CONTENTS

Written evidence reported to the House.

Clauses 64 to 70 agreed to, some with amendments.

Clause 71, as amended, under consideration when the Committee adjourned till this day at Four o’clock.
Members who wish to have copies of the Official Report of Proceedings in General Committees sent to them are requested to give notice to that effect at the Vote Office.

No proofs can be supplied. Corrigenda slips may be published with Bound Volume editions. Corrigenda that Members suggest should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons, not later than Saturday 14 May 2011

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES
The Committee consisted of the following Members:

Chair: Martin Caton, Mr Gary Streeter

† Baker, Steve (Wycombe) (Con)
† Blackwood, Nicola (Oxford West and Abingdon) (Con)
† Brake, Tom (Carshalton and Wallington) (LD)
† Brokenshire, James (Parliamentary Under-Secretary of State for the Home Department)
† Buckland, Mr Robert (South Swindon) (Con)
† Chapman, Mrs Jenny (Darlington) (Lab)
† Chishti, Rehman (Gillingham and Rainham) (Con)
† Coaker, Vernon (Gedling) (Lab)
† Efthymios, Clive (Eltham) (Lab)
† Ellis, Michael (Northampton North) (Con)
† Featherstone, Lynne (Minister for Equalities)
† Johnson, Diana (Kingston upon Hull North) (Lab)
† Johnson, Gareth (Dartford) (Con)
† Opperman, Guy (Hexham) (Con)
† Robertson, John (Glasgow North West) (Lab)
† Shannon, Jim (Strangford) (DUP)
† Tami, Mark (Alyn and Deeside) (Lab)
† Watson, Mr Tom (West Bromwich East) (Lab)
† Wright, Jeremy (Lord Commissioner of Her Majesty’s Treasury)

Annette Toft, Rhiannon Hollis, Committee Clerks

† attended the Committee
Public Bill Committee

Tuesday 10 May 2011

(Morning)

[Mr Gary Streeter in the Chair]

Protection of Freedoms Bill

Written evidence to be reported to the House

PF 60 Sport and Recreation Alliance and Child Protection in Sport Unit
PF 61 NSPCC
PF 62 Wiltshire & Swindon Activity & Sports Partnership (WASP)
PF 63 Liberty (National Council for Civil Liberties)
PF 64 Lawn Tennis Association
PF 65 British Security Industry Association
PF 66 TMG CRB
PF 67 Brookscroft Management Ltd

Clause 64

Restriction of definition of vulnerable adults

10.30 am

Amendment made: 132, in clause 64, page 46, line 33, leave out ‘falling within’ and insert ‘which is a regulated activity relating to vulnerable adults by virtue of’.—(Lynne Featherstone.)

Question proposed, That the clause, as amended, stand part of the Bill.

Diana Johnson (Kingston upon Hull North) (Lab): Good morning, Mr Streeter and members of the Committee. The Committee has obviously examined the clause, but I wish to press the Minister on several matters that are still outstanding. Will she set out clearly why the Government have decided to make such a change? The hon. Lady said in an earlier debate that vulnerable adults are currently defined in relation to their situation. For example, people are described as vulnerable adults because they are receiving some form of health care, have a disability or are particularly vulnerable because of their situation. The clause now defines a vulnerable adult as someone for whom a regulated activity is provided. I should be grateful if the Minister would explain why we are making such a change. The scope of the current vetting and barring scheme is defined by two elements: first, by a person being a “vulnerable adult,” and secondly, by an adult being in receipt of a “regulated activity.” Our intention is to move from the position in which a whole range of people are included in regulated activity, whom we believe do not belong in such a position. Action on Elder Abuse stated that society cannot reasonably expect any system or a combination of systems to guarantee the safety and well-being of every child or adult at risk, and we cannot expect a system in its totality to achieve that. Matters become much less clear in respect of ancillary staff and more general volunteers. I guess that shows the difference. For example, personal care and relevant social care are very intimate. The risk is not about where people are or whether they are in a home; it is about the service that people receive and whether that might make them vulnerable. Under the Bill, even if there is only one occasion on which the exchange of care happens, it will be a regulated activity.

The approach is more targeted and risk-based. In deciding on it, we considered the varying nature of someone’s vulnerability—as we have said, according to age, illness or disability—and their capacity to make decisions. The approach recognised that vulnerability may change over time and that some people are more vulnerable in some situations. It also looked at social health and social care services, as well as levels of supervision. It did not come out of the blue from the Department of Health; it was an evidence-based decision and a wide range of sources was drawn on in deciding what were regulated activities.

Among many other publications, we drew on the 2007 “UK Study of Abuse and Neglect of Older People”, the Mental Capacity Act 2005 code of practice, investigations into referrals to the protection of vulnerable adults list, the “Investigation into Mid Staffordshire NHS Foundation Trust”, publications by the Nursing and Midwifery Council, and tools developed for assessing risk of neglect. We also drew on the expertise and experience of Lynne Phair, a consultant nurse who is a widely acknowledged expert in safeguarding vulnerable adults.

I hope that the hon. Lady will accept that the decision was not made out of the blue. The approach was about making a risk-based assessment of where risk is greatest and coming up with a proportionate scheme to protect vulnerable adults and children from the greatest risks. It will not stop people from working who have little or no potential of causing a problem, if they are properly supervised and proper employment practices are taken.

Diana Johnson: What the Minister is saying is helpful to our understanding of the evidence that was used to reach the decision about clause 64 and other provisions in the Bill. I wonder if she will help me a little further. Are there any examples of other countries that have millions of gardeners and cooks, so it would be helpful if she could give other examples of activities that will no longer be covered under the Bill. I have set out the chief points on which I need clarification under the clause.

The Minister for Equalities (Lynne Featherstone): I look forward to our proceedings this morning under your chairmanship, Mr Streeter. The hon. Lady asked why we are making such a change. The scope of the current vetting and barring scheme is defined by two elements: first, by a person being a “vulnerable adult,” and secondly, by an adult being in receipt of a “regulated activity.” Our intention is to move from the position in which a whole range of people are included in regulated activity, whom we believe do not belong in such a position. Action on Elder Abuse stated that society cannot reasonably expect any system or a combination of systems to guarantee the safety and well-being of every child or adult at risk, and we cannot expect a system in its totality to achieve that. Matters become much less clear in respect of ancillary staff and more general volunteers. I guess that shows the difference.
adopted that approach to the vetting and barring of people working with vulnerable adults? Have the Government also considered that?

**Lynne Featherstone:** I will come back to the hon. Lady on whether other countries, if any, were looked at. The approach was defined by our great experience in this country.

We have never said that the previous Government were wrong to protect vulnerable adults and children; we have simply made the assessment that including 11 million people in a scheme in which the vast majority did not need to be included was disproportionate, put people off volunteering and created conditions where some people—particularly men—were scared to hug a child if they fell over. It reached ridiculous proportions, and the approach is about trying to be proportionate about where the risks are.

On who is in and who is out of the scheme, for adults it covers all health, personal and social care workers—doctors, social workers and home care workers who assist with independent living. The types of workers who carry out regulated activities in relation to adults include—apart from doctors, nurses and dentists, who are the more obvious health care professionals, and the staff who work under their direction or supervision, such as a health care assistant on a hospital ward—care workers who provide personal care whether in a health setting, a care home or day care service; care workers who help an older, sick or disabled person with day-to-day management of their money by helping with shopping or paying bills, for example; anyone who makes financial or welfare decisions on behalf of another person because, for example, they lack mental capacity; social workers assessing the needs of social care services for older, disabled or sick adults; and drivers and escorts who transport adults under arrangements organised by service providers.

Under the previous scheme, all jobs in care homes are regulated, where the work is carried out for the purpose of the home and there is any form of contact with residents. That is changing under the Bill. Examples of people who are being taken out of regulated activity are volunteers who maintain the plants and the fish tank in the residents’ lounge, the lift engineer, the plumber, the electrician, the hairdresser, the window cleaner, the receptionist, volunteers who give their time to provide activities such as music, crafts or flower arranging, and inspectors. The changes will mean that there is a risk-based calculation and the workers or volunteers who are most intimately involved with residents—those providing the care—are in regulated activity. I hope that explanation helps the hon. Lady.

I am not aware that any other countries have adopted our approach to the definition of “vulnerable adults.” It is important to have a scheme that is appropriate to England and Wales. As I said, the research and evidence base that the Department carried out was extensive.

**Nicola Blackwood (Oxford West and Abingdon) (Con):** I am a school governor and we have a shortage of school governors in Oxfordshire. Can the Minister tell me what the status of school governors will be under the new scheme, given that we are keen to encourage more people to get involved in the local governance of their schools?

**Lynne Featherstone:** I am pleased to say that school governors will be taken out of the scheme. We must appreciate in our proposals the very heavy responsibility of being a school governor and not add to the off-putting stacks of work that they already have to do.

On numbers, although we are currently discussing adults, the reduced numbers that we explored in our last sitting relate to both children and adults. Posts with children that are no longer included include school governors and contractors working in schools. To reiterate, an important part of the measure is that we no longer label someone a vulnerable adult. People do not like to be defined as vulnerable simply because they are older.

**Vernon Coaker (Gedling) (Lab):** May I return to the point about school governors? To clarify, does the measure mean that school governors will be exempt from any check when they undertake any activity at a school? For example, school governors are exempt with respect to governing body duties, but are they exempt if they go on a school trip? Would that be a regulated activity?

**Lynne Featherstone:** It would be a regulated activity under those circumstances. That situation would be a change of their occupation, but just doing their job, governing the school, will not be included.

**Diana Johnson (Gedling) (Lab):** I want to clarify that matter, because the general public will probably be interested. My understanding, which differs from what the Minister has said, is that if a school governor went on a school trip, they would probably be with teachers and other paid school staff. Is that not being supervised and would they not therefore be in regulated activity?

**Lynne Featherstone:** The hon. Member for Gedling asked whether there would be a difference. If the activity were supervised, of course there would. Only the teacher or organiser of a particular trip can judge whether a person should be supervised. If an activity were supervised, it would be regulated activity.

**Mrs Jenny Chapman (Darlington) (Lab):** I am grateful for the Minister’s patience. I am interested in the issue of school governors. Is she saying that someone who would be barred from regulated activity could make decisions on a school governing body about, for instance, a safeguarding policy or child protection matters?

