Northern Ireland are section 1 and Schedule 1, which provide for the establishment of IBB. Otherwise, the provisions of the Act are essentially mirrored in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. The Scottish Executive passed its own legislation, the Protection of Vulnerable Groups (Scotland) Act 2007, and is now consulting on its implementation. The explanatory memorandum for each Instrument made under the Act will set out the Instrument's extent or application.

6. Policy background

6.1 The Bichard Inquiry Report (2004), at <http://www.bichardinquiry.org.uk>, identified systemic failures in current vetting and barring systems. These included the following factors:

6.1.1 inconsistent decisions were being made by employers on the basis of CRB disclosure information;

6.1.2 CRB disclosure information is only certain to be accurate on the day of issue;

6.1.3 there are inconsistencies between List 99, and the POCA and POVA lists, which operate under different legislative procedures;

6.1.4 the current barring system is reactive to harmful behaviour rather than preventive;

6.1.5 there are inconsistencies between police authorities in the disclosure of police information.

6.2 The aspects of policy most relevant to each of the Instruments referred to at paragraph 2.1 are described in those Instruments' respective Explanatory Memoranda. Looking at the broader policy behind the Act, the intention is to address the failings identified at paragraph 6.1 and to put barring decisions into the hands of a body of experts that is independent of Government.

6.3 As described above, all those who are subject to current restrictions are to be included or considered for inclusion in the new barred lists. As from a "go-live" date, inclusion on those lists will take effect to bar the relevant individuals from engaging in regulated activity with children and/ or vulnerable adults (there is no current intention to prevent a barred individual from engaging in controlled

activity, though those with responsibility for managing controlled activity will be required to put in place safeguards to manage the risks posed by barred individuals).

- 6.4 It is anticipated that the current restrictions will fall away at that point (subject to any savings that may be necessary), though the timing of this aspect of implementation is still under review. In relation to people who had been on List 99 and had not been transferred to the new barred lists, the General Teaching Councils for England and Wales will (where relevant) have to make a decision as to individuals' suitability to be teachers.
- 6.5 Because the Government is still finalising details about the later stages of implementation, a supplementary over-arching memorandum will be submitted once further substantive details have been finalised. Home Office Ministers hope to make an announcement on costs and the timing of the implementation of the Act in the coming weeks. In addition, the Government will publish a suite of guidance documents to help intermediary bodies, employers, employees and volunteers understand clearly their rights and responsibilities under the new scheme. This will be published well in advance of the go-live date. Some key points in the guidance will depend on the outcome of current public consultation, see below.
- 6.6 **Public Consultation:** The Government consulted publicly in summer 2007. The results were published on 14 November 2007 at: <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1476> . The explanatory memorandum with each Statutory Instrument will, where relevant, give further detail on any consultation responses relevant to that SI.
- 6.7 In February 2007 we began a series of stakeholder information events in major cities around England, Wales and Northern Ireland. These events are ongoing – further information is at: <http://www.isa-gov.org.uk> . That website also contains a number of fact sheets and background documents on the new scheme. We also hope to launch a new telephone helpline to help support stakeholders, including employers and employees, with their understanding of the new IBB scheme.
- 6.8 We have also recently concluded a second, wide-ranging, formal consultation on implementation of the scheme. This is online at: <http://www.dcsf.gov.uk/consultations/conDetails.cfm?consultationId=1516> . This consultation sets out in detail how it is intended that IBB scheme will operate. The scheme is still being designed and systems built. This consultation invites views on a range of issues that are fundamental to implementing IBB scheme. It covers:
- the definitions of children and of vulnerable adults;
 - further defining the scope of regulated activity and controlled activity;
 - eligibility to make checks on employee's status in the scheme;
 - how to apply to the scheme;
 - phasing-in of applications to the scheme;
 - the application fee;
 - referring information to IBB; and

○ representations and appeals against barring decisions.
This second consultation closed on 20th February 2008.

7. Impact

- 7.1 See updated Impact Assessment which will (after a Home Office Ministerial announcement expected in the coming weeks) be attached, where relevant, to each E.M; or the published Assessment for the overall Vetting and Barring scheme, signed by a Minister in July 2006, at:
www.dfes.gov.uk/ria/index.cfm?action=assessments.view&i_assessmentID=73.

8. Contact

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DCSF, 27th February 2008.

**FINAL REGULATORY IMPACT ASSESSMENT (RIA)
FOR THE POST-BICHARD VETTING AND BARRING SCHEME
(updated 5th July 2006)**

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Annex A – Mandatory Disclosures: the current situation

Annex B: the levels of protection offered by the new vetting and barring scheme

FINAL REGULATORY IMPACT ASSESSMENT (RIA) FOR THE POST-BICHARD VETTING AND BARRING SCHEME

Section 1 – Issues and options

TITLE OF PROPOSAL

1. Making Safeguarding Everybody’s Business: A Post-Bichard Vetting and Barring Scheme.

PURPOSE AND INTENDED EFFECT OF MEASURE

Objective

2. In the light of the Bichard Inquiry, to reduce the incidence of harm to children and vulnerable adults by those who work with them, through the creation of a new vetting and barring scheme for people working with children and vulnerable adults (paid or unpaid). This scheme will help to ensure that:

- those who **are** known to present a risk do not gain access to children or vulnerable adults through their work in the first place; and,
- those who **become** a risk are detected at the earliest possible stage, and prevented from continuing to work with children and vulnerable adults.

Rationale for Government Intervention

3. It is known from previous cases, inquiries and research that many people who pose a risk to children and vulnerable adults seek to gain access to them through their work. By preventing them from doing so, it may be assumed that the number of cases of harm will be reduced.

4. Although the vast majority of people who seek to work with children and vulnerable adults do not pose any threat, it is the responsibility of Government to set the framework for determining the potential risk of harm presented by people seeking such work.

5. The Bichard Inquiry (see paragraphs 14-17 below) highlighted serious systemic flaws in child protection measures, record keeping, vetting and information sharing. The proposed vetting and barring scheme (option D) is a fundamental part of the Government’s plans to address the problems that were identified (see paragraphs 23-29) and reduce the likelihood of unsuitable people gaining access to children and vulnerable adults through their work.

6. The risk of doing nothing, therefore, is that people who present a risk will continue to take advantage of the flaws and gaps in the current system and obtain positions giving them the opportunity to abuse or harm children and vulnerable adults.

7. The current incidence of abuse of children and vulnerable adults by those gaining access through their work is difficult, if not impossible, to measure directly

because: there are no reliable statistics on the incidence of abuse because much goes unreported; it is not known how much of this takes place outside the home; retrospective surveys provide prevalence data, but this is highly sensitive to the nature of the sample and questions; conviction rates are not a good indicator because a high proportion of reported abuse does not result in prosecution; and there is no way of systematically recording actual or alleged abuse outside the family - we only know about cases referred by employers to the existing, less than comprehensive barring schemes.

8. Nevertheless, there are some figures which highlight the fact that abuse in the workplace is undoubtedly a problem. Data supplied by 122 of the 147 LEAs in England show that at least 2357 allegations of abuse were made against education staff between August 2003 and September 2004. The police investigated 26% of these, another 20% resulted in a formal disciplinary hearing and around 40% were resolved without formal disciplinary hearing or criminal action. In the vulnerable adult workforce, between 1 April 2004 and 14 February 2005, the Commission for Social Care Inspection investigated 1,320 complaints relating to a category of abuse in a care home. Of the 1,320 complaints investigated, 494 were upheld. *Hidden Voices*, a report by Action on Elder Abuse published on 29 November 2004, analysed almost 7,000 phone calls received by its Helpline since 1997. The report found that 34% of abusers were paid workers.

The cost of abuse

9. The 'Benefits to children and vulnerable adults' section below (101-103) outlines the benefits that would arise from reducing the incidence of abuse in terms of outcomes. However, although abuse in the workplace is a small proportion of overall abuse, it is useful to note the cost of abuse as a whole to the wider economy and the financial benefits which would therefore arise from reducing at least a small part of it.

10. In 1996 the Institute of Public Finance was requested by the National Commission on the Prevention of Child Abuse to estimate the cost of child abuse to the country. Their report (*Childhood matters: report of the National Commission of Inquiry into the prevention of child abuse, 1996*) stated that:

"The current cost of child abuse to statutory and voluntary agencies is £1 billion a year. Most of this is spent dealing with the aftermath of abuse rather than its prevention.

The total cost of abuse far exceeds this estimate. Individuals and families bear most of the consequences, sometimes for the rest of their lives at an incalculable cost." (p.29)

11. The calculations did not include the costs incurred by other related services such as adult mental health services, secure residential accommodation for young people, special education, child psychiatric services or the prison service, in coping with the long term consequences of child maltreatment. Indeed they concluded:

Thus, the full cost of child abuse to the public purse easily exceeds £1 billion a year". (p.32)

12. More recently, research by the NSPCC (*The Costs and Consequences of Child Maltreatment, A Report for the Department of Education and Skills, Chris Mills, Policy Researcher, NSPCC, 2004*) has used international comparisons to estimate the short term cost of child abuse. This has given a figure of £20,000 per case which mostly covers immediate expenditure including the cost of investigation, protection, prosecution and care. The long term costs are harder to estimate but the NSPCC suggests a figure of £60,000, though this is highly speculative, and contains a significant element of uncertainty. Each potential case of child abuse that may be averted by the scheme could therefore induce a potential saving of £60,000 to Government.

13. In addition to this cost, there is also the cost of inquiries into abuse of children and vulnerable adults of which there were over 20 in the 1990s. Although each inquiry is different, the Bichard Inquiry itself cost around £2 million. The new scheme on its own will not completely prevent all such abuse in the workplace, but any reduction might be expected to lead to fewer inquiries of this nature.

