

Safeguarding Vulnerable Groups Act 2006: Independent Safeguarding Authority Scheme Consultation

Consultation Response Form

The closing date for this consultation is: 20
February 2008

Your comments must reach us by that date.

department for
children, schools and families



THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online or offline response facility available on the Department for Children, Schools and Families e-consultation website (<http://www.dcsf.gov.uk/consultations>).

The information you provide in your response will be subject to the Freedom of Information Act 2000 and Environmental Information Regulations, which allow public access to information held by the Department. This does not necessarily mean that your response can be made available to the public as there are exemptions relating to information provided in confidence and information to which the Data Protection Act 1998 applies. You may request confidentiality by ticking the box provided, but you should note that neither this, nor an automatically-generated e-mail confidentiality statement, will necessarily exclude the public right of access.

Please tick if you want us to keep your response confidential.

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If you have an enquiry relating to the policy content of the consultation you can contact the DCSF enquiry line on:

Telephone: 0870 000 2288

e-mail: info@dcsf.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 01928 794888

Fax: 01928 794113

e-mail: consultation.unit@dcsf.gsi.gov.uk

Please select the category that best describes you:

<input type="checkbox"/> Local Authority	<input type="checkbox"/> Local Safeguarding Children Board	<input type="checkbox"/> Voluntary Sector
<input type="checkbox"/> Education	<input type="checkbox"/> Recruitment/HR	<input type="checkbox"/> Self-employed
<input checked="" type="checkbox"/> National/Professional Association/Union	<input type="checkbox"/> Health/Care Sector	<input type="checkbox"/> Parent/Carer
<input type="checkbox"/> Other		

Please Specify:

The National Childminding Association (NCMA) is the only national charity and membership organisation that represents home-based childcare in England and Wales, delivered by registered childminders and nannies, with approximately 50,000 members. We promote quality home-based childcare so that children, families and communities can benefit from the best in childcare and education.

Working in partnership with Government, Ofsted, local authorities, children's centres, extended schools and other childcare organisations, we aim to ensure that every registered childminder has access to services, training, information and support to enable them to provide a professional service. NCMA offers to work with all local authorities across England (and Wales).

We also aim to ensure that everyone who works with registered childminders has access to the information, training and support they need.

NCMA's response is based upon the care of children and does not touch upon definitions or protection of vulnerable adults. Similarly, NCMA has limited its responses to those issues relating to childcare.

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

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

No comment.

2 Are you content with our proposed understanding of frequently? (paragraphs 3.4 - 3.6)

Yes

No

Not Sure

Comments:

The focus on frequency is misplaced. The issue that allows an adult to build up a relationship of trust with a child that can then be abused is not frequency but regularity. The proposal to regulate activity that is more frequent than once a month ignores the fact that somebody seeing a child regularly but less frequently might still be able to exert pressure or influence on a child. NCMA would encourage Government to consider regularity as well as frequency in deciding what activities should be regulated.

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

Yes (please explain)

No

Not Sure

Comments:

NCMA is not clear that the definition of “incidental” activities is correct. There are bound to be activities that are not captured in paragraphs 3.8 - 3.12 where children are incidental. The key issue is whether adults are able to exert undue influence and whether they are themselves supervised. In situations where other, responsible adults are in attendance (such as, for example, an activity where the parents remain on the premises during the activity, or where a large group of adults are present, such as in a class open to all ages) the risk is significantly less than where a child or children are alone with one or a few adults. This should be better reflected in the definition of “incidental” activity.

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

Agree

Disagree

Not sure

Comments:

No comment.

5 Do you agree that Children’s Centres should be classed as establishments under the SVG legislation in the same way as schools? (paragraphs 3.26 - 3.34). Are there any other settings that should be covered?

Agree

Disagree

Not sure

Comments:

NCMA strongly supports the classification of children's centres, extended schools, nurseries, play schools and any setting where children are alone in the care of adults that are not their parents as regulated activity in the same way as schools are classified. NCMA agrees with the statement (3.28) that "any activity in a special establishment, not just activity such as teaching or supervising, is regulated... to stop unsuitable individuals building up relationships of trust with children..."

NCMA supports the implication in 3.30 that childminders would need to vet employees such as assistants, as well as anybody else who had regular contact with the children.