**Lynne Featherstone:** I am saying that any school will take its duties seriously, as we discussed extensively in our previous debate. Anyone working within a school will undergo all the necessary checks. Anyone whose duty has been taken out of regulated activity under the Bill will be eligible for an enhanced Criminal Records Bureau check. It is not as though people who are barred will be allowed simply to walk in; an enhanced CRB check will carry all the soft information, convictions, police information and softer intelligence.

10.45 am

**Diana Johnson** indicated dissent.
Lynne Featherstone: The hon. Lady shakes her head, but we will discuss these matters in later debate. The new approach set out by the Bill no longer labels people as vulnerable adults, but defines the types of regulated activity that are carried out in relation to an adult who, by reason of age, illness and disability, needs those services. The vetting and barring scheme will not cover those who are not carrying out regulated activity. That includes, for example, prison and probation staff, maintenance workers, cleaners in hospitals and care homes and workers in sheltered housing. Together, clauses 64 and 65 create a new approach to defining regulated activity in respect of an adult, as we have discussed. It is about the nature of the activity, regardless of the setting in which it is carried out. It is a much better approach than attempting to define vulnerability or trying to label a person as vulnerable. As we discussed last week, I am an adult; I become vulnerable if I go into hospital or if I am incapacitated, but I am not a “vulnerable adult.” There is a big distinction to be made.

We know that adults who are older or disabled do not care to be referred to as vulnerable. This new approach will ensure that health care and relevant personal care provided to adults will constitute the regulated activity to which barring applies.

Question put and agreed to.

Clause 64, as amended, accordingly ordered to stand part of the Bill.

Clause 65

Restriction of scope of regulated activities: vulnerable adults

Amendments made: 133, in clause 65, page 47, line 5, leave out ‘or community care services’.

Amendment 134, in clause 65, page 47, leave out lines 10 to 13.

Amendment 135, in clause 65, page 47, leave out lines 16 to 21.

Amendment 136, in clause 65, page 47, line 38, at end insert—

‘(3ZA) Any reference in this Part of this Schedule to health care provided by, or under the direction or supervision of, a health care professional includes a reference to first aid provided to an adult by any person acting on behalf of an organisation established for the purpose of providing first aid.’.

Amendment 137, in clause 65, page 47, line 50, leave out ‘or’.

Amendment 138, in clause 65, page 48, line 6, at end insert ‘;

(c) any form of training, instruction, advice or guidance which—

(i) relates to the performance of any of the activities listed in paragraph (a),

(ii) is given to a person who is in need of it by reason of age, illness or disability, and

(iii) does not fall within paragraph (b).

Amendment 139, in clause 65, page 48, leave out lines 10 and 11.

Amendment 140, in clause 65, page 48, line 13, leave out from ‘to’ to end of line 15 and insert ‘the running of the household of the person concerned where the assistance is the carrying out of one or more of the following activities on behalf of that person—

(a) managing the person’s cash,

(b) paying the person’s bills,

(c) shopping.’.

Amendment 141, in clause 65, page 48, line 31, leave out second ‘or’.

Amendment 142, in clause 65, page 48, line 35, at end insert ‘;

(f) the appointment of a representative to receive payments on behalf of the person in pursuance of regulations made under the Social Security Administration Act 1992’.—(Lynne Featherstone.)

Clause 65, as amended, ordered to stand part of the Bill.

Clause 66

Alteration of test for barring decisions

Question proposed, That the clause stand part of the Bill.

Diana Johnson: We now move on to the barring part of the Bill. This clause alters the test for barring an individual. It amends schedule 3 to the Safeguarding Vulnerable Groups Act 2006, which regulates the barring arrangements. That includes the process of information sharing between the Independent Safeguarding Authority and the Secretary of State. Subsection (1) changes the conditions for automatic barring. At present, anyone who has committed certain serious offences will automatically be barred. In future, the person must have committed the serious offence, and the ISA or the Secretary of State must have reason to believe they have worked in, are currently working in, or may work in, a regulated activity in future. It is of great concern to many people that that automatic barring will effectively stop.

Subsection (2) rewrites schedule 3, and deals with offences that may lead to an automatic barring, where someone has the right to make representations. These are offences which give rise to a presumption that they pose a risk, but which can be rebutted through representations to the Secretary of State. Again, the automatic barring will only occur when the ISA has reason to believe that they have worked in the past, are currently working, or may work in future, in a regulated activity. Subsections (3) and (4) do the same, but for cases where individuals have been referred to the ISA because of the risk of harm, or because of their behaviour. Subsections (5) to (8) make the same changes for those barred from working with vulnerable adults.

I would be grateful if the Minister could help me. I have been trying to think why the Government would want to introduce this provision. Where is the evidence that it is required? I have not been able to find any evidence in any of the information that has been supplied. I want to look at the example of someone convicted of child rape. At the moment, they would automatically go on the barred list. As I understand it, under these new provisions, they would only go on the barred list if they had worked in regulated activity in the past, or they currently did so, or may do so in future. As the clause is drafted, if the person who had been convicted of child rape was a lorry driver, for example, they would not automatically go on the barred list, although most of the general public would think that that was a no-brainer—they should automatically be on the list.
happen if that lorry driver decided—say five or 10 years down the road—to take up driving a school coach with children on board? Could the Minister look at that example? Obviously, the ISA has to consider that this man is a lorry driver. If he has been a lorry driver for 20 years, will the ISA just say, “Well, he has never shown interest in driving people, so he is not going to be put on the barred list”?

I am very concerned about this; I am not sure what the Government will gain from enacting the clause. An appeals process is already built into the provisions around barring. Therefore I do not understand why a person should not be put on the barred list automatically, and appeal if they so wish.

I am also concerned about how the ISA will make an assessment in cases like this. If someone has used their position to abuse children, most people would assume that that person might try to get as close as possible to children in the future. Even if the abuse had not taken place during the course of regulated activity—and if this clause passes, that is the definition that will have to be looked at by the ISA—we should surely presume that that person might attempt to get into regulated activity.

In the case of offences that are so serious that someone is automatically barred, could the Minister give me some idea about the cost of going through this new procedure? Obviously, if someone is convicted of a serious offence and the automatic next stage is to put them on the barring list, that seems a very straightforward, cheap thing to do. If we have to go through a process of weighing up evidence, considering what the person has previously done, is currently doing or may do in the future, there must be a cost to that. I could not see from the impact assessment that any thought had been given to the potential financial cost of dealing with the issue of barring in this way.

I would also like guidance from the Minister about how the ISA will assess whether someone is likely to participate in a regulated activity in the future. I do not understand how rational decisions can be made about whether a person may wish to take up regulated activity. Who knows what will happen in the future?

I would also like to know what happens when the ISA gets information that leads to someone being barred—evidence that they wanted to participate in regulated activity but were not currently doing so. What happens to that information? What concerns me is that we know how often information can go astray. I would like to understand how the ISA will hold on to information that, under the law being brought forward, it will not have the right to hold—given that if a person is not in regulated activity, I assume that they are of no interest to the ISA. What happens if someone reports to the ISA genuine concerns about somebody who is not in a regulated activity, but whose conduct should result in their being barred? What does the ISA do with that information, and how would that be dealt with in the future if that person moved into regulated activity? How can we ensure that the information is not lost?

The impact assessment refers to the fact that between January 2009 and December 2010 there were 16,000 automatic bars, and states that there will be a significant drop in the number of people placed on the barred list. Can the hon. Lady give us an idea of the numbers she expects to be on the barred list if the provisions are enacted?

Gareth Johnson (Dartford) (Con): The hon. Lady has asked the Minister for clarification of the number of people it is expected will be affected by the proposal. Does she consider that more or fewer people need to be checked than under the current system, or is the current situation is about right? I do not understand where the hon. Lady is coming from in respect of numbers.

Diana Johnson: I am starting from the evidence in the impact assessment, which refers to 16,000 people on the barred list. I have set out my worries about changing a system that most people readily accept offers a level of protection by ensuring that the names of those who should be on the barred list are placed on it. I am concerned that the forthcoming changes will mean that fewer people will be on the barred list and that we will not have the level of protection that we need.

Obviously, I want to hear from the Minister exactly how many people she thinks will be affected. She might not think that the number will be significant, but it would be interesting to see, given the figures for 2009-10, where we will be if the proposal is enacted. The whole thrust of what the Government are saying is that they want a more common-sense approach and want the general public to be with them. They have it wrong. The general public will not be with them on automatic barring.

Michael Ellis (Northampton North) (Con): Does the hon. Lady agree that the principal worry should be not the number of people on the list, but the fact that they are relevant to the list?

Diana Johnson: The hon. Gentleman makes an important point. I have stressed that, unlike the Government, I am not hung up on numbers. One of the threads in the Bill seems to be an intention to get numbers down. I agree that the provision must be about ensuring that relevant people are on the barred list.

The Association of Chief Police Officers made it clear in its written submission that it is worried about how the Independent Safeguarding Authority will be aware of whether or not someone committing an automatic bar offence satisfies any of the criteria and so should be added to the list. Senior police officers made such comments. They obviously deal with such issues day in, day out so I hope the Minister will take their remarks seriously. ACPO also states that there might be individuals who currently feature on the barred list as a result of the ISA’s structured judgement process and who under the revised provisions will need to be removed—this may present a serious reputational risk for all stakeholders involved in the safeguarding arena”.

What happens to those people whom ISA will have to remove under the new provisions?

The NSPCC made it clear in its written evidence that it is worried about the provisions and states:

“A person might display harmful behaviour, which might be sufficient for a bar whilst working with children outside of regulated activity (for example as a volunteer Sunday school helper). This information would not trigger a referral to ISA or a subsequent bar because the individual was not working in regulated activity. Therefore they could continue to have close contact with children, and might in the future, be able to begin working in regulated activity.”

Again, people at the NSPCC who deal with such issues each day say that the matter needs to be looked at again.
An example of some problems with the provisions was presented to me and concerns a volunteer football coach, P, coaches boys’ football for a local Sunday league team. He is an assistant coach and is supervised by T, who is regulated. P is in charge of the under-11s, and leads their sessions, which are conducted on the same field, but away from the other groups. P is not conducting a regulated activity. P used to perform a similar role in a different city. Several parents, however, made complaints that he was exposing himself to the boys that he taught. No parent contacted the police, but the Football Association removed P from his position and informed the ISA through the proper channels. There are two scenarios. I am bringing these examples to the Minister’s attention because of the problems that this clause stores up in its approach to barring. In its written evidence to the Committee, the ISA said:

“In circumstances where the barring body receives a referral in relation to a non-Regulated Activity, without evidence that the person has worked (or is working or likely to work) in Regulated Activity, the barring body will not be able to take action to bar the person regardless of the seriousness of the reported behaviour.”