BACKGROUND

The Bichard Inquiry

14. The Bichard Inquiry, led by Sir Michael Bichard, was commissioned by the Home Office in December 2003 following the conviction of Ian Huntley for the murder of Soham schoolgirls Holly Wells and Jessica Chapman. The inquiry investigated child protection measures, record keeping, vetting and information sharing. The Report setting out Sir Michael's findings and recommendations was published on 22 June 2004.

15. The Report made 31 recommendations, most of which fell to the Police, the Home Office, and the Criminal Records Bureau (CRB) to implement. There were eight recommendations that fell to the Department for Education and Skills (DfES) to lead. These recommendations fall into three clusters:

12-15 : Strategies for handling allegations of sexual offences against children, in particular strengthening and clarifying when and how social services notify the police

16-18: Improvements to training in recruitment and selection procedures for Head teachers and governors

19: The creation of a centralised registration scheme to determine whether an individual is unsuitable for work with children and vulnerable adults

This RIA concerns Recommendation 19.

16. The Government welcomed the publication of Sir Michael Bichard's report and accepted all of its recommendations on 22 June 2004. Six months later a cross-Government report covering progress together with plans and timetables for future work was sent to Sir Michael. This was made public on 11 January 2005 when it was laid before Parliament accompanied by a written ministerial statement.

17. The development of the proposed new scheme is therefore one aspect of wider measures being taken forward across Government improving CRB processes and the way that the police handle and share information. It will build on, and is dependent on, the implementation of other recommendations whose impact is being assessed independently.

The current disclosure and barring processes

18. The current disclosure process operates through employers obtaining a CRB disclosure for successful new job applicants in order for employers to screen out the tiny minority from the children's and vulnerable adults' workforces that they consider unsuitable to work with these vulnerable groups. CRB disclosures are mandatory for some positions and employment settings and optional for others (see Annex A).

19. The disclosure service implemented through the CRB has been designed so that relevant information about a person's criminal record and whether they are on one of the current barred lists (see paragraph 22) can be made available to employing organisations with the consent of the individual applicant. This enables these organisations to make safer and more informed recruitment decisions.

20. There are two levels of disclosure, Enhanced and Standard. Both levels of disclosure contain personal and sensitive information about an individual's criminal record history including spent and unspent convictions, police cautions, reprimands and warnings and they state whether the individual is already on one of the barring lists where the application indicates that such checks are desired (as described below). Enhanced Disclosures also involve an extra level of checking with local police force records which may highlight previous allegations or patterns of behaviour.

21. Disclosures can only be issued for those posts which are deemed to be exempt under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Although the current criteria for eligibility to Enhanced Disclosures requires a higher level of contact with children or vulnerable adults than Standard Disclosures (as set out in the Criminal Justice and Court Services Act 2000), currently nearly 90% of all disclosures are issued at enhanced level. Recommendation 21 of the Bichard Inquiry Report stated that all posts which involve work with children and vulnerable adults should be eligible for a check at enhanced level and work is underway with the Home Office to take this forward. It is envisaged that the changes to Enhanced eligibility will be made following Royal Assent of the Safeguarding Vulnerable Groups Bill, in order that the scope of the relevant children and vulnerable adult workforces as defined by the Bill can be reflected in any revised Enhanced Disclosure eligibility criteria. This may first necessitate changes to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.

22. Employers who dismiss or suspend an individual can (and in some cases must – see Annex A) refer them to one of the current barring lists. The three lists, List 99 (the list of directions made under Section 142 of the Education Act 2002 for those working in education), Protection of Children Act List (POCA), and Protection of Vulnerable Adults List (POVA), have different criteria and procedures. Referrals to these lists are considered by expert teams within DfES enabling the Secretary of State to make the decision whether or not to bar them from work with children and/or vulnerable adults. The List 99 review, which was published on 19th January 2006, recommended that an independent panel of experts should be established. This is operational and is headed by Sir Roger Singleton. The independent panel’s advice is sought on all decisions referred to the Secretary of State. The other recommendations of the List 99 review have either been taken forward, or are in the process of being taken forward. For example, on 12 May it became mandatory for all new appointments to the schools workforce to obtain CRB Disclosures.

There are several problems with the current process:

23. Recruitment decisions are taken locally, often by small employers, who have relatively little experience of handling raw information about offences and allegations. As Sir Michael highlights in his Report, this “makes inconsistency inevitable, given the number of employers involved” and also reduces the likelihood of a “fair and appropriate balance regarding suitability being struck” (4.125, *The Bichard Report*);

24. Not all staff in child or vulnerable adult related settings are eligible for an Enhanced Disclosure (one that includes ‘soft’ intelligence in addition to conviction information). This was addressed by Sir Michael in Recommendation 21: “All posts, including those in schools, that involve working with children, and vulnerable adults, should be subject to the Enhanced Disclosure regime” (*The Bichard Report*);

25. There is confusion over the distinction between eligibility for Standard and Enhanced Disclosures. As Sir Michael points out, “the differences between the two types of disclosure are subtle and unclear. Different employers are likely to have different views about where the distinction lies. Inconsistency is likely... The distinction does not seem to me to be appropriate in principle... For children, drawing a distinction between ‘normal’ and ‘regular’ contact does not make sense.” (4.74 and 4.75, *The Bichard Report*);

26. The quality and relevance of soft information obtained from local police forces is variable. “The current system depends upon decision making by 43 Chief Constables (or those to whom the function is properly delegated). Inconsistency is inevitable” (4.105.1, *The Bichard Report*);

27. The disclosure certificate is only valid on the day of issue; it is effectively a ‘snapshot’ and is not subject to updating. “There are no uniform arrangements for re-vetting or ensuring that relevant subsequent convictions or intelligence are consistently made available to inform a decision about continued employment” (4.106, *The Bichard Report*);

28. People who work with children or vulnerable adults for several different

organisations are often, quite correctly, checked by each one. This leads to an individual being checked several times with associated costs and delays for each organisation.

OPTIONS

29. This section describes the strategic options which have been considered by the Project.

30. Recommendation 19 set out the requirements for a new system to prevent unsuitable people working with the vulnerable. The Project team considered various options which met these requirements, in particular a comprehensive Positive Registration Scheme (included here as strategic option C) and a centralised Vetting and Barring Scheme (strategic option D). The decision to take forward option D was reported to Sir Michael Bichard in December 2004 and he endorsed the proposed option in his response to the Government's progress report in March 2005.

31. The vetting and barring scheme model was examined in more detail by an independent Feasibility Study, undertaken on behalf of Government, which reported in February 2005. A number of the strategic options identified by that Study are described in the following section. The Feasibility Study confirmed that Option D was operationally and technically feasible, but that further analysis was required to confirm that it was affordable. It was confirmed in March 2005 that detailed development of Option D should proceed and, as a result, subsequent analysis has been focused exclusively on the further development of Option D.

32. There are specific risks associated with all the options presented. A high-level option appraisal is included below.

Option A

33. Option A is to do nothing and rely on the current arrangements.

Risks:

- Problems with current provision will persist;
- Risk of abuse of children or vulnerable adults by those working with them is not reduced.

Option B

34. Option B would improve guidance on vetting procedures and benefit from planned improvements to the Police and the CRB. These will speed up the CRB process and improve the quality of information that is included on Disclosures. Employers would use the existing CRB disclosure process to check the background of job applicants and use that information, alongside their other recruitment processes, to consider whether the applicant was suitable for that job. Where an individual working with children or vulnerable

adults was dismissed, or otherwise left that position, the employer would refer that information to the DfES to consider whether the individual should be barred from working with children or vulnerable adults.

35. Under this option the following risks would exist:

- Disclosure would continue to be a snap-shot and barred status would not be updated.
- No consistent pre-employment consideration of whether an individual would be a danger to children or vulnerable adults if employed, nor would there be any offence committed should an employer to decide to employ an individual who would be considered a danger and had not previously come to the attention of the barring schemes;
- Employers would need to continue to get repeat disclosures for each new start
- Employers would not be alerted when an individual became unsuitable due to conduct subsequent to taking up employment and the individual could continue to work until asked to provide a new disclosure
- Implementation would be dependent on the introduction of improved information management and disclosure processes within Police Forces;
- This option would not meet the commitment to deliver a comprehensive, proactive vetting and barring scheme.
- No method for individual employers (e.g. parents) to carry out checks

Option C (Registration Scheme)

- Option C is a registration scheme where everyone working with children and vulnerable adults is registered for such work. All those seeking to work with children or vulnerable adults would be required to register with the scheme. Those considered unsuitable by the scheme would be refused registration.

36. Under this option the following risks would exist:

- A registration scheme might provide employers with false assurance about the suitability of the individuals they were seeking to employ and discourage employers from taking responsibility for vetting prospective employees appropriately for the positions concerned.
- A registration scheme would duplicate the registration responsibilities of existing regulatory bodies such as the General Medical Council or the General Social Care Council.
- Open to fraud

- Positive register tracking an eligible workforce of over 8 million would be expensive and demanding.

Option D

37. Option D would introduce a new proactive, comprehensive and continuously updated vetting and barring scheme underpinned by legislation. The new scheme would build on existing systems and good practice to offer an improved service with new functions, helping to eliminate the existing gaps which could be exploited by unsuitable people seeking access to the vulnerable through their work.

38. The features of option D are explained in section 2

39. Under this option the following risks would exist:

- Tight timetable for implementation.
- Significant awareness raising required to ensure that system is understood and used appropriately by wide range of employers and voluntary bodies who will have access – in particular, must make clear that this system complements, rather than replaces, effective recruitment practices for those working with children and vulnerable adults.

