



Department of  
**Health, Social Services  
and Public Safety**

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AN ROINN

**Sláinte, Seirbhísí Sóisialta  
agus Sábháilteachta Poiblí**

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MÁNNYSTRIE O

**Poustie, Resydènter Heisin  
an Fowk Siccar**

## **Consultation: Vetting Requirements in Adoption, Fostering and Private Fostering**

**Issued: 6<sup>th</sup> July 2009**

**Responses should be received by: 9<sup>th</sup> October 2009**

## Background

1. In light of the murders of Jessica Chapman and Holly Wells by a school caretaker in 2002, Sir Michael Bichard was commissioned to undertake an Inquiry which looked at the way employers recruit people to work with children and vulnerable adults. The Inquiry's recommendations led to enactment of the Safeguarding Vulnerable Groups Act 2006 (and equivalent NI legislation), which provides for a single agency to vet all individuals who want to work or volunteer with vulnerable people. The Independent Safeguarding Authority (ISA) was created to fulfill this role across England, Wales and Northern Ireland. Scotland is developing its own similar system, which will work closely with the ISA. On 13 March 2009, the ISA took over responsibility from Northern Ireland Government Departments for decisions on new cases referred under existing barring schemes, i.e. under the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 or the Education (Prohibition from Teaching or Working with Children) Regulations (NI) 2007.
2. Currently, those organisations proposing to offer work in regulated or care positions must ascertain if an individual is included on a disqualification list before offering them work in such positions. This check will be facilitated by AccessNI. The new Vetting and Barring Scheme (VBS) being put in place under the Safeguarding Vulnerable Groups (NI) Order 2007 will have a much broader coverage including, for example, vulnerable adults. In addition, the Scheme will enable vetting information to be obtained in relation to other groups who are not engaged in activities which are regulated or controlled under the Safeguarding Vulnerable Groups legislation, e.g. adoption.
3. The Department wishes to ensure that consistent vetting practices are operated across Trusts and other providers in a number of key services relating to children. The purpose of this exercise is to seek views on

proposed future arrangements in adoption, fostering and private foster care.

### **Vetting and Barring Scheme (VBS)**

4. From July 2010, people registering with the VBS to work or volunteer with children or vulnerable adults will apply to AccessNI. AccessNI will check whether there is any relevant information, including police information, known about the individual. If relevant information exists, AccessNI will pass this to the ISA, which will decide whether the applicant should be barred. A person who is not barred will be registered with the scheme.
5. The minimum age at which an individual can be registered with the scheme is 16. Individual applicants will have to pay a fee of £58 to register with the scheme and an Enhanced Disclosure Check will be included in this fee. With the consent of the individual, employers (and other bodies who have registered a legitimate interest) will be able to check the registration status of relevant individuals online and for free. In addition, all individuals registered with the ISA will be subject to continuous monitoring, meaning that when new information becomes known about an ISA-registered individual, the ISA will be automatically informed. The ISA will then reconsider the suitability of the registered individual. Assuming the employer has registered to be notified by the ISA, the Authority will immediately advise the employer if it is minded to bar the individual or has placed him on one of the Barred Lists.
6. Further information on the operation of the VBS is available on the Safeguarding Vulnerable Groups website at <http://www.dhsspsni.gov.uk/svg> or the ISA website at <http://www.isa.gov.org.uk>

## **Enhanced Disclosure Checks**

7. From April 2008, Part V of the Police Act 1997 has applied in Northern Ireland, providing a statutory framework for the provision of criminal history and other relevant information to employers and other organisations about potential employees and volunteers. AccessNI is the disclosure service responsible for releasing this information in Northern Ireland.
  
8. Under the new system, there are three types of disclosures;
  - a Basic Disclosure Certificate, which shows details of all convictions considered to be unspent under the Rehabilitation of Offenders (Northern Ireland) Order 1978 (or it will state that no such convictions were found);
  - a Standard Disclosure Certificate, which shows details of spent and unspent convictions and cautions. It does not show details of cases pending; and
  - an Enhanced Disclosure Certificate (EDC), which contains all of the information in the Standard Disclosure plus other relevant information held in police records. This can include information about attempted prosecutions that were unsuccessful or behaviour that might be indicative of criminal activity.

Where a Standard or Enhanced Disclosure is required for someone who will be working with children or vulnerable adults, AccessNI can also conduct a check against lists of those considered unsuitable to work with the vulnerable. The Registered Body is responsible for advising AccessNI that this is required.

## **Who Should Be Checked?**

9. Under current arrangements, HSC Trusts and other agencies are required to obtain a range of information in order to determine whether a person is suitable to be an adoptive or foster carer. The foster care

regulations<sup>1</sup> require the agency to obtain details of any previous spent criminal convictions of the prospective foster carer and those of any other adult members of his household (aged 18+). The adoption regulations<sup>2</sup>, in operation since 1989, do not specifically require criminal records checks but agencies are required to obtain all relevant information. In private fostering, a person is precluded from being a private foster carer (unless a Trust provides written consent) if they have been convicted of certain offences or are disqualified for other reasons (primarily relating to care of children)<sup>3</sup>.

