

## Response to:

# **Safeguarding Vulnerable Groups Act 2006 / Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 Barring Consultation**

The Ann Craft Trust, VOICE UK and Respond are three separate learning disability charities which focus on abuse, crime and protection issues.

VOICE UK supports people with learning disabilities and other vulnerable groups who have experienced crime or abuse. We also support their families, carers and professional workers.

The Ann Craft Trust works with staff in the statutory, independent and voluntary sectors to protect people with learning disabilities who may be at risk from abuse. We also provide advice and information to parents and carers who may have concerns about someone they are supporting.

Respond offers a range of services which provide emotional and psychological support to victims and perpetrators of abuse who have learning disabilities. It also provides training and support to professionals and carers working with them.

The Ann Craft Trust, VOICE UK and Respond welcome the opportunity to comment and make suggestions on the Government's proposals for the barring process and the criteria for automatic barring. The Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 are vitally important for preventing children and vulnerable adults from becoming the victims of crime or abuse. It is essential that the implementation of this Act and this Order address all the relevant safeguarding issues and we are therefore pleased that the Government is seeking the views of stakeholders.

Our organisations believe that there should be no differentiation on the basis of age in the no-review period. We are not convinced that the proposals on the no-review period adequately reflect how people behave and will be fair in practice. Treating people differently because of their age is too simple a determinant. Instead, we suggest that the no-review period should be the same for all people who are barred.

We are alarmed the lists of automatic barring offences omit serious offences that clearly indicate unsuitability to work with vulnerable groups. The omission of rape of adults and sexually offences committed by care workers against people with mental disorders<sup>1</sup> is particularly alarming. With no

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<sup>1</sup> We would like to note that we share the view of many professionals in the learning disabilities field that the term "mental disorder" is inaccurate and offensive. However, we are using it in this response because of its application in many laws and its consequent legal meaning.

reasonable explanation for this, we can only conclude that this is an error and ask the Government to correct it.

**Q1. Should the period in which representations should be submitted by individuals to the Independent Safeguarding Authority be set at 8 weeks?**

Our organisations are not aware of any reason why 8 weeks should not be adopted as the period allowed for individuals to make representations.

**Q2. Should the new scheme differentiate between young people and adults for the purposes of the minimum no-review period?**

We believe that there should be no differentiation between young people and adults in the minimum no-review period. While we welcome the Government's desire to be fair to young people, we believe that increased fairness will not necessarily be the outcome of this proposal.

A premise underpinning such differential treatment is that a young person may commit crimes that they are less likely to repeat once they have gained the benefits of experience, maturity and a more fully developed personality. We have serious doubts whether this premise holds true for the serious crimes for which a young person may be automatically barred (e.g. rape, kidnap, paying for the sexual services of a child) and for many crimes for which they might otherwise be barred.

This premise also rests on the assumption that maturity and development are dependent on age. The reality is that people mature and develop at their own individual paces, some more rapidly and some more slowly than others that share their age.

The basis of this proposal therefore does not seem to be strong enough to justify treating people differently on the basis of a simple determinant like age. We are concerned that adopting this approach in the new scheme may lead to unfair outcomes because it does not take account of individual circumstance. By way of example, a person who was barred at 30 might be reformed after 5 years but have to wait another 5 years to ask for a review.

While we appreciate that the Government is looking for an approach that takes account of circumstances, we believe that differentiation in this way is too simple. Equally, an approach in which the no-review period is totally determined by individual circumstances would be complex and bureaucratic. It is better if immaturity, naivety and lack of experience are considered as part of reviews of barring decisions. For the sake of equality, fairness and practicality, all requests for reviews should be considered after the same period of time has passed.

**Q3. Should the new scheme adopt the same minimum no-review periods as current schemes: 10 years for adults and 5 years for younger people?**

Following on from our answer to Q2, we believe that the new scheme should adopt the same minimum no-review period for both adults and younger people – 10 years.

**Q4. Under the current schemes, the age boundary for the purpose of the minimum no-review period is 18. Should it remain at 18 or should it be raised to 25?**

As per our answer to Q2, our organisations recommend that the new scheme does not use an age boundary in relation to the length of the minimum no-review period.

## **Q5. Do you agree with the list of offences that would result in automatic barring from working with children?**

We divide our answer to this question into comments on the list of automatic barring offences for England & Wales and the list of automatic barring offences for Northern Ireland.

### England and Wales

Our organisations agree with the list of offences that would result in automatic barring from working with children.

Our one comment is that some offences on the *Children's Automatic Barring Offences – with no right to representations* list are repeated on the *Children's Automatic Barring Offences – with right to representations* list. These repeated offences are contained within sections 1, 2 and 30 through 41 of the Sexual Offences Act 2003. We support inclusion of these offences on the *Children's Automatic Barring Offences – with no right to representations* list and imagine that their reproduction on the *Children's Automatic Barring Offences – with right to representations* list is simply an administrative error.