Option E

40. One regulator suggested a further option whereby they would take on barring responsibilities for those within their workforce, devolving the decision about unsuitability to each sector. Under this option, existing professional and regulatory bodies would be asked to take on responsibility for registering all staff within their relevant sector, checking that all those in the workforce did not represent a danger to children or vulnerable adults in addition to checking that they had the appropriate qualifications. Systems and processes would be established to ensure that relevant information was disclosed by the Police Service and other agencies to the relevant representing bodies in order that the barred status of individuals within their workforces could be continuously updated.

41. Under this option the following risks would exist:

- Appropriate regulatory or representative bodies do not already exist for all sections of the workforce and would need to be established.
- Individuals could only be barred from individual sectors – with potentially different criteria operating in each sector – increasing the likelihood of individuals evading barring by moving to least regulated sectors.
- Existing regulatory and representative bodies unwilling to take on the extra responsibilities – this would represent a significant extension of

the duties of many of the relevant bodies.

- Significant implementation risks in establishing the systems required for the transfer of data to the range of professional and regulatory bodies involved.

Option assessment

Option	Impact	Acceptability	Evaluation
A. do nothing	Nil	<ul style="list-style-type: none"> - Expectations have been raised that govt will improve safeguarding - Unsuitable people may still gain access to the vulnerable through current loopholes 	Not viable
B. improve existing systems	Low – no continuous updating or pre-employment central vetting	<ul style="list-style-type: none"> - Does not meet requirements of Bichard Report. - Does not meet Government commitment to implement recommendations - Limited stakeholder support - High demand for continuous updating - Unsuitable people may still gain access to the vulnerable through current loopholes 	Significantly better than A. Could be stage towards D.
C. Positive Registration or 'approval' scheme	High	<ul style="list-style-type: none"> - User concerns over false assurance and over costs of registration fee. - Regulators concerned about conflict with their roles 	Not recommended due to the risks outlined in paragraph 36
D. Vetting and Barring Scheme	High – as examined in this RIA	<ul style="list-style-type: none"> - Meets material requirements of Bichard's recommendations - Meets public commitment to develop new scheme in response to Bichard Report - 89% of consultation agreed this is an appropriate model - Will need comprehensive communications exercise to ensure take-up and understanding 	Recommended option (although there are also risks which are expanded on below)
E. Regulators' responsibility	High – change of role for regulators	<ul style="list-style-type: none"> - Very limited informal support - Some regulators reluctant to take on additional role - Only applies to regulated 	Not viable

		sectors so reduced mobility and protection across sectors for others unless new bodies are set up	
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42. Given the Government's commitment to implement Sir Michael Bichard's recommendations, Options A and B are not viable as the benefits they offer do not meet the terms of Recommendation 19 and do not solve the problems highlighted by Sir Michael. The risks and costs around Option C make it impractical. Option E presents too great a risk of inconsistency and new burdens on regulatory bodies. Section Two will therefore concentrate on the costs, benefits and impact of Option D: the proposed new vetting and barring scheme.

Section 2 – Impact of proposed scheme

How Option D, the proposed scheme, will work:

43. An individual will apply to the scheme as he or she would now apply for an Enhanced Disclosure. In the small minority of cases where a disclosure reveals information that may be relevant to their suitability for work in the relevant workforce, the information will be reviewed by the Independent Barring Board.

44. An individual will also be able to apply for a **speculative disclosure of their status** before applying for work with children or vulnerable adults thus allowing prospective employers to check their status on-line and enabling them to initiate the monitoring process.

45. If new police information comes to light on individuals who are monitored by the scheme then this information will be passed to the IBB for consideration. Should a decision to bar an individual be taken after consideration of this new information then **the employer will be notified of a change in the individual's status**. Every effort will be made to contact the relevant employer. This ensures that people who are monitored by the barring scheme and who become barred can be removed from the workforce at the earliest opportunity, rather than waiting for a referral from the employer.

46. This continuous updating facility also means that employers do not have to repeatedly request a new disclosure of status for members of their own workforce within the validity period (yet to be defined – potentially the equivalent of an average working life) as they would be automatically notified of a change in the individual's status. It also means that if the individual changes job, new employers will only have to undertake a simple **free and instant online check** of the applicant's status enabling them to employ the individual immediately.

47. There will be no change to the way that employers refer individuals in their employment to the barring lists when their employment has been terminated as a result of reasons associated with harm, or risk of harm, to children or vulnerable adults. However, a duty will be placed on more employers to refer to the scheme, and the scope of employers able to refer to the scheme on the vulnerable adults has been substantially increased.

48. Barred individuals will have a right of appeal to the Care Standards Tribunal on a point of law or a point of fact, except in cases where they have been automatically barred for a small number of the most serious sexual offences against children and vulnerable adults and are therefore deemed to present a manifest risk of harm to these groups.

49. The table below shows how the proposed new scheme will solve the problems with the current system.

Current problem	New scheme
<p>Local vetting inconsistencies Vetting decisions are made locally based on an inconsistent (and often limited) understanding of the information on a CRB Enhanced Disclosure</p>	<p>Centralised Barring Decision Barring decisions would be made by a central expert team on application to work with children or vulnerable adults. Unless the individual has been barred, the employer may then decide whether or not to offer the job. (An employer may employ a barred individual in some activities covered by the scheme, including in support work in hospitals and FE colleges (for example a cleaner or receptionist). The employer should follow relevant guidance from the Secretary of State.)</p>
<p>Reactive barring process Individuals can only be barred following a referral by their employer or other relevant body after they have harmed (or placed at risk of harm) a child or vulnerable adult through the course of their work.</p>	<p>Proactive and reactive barring process Individuals may be barred on application to work with children or vulnerable adults based on known information, for example criminal history, before entering the workforce. Referral based barring will also continue as now and will be extended to a wider range of bodies, including professional and regulatory bodies and local authority social services departments. There will be a process of automatic barring for a range of serious offences, whereby individuals will be barred following caution or conviction, in order to better safeguard vulnerable groups. In the majority of cases they will then have a right to make representations in order to prove they are not a risk and could then be removed from the list.</p>
<p>Disclosure is a ‘snapshot’. It is only valid on the date of issue – subsequent convictions are not brought to the attention of employers as they occur</p>	<p>Continuously updated system The new scheme will be able to notify employers of a change in the individual’s status if the employee becomes barred as a result of new information which may not have been known to the employer. This is because any new relevant information recorded by the police on individuals in the workforce will be considered by the barring scheme. Barring decisions will also be shared with the relevant professional or regulatory body.</p>
<p>Cost and delay of repeat checks. Individuals in the child and vulnerable adult - related workforce often have more than one post and should be checked</p>	<p>Free and instant online barred status check. A continuously updated system will enable new employers to do a free and instant online check of the applicant’s up-to-date status in the scheme.</p>

<p>for each one, leading to administrative and cost burdens.</p>	
<p>Not everyone is eligible for an Enhanced Disclosure, particularly those employed by parents and personal employers</p>	<p>Increased entitlement to Enhanced Disclosures All posts with access to children and vulnerable adults will be eligible for an Enhanced Disclosure. Those employed by parents/personal employers will be eligible for a barred list check.</p>
<p>Three Separate barring lists List 99, PoCA, PoVA and the Disqualification Order regime have different legislative bases and apply differently to parts of the workforce.</p>	<p>A single list of those barred from working with children and one for those barred from working with vulnerable adults The new scheme will introduce a single list of those barred from working with children and a list of those barred from working with vulnerable adults. These two lists will be closely aligned and the IBB will consider all information it receives in relation to both lists. This will clarify and simplify information for employers.</p>

Risk Mitigation:

The following steps are being taken to mitigate the risks associated with Option D, as highlighted in paragraph 39:

Risk	Mitigation
Implementation dependent on the introduction of improved information management and disclosure processes within Police Forces.	Working closely with the Home Office and the Police and inputting to related projects through representation on relevant Project Boards. CRB is rolling out the quality assurance framework to local police disclosure units to improve consistency and quality of disclosure information.
Tight timetable for implementation	Good project management and planning to ensure milestones are met.
Significant awareness raising required to ensure that system is understood and used appropriately.	Broad communications activities and a detailed change management strategy underway including links to wider safeguarding agenda and insistence on fact that this is only one part of good vetting and recruitment practices.

SECTORS AND GROUPS AFFECTED

50. Individuals working or seeking to work in the children's or vulnerable adults' workforces will be eligible to apply for consideration by the barring scheme. Further changes to legislation will extend the eligibility for enhanced disclosures. This will mean that everyone who works with children and/or vulnerable adults will be eligible for an enhanced disclosure and consideration for barring. A proportion of these people will be subject to compulsory enhanced disclosures and checks of their status.

51. There is a distinction to be made between the current *headcount* of people in the workforce (that is the total number of individuals in the workforce) and the number of *roles*. There are more roles in the workforce than individuals employed in the workforce, however, and enhanced disclosure is currently required for each role. Thus, the headcount gives the potential number of people affected and the number of roles enables the project to estimate the impact on the disclosure process. Total headcount figures are below with the number of checks currently undertaken per annum.

Sector	Headcount of workers & associates (England & Wales)	CRB checks per year (average)
Fostering	96,000	65,067
Cafcass	2,283	1,493
Schools	1,053,263	518,307
School Governors	233,000	10,000
Childcare & Early Years	891,349	205,390
Youth	70,683	18,000
FE Colleges	238,525	107,359
Sport & Leisure	2,212,499	189,634
NHS	1,330,740	457,834
Medical and health students	129,000	45,994
Social care	922,872	574,116
Religious organisations	77,800	19,500
Other (including independent health sector, regulatory bodies, etc)	244,839	24,253
TOTAL	7,502,854	2,217,638

Over time, as a greater proportion of the workforce have applied to the scheme and become subject to continuous updates, the volume of new applications for disclosures will decline as employers will be able to check an individual's status on-line.