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

Agree

Disagree

Not sure

Comments:

No comment.

7 Do you agree that adoption agencies should be able to check ISA status on the groups set out in paragraph 4.12 - 4.17? Do you have any other comments on these proposals?

Agree

Disagree

Not sure

Comments:

No comment.

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

Agree

Disagree

Not sure

Comments:

NCMA fully supports the regulation of childminders. Consequently, NCMA welcomes plans to include childminders under the rubric of the ISA and to continue to require them to undergo an enhanced CRB check. NCMA believes that plans to conduct CRB checks on childminders that registered before the requirements were introduced and so may have avoided a CRB check until now are long overdue.

NCMA is concerned that childminders should not be required to bear the costs of these regulatory activities, however. Childminders tend to be single person businesses earning very small sums: NCMA's 2007 Membership Survey found that half of childminders earn less than or equal to £7,000 a year, while the DfES *Children's Workforce Research 2006 – Childminders* found that two fifths do not make a profit and in fact most of those make a loss. At present childminders are threatened with an increase in registration fees of up to 686 per cent, as well as having to pay for paediatric First Aid courses, which can cost around £75; a health declaration from a general practitioner, which can amount to £80; public liability insurance of £22.50; fire safety; registration as a food business if they provide meals; registration of a private hire vehicles in some local authority areas if they transport children in their car (which can cost c.£400); as well as other set-up and ongoing costs. Current practice sees Ofsted/CCSIW covering the costs of enhanced CRB checks; NCMA hopes that

this will continue and that other ISA-related costs would also be covered.

NCMA believes that the paragraphs 4.19 to 4.21, on the regulation of those living with but not working with childminders, is unclear. Paragraph 4.19 says that "...it is only possible to obtain this information in relation to childminders and those who work on childminding premises not those who live on the premises." However, Paragraph 4.20 immediately states that "Ofsted currently obtain an Enhanced Disclosure on the household member and it is proposed would continue to be able to, but not necessarily required to, do so in the future." Paragraph 4.21 then states that "We propose to amend the legislation to allow ISA checks to be made on those who live on childminding premises aged 16 or over," but then goes on to say "where childminders care for children overnight... Enhanced disclosures should be obtained for household members... Withholding consent would then lead to a childminder's application for registration being refused/cancelled by Ofsted."

Clarity is clearly called for, here. There are two distinct issues being discussed: Enhanced CRB checks, and ISA regulation. NCMA suggests that the two be set out more clearly so that it is apparent what the requirements are for childminders, those working with them and those living with but not working with them with regards both the CRB and the ISA.

NCMA is particularly confused by 4.21, which suggests that those living with but not working with childminders should be registered with the ISA and – if overnight care is being offered – should submit to an enhanced CRB check. At present all those over 16 years of age living with a childminders need to undergo Enhanced Disclosure, whereas it is not clear that this would be the case under 4.21. NCMA has reservations about the difficulties the current regime poses for childminders: the people they live with are usually family, and requiring childminders to vet their family is a burden that is not placed on other childcare providers. However, NCMA also recognises the need to put the protection of children first, especially where overnight care is concerned, and urges the Government to explore imaginative ways of working around the problems that may arise. NCMA certainly supports checks for adults that are likely to have regular contact with the children as a result of their being in their home.

One possible solution would be to treat living with but not working with childminders in the same way as the Government proposes treating "controlled activity" (though NCMA would caution against referring to the act of living with somebody as "controlled"): barred individuals could then continue to live with childminders as long as the childminders put appropriate safeguards in place (c.f. 5.4 – 5.6 and 5.9 - 5.13) – for example, a childminder that offers occasional overnight care might agree to do so only on occasions where a family member that has not been checked was not at home that night.

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

Yes

No

Not Sure

Comments:

No comment.

10 Do you agree that employers should be required to obtain an Enhanced Disclosure before employing a barred individual in controlled activity? (paragraphs 5.7 - 5.8)

Agree

Disagree

Not sure

Comments:

Where activity is “controlled” rather than “regulated”, NCMA recommends that a proportional approach be taken.

As outlined in answer 8, above, this represents a possible solution to the question of those living with but not working with childminders.

11 Are there good reasons for employers in controlled activity to have access to Enhanced Disclosures for individuals who are not barred and who are ISA-registered? (paragraphs 5.4 - 5.6). If so, for what purpose would the information on the Disclosure be used?