That is the ISA raising its concerns. That needs to be carefully considered by the Government.

Fair Play for Children has questioned the evidence for this particular change to the law. It said that there is “no sound evidence”. If the Minister has evidence for it, will she take the Committee through it? It certainly is not anywhere in the papers that I have seen. Fair Play for Children also said:

“The key issue here is that both the Richard and Cullen reports, based on real and tragic events, underlined the necessity to share information about those who are known risks to children.”

That was one of the key points that Fair Play for Children made. Interestingly, its evidence also states that

“we can find no evidential basis that such a change”—

as outlined in the clause—

“...has any basis in known offender behaviour, in criminal offending and re-offending statistics. There is no Article 8 gain here that can be justified when set against A8 rights of children and also Article 19 of the UN Convention on the Rights of the Child which we hold has equal merit and claim on the UK as the ECHR. The person who has committed such an offence has no special right to additional protection which we believe this proposal offers for no justifiable reason.”

The evidence from Fair Play for Children also states that the change “goes against the grain of legislation over many years including the 2000 Act.”

Its argument is that people who fall into this category should be permanently barred, whether or not they are seeking employment and whether or not it is regulated. The evidence is that they will try to get an opportunity to work with children. That assertion is backed up, it says, by statistics that show the serial nature of child abuse, as the approach of people who commit those offences is to get close to children so that they can abuse them in various ways.

I am sure that the Minister has had meetings with the General Social Care Council, which is a regulating body for the social work profession that has raised concerns about how the measure will work. Under the Safeguarding Vulnerable Groups Act 2006, it is subject to duties to refer information to the Independent Safeguarding Authority. It states that

“the basis on which the ISA decides to bar an individual is very broad and unclear”

and that

“potential for an overlap arises because the ISA can bar an individual for either causing harm or demonstrating the potential to cause harm to a vulnerable person. Harm is not defined in the legislation and so the ISA has wide discretion in terms of who to bar.”

An individual whose professional incompetence has caused harm or could have caused harm to a vulnerable person could be removed from working with vulnerable adults, and children by the ISA. A registered professional could be barred for example, for inappropriate administration of medication by a nurse, poor administrative procedure in a social work setting, or even misdiagnosis by a doctor.”

The GSCC considers that such cases of professional incompetence should be dealt with by the professional regulator and not by the ISA:

“Where the professional regulator can mitigate the risk to vulnerable people through removing a professional from their register the GSCC considers that there is no need for the ISA to bar such an individual.”

There seems to be confusion among some regulatory bodies about how the barring scheme will impact on their responsibilities and powers. We must ensure that there is clarity and that everyone understands exactly what should happen. The GSCC asked for

“an assurance from Ministers during the debate on Clause 66 that the ISA will not be expected to bar an individual where professional regulators have mitigated the risk to the public.”

I refer again to the Christian Forum for Safeguarding, which, in its extensive evidence to the Committee, raised concerns about barring and how it will affect the churches. It states that

“the publicity to date about the changes is likely simply to signpost those who wish to have access to vulnerable children or
adults away from the state sector into the voluntary sector including our churches. The Bill needs to indicate categorically...that this is neither the Government's intention nor the outcome of the reviews...barring should be applied to the whole of the workforce with children/vulnerable adults, not just regulated activity."

It believes that, similarly, “there should...be a requirement for the referral of anyone from this work force, who is deemed a risk...this information should remain on the Enhanced CRB. There seems no logical reason for this to be omitted and it provides valuable information for the risk assessment process.”

Those are the key concerns about clause 66 and the changes on barring. The information that has been submitted provides a compelling case for the Government to consider the measure again and to do everything that they can to ensure that a general common-sense approach is taken on barring and that those people who should be barred are barred.

**Steve Baker (Wycombe) (Con):** I have listened carefully to the hon. Lady and I am glad that I do not have to answer her concerns on behalf of the Government. She has planted in me some concerns about the tests, which are twofold. First, it seems that the hon. Lady is calling for people to be barred from working with children on the basis of suspicion. She might want to intervene to clarify whether that is the case.

**Diana Johnson:** That is certainly not the case. When I went through the list, I was very careful to say that my concerns were about when there was a conviction for a serious offence or when a suspicion had been reported because of activity or behaviour that was of concern to a charity or a Church group.

**Steve Baker:** Okay. The second point that the hon. Lady made was that there had been a reported suspicion of inappropriate activity. That concerns me deeply because it leaves open the possibility of malicious allegations. If we find ourselves working with children, do we have to be careful how we look at a child, in case we are reported as behaving in a suspicious manner? It is a dangerous road to go down. For me the test should be very simple: criminal conviction. If somebody was criminally convicted of a serious offence against a child, I would be concerned if they were not then barred. I would like to know the circumstances in which somebody would not be barred.

We hear constantly that there is a tendency for allegations to be reported, but that the police are not involved. As I have said before in the Committee, which raises a number of concerns about which professional body has the remit—who comes first and who is in final control of barring. When a professional regulator removes an individual from the register, an ISA bar is not required because the risk has been mitigated. There are several sorts of circumstances, if the hon. Lady will let me explain them.

If action is taken by a professional regulator such as the General Social Care Council to prevent an individual from working as a social worker, it will not necessarily prevent them from seeking employment in social care, as a care assistant in a children's care home or as a health care assistant in a hospital, even though a professional judgment has been made about them. Therefore referral back to the ISA, resulting in a bar, would prevent an unsuitable person from working with children and vulnerable adults, but not necessarily from doing the job about which the professional body was making its decision, because that only controls the areas that function under that professional body.

Professional regulators can apply a range of sanctions, which may indeed mitigate against risk, which is why the Government are proposing to amend the duty to make referrals to the ISA to a power to make referrals, because that will allow regulators such as the General Social Care Council and others to make a judgment about whether their mitigating action against risk is sufficient, or whether wider action is needed, such as a bar by the ISA.

In order to make a barring decision for those who have not committed an offence—the harm test—the ISA uses a decision-making process, which includes the use of structured judgment, to aid its determination about whether an individual presents an unacceptable risk of harm to children and/or vulnerable adults. The ISA decision-making process and guidance is available on the website, if the hon. Lady wishes to look at it.

The current arrangements for professional bodies making referrals to the ISA are confusing. What can the Government do about that confusion? As I said, the guidance on referrals is available on the website for the avoidance of doubt. In addition, the ISA and officials have had a number of meetings with professional regulators to iron out practical arrangements and to exchange information. In fact, officials are meeting on Monday, I think, to discuss these issues further. It should be acknowledged that the Government and professional regulators share the same intentions. They want to ensure that, between them, the harm the hon. Lady is concerned about cannot happen and that the appropriate level of action is taken by the professional body or the ISA bar.

**Lynne Featherstone:** I will see what can be done. Going back through a large number of points, I will answer those that I can.

The hon. Member for Kingston upon Hull North referred to the General Social Care Council’s memorandum to the Committee, which raises a number of concerns about which professional body has the remit—who comes first and who is in final control of barring. Under the new arrangements—proposed new sections 30A and 30B of the Safeguarding Vulnerable Groups Act 2006—regulators will be able to register to receive that information on barring.

**Mrs Chapman:** I have a simple question for the Minister. How many people are barred under current arrangements by the ISA from working with children, using information that would not be included on an enhanced CRB check? How many people barred now will not be barred when employers do not have access to that information?

**Lynne Featherstone:** We do not have the figures to hand as to how that could be done.

**Mrs Chapman:** Could the Minister find out, please?
Diana Johnson: I shall come back to that when we debate a later clause.

Lynne Featherstone: I thank the hon. Lady, because the issues to do with professional bodies come under a later clause. I apologise to her for not responding to her points in the order in which she asked them.

The hon. Lady raised the issue of football coach P, who coached under-13s under the supervision of someone who had been cleared, and had a history of parents being collectively worried about his behaviour. For people with those concerns, it is absolutely right to raise all such issues, but we have to find a balance. In the example given by the hon. Lady, when suspicions were raised, the Football Association contacted the ISA. I have to say, however, that whatever the decision, the FA should have reported its information to the police.

The real issue, and perhaps the only difference between us, is that there might somewhere be unknown information about someone who, because the barring information does not come through if they are in unregulated activities, could be working and perhaps should not be working in those unregulated activities. That is the whole point, and the difference between us is on what is included as a regulated activity, because the barring arrangements will be the same.

Diana Johnson: I think the real issue between us is about information flows. I do not understand why the Government are so keen to turn their face away from ensuring that organisations and groups receive the information that they need. That is the issue between us.

Lynne Featherstone: Does that relate to the hon. Lady’s new clause 15 or is it a separate matter?

Diana Johnson: It relates only to the issue of barring—about why people are not going to be told automatically.

Lynne Featherstone: I am sorry; I thought I had explained that clearly. People might be barred for financial impropriety, for example, so it is not necessarily for harm in that sense. The point that I guess the hon. Lady wishes to make is: if an organisation has volunteers working in an unregulated activity and is aware that someone is barred, it might, without any more information than that, including what the bar is for, decide not to have that person, which would be wrong if the bar is for an unconnected matter. For unregulated activities, it has been decided that the barring information is not needed; that is outside regulated activity.

Moreover, on information flows, the bigger danger is that the same person can, for example, go to the local park and harm children no one is watching. However, if the activity is unsupervised, it will be regulated. We are trying to transfer supervision and care, and to be proportionate about the balance of the responsibility of the state in barring those who are most dangerous and pose the greatest risk in situations where there are opportunities for harm. That is the differential.

Mrs Chapman: The Minister mentioned parks. A long time ago, I worked with offenders, and it struck me that it was common, particularly for sex offenders, for there to be a condition that they do not go near a school, a park or other places where there are children. They were automatically barred, but under these proposals, they would be able to volunteer to work in a school, which seems odd to me and will seem very odd to parents.