52. Roll out of the new scheme will need to be carefully phased so as to avoid some of the problems encountered when the CRB was launched. Implementation plans will take these past problems into account to ensure that capacity of the new scheme can accommodate the rate of application for checks.

53. A distinction must be made between those positions for which a check is **mandatory** and those for which it is left to the employer's **discretion** (see Annex A). It is intended to extend the scope of mandatory checks to cover:

- work in key settings and services targeted at children
- work which involves frequently caring for, supervising, teaching, training, advising, counselling or providing medical treatment and therapy to children
- support work in general health settings not targeted at children
- health and social care settings which involve work with vulnerable adults (and removal centres for asylum seekers). Checks will not be mandatory for those working with vulnerable adults in all other positions.

Broadly, making a check of those working with children will be optional where the work is part of private family arrangements and where the work involves access to health, education or social services records about children but with no actual access to the children themselves.

54. The coverage of the vulnerable adults workforce will increase, as those working in supported housing and voluntary sector services targeted at vulnerable groups will be eligible for checks for the first time.

55. One of the main groups which will become eligible for checks under the new system are those people employed in private domestic situations, eg nannies, au pairs, providers of care or support under direct payments etc. These individuals are currently not eligible for checks by domestic employers. Under the new scheme individuals and parents or other family employers will be able to find out the potential employee's status, with the individual's consent. They will not, however, have a right to access to enhanced disclosure information as they are not permitted to ask the "exempted question" under the Exemptions Order to the Rehabilitation of Offenders Act 1974. (see paragraph 21).

56. The increase in scope of mandatory checks will cover a greater number of those in positions that involve working with children and vulnerable adults, , such as the NHS and day care centres for vulnerable adults and sports and leisure organisations specifically targeted at children.

57. More detail on the proposed extension to discretionary and mandatory checks including examples of positions is included in Annexes A and B.

58. The number of people in the workforces is instructive because it is formally the applicant who applies for an enhanced disclosure (for consent reasons). However it is also important to recognise that the new scheme will also impact on employers because they request, and often meet the cost of, the check. Similarly, there will be an impact on the Registered Bodies network because they process the application for enhanced disclosures (i.e. check the identity of the individual and countersign the application form, sometimes for a fee.)

59. To ascertain the number of employers it is useful to consider the number of businesses/providers that operate in the main sectors, recognising that this is only an indicator and does not cover all areas. There are currently:

60. Children's education and care

- Social care: 34,203 businesses (including 32,000 foster carers)
- Childcare: 115,300 (including 73,000 childminders)
- Schools & colleges: 31,674
- Youth services: 150

61. Health & social care providers

- NHS Trusts in England: total of 593 (comprising 175 Acute Trusts, 31 Ambulance Trusts, 84 Mental Health Trusts and 303 Primary Care Trusts)
- NHS Trusts in Wales: total of 14 (comprising 13 Acute Trusts and 1 Ambulance Trust)
- Independent hospitals in the UK: 249 (Source *Laing's Healthcare Market Review*, 2004-05)
- Domiciliary care agencies operating in England 4,121 (source Commission for Social Care Inspection)
- Care homes in England: 20,069 (source Commission for Social Care Inspection)

62. This gives a total of more than 212,000 businesses. This is probably an under-estimation on account of the lack of sports and leisure representation in these figures, although there may be some duplication here too. Furthermore, the children's workforce data only gives figures for VAT registered businesses, thus presenting a limited picture of businesses in the children's workforce where the majority of provision is VAT exempt.

63. There is also the voluntary sector to take into account, although much of the provision of voluntary care and support is spread across the sectors outlined above. See the section 'Impact on volunteers and the voluntary sector' (paragraphs 85 – 87 below).

64. Other sectors affected may include: religion, transport and charities where work involves relevant contact with children or vulnerable adults.

65. As for Registered Bodies, who check the identity of the applicant, countersign the application form and send it to the CRB, there are currently around 13,000 but the CRB is taking steps to reduce this number independently of these proposals. . This will be a key part of the CRB's strategy to enhance the efficiency of, and improve standards within, the Registered Body network. This was also a key recommendation of the Bichard Inquiry.

Additional Northern Ireland numbers:

66. To give an indication of the numbers of workers impacted in Northern Ireland, there are 24500 teachers registered to teach in grant-aided schools (the independent sector is very small so the figure represents the bulk of the teaching workforce). In addition to this there are the following Full Time Equivalents engaged in various support roles in schools: 1720 Admin/Finance 1720, 3966 Classroom Assistants, 940 Technician Assistants, 81 Foreign Language Assistants, 151 Library Assistants, 95 Other. Obviously this is only one sector of the Northern Ireland workforce, but it highlights that the additional numbers are a small proportion of the England and Wales workforce listed above. The numbers of police checks carried out by the

Criminal Records Office, Northern Ireland in 2004 for positions involving work with children was as follows:

Education	28233
Voluntary organisations in child care	17364
Child care nurses and nursing homes	10102
Students	4012
Social Services	14155
Probation (positions with children focus)	692
Training Schools	30
Social Care Council	436
TOTAL	75024

Source : Police Service for Northern Ireland (PSNI)

67. The project team is working closely with colleagues in Northern Ireland with the intention that in practice the scheme will extend to Northern Ireland, Entry to the scheme will be via the proposed Northern Irish disclosure service. See also paragraph 105 for information on arrangements with Scotland.

Impact on a typical business

68. It is difficult to identify a typical business as the workforce is spread across institutions from large schools to small nurseries, NHS Trusts to small care homes, and sports clubs to voluntary groups. However, they will all face a similar process, and the impact of this new process can be assessed thus:

Old system	New system	Cost/Saving
Decide whether applicant should be checked.	Decide whether applicant should be checked. Clearer guidance and a simpler system with only one level of check will support the employer in this decision.	<u>Saving:</u> time.
Fewer posts eligible for check.	More people eligible for check.	<u>Saving:</u> reduced likelihood of inappropriate appointments and undesirable consequences. <u>Cost:</u> time and money for each additional check.
Either: post requires Standard	All disclosures for work with children and vulnerable adults will be	<u>Cost:</u> Current price difference between an Enhanced and a Standard

Disclosure; or, post requires Enhanced Disclosure.	done at Enhanced level (this is already the case for 90% of disclosures).	disclosure is £5 per disclosure.
<u>On entry to workforce:</u> Complete form and send to CRB.	<u>On entry to workforce:</u> Complete new form and send to CRB.	<u>Cost:</u> Disclosures for the new scheme are likely to cost more than a current Enhanced Disclosure to cover the improved features.
<u>On change of job or new post:</u> Complete form and send to CRB	<u>On change of job or new post:</u> Online status check (plus Enhanced Disclosure if required)	<u>Saving:</u> time and effort of filling out form; time of waiting for CRB to respond; and cost of disclosure
Other recruitment and vetting practices (eg. interviews, references).	No change.	No change.
Subsequent checks on existing staff are recommended after certain intervals, each necessitating a new full disclosure.	Subsequent checks not required, because of continuous updating.	<u>Saving:</u> time and effort of filling out form; time of waiting for CRB to respond; and cost of disclosure
Not notified if individual becomes barred	Every effort made to notify if an individual's status changes.	<u>Saving:</u> able to eliminate unsuitable people earlier and prevent further abuse. <u>Cost:</u> need to recruit and train new worker to replace barred individual

Distributional impacts

69. The process and impact of the new scheme will vary owing to.....

70. **i) Coverage:** The increase in mandatory checks is likely to have a relatively greater impact on the less regulated sectors such as sport and leisure given that these sectors currently process proportionally fewer checks and there are currently fewer requirements on them.

71. **ii) Criminality rates of applicants:** CRB figures show that Enhanced Disclosures for applicants in certain sectors are more likely to reveal information than in others. This means that there are likely to be more barred individuals in those sectors which have higher criminality rates with associated impact on the workforce as a whole. The following figures from the CRB show how this varies according to sectors, although it is important to remember that “criminality” includes those offences that may not lead to a barring decision (eg driving offences):

Of the 2.6m Disclosures issued in 2004, 7.5% (195,000) revealed information on an applicant. These 7.5% of applications were split by sector as shown:

- **By sector**
 - 7.5% Public Sector
 - 10% Private Sector
 - 2.4% Voluntary Sector
- **By organisational type (% should be treated as indicative only)**
 - 30% Sports & Community
 - 17% Local Government
 - 15% Charity
 - 10% Health
 - 8% Social Services
 - 7% Security
 - 4% Education

Of these 7.5% (195,000) Disclosures that revealed information, 10% (20,000) resulted in a job offer being withdrawn. Job offers withdrawn by sector:

- **By sector**
 - 12% Public Sector
 - 13% Private Sector
 - 14% Voluntary Sector
- **By organisational type (% should be treated as indicative only)**
 - 20% Health
 - 15% Local Government
 - 10% Social Services
 - 9% Education
 - 6% Charity
 - 2% Sports & Community
 - 0% Security

Therefore, overall 0.8% of all CRB checks, resulted in a job offer being withdrawn

- **By organisational type (% should be treated as indicative only)**
 - 2.6% Local Government
 - 1.9% Health
 - 0.9% Charity
 - 0.7% Social Services
 - 0.5% Sports & Community
 - 0.3% Education
 - 0% Security

Source: CRB

72. **iii) Mobility of workforce:** Certain sectors have a more mobile workforce than others. These mobile sectors are currently disadvantaged by the lack of portability of disclosures. The new scheme will benefit these mobile workforces by giving the option of an online check of an individual's status rather than full disclosure each time.