10. In most regions of the UK, the law only requires that checks are undertaken for the person applying to be an adopter/foster carer and any other adult members of his/her household (aged 18+). However, standard practice in Northern Ireland has been to undertake checks on all members of the household aged 10 or above – 10 being the age of criminal responsibility. Thus, the level of checks actually being undertaken exceeds the basic requirements of the regulations.
11. It is considered that there is a need to clarify vetting arrangements and ensure consistency of practice. The Department would welcome views on whether adoption, fostering and private fostering regulations should be amended to either;
  - a. underpin the current practice (ie. require EDC's to be obtained on everyone aged 10+); or
  - b. require EDC's to be obtained on everyone in the household aged 16+ only; or
  - c. require EDC's to be obtained on all adult members of the household (aged 18+) only.

To clarify, obtaining an EDC from AccessNI is distinct from ISA registration, which is only possible for those aged 16+.

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<sup>1</sup> The Foster Placement (Children) Regulations (Northern Ireland) 1996 (S.R. 1996/467)

<sup>2</sup> The Adoption Agencies Regulations (Northern Ireland) 1989 (S.R. 1989/253)

<sup>3</sup> Part X of the Children (NI) Order 1995 and the Children (Private Arrangements for Fostering) Regulations (Northern Ireland) 1996 (S.R. 1996/452)

- Q. 1. Which approach do you consider to be the most appropriate? If none, what do you think would be a more appropriate level of vetting?**
- Q. 2. Do you think the same arrangements should apply in each field, i.e. adoption, fostering and private fostering?**
12. The proposed timing and frequency of checks, and suggested arrangements in relation to the VBS, are considered in further detail below.

## **ADOPTION**

### **DOMESTIC AGENCY CASES**

13. This section applies to cases where a person has applied to an adoption agency for an assessment of their suitability to adopt a child.
14. Under current procedures, adoption agencies undertake criminal records checks as part of the preliminary checking procedure, following a counselling interview. Adoption is not considered regulated or a controlled activity under the Safeguarding Vulnerable Groups legislation so there is therefore no requirement for adoptive applicants to be registered with the scheme. It is, however, possible for adoptive applicants to do so.
15. It is proposed that any person who applies to adopt from the commencement of the VBS (in July 2010), would apply to register with the ISA following a counselling interview and confirmation that they wish to proceed. This would provide the agency with an Enhanced Disclosure and check of the barred list. If the applicant was already registered with the ISA for another reason, e.g. they were required to by virtue of an occupation working with children, a fresh EDC would be obtained. In either case, the agency would register an interest with the ISA until the granting of an adoption order (or the applicants withdrew their application), during which time the ISA would notify the agency of any subsequent change to the applicant/s' registration status.

**Q. 3. Do you agree with this proposal? If not, what do you consider to be appropriate?**

**Q. 4. The Department would welcome views on whether other members of the household should also be registered with the ISA at this point. The intention in England and Wales is that other members of the household aged 18+ will be registered. However, we understand that current practice in England and Wales is that**

**criminal records checks are only conducted on members of the household aged 18+. As the minimum age for registration with the ISA is 16, the potential options are as follows:**

- a) no other members of the household should be registered;**
- b) other adult members of the household (aged 18+) should be registered; or**
- c) other members of the household aged 16+ should be registered.**

16. It is important to note, however, that the agency would not be notified of all new information which may come to light in respect of an individual. The agency would not necessarily be notified of a subsequent conviction for driving under the influence or an assault, for example, which the ISA did not deem to affect the individual's registration status.

**Q. 5. The Department is therefore seeking views on whether agencies should, in addition to registration with the ISA, repeat EDC's following approval in order to be as informed as possible about any family in which they may place or have placed a child. Should there be;**

- a) no repeat checks;**
- b) checks repeated at the family's annual review until the making of an adoption order (or the applicants withdraw from the process);**
- c) checks repeated every two years from the date of approval until the making of an adoption order (or the applicants withdraw from the process); or**
- d) checks repeated every three years from the date of approval until the making of an adoption order (or the applicants withdraw from the process)?**

17. Under the SVG legislation it will not be possible for a person to be a foster carer if they are barred. There are currently no offences contained in NI legislation which would automatically preclude a person

from being approved to adopt. Agencies use discretion on a case by case basis. For consistency with fostering, it is proposed that being barred/not being registered should preclude a person from being approved as suitable to adopt.

- Q. 6. Should adoption legislation be amended to preclude a person;**
- a) who is barred from being approved as suitable to adopt?**
  - b) from being approved as suitable to adopt if a member of their household (including a person employed at their home) is barred?**

18. This would not automatically affect situations where a child is placed and a person in the household subsequently becomes barred. There may be a small number of exceptional cases where, despite the barring, it may nevertheless be in the child's interests to stay in the household. Where the barring related to a member of the household, for example, it could be that it is a sibling of the child (by birth or perhaps another adopted child of the prospective adopters) who has committed the offence that has led to the barring. Because of these sorts of exceptional cases, it is not proposed that there should be any absolute duty for an agency to rescind approval should an individual be barred or be no longer ISA-registered because they have become barred.