Lynne Featherstone: But the information should have gone to the police. I am sorry. I do not understand the hon. Lady’s point.

One of the key messages from the debate is that for a long time, employers have been able to refer information to the ISA on suspicion, and the ISA, which is very experienced in making barring decisions, might or might not have made a bar, according to its judgment. It has also been a way in which employers have been able to offload their responsibility. They could say, “I had my doubts. I don’t really want to report the matter to the police because it is not nice to do that about a teacher or employee we know.” There are reservations, and all of us in politics know of situations when people want to move someone on, but do not want to become involved, be seen to accuse or take the matter to the police. It is important that such cases are taken forward. That is the key: such information should go to the police. That is a good message for the Committee to send out.

Michael Ellis: The Minister has hit the nail on the head. Is it not the case that the Opposition expect action to be taken against those who are cast with suspicion, but against whom others are reluctant to inform the police authorities? Is it not important that we remember that those who are committing offences and whom it is right to bar from having connections with children are different from those caught under the less secure system of people simply being suspicious?

Lynne Featherstone: I thank my hon. Friend. It is most important that an employer reports matters directly to the police as well as to the ISA. That is the process by which information will appear on enhanced Criminal Records Bureau checks.

Diana Johnson: It is absolutely right that people report suspicions to the police. No one in the Committee would disagree with that. However, it does not always happen in reality. In his evidence, Sir Roger Singleton said that 50% of concerns about vulnerable adults in care homes that led to dismissal or agreed resignations were not referred to the police. That is why we are stressing the point; it is all very well to say, “Of course, you should go to the police”, but it does not always happen.

Lynne Featherstone: Perhaps that is what happened in the past, but clearly we should be addressing the situation because it is not acceptable. If 50% of incidents are not reported, it is a dreadful indictment of the conditions in the care home, and its supervision and ownership, that so many things could be going wrong and the matter not be reported to the police. Such an establishment needs more surveillance. When someone is employed or offers to volunteer, there is the matter of previous references. They should show doubts and suspicions. [Interruption.] The hon. Member for Kingston upon Hull North is looking quizzically at me, as if to say that
is not how the world works. I am not talking about harmed children, but I know circumstances in which a bad head teacher was given a good reference to pass them on. Such action needs tackling because we are referring on bad heads.

In the cases we are talking about, references need to show doubts, and we should send that message loud and clear. Otherwise, we will be legislating for things that should not be happening in the first place. We will encourage employers to bring examples to the attention of the police and, in that way, the information will be available for wider criminal justice purposes, including local intelligence. As my hon. Friend the Member for Wycombe said, it is important to refer suspicions through legal procedure so that they become convictions.

I remind the hon. Member for Kingston upon Hull North that under the previous system, in limited circumstances a barred person could apply to work in a school. Under the previous Administration, when anyone volunteered to work with children or worked infrequently, if it was with pupils for fewer than three days a month, they could be barred and it need not have been declared. There was the opportunity to ask about barred status, but there was no requirement

Mrs Chapman: I am not sure where we ended up in our last exchange, but will the Minister commit to finding out how many of those who will not be barred under the new system would have been barred under an enhanced CRB check using information that will not be available to the police in the future?

Lynne Featherstone: It is not a numbers game. We will look at that. I do not know how accurate the figure will be; it is quite a difficult figure to get. I will take away the suggestion to look at it, and I will try to come back with something meaningful for the hon. Lady.

Vernon Coaker: My hon. Friend the Member for Darlington has raised quite an important point. Nobody is saying that the numbers will go down by 2,000, but the Minister should have a view; otherwise, what is the point of the proposals? Will fewer people be barred? Will more people be barred? Will the same number of people be barred? I agree that it is not a numbers game, but we are legislating on an extremely important point. At the current time, 16,000 people are barred.

Lynne Featherstone: Eighteen.

Vernon Coaker: Eighteen thousand are barred. Does the Minister expect that number to go down, to go up or to stay the same? If she does not know the answer, I ask her to write to the Committee to clarify the issue.

Lynne Featherstone: I am expecting the number to go down.

Vernon Coaker: How many?

Lynne Featherstone: I have undertaken to come back to the Committee. However, it is not a numbers game; it is absolutely about whether something is regulated or unregulated, whether someone is suitable or unsuitable; it is about the level of supervision, a proportionate response and the balance in terms of the responsibility lying between the state and the employer or organisation. For far too long, there has been a change around. Somehow, people could go through processes that freed them, in employing people, of their actual responsibility for taking references, supervising things and making sure that everything in their organisation or place of employment was run in such a way as to give the best, absolute protection to children and vulnerable adults.

I return to the example of the lorry driver. If a lorry driver committed child rape and later worked with children totally unexpectedly, the duty to check would be activated if the activity was regulated and that is what the driver was seeking to do. If it was unregulated, no barring information would be available. However, it would not be inconceivable that the school would ask for an enhanced CRB check.

Diana Johnson: The point I am really concerned about is why the person is not automatically put on the barred list right at the outset when they are convicted of child rape, so that everybody is clear for the future. In the instance I described, the person would not be put on the barred list, would they?

Lynne Featherstone: But they are barred only if they work in a regulated activity; they are not barred for any other purpose, so it would be disproportionate to put them on the barred list, unless they were proposing to go into regulated activity. There will be, I believe—I will check with my officials—the opportunity for someone who is still in prison to remain on the barred list, but I will come back to that.

Diana Johnson: Can I just be clear? The Minister is saying that it would be disproportionate to put a child rapist on the barred list; that is what she has just said. Why does she feel that a child rapist deserves additional protection and children do not?

Lynne Featherstone: It is not about that. The hon. Lady is using the most emotive language to try to argue the case. What I said quite clearly and on the record is that if the person has not worked, is not working and does not intend to work in regulated activity—

Diana Johnson: How do you know?

Lynne Featherstone: Well, I can only repeat the case. That is why I go back to the fact that our differential is about unregulated activity. If it is regulated activity, the person is barred, regardless. That is the differential; it is about where the balance of responsibility lies.

Mrs Chapman: On the issue of where the responsibility lies, the Minister has complained that employers have not taken up their responsibility to inform the police of suspicious behaviour and of things they are concerned about, but now she expects those same employers, who have not informed the police, to make the barring decision themselves. That does not make sense.
11.30 am

**Lynne Featherstone:** Now such employers will not be able to say that it is the Government’s fault, because they will take the responsibility and they will be reporting. Under the previous scheme, they could say, “We’ve done all this and if something happens it’s not our fault, it’s the Government’s fault.” We all have responsibility and the measure is about being proportionate. [ Interruption. ] Does the hon. Lady think that it was right to have 11 million people in the previous scheme? [ Interruption. ]

**The Chair:** Order. The Minister is on her feet.

**Lynne Featherstone:** The hon. Member for Kingston upon Hull North continually drags in that argument, so the argument back has to be: do the Opposition want us to return to their scheme, which originally included 11 million people? As I have already said, the test is whether the person has been engaged in regulated activity, is engaged in regulated activity, or might be engaged in it in future.

**Diana Johnson:** Will the Minister give way?

**Lynne Featherstone:** May I finish? If the person is in prison for a conviction, they have been engaged in regulated activity, so a teacher in prison for child sex offences is barred.

**Diana Johnson:** I am concerned about how people will work out whether someone might be engaged in regulated activity in future. What is the rationale? What is the step-by-step approach? How will we know what will happen in the future? For example, how would people assess whether the lorry driver who is not now in regulated activity might be engaged in it in future?

**Lynne Featherstone:** That is something that the ISA would be involved in.

May I turn around the question why a child rapist would not be put on the barred list? Why include such a person if they have never worked with children? If, in future, they were to apply to work in a school, the school would apply for an enhanced Criminal Records Bureau check and certificate, which would show the conviction. At that point, the case would be referred to the ISA for the barring decision, as I have said.

I hope that I have dealt with those points. We have a basic difference: the hon. Lady is saying that if someone is barred, they should be barred regardless; we are saying that they should be barred only from regulated activity, not unregulated activity.

**Diana Johnson:** Where has the evidence for the change come from? What evidence is the Minister relying on?

**Lynne Featherstone:** I will come back to the hon. Lady, because I have a number of points to go through.

Autobar offences will still lead to an autobar if the new test is met, so automatic barring will remain as it is. However, rather than add to the list people who have no intention of working in regulated activity, which, for the benefit of the hon. Member for Gedling, was 18,000 people last year, the autobar offence will be picked up on their application to work in regulated activity. We shall discuss later the duty of the employer not to knowingly employ someone on the barred list, and the duty of the barred person not to work in regulated activity.

**Gareth Johnson:** Does the Minister agree that although barring lists will always be important, perhaps most important is that employers ensure that they keep an eye on their employees and act in a responsible way? We all know of instances where people without convictions or suspicion levelled at them have behaved inappropriately. Sadly, therefore, there is a responsibility on us all, particularly employers, to ensure that employees are acting appropriately, without feeding into paranoia.

**Lynne Featherstone:** My hon. Friend makes a good point. The recent case that springs to mind is that of Vanessa George, which was hideous. She worked for a long time in regulated activity and she had a clear CRB check. The ultimate defence against anyone behaving in an inappropriate way with children or vulnerable adults is the person on the spot—the person who is there, who can see what is happening. We can never say never under our scheme, nor could we do so under that of the previous Government. We have worked out where the proportionate line is drawn between the need to keep away someone who means harm, where the greatest risk is, without putting obstacles in the way of those who do not mean harm and who do not need that level of prohibition.

We need to work out a structured process for determining whether a person might engage in regulated activity in the future. That was the point the hon. Member for Kingston upon Hull North made about how we work out who might engage. For example, with courses that lead to regulated activity—for example, a teaching or nursing course may lead someone to regulated activity in due course—the small unknown is with the other information that will come from the employers, upon referral, when that individual is seeking to work in regulated activity. That information will not be in their previous history and we do not know what will happen in the future. They may embark on those activities at a future date, which is what the provision captures.

**Jim Shannon** (Strangford) (DUP): Obviously, parents’ viewpoints will be important, although I do not expect that the Government have been able to consult every parent. Have they consulted the Grandparents Association or the National Governors Association? Those two bodies would have a view on this. I am interested to know whether that has been done.

**Lynne Featherstone:** The consultation has been wide. I will come back to the hon. Gentleman about the specific groups.