73. **iv) Ability to ask exempted questions:** In order to protect offenders' right to privacy and to enable them to rehabilitate themselves in non-sensitive settings, there

are limits as to which employers are allowed to have access to an individual's criminal record. Parents and individuals as private domestic employers, for example, are not allowed to have access to all the information on an Enhanced Disclosure. Given that these situations often afford a high level of personal contact and are often unsupervised, it is desired that these employers should be able to an individual's status in the vetting and barring scheme (even if they cannot know the rest of their criminal history). To enable this they will be able to do an online check of an individual's status in the scheme (with their consent) but will not have access to a full criminal records information.

Impact on volunteers and the voluntary sector

74. It is recognised that any change to the current arrangement of no charge to volunteers for a disclosure would place a new burden on this valuable group so no charge is intended.

75. However, there will be an additional administrative burden and cost on the 'users' of volunteers in the mandatory settings (see Annex A) because even though the disclosure may be free, they may be charged by the umbrella body for processing the application.

76. Again this is mitigated by the fact that future users would only be required to do an online status check where the individual has been through the system once before. This facility is particularly valuable in the voluntary sector as voluntary work is frequently in addition to other work with children or vulnerable adults so their disclosure for that work would enable free and instant online checks for future volunteering work. Furthermore, volunteers often volunteer for more than one organisation, thereby gaining the same benefits across the voluntary sector.

Impact on CRB and the Police

77. The new scheme will have an impact on both the CRB and the Police. The joint project team continues to engage with both CRB and the Police and will also ensure that appropriate changes are made to their processes in the interim so that they are equipped and able to adjust to the new scheme (including handling initial increased volumes – see section on Implementation).

78. "The introduction of new facilities under the IMPACT (Information Management, Prioritisation, Analysis, Co-ordination and Tasking) Programme will enable more straightforward and direct access to a whole range of police information, including soft information held at police force level. The IMPACT Nominal Index already allows users in one force to establish whether any other forces hold information on a person of interest in one or more of their local systems. The deployment of an inter-force information sharing capability based on the Cross-Regional Information Sharing Project (CRISP) during 2007 will be an interim step towards the provision of a complete, integrated information sharing capability which will be fully operational by 2010. IMPACT will drive a range of positive changes to police and CRB procedures independent of the vetting and barring scheme. However, the scheme will seek to benefit from the new IMPACT facilities wherever possible in

terms of improved access to information.

79. The move to require Enhanced Disclosures for all those seeking to work with children or vulnerable adults will mean an extra burden on Local Police Disclosure Units (LPDUs) which will be required to research and consider the relevance of a larger volume of locally held information. However, this will be mitigated by the IMPACT systems which will progressively simplify the process of locating information and by a reduction in the total number of Disclosures issued as employers increasingly do a simple check of a person's status in the scheme."

80. Continuous updating will mean additional operating costs for Local Police Disclosure Units. It has been estimated that this will rise to £365,000 per annum. There may be a set-up cost incurred to accommodate the expected rise in applications on launch of the scheme but this is being mitigated by proposals for phased roll out (see paragraphs 140 – 150) It has been decided that the CRB will administer the new vetting and barring scheme, and will support the role of the Independent Barring Board as part of a single integrated system. This will have implications for the CRB's organisational structures and long-term financial arrangements.

COSTS AND BENEFITS

Costs

81. The costs of the **current process** can be broken down as follows:

Direct costs to Government:	These are the running costs of the current barring lists and partially subsidising the CRB, which processes disclosures.
Indirect costs to Government	The cost to public sector organisations (eg NHS bodies, Local Authorities) of functioning as Registered Bodies, and therefore, processing disclosure applications. This is in addition to the fact that they also pay for many of the checks on their own staff.
Costs to other Registered Bodies / umbrella bodies	The cost to private sector organisations of functioning as Registered Bodies, and therefore, processing disclosure applications. This is often recovered through a charge on employers.
Costs to employers	Effective cost of Enhanced Disclosure for applicant; as employers can pay for the check.
Costs to employees	Formal cost of Enhanced Disclosure; i.e. it is the applicant's responsibility to apply for the check via their employer and they may therefore pay for it.

82. Some work has been done on the potential setting up costs and the annual operating costs of the proposed new scheme. The spectrum of potential costs for the scheme is being informed and narrowed by further costing work. These estimates have been informed by data regarding current operations and assumptions based on

options for future processes.

Cost areas	Estimates	Principles of who might pay
Set-up costs to build new scheme.	<p>Up-front set-up costs are expected to fall within the provision of £16.6m over the years 2005-06 to 2007-08 to be provided by the Department for Education and Skills and the Department of Health.</p> <p>Cost elements will include the design of the scheme; enhancements to processes and systems; document, case management & call centre systems; and project management and consultancy</p>	<ul style="list-style-type: none"> • Up-front costs to be funded by Central Government, shared across participating Government Departments (potentially DfES, DH, HO and DCMS). • Some cost elements may fall to be met through service or lease agreements, and therefore be regarded as operating costs.
Operating costs for central vetting scheme.	<p>£16m to £18m per annum over first 5 years of scheme. Costs are anticipated to peak in 2008/09 as employers and employees identify with the merits of the scheme and apply for inclusion ahead of any statutory requirement. Steady state operating costs are around £17m.</p>	<p>Currently the CRB disclosure process is funded by a fee for each application. The enhanced features of the vetting and barring scheme, such as continuous updating, will cost more to provide. The level of the fee will be reviewed when the new scheme is introduced in 2008, and it will be affected by assumptions about how the new scheme is phased in and hence the volume of applications to be handled. Other funding options for the longer term include central Government funding and other forms of charges on scheme members or employers. These have advantages and disadvantages. No decision has been made to depart from fee funding.</p>
Costs of CRB disclosure process	The Disclosure process in 2005/06 cost £78m.	See above.

	The CRB currently charges £36 per disclosure except disclosures for the voluntary sector which are free of charge funded in part by the levy on Enhanced Disclosures. However, the Government is currently required to make up the £2m revenue deficit of the CRB largely due to volunteers.	
Registered bodies and umbrella bodies costs (note that some RBs and many UBs are run as commercial operations and will therefore see a net benefit due to increased volumes)	Increased volumes of applicants will incur an additional cost to RBs (potentially a total cost of £6m) for handling and processing.	<ul style="list-style-type: none"> • Employers or individuals pay for service (either directly if the RB is a commercial operations or indirectly if it passes on the cost to individuals through reduced salaries or higher professional fees).

83. In terms of impact on the workforce it is important to highlight the significant net benefits that will flow to employers (largely in the public sector) from the change to a continuously updated system that will reduce the need for repeat CRB disclosures and speed up the recruitment process through instant access to the individual's status. This could bring savings not just to individual employers but to the sectors as a whole. (See Sectors and Groups affected).

84. Environmental costs: None

85. Social costs: The scheme will have a social cost in terms of its impact on the rehabilitation of offenders. By ensuring that people with a serious relevant criminal history which suggests a potential risk to the vulnerable do not work with these groups, the new scheme will have an impact on their ability to rehabilitate themselves through such work. On the other hand, there will be an unquantifiable social benefit due to the reduced incidence of abuse of children and vulnerable adults and associated negative social consequences (see Rationale for Government intervention section below).

Benefits

Removal of people who pose a risk from the relevant workforce

86. Barring individuals who present a risk from entering the workforce will reduce the likelihood of such individuals gaining access to children and vulnerable adults through their work. The proactive and updated nature of the new scheme should lead

to an increase in the number of barred individuals each year.

87. Independent research carried out by MORI for the CRB estimates that in 2004 around 20,000 people were refused employment on the basis of information on the Enhanced Disclosure. This was broken down by the following reasons which highlight the limited effect the current barring schemes have on preventing unsuitable people (although not all of those refused employment would be barred under the proposed scheme):

Q: Thinking about this individual again, which of the following type (s) of information caused you not to employ them?

	Year 3
84%	Details of their previous conviction(s)
17%	Local Police Force information on the front of the Disclosure
8%	Outcome of their POVA Check
3%	Outcome of their POCA Check
3%	Local Police Force information in a separate letter
0%	Outcome of their List 99 Check

88. Since many employers are currently undertaking appropriate selection practices, these individuals would not be employed for this work anyway. However, the new scheme would ensure consistency in this area and prevent these individuals from repeatedly seeking work with children or vulnerable adults until an unscrupulous or unaware employer enables them to do so. These individuals would be barred because of serious offences committed or because of a series of serious allegations which would make them unsuitable for work with children and vulnerable adults so this is not taking a significantly larger number of people out of the workforce, but rather ensuring that these people do not enter the workforce as a result of an employer's bad practice or lack of information.

Benefits to children and vulnerable adults

89. The key benefit is improved safeguards children and vulnerable adults by reducing the threat of unsuitable individuals gaining access to them through their employment.

90. 'Staying safe' was one of the five outcomes which was identified by the Every Child Matters programme and the barring scheme is one of the ways that the DfES intends to meet its commitment to ensuring that children and young people achieve this outcome.

91. The Care Standards Act 2000 introduced the Protection of Vulnerable Adults Scheme (POVA), which has ensured all adults in receipt of social care services now have a significantly increased level of protection. This Act, together with the green paper "Independence, well-Being and choice" and the recently

published white paper "Our health, our care, our say" has put in place the foundations for a system overhaul of the way care services are delivered to vulnerable adults.

92. It is, however, impossible to quantify exactly the preventative effect of the new scheme. It is also recognised that the majority of benefits will be personal and social, linked to individual self-esteem and life chances, particularly given the long term effects of abuse on the ability to form trusting relationships. Although the costs of child abuse (and therefore potential savings by the scheme) are outlined in The Rationale for Government Intervention (paragraph 3), the overall effect of reducing abuse cannot be easily quantified.

Benefits to employees and employers

93. Reduced incidence of abuse by those working with children and vulnerable adults is obviously also a potentially key benefit to individual employers, as it helps to ensure a safe and productive working environment and maintain a good business reputation.