- Q. 7. Do you agree that because of these sorts of exceptional cases, it is not proposed that there should be any absolute duty for an agency to rescind approval should an individual be barred or be no longer ISA-registered because they have become barred?**

### **INTERCOUNTRY ADOPTION**

19. In line with the UK's obligations under the United Nations Convention on the Rights of the Child, it is intended that equivalent safeguards for intercountry adoption would be introduced as those proposed in

respect of domestic agency placements. The agency would register an interest in the applicant/s until an adoption recognised in UK law had been effected or the applicant/s withdrew from the process.

**Q. 8. Do you agree that the same procedures should apply?**

**NON-AGENCY DOMESTIC ADOPTION (INCLUDING STEP-PARENT ADOPTION)**

20. This section applies to adoptions where the child has not been placed by an adoption agency. This includes situations such as step-parent adoptions or where a parent has placed a child with a relative.
21. Before applying for an adoption order in these cases, prospective adopters are required to lodge Notice of their Intention to apply with the Health and Social Care Trust in whose area the child lives. The child then becomes a 'protected child' and the Trust is responsible for supervising his wellbeing until an adoption order is granted. Whilst the Trust does not have to formally assess and approve the prospective adopters as suitable to adopt, it does have to provide a report to the court.
22. Current practice is that on receipt of a Notice of Intention to Adopt, Trusts obtain enhanced disclosures on everyone in the household aged 10+. In view of the shorter timescales involved in these cases, the Department considers that the current level of vetting is appropriate and is not convinced there would be much added value in requiring carers or other members of the household to be registered with the ISA.

**Q. 9. Do you agree?**

## **FOSTERING**

23. Fostering providers currently undertake criminal records checks as part of the preliminary checking procedure. Fostering is identified as regulated activity under the Safeguarding Vulnerable Groups legislation so all foster carers are required to be registered with the ISA. It will also be possible for other members of the household (aged 16+) to be registered. It is proposed that people who wish to foster should become registered with the ISA following preparation training and should continue to be registered until such time as they come off the agency's list.

**Q. 10. The Department would welcome views on whether other members of the household should also be registered with the ISA. As the minimum age for registration with the ISA is 16, the potential options are as follows:**

- a) No other members of the household should be registered;**
- b) Other adult members of the household (aged 18+) should be registered; or**
- c) Other members of the household aged 16+ should be registered.**

24. Under the SVG legislation, it is an offence for a person who is barred to be a foster carer.

**Q. 11. Should fostering legislation be amended to preclude a person from being approved as suitable to foster if a member of their household (including a person employed at their home) is barred?**

25. As with adoption, the provider would only be notified of any change in relation to the carer's registration status. The Department is therefore seeking views on whether providers should, in addition to registration with the ISA, repeat EDC's following approval in order to be as

informed as possible about any family in which they may place or have placed a child.

**Q. 12. Should there be;**

- a) no repeat checks;**
- b) checks repeated from the date of approval until the family comes off the fostering list;**
- c) checks repeated every two years from the date of approval until the family comes off the fostering list; or**
- d) checks repeated every three years from the date of approval until the family comes off the fostering list?**

**PRIVATE FOSTERING**

26. Private Fostering is an arrangement that is made for the care of a child under the age of 16 (under 18, if disabled) by someone other than a parent or close relative<sup>4</sup>, with the intention that it should last for 28 days or more. People convicted of certain offences are disqualified from providing private foster care unless a Trust gives written consent. The carer is required to advise the Trust of any offence they (or any member of the household) have committed or of any disqualification or prohibition imposed on him with respect to children. They must also notify the Trust if any further conviction, disqualification or prohibition takes place in relation to a person living or working in the home. In addition, unless he has disclosed the fact to the Trust and obtained its written consent, a person may not foster a child privately if he lives in the same household as a person who is disqualified or he lives in a household at which any such person is employed.
27. The SVG legislation amends the Children Order to the effect that a person cannot be a private foster carer if he is barred or he lives in the same household as a person who is barred. **This means that the**

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<sup>4</sup> A close relative is defined as a grandparent, brother, sister, uncle or aunt (by full blood, half blood, marriage or civil partnership) or a step-parent.

**Trust's discretion to give written consent in respect of a barred person or someone who lives in the same household as a barred person has been removed.** For consistency with the existing provisions, it is proposed that this should also apply where the proposed private foster carer lives in a household where a barred person is employed.

**Q. 13. Do you agree?**

28. It is recognised that conducting EDC's and ISA registration arrangements will carry a cost.

**Q. 14. In your view, who should be responsible for meeting these costs?**

29. In July 2006, the Department consulted on proposals to specify a number of offences which would ordinarily preclude a person from being approved as suitable to adopt or become a foster parent. It is not now intended that specified offences would be introduced in addition to the measures discussed in this document. There will be some restrictions on carrying out these roles arising from persons being barred. Beyond that, it is proposed that agencies would continue to have the discretion to make informed judgements about a person's suitability on a case-by-case basis.

**Q 15. Do you agree?**