Yes

No

Not Sure

Comments:

In a situation where a barred individual was to be employed, employers would need to know the cause of the bar so as to establish safeguards to ensure that children were protected.

12 a) Do you agree that employers, before employing a barred person in controlled activity, should be required to conduct, make a record of and retain a copy of a risk assessment? (paragraph 5.9)

Yes

No

Not sure

Comments:

It is essential that procedures are put in place to safeguard children and that employers and regulators are able to demonstrate that such safeguards obtain.

12 b) Do you agree that employers employing a barred person in controlled activity, should be required to ensure the person will be appropriately supervised? (paragraph 5.10)

Agree

Disagree

Not sure

Comments:

Appropriate supervision does not automatically mean blanket supervision, and a proportionate approach is called for. However, it is to be assumed that those who are barred are barred for a good reason, and as such additional supervision would be called for.

12 c) Should the employer be required to record the supervision arrangements in the risk assessment? (paragraph 5.10)

Yes

No

Not Sure

Comments:

It is essential that procedures are put in place to safeguard children and that employers and regulators are able to demonstrate that such safeguards obtain.

13 Do you agree that the employer should be required by regulations to obtain Enhanced Disclosures and repeat the risk assessment at set intervals? If so, how frequently should it be repeated? (paragraph 5.13)

Agree

Disagree

Not sure

Comments:

Rather than repeating the enhanced disclosure, it is hoped that the ISA would provide regular updates of any changes to an individuals status or conditions.

NCMA believes that risk assessments should be periodically reviewed.

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

Agree

Disagree

Not sure

Comments:

NCMA welcomes the plan to phase in the ISA and to take this opportunity to ensure that any childminders that registered before the requirement for CRB checks pertained are now checked, and that they are checked as a priority. Those that have recently undergone CRB checks should not be re-checked just to tick appropriate boxes; they are a lower priority and should wait until those for whom the period has been longer have been re-checked.

15 Do you agree with the proposals regarding the checking arrangements for personnel suppliers including educational institutions? If not, why? (paragraphs 9.2 - 9.13).

Agree

Disagree

Not sure

Comments:

No comment.

16 Do you agree with our proposals to retain existing statutory requirements for Enhanced Disclosures and not add any further requirements as part of the ISA scheme? (paragraphs 9.25 - 9.30)

Agree

Disagree

Not sure

Comments:

NCMA are happy with the current requirements for Enhanced Disclosure.

17 Should anything be added to our proposed understanding of harm?
(paragraphs 10.3 - 10.5)

Yes

No

Not Sure

Comments:

The definition of “harm” is satisfactory and NCMA is pleased to note that “harm” includes “impairment of development... [including] physical, intellectual, emotional, social and behavioural...”

18 Do you agree that the list at Annex G will capture all the information that the ISA would require to make barring decisions?

Agree

Disagree

Not sure

Comments:

19 a) At what stage in the ISA’s consideration process do you believe employers should be notified? (paragraph 11.3)

Comments:

NCMA believes that employers should be notified as soon as a person has been barred or has left the scheme. However, it would not be appropriate to inform employers at an earlier time.

19 b) What information should the ISA pass to employers at this stage?
(paragraph 11.3)

Comments:

Employers will need to know whether employees are eligible to work with children: i.e. whether they are barred entirely or whether they can work at “controlled activities”. Apart from this, it is sufficient that employers know that their employee is no longer ISA registered. In this instance, those employees in regulated activity will no longer be eligible for employment and employees will terminate their contracts or move them to “controlled activity”, undergo a risk assessment and put safeguarding procedures in place.

20 Please use this space for any other comments.

Comments:

21 Please let us have your views on responding to this consultation (e.g. the number and type of questions, was it easy to find, understand and complete etc.).

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

Further information on the Code of Practice can be accessed through the Cabinet Office Website: <http://www.cabinetoffice.gov.uk/regulation/consultation-guidance/content/introduction/index.asp>

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 20 February 2008

Send by post to:

Consultation Unit
Department for Children, Schools and Families
Area 1A, Castle View House
East Lane
Runcorn
Cheshire WA7 2GJ

or by email to

SVGAct-Policy.CONULTATION@dcsf.gsi.gov.uk