94. A more quantifiable benefit can be ascertained as a result of the new scheme's continuous updating facility which reduces the need for a full Enhanced Disclosure every time an individual changes job in some sectors. After the initial application for an enhanced disclosure and barring consideration (which may cost slightly more than currently), the benefits of this will be:

- Subsequent on-line checks of the individual's status on moving job will be free
 - **saving cost** of repeat disclosures in some sectors;
- Subsequent checks will be instant in some sectors
 - **saving time and effort** of processing application forms; and,
 - **saving time and cost** of waiting for full disclosure from CRB.

The majority of disclosure applications are currently processed in 2-4 weeks. However, during this interim period, employers often rely on agency staff or employ the individual with additional safeguards in place. By removing this time delay, employers would be able to appoint individuals immediately and hence avoid costs of agency staff or other measures in the interim. We will also continue to allow provisional employment while waiting for an Enhanced Disclosure in certain situations to minimise recruitment delays.

95. Employers will also benefit from the fact that as far as possible they will be notified if an employee's status changes as a result of the new scheme's continuous updating facility. They will therefore not be expected to get further disclosures on their workers once they are subject to monitoring for the duration of the validity period of the disclosure. Furthermore, they will have continued assurance that the individual is still monitored and has not been barred.

Benefits as a result of subsequent checks being free

96. As explained above, there is a distinction between the ‘formal’ and ‘effective’ incidence of the charge for the check. The formal incidence refers to who is legally responsible for paying the charge, whereas the effective incidence refers to who actually ends up paying the charge. While employees bear the formal incidence of the charge, the effective incidence is shared between employees, employers and consumers. The explanation for this is as follows:

- some employees may be able to demand compensation for having to pay the charge, or negotiate that their employers reimburse them for the expense. In this case, they will be ‘passing on’ the charge to employers.
- similarly, when employees pass the charge on to employers, employers then have the choice of whether to accommodate the charge (accept lower profits) or pass the charge on to consumers (by increasing prices).

97. By only charging for the initial disclosure and not for subsequent rechecks of an individual’s status (during a validity period to be determined but well in excess of ten years), **the new scheme will reduce subsequent both *formal and effective incidences of the charge*.**

98. These savings in cost and time will be of particular benefit to small businesses, which are less able to absorb the cost of the charge and less able to cover the vacancy while the applicant is being checked.

EQUITY AND FAIRNESS

99. The new scheme will *not discriminate against people differently according to gender, age, race, disability or location*. However, statistics show that certain gender, age and racial groups and certain locations have higher criminality rates than others. As a result, it is likely that more people from those groups with a higher criminality rate will be barred from working with children and vulnerable adults. This could have a particular impact in those areas (with higher proportions of individuals with a criminal history and it is also likely that this will have a greater effect on those sectors which employ more individuals from such a background. The impact on people with a criminal record history is shown below.

100. Rural testing: Discussion with policy officials and stakeholders has concluded that there will be no disproportionate impact on people in *rural areas*. Indeed, the fact that barring decisions will be made by an expert team before employment should increase the level of fairness in the system

101. There are three potential areas where equity and fairness could be an issue: those with a criminal record history; applicants from outside the child and vulnerable adult related workforces and applicants from devolved administrations. These are assessed below:

Those with a criminal record history

102. Depending on the exact processes adopted by the barring scheme, it is possible that the Disclosures of those with a relevant criminal record history may take longer

to process because they are being reviewed by the independent barring board in order to consider whether or not the individual should be barred. However, this is offset by the fact that those with minor criminal histories which aren't relevant to their suitability to work with children and vulnerable adults will have their Disclosure processed quickly and are less open to discrimination by individual employers who only do an online check of the individual's status.

Applicants from outside the child and vulnerable adult workforces

103. Once the scheme has been in operation for a while, it is a likely scenario that two people will apply for a job which involves work with children or vulnerable adults, one of whom has already been checked and one who hasn't. In this case, it would be cheaper, quicker and easier to employ the applicant who has already been checked (by doing a simple instant status check) than to apply for a full disclosure for the applicant who is not in the system.

104. This impact is offset by the fact that the new scheme will also enable individuals to apply for speculative disclosures so that they can improve their employability.

Applicants from devolved administrations

105. It has been agreed that the new scheme should apply to England and Wales and Northern Ireland, with reciprocal arrangements for Scotland. We are in the process of harmonising the legal frameworks to enable the close relationship of the scheme with related delivery partners across the devolved administrations. These arrangements will effectively mean that the impact on people from Scotland will be equivalent to the implications for applicants from outside the child and vulnerable adult workforces (see above).

SMALL FIRMS' IMPACT TEST

106. In March 2005 a questionnaire was sent to 700 small businesses through the DTI Small Business Service. The questionnaire received 56 responses from various small businesses ranging from recruitment and marketing agencies, to IT services and software specialists.

107. Responses were largely positive in that 66% (37) believed that the proposed scheme would reduce the risk of unsuitable people gaining access to children or vulnerable adults through their work. Only 7% believed that it would not reduce risk. Comments reflected the belief that the scheme would not affect most businesses, but that it would reduce risk and that this was a positive outcome. One response indicated that the scheme would "help to reassure clients."

108. 71% (40 respondents) indicated that their employees had no significant contact with children or vulnerable adults through their work and 88% (49) respondents indicated that they did not employ staff under the age of 16. Of the 21% (12) who indicated that their employees did have significant contact, 9 businesses already performed vetting procedures on relevant staff and 10 believed that the scheme would

reduce risk (one disagreed and one didn't know).

109. 13% (7) respondents believed that expanding compulsory checks would have a negative impact on their business, even though some of them would not be affected by the extension.

110. 82% suggested that it would be easier to perform an on-line check rather than seek an enhanced disclosure to confirm an employee's suitability. However 23% said that there were circumstances in which they would still require an enhanced disclosure to find out other potentially relevant information.

111. Only one respondent indicated that they thought the scheme would have a significant negative impact on their business. However this business did not employ children or encounter children or vulnerable adults through its work. One respondent indicated that as they employed those under 16 that they would need to perform checks on themselves which they felt was unsuitable.

112. The majority of comments however were positive and supported the aims of the scheme. Respondents favoured a quick and easy check that was simple to administer and expected good communication about who was affected by the scheme and the responsibilities of employers.

COMPETITION ASSESSMENT

113. The markets affected will be primarily Education, Health, Social Care, Sport and Leisure, and potentially some minor impact on Religion, Transport, IT, supported housing, the Prison Service, the National Probation Service, some parts of services provided to asylum seekers and the part of the Retail market which employs children under 16.

114. The scheme will affect the markets differently according to the degree to which employers in each market will be required to undertake a status check. Those markets with the greatest numbers of required checks will be Education, Health and Social Care, the two former markets being dominated by the public rather than private sector. Initial assessment for each market suggests there will be no impact on competition.

ENFORCEMENT AND SANCTIONS

How will the proposal be enforced?

115. We anticipate that umbrella bodies and registered bodies will check the identity of applicants, as now.

116. To maximise the protection afforded to children and vulnerable adults we intend to place a duty on employers in mandatory settings to check an individual's status and whether or not they are subject to continuous updating.

117. We intend to work with Inspectorates so that they have a role in monitoring that checks have been made and that the barring scheme is used in the context of wider child and vulnerable adult protection procedures. Ofsted, for example, have already agreed that the school self-evaluation will include child protection requirements and recruitment and selection procedures. This will be reviewed with the school during the inspection and any non-compliance will be reported and considered as part of the overall judgements about the effectiveness of the school. The exact mechanism for inspecting that checks have been made will be developed according to appropriate technical solutions. CSCI, the Healthcare Commission and the National Assembly for Wales will also continue to monitor the effectiveness of safeguarding measures that are put in place in health and social care services.

118. In other areas of the child and vulnerable adult-related workforce, where checks will be at the discretion of the employer, participation will be encouraged through partnerships with relevant organisations and the private sector. Increased public and employer awareness of their availability should lead to increased take up.

What will be the sanctions for non compliance?

119. Section 35 of the Criminal Justice and Court Services Act 2000, and section 89 (5) of the Care Standards Act 2000 for vulnerable adults state that the maximum penalty for knowingly working (or applying for work) with children or vulnerable adults while barred or knowingly employing someone who is barred in such a childcare position (the offence by employers only currently applies to the children's workforce) is five years imprisonment or a fine or both. We do not intend to change these sanctions, and intend to create a new offence of employing someone who is barred from working vulnerable adults.

120. Ensuring that mandatory checks are carried out and that individuals working in mandatory settings are subject to continuous updating will be crucial to afford the necessary level of protection for children and vulnerable adults. We intend that failing to carry out a mandatory check, knowingly employing an individual in the mandatory sector not subject to continuous updating, or working in a mandatory setting after having withdrawn from continuous updating will be criminal offences.

121. The Police and Courts will enforce elements of the policy which carry criminal offences.

122. There are certain acts which may be considered negligence rather than criminal issues. This includes failure to carry out appropriate discretionary checks and failure to share relevant information. We expect that regulatory bodies will wish to play a role in developing different sanctions for different sectors to encourage compliance. This may include removal of, or restriction of, registration.

123. Inspectorates may review what action has been taken in response to recommendations from previous inspections. Follow up inspections may take place where failure to comply demonstrates a wider concern about leadership and management.

CONSULTATION

Informal consultation

124. In partnership with the Department of Health, we have worked closely with the Home Office, Police representatives and the Criminal Records Bureau. We have also consulted widely with other Government departments and agencies and the devolved administrations in Scotland, Wales and Northern Ireland. This consultation included a 2-day challenge workshop in September 2004.