The hon. Member for Kingston upon Hull North asked whether we will be able to retain information about an individual who is not engaged in regulated activity, so that it is available, should that person want to engage in it in future. The ISA is already able to
retain information in accordance with the 2006 Act and data protection principles, so the answer to the hon. Lady is yes.

Diana Johnson: I asked the question because the law will change and the ISA will only be interested in regulated activity. I am a little confused, because the 2006 Act relates to the current situation. What will happen when the ISA’s responsibilities are much more limited? I do not understand how it will work.

Lynne Featherstone: It is all about being proportionate in terms of what is retained and what is passed on. On the hon. Lady’s anxiety, the ISA will still have the capacity to pass on information. It already uses that capacity to a great extent and I doubt that the situation will change under the Bill.

Diana Johnson: Will the Minister write to me, detailing the specific statutory powers that the ISA will have to retain information, which—as I understand it—it will have no responsibility for?

Lynne Featherstone: I am happy to write to the hon. Lady about that.

I hope that I have answered the vast majority of the hon. Lady’s points. Clause 66, as she said, amends schedule 3 to the Safeguarding Vulnerable Groups Act 2006. The clause will ensure that only those who apply to engage in regulated activities with children or adults are included in the barring regime, so as to prevent them from undertaking such work. People who have never undertaken such work, or never applied to undertake such work, will no longer fall within the scope of the vetting and barring arrangements. This is for clarification. It makes no sense to go through the process of barring someone who has never engaged in, and who has no intention of engaging in, regulated activity. If that individual were to be barred, or were a bar to appear, it could hamper their employment chances in occupations that do not give rise to safeguarding issues.

Clause 66 amends how automatic barring works. Individuals who have committed the most serious of crimes, who work or apply to work with vulnerable groups, will still be automatically barred from working with those groups. There are two types of automatic barring: one without the right to make representations and one with the right to make representations. The arrangements for the category of offences in respect of which an individual may make representations to the ISA on their barring status are changed.

Subsection (1) of clause 66 relates to the children’s barred list and amends the provisions set out in paragraphs 1, 2 and 3 of schedule 3 to the Safeguarding Vulnerable Groups Act 2006 for the automatic barring of persons who meet the prescribed criteria. The prescribed criteria are set out in Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 and refer to circumstances when individuals have been convicted or cautioned for a serious criminal offence, which gives rise to a clear indication of risk to vulnerable groups.

Clause 66 first amends paragraph 1 to limit the requirement for the Secretary of State to make referrals to the ISA and ISA bars to individuals who have, have been or might in the future be engaged in regulated activity. The clause therefore excludes from automatic barring persons who have not worked, who are not working and who have no intention of working in regulated activity. The changes still require the ISA to place on the barred lists those persons who have committed serious offences and who are, have been or might in the future be engaged in regulated activity.

Subsection (2) amends paragraph 2 of schedule 3 to the 2006 Act.

Clive Efford (Eltham) (Lab): I am trying to get my head round the clause. There are times when I feel at ease with what the Minister is saying and there are other times when I feel very awkward. If someone has committed an offence such that a parent would reasonably have concern about that person having access to their children in regulated or unregulated activity, how does the clause reassure the parent? The person has committed an offence, regardless of whether at the time of the offence they had any intention of working with children. Perhaps they had no intention of doing so and there was no suspicion that they would want to do so. Can the parent be confident that the person will be prevented from having access to children?

Lynne Featherstone: In respect of unregulated activity, the parent can have confidence in the school or care home in which the person is helping or working in a supervised capacity. That is the point. What we are talking about will come about not through the barring information, but through the organisation’s procedures, checking of references, supervision and attention to detail and through its listening to what people say. It will not come about through people seeing that there is a bar.

I understand why we keep returning to the point about the concerns of parents about someone who may have been barred at some point being anywhere near, in any circumstances, their child. That is what the hon. Member for Eltham is talking about. My answer is that the Government have made a decision about where and how that is best safeguarded against in terms of appropriateness, because the knowledge about a bar is not necessarily the safeguard that a parent needs. The enhanced CRB check, the other checking procedures and the supervision thereof are far more important on the day, in the circumstances. The people on the spot know the geography, the circumstances, the level of supervision and all those things. That is the answer to the hon. Gentleman’s point. It may not be the answer that he wants. Nevertheless, those are the circumstances in terms of the decision between unregulated and regulated activity.

Clive Efford: Clause 66(1) refers to a situation in which the Secretary of State “has reason to believe that...the person...has been, or might in future be, engaged in regulated activity relating to children.”

There seems to be a loophole or gap in the Bill that suggests that if a person is showing no intention of working with children and there is no suggestion that they are involved with children, there is no need for them to be placed on the barred register. What if several years later they begin to work on a voluntary basis with
a local organisation—the scouts, a football team or whatever? Should we not have a system that prevents such a person from getting into that situation, whether the activity is regulated or unregulated?

**Lynne Featherstone:** The system basically does that. That person will be checked in the sense—[**Interruption.**] They will be checked. They may not have the word “bar” on the certificate, but they will be checked. That is the point, so there is no change to the barring regime from before.

Subsection (2) amends paragraph 2 of schedule 3 to the 2006 Act, which governs automatic bars with representations. Those bars are based on criminal convictions or cautions that although not providing such a clear indication of risk as the criteria falling under paragraph 1 of schedule 3, are still serious and raise the presumption of a risk of harm to vulnerable groups. Those offences are also set out in the 2009 prescribed criteria regulations.

In such cases, the new arrangements will require the ISA to seek representations from an individual who has committed such an offence, before making its decision on whether to place them on the children’s barred list. If no such representations are received within the prescribed period, the ISA will be required to place the person on the barred list. That is different from the current provision, which requires representations to be sought after the individual has been placed on the barred list.

If representations are received, the ISA must consider whether it is appropriate to include the individual on the barred list. Like subsection (1), subsection (2) limits the application of such bars to those who are engaged, have been engaged or might in the future be engaged in regulated activity.

11.45 am

**Diana Johnson:** On the point about the process, will the Minister address the cost?

**Lynne Featherstone:** If I can, I will address the cost in a moment and, if I cannot, I will write to the hon. Lady.

Subsections (3) and (4) will make provision in respect of persons referred to the ISA on the grounds of their behaviour with or the risk of harm to children. As with the arrangements for automatic barring and for barring with representations, only individuals who are engaged, have been engaged or might in the future be engaged in regulated activity can be placed on the ISA barred list. Subsections (5) to (8) of the clause make the same amendments in respect of persons referred to the ISA or placed on the barred list relating to adults. With that, I ask the Committee to agree to the clause.

**Question put,** That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

**Division No. 21**

**AYES**

Baker, Steve
Blackwood, Nicola
Brake, Tom
Brokenshire, James
Buckland, Mr Robert

**NOES**

Chapman, Mrs Jenny
Coaker, Vernon
Efford, Clive
Johnson, Diana

**Question accordingly agreed to.**

Clause 66 ordered to stand part of the Bill.

**Clause 67**

**Abolition of controlled activity**

**Question proposed,** That the clause stand part of the Bill.

**Diana Johnson:** The clause will abolish the notion of controlled activity, about which we have previously had lengthy debates. I want the Minister to address several issues. Is she satisfied that in removing controlled activity, the same level of protection will be offered to the most vulnerable adults and children, about whom the Committee is concerned?

The Government have made much of their claim to halve the number of people subject to vetting and barring. I am interested to know how many people no longer subject to barring will be working with vulnerable adults. There has been a big debate about those working with children, but the vetting and barring clauses relating to vulnerable adults have not attracted as much attention from the charities and organisations that have commented on the clauses relating to children.

I am particularly interested in the split between how many people who would have been considered to be in controlled activities with adults the Minister expects will be removed from any of the vetting and barring schemes. Similarly, for children, how many people were in the previous scheme and how many will there be in the new scheme? Will she take us through some examples, so that we can fully appreciate and understand what the clause will do?

I want to press the Minister on what steps she will take to ensure that the community care and social care industry is fully aware of the requirements under the new scheme. Having spent time looking at and understanding controlled and regulated activity, is she concerned about the confusion that might arise from the changes? At the beginning, we talked about the complicated nature of the scheme and about ensuring that it is as clear as possible to all interested parties. We need to get this right, because all members of the Committee want to ensure that there is a clear message about what the Bill will do to protect vulnerable children and adults.

**Lynne Featherstone:** I believe that there will be the same level of protection from harm in the assessment of greater risk. It is not impossible that someone could be in a situation now that they could not have been in before because it was regulated, but it will be either supervised or, with adults, there will not be the personal care, relevant social care or health care that dictates that something should be regulated activity.

Despite its merits and the well intentioned introduction of the scheme by the previous Government, it developed into a complex and cumbersome central bureaucracy and brought far too many people within its scope. Additionally, the vetting and barring scheme was accused
of being confusing, expensive and encouraging risk-averse rather than responsible behaviour by employees and of giving the impression that the scheme could manage all risks out of the system used for pre-employment checking.

Many believed that the scheme was based on the assumption that people who wished to work or volunteer with children and vulnerable adults posed a risk unless the VBS process found otherwise, in contrast to the UK’s legal and democratic tradition of innocent until proven guilty.

Unison said:

“We do not support the principle of the existing scheme that requires the pre-registration of all employees and volunteers without subsequent vetting since this cannot of itself provide any protection.”

The GMB, the Royal College of Nursing, Royal College of Midwives, National Union of Teachers, Unison, Unite and other members of a 24-member union coalition said:

“There should be no duplication of regulatory mechanisms that would lead to overregulation”.

Wales Council for Voluntary Action said:

“The scheme needs to be simple, easily applied and robust.”

NHS Employers said:

“Whilst patient safety is absolutely paramount to the review of the scheme, NHS Employers would fully support the proposals under the Coalition agreement to reduce the application of the scheme to common sense levels.”

I refer to those statements because, although the hon. Lady said that the new scheme is complicated or confusing, the old scheme was extremely complicated and confusing. The changes will simplify things and put responsibility back in an appropriate place.

I was asked about the scheme for both adults and children: 500,000 will be removed from the controlled activity section of the scheme.

Diana Johnson: Will the Minister confirm that—500,000 out of what?

Lynne Featherstone: Controlled activity.

The Chair: Order. Could we have a proper intervention?