### Northern Ireland

It is unclear to us why many offences under the Sexual Offences Act 2003 are not included in the list of children's automatic barring offences for Northern Ireland, particularly as these same offences are included in the equivalent list for England & Wales. These offences are contained within sections 1 through 8, 25, 26 and 30 through 41 of the Act and include such offences as rape and incest. Importantly, they include offences targeted at care workers who sexually exploit those in their care. Individuals who have committed such offences represent a clear danger to children and we urge the Government to include these offences on the Northern Ireland list so as to ensure that conviction for one of these offences leads to automatic barring from working with children.

We would like to expand on this point in one respect. Some of the offences in the Sexual Offences Act 2003 that are not included on this list relate to crimes against people with a mental disorder (s.30 through s.41). It is important to note that those convicted of sexual activity with children with a mental disorder will not be automatically barred in Northern Ireland if these offences are not included on this list. Those who have displayed a desire and capacity to exert power over vulnerable people through illegal sexual activity with an adult with a mental disorder will also not be automatically barred. The children's list for England & Wales recognises that such people represent a danger to children and we urge the Government to ensure that the list for Northern Ireland similarly recognise this danger.

## **Q6. Do you agree with the list of offences that would result in automatic barring from working with vulnerable adults?**

Our answer to this question is divided into comments on the list of automatic barring offences for England & Wales and the list of automatic barring offences for Northern Ireland.

### England and Wales

We are alarmed that "Rape [of an adult]" under s.1 of the Sexual Offences Act 2003 is not included in the list of offences that would result in automatic barring from working with vulnerable adults in England & Wales. Our organisations can think of no reason why barring should not be automatic for a convicted rapist. To not automatically bar someone for committing a particular crime is to allow them to make a case to the Independent Safeguarding Authority as to why they should not be barred. It is to effectively recognise that there might be occasions when someone who is guilty of a particular

criminal offence should be allowed to work with vulnerable adults and so it is just to provide them with an opportunity to explain why they do not pose a risk. We can think of no reasonable case that a convicted rapist could make for why they should be allowed to work with vulnerable adults and no occasion when a convicted rapist should not be barred.

It is also unclear to us why a person who has a conviction for raping a child will be automatically barred from working with vulnerable adults but a person convicted of raping an adult will not. It is equally unclear why raping an adult is grounds for automatically barring someone from working with children in England & Wales, but not automatically barring them from working with vulnerable adults. This sends a confused and contradictory message about the seriousness of rape.

It is hard for us to believe that the Government would deliberately omit from this list the rape of an adult under s.1 of the Sexual Offences Act 2003. The Government has done too much good work to tackle and prevent sexual violence for this omission to be intentional. Instead, we conclude that this omission must be a grave error which we strongly urge the Government to correct.

### Northern Ireland

We are equally alarmed that both the common law offence of “Rape [of an adult]” and the same offence in s.1 of the Sexual Offences Act 2003 are missing from the list of offences for automatic barring in Northern Ireland. This is hard to explain when “Rape [of a child]” is included in this list (although only the common law offence). We reiterate the points made above about why excluding rape of an adult as a ground for automatic barring is a grave error and ask the Government to correct this mistake on this list as well.

We are also concerned that many offences under the Sexual Offences Act 2003 are not included in this list, particularly as these same offences are included in the equivalent list for England & Wales. The offences which are omitted are serious and indicate a clear intent and willingness to sexually exploit others. Crucially, some of these are offences specifically for care workers who sexually assault and rape those in their care. These offences are contained within sections 1 through 8, 25, 26 and 30 through 41 of this Act. Individuals who have committed such offences represent a clear danger to vulnerable adults. We urge the Government to ensure that conviction for one of these offences leads to automatic barring from working with vulnerable adults in Northern Ireland.

The *Vulnerable Adults Barring Offences – with no right to make representations* list is notably different to the equivalent list for England & Wales. If the list for England & Wales included offences which did not exist in Northern Ireland, then this difference would be justified. However, we are not aware of any reason why the Northern Ireland version of this list should not be the same as the list for England and Wales. We ask that the Government ensure equal protection for vulnerable adults in Northern Ireland by making the *Vulnerable Adults Barring Offences – with no right to make representations* list for Northern Ireland the same as the equivalent list in England & Wales.

We appreciate the Government’s good intent with these proposals, but are concerned about the approach taken in the barring process and the omission of serious criminal offences from the automatic barring lists. It is our hope that these issues can be easily resolved.

We hope that these comments and suggestions have been useful. Please feel free to contact our Policy and Campaigns Officer, Robin Van den Hende (020 7874 5486, [robin.vandenhende@respond.org.uk](mailto:robin.vandenhende@respond.org.uk)) if you have any questions or we can be of further assistance.

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