125. Representatives of key regulatory bodies (such as Ofsted and the Commission for Social Care Inspection (CSCI)) and key professional bodies (such as the General Teaching Council and the General Medical Council) are on our Regulators Group. Representatives of head teachers unions (SHA and NAHT), sector representatives (including the voluntary sector), representatives of children and vulnerable adults and other interested organisations have been consulted through the Project Advisory Group which meets quarterly.

126. We are also engaging individually and through consultative groups with other relevant and interested organisations who are not directly involved in the Regulators or Advisory Groups.

Wider public consultation

127. At the end of January 2005, we held a workshop for frontline 'end-users' to test out the proposed scheme with a selection of employers and employees from different sectors. Their views informed policy and were useful in the development of the formal consultation.

128. On 5 April 2005 a consultation entitled *Making Safeguarding Everybody's Business: A Post-Bichard Vetting Scheme* was published alongside the Partial RIA. Running until 5 July 2005, it was published online and in hard copies of which nearly 2000 were distributed. The exercise was accompanied by a communication exercise which included various stakeholder events and conferences including a series of six regional events held in conjunction with the DfES Children's Workforce Unit.

129. A formal analysis of responses to the consultation document was undertaken by the DfES Consultation Unit. The report was based on the 310 responses from across the various sectors received before the deadline. Below is a summary of responses on the key areas.

130. **Overall:** Respondents welcomed the proposals for the introduction of a central vetting and barring scheme with 89% (258 respondents) either agreeing or strongly agreeing that the model was appropriate, supporting proposals for a single point of reference where they could check the suitability of employees for positions working with children and vulnerable adults.

131. **Improved safeguards:** 88% (247) of respondents either agreed or strongly agreed that it would improve safeguards for children and vulnerable adults, welcoming the fact that records would be updated when new information came to

light.

132. **Impact on recruitment:** Respondents did not generally believe that the new scheme would have a negative impact on the way that they recruited individuals to work with children or vulnerable adults, although 13% (25) expressed concerns about delays in the system or additional costs.

133. **Workforce:** Respondents agreed with the proposal to extend the categories of positions for those eligible for a check. They also agreed with the extension to those where it should be compulsory to carry out a CRB check to include all those services exclusively targeted at children or vulnerable adults. A number of respondents felt that all who had access to children and vulnerable adults should be checked.

134. 94% (262) of respondents agreed with the proposal to extend mandatory checks, of whom 87% of respondents agreed that the impact of extending mandatory checks was acceptable, commenting that additional bureaucracy and costs would be acceptable because of the increased safety they provided.

135. Most respondents agreed with the proposals not to impose a requirement on employers of children and vulnerable adults to check other members of their workforce who had contact with them. They were also happy that they had the option to check them if they wished to do so. There were however a number of respondents who felt that there should be checks for all.

136. **Costs:** When asked about how much they would be willing to pay for a comprehensive updated system, respondents put forward suggestions that the system should be free, subsidised or that they would prefer an annual registration fee.

137. **Enforcement:** The vast majority (97% or 259) of respondents agreed with the intention to keep the existing penalties for non-compliance and that the penalties should apply to private employers as well as larger employers. Some respondents felt that there should be proportionate levels of penalties so that smaller organisations and individuals should pay less.

138. **Barring threshold:** 59% (157) of respondents wanted the barring threshold set at low or very low as this would lead to a more comprehensive check. Those who thought the barring threshold should be higher felt that 'soft' evidence was not always accurate and that only convictions or cautions should lead to barring.

139. The series of events that accompanied the Consultation also provided useful and largely positive feedback, with frontline representatives acknowledging the need to improve the current system and supporting the new proposals. In particular they welcomed the prospect of continuous updating, the increased eligibility to checks and the fact that the new scheme would mean a centralised and integrated approach to the protection of the vulnerable. However, there were concerns about a new IT system and that the threshold for the new scheme would be too high meaning that people with criminal histories might still be able to work with the vulnerable.

140. In December 2005 and January 2005 we engaged in a further round of consultation with key stakeholders on those elements of the scheme that had already

been developed. A policy dialogue pack was prepared seeking stakeholders views on issues such as the coverage of the scheme and the scope of the bar. The outcome of discussions at stakeholder meetings on these particular questions have informed ongoing policy development.

IMPLEMENTATION AND DELIVERY

141. Implementation of the full vetting and barring scheme will require the passing of primary legislation. It is important, however, to ensure that a phased approach is taken to implementation, introducing improvements where possible within the current legislative framework and scheduling the introduction of the post legislative solutions to maximise benefits and minimise implementation risk.

142. The main elements which will need to be phased in are the setting up of an independent board of experts to make barring decisions, introduction of the new lists, extension of the workforce, accept referrals from other agencies, phased roll out of pre-employment vetting, possibly by sector, continuous updating and online checking. Sufficient time will be planned for detailed specification, procurement, design and build of the IT solution necessary to support the scheme. It will be necessary to introduce guidance or requirements relating to the checking of existing staff.

143. The introduction of the new lists (with transitional arrangements for current lists), pre-employment vetting and extended workforce coverage will form the initial building block of the scheme. It is anticipated that extension of workforce coverage will be managed through secondary legislation with specific sectors of the workforce becoming eligible for entry to the scheme at specified dates. Continuous updating, notification and on-line checks are planned in the subsequent phase of implementation to reflect the necessity to establish a database of those who have entered the scheme in order for this functionality to be applicable.

144. For presentational reasons it would be desirable to introduce the various aspects of the new scheme together as a clear and distinct start would help avoid workforce confusion and facilitate straightforward communications. However, to avoid capacity problems and to enable some of the benefits of the new scheme to be realised quicker, a phased introduction is preferred. For these reasons grouping the elements as above may be the most appropriate approach.

145. It is also likely that mandatory checks under the new scheme will be phased in by workforce sector to avoid the 'big bang' problems experienced by the CRB on its inception. During this time, however, there would not be any restrictions on eligible individuals being checked through the new scheme.

146. In parallel to the work on legislation and plans for phasing, the project itself is going through several key stages to ensure successful delivery, namely:

- The Scope and Initiation Stage
- The Feasibility Stage

- Detailed Design
- Build and Test System
- Implementation.

147. An independent feasibility study of the proposed model was undertaken and reported in March 2005. The study concluded that the model was both operationally and technically feasible.

148. Further feasibility analysis was undertaken to consider the proposed scheme in more depth. The outputs from this stage included, a refined cost model, clearer understanding of the scope of the registration scheme and how it relates to the workings of other government departments such as CRB and DoH; development of the Strategic Outline Case, Project Initiation Document, Quality Plan and the high level project plan. Feasibility and testing will continue until Royal Assent

149. . The Safeguarding Vulnerable Groups Bill will enable the new vetting and barring scheme to be put in place. The next phase of the project will be detailed design and specification of requirements. The deliverables in that phase will be a detailed business model and defined processes to implement the new scheme, refined plans to support the transition to the new scheme, and detailed business requirements. This stage will also include the development of the Full Business Case and refreshment of the Procurement Strategy.

150. The Department will work closely with HO, CRB and DH to establish appropriate governance procedures to ensure propriety in the procurement necessary to support the new scheme, including identifying arrangements for transition of responsibility and accountability to the new IBB as appropriate.

Guidance and communication

151. Guidance will also be issued at least 12 weeks prior to the introduction of the scheme to ensure that users are familiar with new processes and requirements. There will obviously be a cost to users in terms of the time taken to familiarise themselves with the guidance.

152. A detailed communication and stakeholder engagement plan will ensure that full benefit is realised upon introduction of the post-legislation scheme through awareness and increased usage of pre-employment vetting and vetting and barring scheme checks.

MONITORING AND REVIEW

153. The project and the proposals are subject to the Office of Government Commerce (OGC) Gateway TM Process. This process examines the project at critical stages in its lifecycle to provide assurance that it can progress successfully to the next stage. It is based on proven techniques that lead to more effective delivery of benefits

together with more predictable costs and outcomes. This project was examined for Gateway 1 in September 2005 with further reviews until Gateway 5 which will assess benefits realisation following implementation.

154. It is difficult however, to have robust success criteria for the new scheme because of the lack of comprehensive data and because of the preventative nature of the proposed scheme. It is necessary, therefore, to consider the potential benefits that could arise from resolving the problems with the current system. One could then use indirect or proxy measures that focus more on process than outcomes. For example, every unsuitable person added to the barred list is one more prevented from potentially abusing vulnerable people through their work (though we can't be certain that they would have gone on to do so).

155. There is work underway to develop appropriate Safeguarding performance indicators and it is anticipated that these will assist in monitoring the on-going impact of the improvements introduced by the scheme.

156. Monitoring of implementation will comprise a mix of inspection by existing Inspectorates (as part of their normal procedures), performance measures and customer feedback (through satisfaction surveys and stakeholder groups). As in the case of all new regulation, there will also be a requirement for a review after three years.

157. The impact of the scheme on the recruitment process will be assessed through monitoring process efficiency targets in relation to the length of time taken to process pre-employment checks, referrals and appeals.

158. We are looking at the possibility of including a question on child-protection in recruitment practices in the Adult Basic Data set questions. This would enable us to monitor the take-up of the scheme in education settings.

159. In partnership with Action on Elder Abuse, the Department of Health is exploring the possibility of a national recording system for the incidence of adult abuse, and a number of pilots are being run.

160. We may also be able to monitor rates of CRB checks with data collected by Ofsted, the Healthcare Commission, CSCI and other regulatory bodies and the management of information provided by the CRB itself.

SUMMARY AND RECOMMENDATION

161. **The Government strongly recommends Option D:** the development of a vetting and barring scheme covering all those who work with children and vulnerable adults. The scheme, with appropriate appeals mechanisms, would confirm that there the individual is not considered unsuitable to work with these client groups. The barred list would be continuously updated and prospective employers will be able to make an instant check of an individual's status.