Diana Johnson: Will the Minister clarify the total number of controlled activities?

Lynne Featherstone: The total number of those who were involved in controlled activity who will now not be is 500,000. Because controlled activity is being abolished, they will no longer be involved in it. Nacro said:

“‘Controlled activity’ was a category to complement regulated activity and applied to posts in which people had contact with children and vulnerable adults, but did not work directly with them. An example would be a car-park attendant in a hospital. Nacro welcomes its demise as it added further ambiguity to an unclear system.”

Isabella Sankey of Liberty said:

“We were also concerned that under the Safeguarding Vulnerable Groups Act 2006, many more people would need vetting who had not previously been vetted…they would be categories that it was not necessary to vet, whether they were receptionists, cleaners or other categories of people—that extra controlled activity category.”

Clause 67 abolishes the concept of controlled activity, which is defined in the Safeguarding Vulnerable Groups Act 2006 as ancillary in nature to regulated activity, and to which barring did not apply. For example, it included administrative staff employed in a social services department and those with access to sensitive records. The clause will help to scale the scheme back to common-sense levels, so that only activities that are defined as regulated activities fall under the new barring arrangements, and what would have fallen under the heading of controlled activity will not be subject to the arrangements.

The clause repeals sections 21 and 22 of the 2006 Act, which define controlled activity in respect of children and vulnerable adults, as well as section 23, which enabled regulations to be made to govern steps that employers must take when considering whether to allow a person to engage in controlled activity. As we have discussed in relation to clauses 63 and 65, regulated activities are being re-defined on the basis of risks to, and access provided to, children or adults who need those services by reason of their age, illness or disability. We do not think that a separate category, such as controlled activity, to which barring does not apply, is necessary or desirable.

Abolishing the concept of controlled activity will require all employers to actively manage any risks inherent in those types of role, rather than assume that the Government have already done that for them, as was arguably the case under the previous arrangements.

Colin Reid of the National Society for the Prevention of Cruelty to Children said:

“Vetting in itself is only one part of good practice; it will not screen every unsuitable person out. Organisations need good practice guidance, codes of conduct, good employment practices, a culture of child protection and systems to report.”

"Part of that risk management process will include employers and voluntary organisations obtaining enhanced criminal record certificates in respect of persons working with vulnerable groups but in a capacity that does not constitute regulated activity. Employers will, therefore, continue to have access to any criminal convictions and relevant non-conviction information that will enable them to come to a view on whether it would be appropriate to employ the person concerned in the position in question.

Of course, an enhanced criminal record certificate will not tell the employer or voluntary body whether a person is barred. Barring does not apply in such cases, so we do not believe that it would be appropriate to provide each non-conviction information that will enable them to come to a view on whether it would be appropriate to employ the person concerned in the position in question."
with vetting and barring. The survey was of 94 volunteering organisations and it took place between December 2009 and January 2010. The results reveal the scale of confusion surrounding the scheme as was. Only 33% of respondents said that they fully understood which of their volunteers would need to be registered, while 37% reported that they were not sure whether the scheme meant that some of their activities would be stopped or cancelled; 56% thought that the overall impact of the scheme would be increased bureaucracy; and 52% believed that the scheme would make it harder to recruit volunteers. Some organisations expressed concerns that volunteers would simply refuse to register with the ISA, with one organisation commenting:

“Many of our volunteers are older people and may see the Vetting and Barring scheme introduction as a watershed moment in their day services which are heavily reliant on volunteers”.

Mrs Sunita Mason, the independent adviser for criminal information management, said in her oral evidence to the Committee that “if there are serious concerns”—I would be happy to return to this point regarding an individual working with vulnerable people—”employers need to be educated to refer matters to the police. Quite frankly, it is not only the ISA that might want to share information.”—[Official Report, Protection of Freedoms Public Bill Committee, 22 March 2011; c. 74, Q217.]

That is an important point. We will be meeting, talking and putting out guidance about all those things in terms of the education that is needed, as has been referred to by the hon. Lady. However, the overarching change is that the clause will abolish controlled activity. I remind the Committee that it has never been the case under the vetting and barring scheme that barring has applied to all work with vulnerable groups. The bar applies to regulated activity as defined in the 2006 Act, as amended by the Bill, and the abolition of the concept of controlled activity does not change that.

Question put and agreed to.
Clause 67 accordingly ordered to stand part of the Bill.

Clause 68
Abolition of monitoring

Question proposed, That the clause stand part of the Bill.

12 noon

Diana Johnson: The clause gets rid of the monitoring involved in the vetting element of the vetting and barring scheme. That element of the 2006 Act was never actually brought into force. Under the old scheme, however, anyone conducting a regulated activity would have had to register with the ISA, which would have given them clearance. That would have allowed an employer or activity provider to know that the person was clear.

Will the Minister comment on one point? Although there was genuine concern about the vetting element being seen as onerous and overly burdensome, there was a simplicity to it. The ISA is very specialist in this area, and some of its staff look at issues such as people raising suspicions about individuals’ behaviour, which Government Members were concerned about.

The ISA would have assessed the information brought before it and decided whether an individual was safe to work with children. As I understand it, the individual had a right of appeal. That system has been replaced by a complex system requiring individuals to apply for CRB checks, which leaves employers to assess the check for themselves. A number of small organisations, charities and voluntary groups have said that it would be much simpler for small organisations to be able to defer to the ISA’s judgment.

Mrs Chapman: I want to back up my hon. Friend’s point. I have visited the ISA on two occasions because I was concerned about this. I sat down with decision makers to look at examples of case files because I wanted to understand properly how things are done. The ISA is making very difficult, finely balanced judgments using lots of evidence and experience. Decisions are not made by one person; lots of moderation goes on, and there is a high level of checking and supervision. The Committee needs to understand that when it considers the ISA’s decisions.

Diana Johnson: I am grateful for that thoughtful contribution. My hon. Friend clearly makes the point I was attempting to make about the ISA’s specialist knowledge, which will now not be used.

In his evidence to the Committee, Sir Roger Singleton talked about parents’ views on ensuring that people who come into contact with their children are suitable. There is a concern about music teachers and tutors. If the ISA said that someone was a music teacher, parents could have reassurance and could allow their child to go to that person’s home for music lessons once a week, because they would know that the ISA had said the person was suitable. There is a concern that we have lost that ISA specialist knowledge, which reassured parents and some of the voluntary groups. In his evidence, Sir Roger Singleton said:

“Three out of four parents said that if they personally could not be responsible for deciding which adults looked after their children, the adults should be subject to some form of check, basically to see that they were not unsuitable to work with children.”—[Official Report, Protection of Freedoms Public Bill Committee, 22 March 2011; c. 71, Q206.]

Those, then, are some comments on the effect of removing the monitoring element covered in the clause.

Lynne Featherstone: It is not correct to say that because an individual is monitored, they were clear to work with children or adults. That meant only that the person was not barred, which is not the same as being cleared. Monitoring gave a false sense of security and I argue that it resulted in a reverse situation—people abdicated their responsibility. The hon. Lady has quoted Sir Roger Singleton, but it is worth reminding the Committee of what he said in his evidence to us. On these changes to the scheme, he said:

“in general, our view is that the safeguarding interests of children and young people are well considered and they are protected in the Bill. There are lots of aspects that we welcome, such as the abolition of the registration scheme, the auto-bar provisions, the abolition of controlled activity...One of the challenges that we all face is that vetting and barring can be vested with too much comfort and authority. The intention is to underline the responsibility of the employer or the organiser of volunteers, and that is right.”—[Official Report, Protection of Freedoms Public Bill Committee, 22 March 2011; c. 70, Q203, Q205.]
I argue, therefore, that the measure has the opposite effect and that taking away responsibility from the employer is more dangerous. The ISA makes an overarching decision on barring and will continue to do so—there is no change there. The ISA will not say whether a person is suitable and would not have done so under the previous scheme. There was never a mandatory requirement on personal tutoring under the old scheme either. The ISA can still assess information—convictions or otherwise—and bar people under their risk-based process. No information was known about 92% of the people who were subject to monitoring, so monitoring 9 million people is disproportionate, given that such a high percentage of them have nothing to be worried about.

The clause repeals sections 24 to 27 of the Safeguarding Vulnerable Groups Act 2006. Monitoring would have meant that updated information, such as new convictions or cautions, would be collated and referred to the ISA so that it could consider whether the registered person should be barred. Individuals who seek to harm vulnerable people in our society will still be prevented from taking on roles working with vulnerable groups without the vast majority of law-abiding people who work with such groups having to be continually monitored.

The protection of vulnerable groups is a shared responsibility and not solely that of the Government, and employers or organisations should not feel a protection that is not actually there. As I have said in previous discussions, there is no better ultimate defence than the person who is there, who knows the situation, knows what the person is meant to be doing and knows the geography of the place in which they are working.

We will not condone a system that assumes that the way to catch the guilty is to monitor the innocent, using a big brother solution, just in case they do something wrong. The clause abolishes monitoring requirements and any other requirements relating to the proposed monitoring scheme. The abolition of monitoring is an important component of the overall package of reforms relating to the test that the police must employ, which I think that the person may engage in regulated activity, which may not always be clear. We have discussed at length the problems of the approach of looking at regulated activity and thinking whether the person may decide to engage in it in the future. My view is that the test has been weakened in that particular case. Will the Minister comment on that?

There is also a change to the test that the police office must employ when deciding what information to share. At present, the police will share information if they think that it might be relevant. Under the clause, they will share information if they reasonably believe it to be relevant. Will the Minister comment on that?

Subsection (2) replaces paragraph 20(2) of the Safeguarding Vulnerable Groups Act 2006. Both paragraphs concern the Secretary of State’s duty to share information with the ISA. However, while the original paragraph had a more general obligation, the new one appears to limit the obligation to one about convictions that lead to automatic barring. Will the Minister comment on that?

Does the Minister think that the changes set out in the clause will result in the ISA receiving more or less information about people of concern? I do not understand why the Minister wants to limit the Secretary of State’s remit for sharing information with the ISA; perhaps she will explain the thinking behind that.

Furthermore, why is it the role of the police to consider whether someone is likely to conduct a regulated activity in the future? We have already discussed the difficulty of doing that, and the specialist knowledge and approach that the ISA have. We are expecting police officers also to have that knowledge and approach. Will the Minister comment on how she sees that happening and what discussions she has had with the Association of Chief Police Officers to consider the special training that might be required of police officers to fulfil the obligations of the clause?

**Lyne Featherstone:** Clause 69(1)(a) inserts the words “appears to apply” in paragraph 19 of schedule 3 to the Safeguarding Vulnerable Groups Act 1996 so that the ISA can require the police to provide information such as convictions, cautions and other relevant information when the police consider that the barred provisions, whether they are automatic or discretionary, apply or appear to apply.

The reason for the amendment is that we have amended the barring provisions in schedule 3 for both automatic and discretionary bars. Under our amendment, a person is barred only if there is a link to regulated activity—if the person is engaged in such activity, has been so in the past or is likely to be so in the future. It may not be immediately apparent to the police whether the person does or does not have that link, and it cannot be the police’s job to know that. That is why there is a requirement to supply that information. What they will know is whether the person has had any convictions, or relevant police information.

The clause also removes a reference, in paragraph 19 of schedule 3 to the Safeguarding Vulnerable Groups Act 2006, to information resulting from monitoring.
and we have just abolished monitoring in the previous clause. The amendment, therefore, is consequential on the key clause, which was clause 66.

Clause 69(1)(b) amends the test that the police apply when giving the ISA police information. Whether that is a conviction or other police information, the test at the moment is that the chief officer of police must provide such information as he thinks might be relevant; the clause changes that to such information as he “reasonably believes” to be relevant. It is a higher bar. That mirrors the change made under clause 79 to the relevance test for disclosing information on enhanced CRB certificates, which we will come to when we get to the CRB area later on.

Clause 69(1)(c) is consequential on clause 69(2), which amends paragraph 20 of schedule 3 to the 2006 Act. We are amending that paragraph because of the changes made to the 2006 Act that repeal monitoring. The Secretary of State will no longer be involved in monitoring under the 2006 Act, and we are therefore amending the obligations to share information accordingly.

The new obligation on the Secretary of State is to share information about conviction and cautions of a prescribed description. That obligation will kick in when an individual makes an application to the CRB for an enhanced CRB certificate in connection with regulated activity, and the CRB certificate shows an auto-bar offence. The CRB, which acts on behalf of the Secretary of State, is under an obligation to pass the information on to the ISA, and the proposal would make sure that the obligation included an obligation to pass on details of the conviction, such as the convicting court, the date of the conviction and the sentence received.

Question put and agreed to.
Clause 69 accordingly ordered to stand part of the Bill.

Clause 70

REVIEW OF BARRING DECISIONS

12.15 pm

Diana Johnson: I beg to move amendment 166, in clause 70, page 53, line 28, at end insert—

‘(4) The sponsor of any individual engaged in regulated activity as listed in the Safeguarding Vulnerable Groups Act 2006 will be informed as to whether that individual is on a barred list held by the Independent Safeguarding Authority.’.

The amendment is an attempt to deal with the problem that we have identified with information on barring. Under the Bill, employers or voluntary organisations employing someone to work in regulated activity will only find out that that individual is barred when they receive the CRB certificate. The certificate is sent first to the individual—a matter to which we shall return under later clauses—who must share it with their employer. If an individual was barred while already in employment, the employer will not find out about it until another CRB check is carried out.

Under the amendment, employers or voluntary organisations providing regulated activity, to whom we have referred as sponsors, must always be informed when an individual who works in or applies for a regulated position in an organisation is barred. Sponsors will always know the situation, and will not have to wait until a CRB check is carried out and the individual shares details of the CRB certificate at a later date. The NSPCC supports the amendment, because it would ensure that basic information is known instantly about whether someone is barred, and it would not mean that there would be a lengthy delay. It would meet the Minister’s aim that information about those within regulated activity held by employers is current, and those employers will be fully aware that a barring decision had been made.

Lyne Featherstone: Perhaps I did not fully understand the hon. Lady’s point. Clause 72 already imposes a duty on employers to check whether a person is barred before committing that person to engage in regulated activity. Clause 71 provides for the capacity for employers to register an interest so that they will be informed if an individual is barred. The Bill puts the onus on employers, rather than relying on the bureaucratic system of monitoring circumstances. Employers can make sure someone is not barred before they enter their employment and will have the option to be continually updated on their status.

Diana Johnson: I accept that we shall discuss such matters under later clauses, but will the Minister confirm that such action will take place only with the consent of the individual? I know that she is keen to ensure that employers play the fullest part in monitoring and checking that employees are doing what they should be doing and not doing what they should not be doing but, if consent were not given by the individual, the employer would not know that there had been a barring decision. Is that right?

Lyne Featherstone: I shall come to consent later, but an employer who employs someone in regulated activity will commit an offence if they knowingly employ someone who is barred. I therefore assume and believe that that employer could register their interest and be updated if someone were barred. It is highly unlikely that they would not know in any circumstances that someone had committed an offence that led to barring while in employment. An individual cannot go into employment in regulated activity before the employer has found out, because the employer will have a duty under clause 72 to ensure that the individual is not barred before employment commences.

Diana Johnson: I want to make sure that I fully understand this point. I understand that the employer will be obliged to check whether someone is barred. If an employer did so in the case of an individual who was also a supervisor in a Sunday school—a regulated activity—but information was subsequently passed to the ISA stating that things had been happening in the Sunday school that should not have been happening, and that resulted in the ISA taking the decision to bar that individual while they were still employed in their day job, how would the employer know that the ISA had made a barring decision? What would happen if the employer had already checked, and the check was clear, but several months later a decision was taken to bar?
Lynne Featherstone: I will come back to the hon. Lady on that point, because it certainly deserves an answer. If I cannot provide one at this point I will come back to her at a later stage. In practice, it is unlikely that an employer would not find out that an employee in regulated activity had been barred, and if that happened the employee would, of course, be committing a criminal offence. I understand the point that the hon. Lady is making, but it would be an offence if that employer did not bother to find out and did not know that they were employing somebody who had been barred. Yes, the updating service on barred status requires consent, but the offences of knowingly employing a barred person and of engaging in regulated activity if barred will already exist, so both would be committing an offence. The person who is barred will commit an offence if they carry on working in regulated activity. That will be against the law by the time the Bill is introduced. If an individual refuses to give consent, either under clause 71 or through an enhanced CRB certificate, it is up to the employer to take appropriate action. Any employer who is a regulated activity provider will be responsible enough to take appropriate action. If someone refuses to give consent to check on their status, that in itself should sound an alarm.

Diana Johnson: If an individual is checked at the outset of their employment and found not to be barred, but they are barred in the course of that employment, is the employer committing a criminal offence by employing someone who has been barred if they do not know that that is the case because the individual has not given consent to tell them?

Lynne Featherstone: The crime on the employer's side is if they knowingly employ somebody who is barred. The individual themselves would be committing a criminal offence the moment they are barred if they go into, or continue with, regulated activity.

Diana Johnson: I would like to test the opinion of the Committee on this amendment. We have talked a lot about the need for employers to take responsibility for decisions about whom they employ and what services are provided, and to make sure that people are safe and doing the job that they should be doing. I am concerned about the fact that an employer who has done everything correctly by checking the status of an employee at the outset of their employment in regulated activity, when they were clearly not barred, might find themselves in the difficult position of not knowing if that employee is subsequently barred because of the later provision in the Bill that an individual has to give their consent. That is not very satisfactory.

Lynne Featherstone: Does the hon. Lady not think that alarm bells would ring if an employer wanted to check whether someone in their employ had become barred, but that employee did not give their consent?

Diana Johnson: We will come on to consent, but I am surprised that there is an opportunity in the Bill for an employee to withhold consent. I am sure that the Government have drafted the Bill as they have to ensure that it is not compulsory for an employee to give their consent, because that would lead to remedies in the courts or in an employment tribunal. There are some problems with the Bill's drafting on that issue, so I would like to press the amendment to a vote.

Question put. That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 22]

AYES

Chapman, Mrs Jenny
Coaker, Vernon
Efford, Clive
Johnson, Diana

NOES

Baker, Steve
Blackwood, Nicola
Brake, Tom
Brokenshire, James
Buckland, Mr Robert
Chishti, Rehman
Ellis, Michael
Featherstone, Lynne
Johnson, Gareth
Wright, Jeremy

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Diana Johnson: The clause gives the ISA a more general power to review an individual's inclusion on the barred lists. How many appeals does the ISA currently receive in a year, and how many are successful? What situations will be covered by a more general approach?

I also want to know about the cost. Will such an approach lead to more costs being incurred by the ISA as people mount endless appeals? Will there be a limit on the number of appeals that can be made? What is the time scale for appeals? I want a sense of how it will work in practice.

Lynne Featherstone: As the hon. Lady says, clause 70 will enable the ISA to review at its discretion someone's inclusion on either of the barred lists. How many appeals does the ISA currently receive in a year, and how many are successful? What situations will be covered by a more general approach?

If we look back at the circumstances of the errors that the ISA has made previously, it will remove someone from the barred lists in the following types of cases: if Mr X is cautioned for an autobar offence and barred, but his caution is rescinded—a change in circumstance; if Mr X is convicted of an autobar offence and barred, but his conviction is quashed on appeal; or if Mr X is barred following a conviction before 12 October 2009 for an autobar offence, but it transpires that the court had considered a disqualification order and decided not to issue one. The ISA will also remove someone in the following cases: Mr X is made subject to a disqualification order or risk of serious harm order and barred, but the order is revoked; the ISA bars Mr X for an autobar offence conviction or caution based on police information, but the information is wrong and no autobar offence was committed—he is found not guilty by reason of insanity, for example; or the ISA bars Mr X based on police information, but Mr Y has assumed Mr X's identity—the ISA has got the wrong person.
Appeals are not the same as reviews. There is a different implication. There are approximately 12 appeals pending before the upper tribunal. I believe that at present no appeals have been determined by the tribunal, but I will confirm that in due course. It is only right that the ISA should of its own volition be able to review cases at any time. If, for example, the ISA discovers that someone was put on a list in error, it should be able to review its barring decision and take relevant action. On that basis, I commend the clause.

Question put and agreed to.
Clause 70 accordingly ordered to stand part of the Bill.

Clause 71

INFORMATION ABOUT BARRING DECISIONS

12.30 pm

Lynne Featherstone: I beg to move amendment 143, in clause 71, page 56, line 5, leave out 'After paragraph 3(1)' and insert 'Omit paragraph 3(1)(b)'.