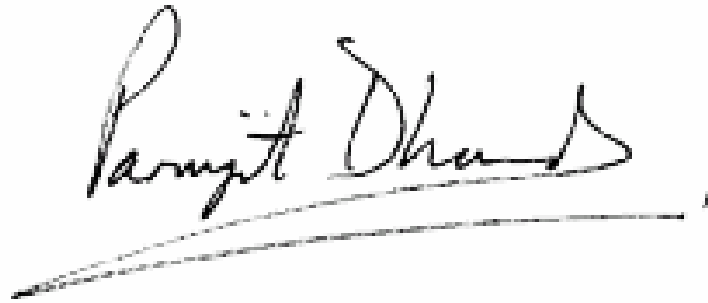
162. The benefits of introducing the Vetting and Barring Scheme include:

- Increased protection for children and vulnerable adults from abuse by those known to be unsuitable to work with them.
- More people working with children and vulnerable adults will be eligible for a CRB disclosure and consideration by the scheme.
- Decisions on whether to include an individual on the barred lists taken by experts
- Improved transparency - a comprehensive and consistent vetting service operating to a published set of clear criteria.
- Delivery of a step change in the vetting services for employers by notifying employers of any change in an employees' status.
- Parents and private employers will be able to carry out checks and hence be provided with reassurance that those working with their children are not known to be unsuitable.
- Delivery of a barring scheme which will support – rather than delay – effective recruitment procedures.

163. This RIA has identified significant risks and impacts for processes and individuals involved in the recruitment and selection of people to work with children and vulnerable adults. However, it has also highlighted the problems with the current situation, the political commitment to introducing changes and the potential benefits of the proposed scheme to employers, employees and most importantly to the vulnerable.

MINISTERIAL DECLARATION

164. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

A handwritten signature in black ink, reading "Parag Dhand", is written over a horizontal line. The signature is written in a cursive style.

5th July 2006

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Annex A – Mandatory Disclosures: the current situation

Eligibility for a Disclosure

1. Eligibility for a CRB Disclosure (at standard and enhanced levels) is governed by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. Such a Disclosure is available to assess a person's suitability for, inter alia, work in a "regulated position" for the purposes of Part II of the Criminal Justice and Court Services Act 2000; in further educational institutions where normal duties involve regular contact with children; and work concerned with the provision of health services or care services to vulnerable adults.

Education

2. The Secretary of State may issue a direction prohibiting or restricting a person from carrying out work to which section 142 of the Education Act 2002 applies. The list of directions made under section 142 is known as "List 99".

3. The List 99 review, which was published on 19th January 2006, recommended that an independent panel of experts should be established. The independent panel's advice will be sought on all decisions referred to the Secretary of State, and without fettering her discretion, it is envisaged that the Secretary of State will follow the panel's advice in all cases. Work is currently underway to take forward all the recommendations of the List 99 review.

4. Section 142 applies to: (a) providing education at a school, (b) providing education at a further education institution, (c) providing education under a contract of employment or for services where the other party to the contract is a local education authority or a person exercising a function relating to the provision of education on behalf of a local education authority, and (d) taking part in the management of an independent school. It also applies to work of a kind which (a) brings a person regularly into contact with children, and (b) is carried out at the request of or with the consent of a "relevant employer" (whether or not under a contract).

5. A "relevant employer" includes (a) a local education authority, (b) a person exercising a function relating to the provision of education on behalf of a local education authority, (c) the proprietor of a school (including an independent school), and (d) the governing body of a further education institution.

6. A relevant employer must not use a person to carry out work in contravention of a direction made under section 142. This means that a "relevant employer" must check List 99 before using someone to carry out work to which section 142 applies. This can be done through a CRB Disclosure or, in some cases, through the Department for Education and Skills directly. Departmental guidance makes it clear that a CRB Disclosure should in any event be obtained for all appointments in schools or in further educational institutions where normal duties involve regular contact with children.

7. Requirements for CRB Disclosures are also set out in the Education

(Independent School Standards) (England) Regulations 2003 and the Independent School Standards (Wales) Regulations 2003 for the independent sector.

8. A relevant employer must refer a person to the Secretary of State in certain circumstances who may then consider whether to include that person in List 99.

Child care

9. The Secretary of State is required by the Protection of Children Act 1999 to keep a list, known as the POCA List, of individuals unsuitable to work with children. A “child care organisation” proposing to employ someone in a “child care position” to ascertain whether he is included in the POCA List or in List 99 on the grounds of unsuitability to work with children and, if he is, not to employ him. The only way to carry out the check against both lists is through a CRB Disclosure.

10. Accompanying guidance states that whilst organisations other than “child care organisations” are not required to seek checks they should note that “carrying out these checks [i.e. obtaining a CRB Disclosure including making a check of the POCA List and List 99] forms an essential and integral part of the pre-employment vetting process before appointing persons to child care positions”.

11. A “child care organisation” is an organisation (a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; (b) whose activities are regulated by or by virtue of any prescribed enactment, and (c) which fulfils such other conditions as may be prescribed.

12. A “child care position” is defined largely by reference to a “regulated position” for the purposes of Part II of the Criminal Justice and Court Services Act 2000.

13. A child care organisation must, and another organisation may, refer a person who has worked in a child care position to the Secretary of State in certain circumstances. The Secretary of State must then consider whether that person should be included in the POCA List.

Vulnerable adult-related employment

14. The Protection of Vulnerable Adults (POVA) scheme, established under the Care Standards Act 2000, was implemented in regulated adult social care settings in England and Wales from 26 July 2004. It creates a list of people, held by the Secretary of State, who are considered unsuitable to work with vulnerable adults.

15. Where the scheme has been implemented, there is a statutory requirement on providers of care to check if an individual is included on the POVA list. Checks against the list are only available as part of an application for a Criminal Records Bureau (CRB) Disclosure. POVA is currently implemented with regard to the following groups:

- care workers employed by registered providers of care homes, including workers supplied by employment agencies and businesses to such providers, who are employed in care positions that enable them to have regular contact in the course of their duties with care home residents;
- care workers employed by registered providers who carry on domiciliary care agencies, including workers supplied by employment agencies and businesses to such providers, who are employed in care positions concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance;.
- Those providing care through adult placement schemes

16. There is also a statutory requirement on providers of care, and employment agencies and businesses that supply individuals to these providers, to refer the care workers and individuals listed above to the Secretary of State for possible inclusion on the POVA list. This applies where, in the view of a provider of care or an employment agency or business, an individual has been guilty of misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm.

17. The POVA scheme does not currently apply to the NHS and the independent health care sector. However, since 14 February 2005, as part of the Secretary of State's *Standards for better health*, CRB Disclosures have applied to every new recruit to the NHS in England who has access to patients as part of their normal duties. Requirements for CRB Disclosures are also set out in the Private and Voluntary Health Care (England) Regulations 2001 and the Private and Voluntary Health Care (Wales) Regulations 2002 in relation to staff working in the independent health care sector.

18. Staff working in the Prison Service, the National Probation Service and in removal centres already undergo strong vetting procedures, which include a full criminal records check.

Annex B: the levels of protection offered by the new vetting and barring scheme - children

Level 1 – the bar applies and there is a requirement to check a person’s status in the vetting and barring scheme – regulated activity

Work in **key settings and services** targeted at children, such as schools, children’s hospitals, children’s homes, Young Offender Institutions, etc.

Examples: teachers, school caretakers, care workers, social workers, nurses, doctors, Prison Officers in youth offender institutions, cleaners in children’s hospitals, catering and administrative staff in schools, etc.

Any other work which involves **frequently caring for, supervising, teaching, training, advising, counselling or providing medical treatment and therapy to children** – regardless of the sector in which it is carried out

Examples: football coaches, GPs, private tutors, youth workers, teenage pregnancy advisors, canoeing instructors, police child protection officers, school-bus drivers, telephone counsellors, on-line chat room hosts, etc.

Key positions of authority in relation to children

Examples: Director of Children’s Services, Children’s Commissioner, Youth Justice Board member, person operating the Information Sharing Index, etc.

Level 2 – there is a requirement to check a person’s status in the vetting and barring scheme – controlled activity

Support work in general health settings not targeted specifically at children, such as general hospitals, a GP’s surgery, a sexual health clinic, etc.

Examples: cleaner in hospital (children’s ward or other), hospital shop worker, catering staff, car park attendant, receptionist, etc.

Support work in general FE settings such as a local FE college

Examples: caretaker, receptionist, catering staff, etc.

Level 3 – entitlement to check a person’s status in the vetting and barring scheme

Work that frequently involves training, supervising or advising soldiers aged 16-18 in the armed forces

Examples: Army Training Instructor

Work that frequently involves access to health, education or social services records about children, but with no actual access to children themselves.

Examples: person working in the SEN team in a local authority, people who input to the Integrated Children's System

The levels of protection offered by the new vetting and barring scheme – vulnerable adults

Checks will cover the following parts of the vulnerable adults workforce:

- those providing, or supporting the provision of, health and social care services, in both the public and independent sector, including regulators, students of relevant professions and to direct payment recipients;
- those working in supported housing;
- people appointed to assist people without capacity in the conduct of their affairs;
- prison and probation staff;
- staff in removal centres for asylum seekers;
- those involved in activities targeted at vulnerable groups, e.g. sport and leisure, education, training, social activities, advice, counselling - where the workers concerned have contact with vulnerable adults.

In these areas, work with vulnerable adults will include

- those directly working with vulnerable adults
- indirect access to one or more vulnerable adults, e.g. by telephone or e-mail;
- access to personal or sensitive information about vulnerable adults;
- management of staff who work with vulnerable adults.

In view of the need to ensure the protection of vulnerable adults in key health and social care settings, checks will be required in these sectors. In addition, they will be mandatory for staff in removal centres for asylum seekers.