The Chair: With this it will be convenient to discuss the following: Government amendments 144 to 149 and 152 to 161.

New clause 15—Independent Safeguarding Authority: sharing information—

The Independent Safeguarding Authority has a duty to share information with the Police where—

(a) the information is such that the Chief Executive of the ISA feels that a criminal investigation is appropriate, or

(b) the information is credible and reliable and suggests that an individual poses a real threat to vulnerable groups, or

(c) the information has led to a person being barred, or

(d) the information is such that it would lead to a person being barred were the ISA to have reason to believe that the individual may work in a regulated activity in the future.'.

Lynne Featherstone: The main Government amendments in this group seek to strengthen the provisions in the Safeguarding Vulnerable Groups Act 2006 in relation to the information that can be passed from the Independent Safeguarding Authority to other organisations, such as the police and probation services. Amendment 145 will enable the Independent Safeguarding Authority to provide to the keeper of a register—for example, the General Medical Council—any relevant information that it considers appropriate, and not just information relating to a barred person.

Amendments 148 and 149 will change the basis on which barred list information is provided to the police, and will extend the provision of such information to the Prison Service and the probation service. At present, the ISA “may” provide information to the police in connection with certain aims, such as the detection or prevention of crime. That was intended to enable the authority to provide information to the police that it might have obtained from other sources, such as employer referrals. For operational reasons, the police need to ensure that barred list information is available when needed—for example, in investigating a potential offence, such as someone working while barred. The provision will therefore be changed to ensure that the ISA “must” provide such information.

The provision will also be extended to the Prison Service and the probation service for the purposes of public protection. Those services require information on barred status and on the reasons for that barring in the preparation of risk assessments, particularly when prisoners or those under probation supervision are being considered for work placements in the community that may provide access to children or vulnerable adults. Those changes have been requested by the police and the Ministry of Justice.

Government amendments 143 and 144 will remove the provision that would have enabled the Ministry of Defence to carry out barred list checks on training supervisors working for the armed forces in countries outside England and Wales. The Ministry of Defence believes that the provision is no longer necessary, because it is satisfied that the availability of CRB checks will be sufficient in assessing the suitability of individuals to act as training supervisors for recruits under 18. The same changes will be made for training supervisors working in England and Wales for the same reasons, namely that the Ministry of Defence is satisfied that barred list information is not essential for its vetting of personnel working with under-18s on the basis that enhanced criminal record certificates will continue to be available.

The other Government amendments in this group are consequential or minor drafting amendments to schedules 7 and 8, and I commend them to the Committee. They resulted from feedback on our original proposals and will increase the protection to vulnerable groups that will be provided by our rebalanced disclosure and barring regime.

Diana Johnson: I want to address new clause 15, which in some ways is similar to Government amendment 149. The major difference is that the Government amendment will enable the Secretary of State to issue guidance or regulation on when information should be shared between the ISA and the police or between the ISA and professional bodies, such as the military and the Prison Service.

Our new clause 15 focuses on the police and the giving of specific guidance. Its rationale is to add more information to the police database for the purposes of enhanced CRB checks. We have had extensive debates in Committee about the importance of passing information to the police for use in making CRB checks, and the new clause assists with that.

The new clause would give the ISA a duty to share information with the police where the information is such that the chief executive of the ISA feels that a criminal investigation is appropriate, where the information is credible and reliable and suggests that an individual poses a threat to vulnerable groups or where the information has led or would lead to a person being barred if the ISA had reason to believe that the individual might work in a regulated activity in future. It would give the sharing of information some teeth. The evidence sessions identified that 50% of problems in independent care homes and the care sector are not reported to the police. That issue requires particular attention.
ACPO’s response to the Committee makes a point about access to real-time information about barring. Will the Minister comment on that? The example in ACPO’s evidence involved a uniformed police patrol outside office hours checking the driver of a minibus containing children. That officer would need to know there and then whether the driver was barred from working with children in order to take the necessary enforcement action and, more importantly, to ensure the safety of the children by removing the barred individual from that activity. Otherwise, there is a danger that the Safeguarding Vulnerable Groups Act 2006, as amended by the Bill, will become a toothless tiger. Immediate, real-time information is required. Will she comment on whether that would work within the provisions set out in her amendments?

Will the Minister explain Government amendment 145? The amendment will change the provisions to apply only when the ISA considers it appropriate to provide information. What is the reasoning behind that?

Jim Shannon: I would like to give a Northern Ireland perspective on how the legislation might work over there. I support the amendments, particularly amendments 148 and 149, and I have a couple of questions. I am grateful for the opportunity to speak on the recommendations and amendments.

Vetting and barring arrangements are almost identical in Northern Ireland, following a decision by the then Secretary of State, the right hon. Member for Neath (Mr Hain), to join the provisions for arrangements under the Safeguarding Vulnerable Groups Act 2006, allowing the ISA to take barring decisions on Northern Ireland cases and allowing the vetting and barring scheme to be replicated in the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. That is sensible. There is great worth in having wider UK arrangements that remove potential differences between nations on this important issue. It is important to strengthen the provisions, as the Government’s amendments would.

For many years, Northern Ireland has pioneered developments in vetting arrangements, having had first-hand experience of how inappropriate people can access positions of trust, such as in the case of sex offender Martin Huston in 1993. The abuse of trust inquiry into his activities led to the strengthening of Northern Ireland’s arrangements with the Department of Health, Social Services and Public Safety’s pre-employment consultancy service and, more lately, led to the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003.

I feel that what we have done in Northern Ireland is clearly endorsed in the measures proposed in the amendments. Research in 2008 by the four area child protection committees and the National Society for the Prevention of Cruelty in an Ipsos MORI opinion poll of 1,000 adults in Northern Ireland found that 97% of members believe exists with unregulated activity. There is no need for the barring information; it would be to apply for CRB checks for posts that involve regular work with children but which are none the less outside of regulated activity—some hon. Members have referred to regulated and unregulated activity. A supervised volunteer is an example of such a post, and the Government have also indicated that barring information will not be available for them. However, as Sir Roger Singleton—oft-quoted today—pointed out in his evidence to the Committee, policing information is not available in 20% of the ISA barring cases. This could lead to a person barred from regulated activity getting work in supervised settings and, when employers choose to obtain a CRB check, could lead to the chance that the police are unsighted in relation to any non-conviction data and unaware of any bar. That could result in false assurances for employers; perhaps the Minister will comment on that.

Currently, barred list information is available for such checks in England, Wales and Northern Ireland under respective regulations made under the Police Act 1997. Those regulations have been approved by Parliament, and are presumably compliant with the European convention on human rights. I ask the Minister to reconsider that issue, and to look at whether it is wise effectively to create a two-tier regime for enhanced criminal record disclosures that ultimately limit probability. If the Government intend to follow through on the proposals not to provide barred information in non-regulated activity enhanced disclosures, it is important that a number of things happen to ensure that gaps do not appear between regulated activity and non-regulated activity enhanced disclosures.

Employers should always ensure that when they make referrals to ISA they involve the police and social services when appropriate. That will ensure that the reasons for an ultimate bar will be known to the police, and possibly disclosed in a CRB certificate or, in the case of Northern Ireland, an AccessNI certificate. I welcome the Government’s intention, which is crucial, to ensure that better guidance is provided to employers—guidance that will no doubt be replicated in Northern Ireland by the Department of Health, Social Services and Public Safety and the Department of Justice.

I support this group of Government amendments because they ensure that ISA advises the police of relevant barring information that the police might not themselves have. On most occasions, both social services and the police should be aware of cases, but a feedback loophole—sorry, loop; there seem to be loopholes in everything—from ISA to police forces is important. There may be occasions, albeit not often, when the police or social services are unaware of barred individuals, and a minority of cases in which the individual is barred from working with children but has children of his own and some form of assessment may be required by social services.

Lynne Featherstone: The hon. Gentleman shares some of the concerns expressed by the hon. Member for Kingston upon Hull North about barred information not being available on those in unregulated activity—the enhanced Criminal Records Bureau certificates. I do not want to repeat the entire conversation that I have already had to explain the differential that Government Members believe exists with unregulated activity. There is no need for the barring information; it would be
disproportionate for those working in unregulated activity. The definition of unregulated activity has been carefully assessed and evidenced in determining what is in and what is out. We agree that there would be benefits in aligning the vetting and barring schemes as they operate in England, Wales and Northern Ireland, and the hon. Member for Strangford might be pleased to know that yesterday I tabled amendments to that end, which we will debate in due course.

On the changes to the criminal records regime, the Northern Ireland Administration have indicated that they do not wish to parallel the changes to the Police Act 1997 made by chapter 2 of part 5. As this is a devolved matter, it is appropriate that the decision is taken by the Northern Ireland Government. Not all enhanced CRB certificates include barred list information. That is the case at present, as well as under our proposals. Enhanced CRB certificates can be requested for positions that do not involve working with children or vulnerable adults, such as Gambling Commission licences or immigration advisers.

At 12.45 pm

The hon. Member for Kingston upon Hull North made a point about amendment 145. At the moment, under clause 73, the ISA can provide information to a keeper of a register, such as the General Medical Council, on any barred person. The amendment would allow the ISA to provide information to a keeper of a register on any person, irrespective of whether they are barred. Therefore, more information will flow. That is because, even though the ISA did not bar the person, there might still be information in the ISA’s possession that would be relevant to the keeper of a register.

With regard to real-time information, the ISA must provide barring information to the police on request. At the moment, the police can ask for the barred list, or for information about an individual who may or may not be on the list. It is the police’s problem at the moment how to use that information—that is, to get it to the bobby on the beat. As the hon. Lady mentioned, the ISA would be open during normal working hours, but outside those hours that link is not yet in place. I understand that the police therefore intend to make the information available in real time, but that is for the police to do. The role of the ISA is to provide the police with the information: either the barred list or the information that an individual is barred.

Diana Johnson: Whenever anyone is barred, the police are told. Is that correct? They will have that information available to put on their computer systems. Is that what the Minister is saying?

Lynne Featherstone: My understanding is that at the moment that is not the case; there is not continued updating. However, it will be the case in future. That is something that the police need to work out. At the moment, the provision in the Bill is about the requirement to supply to the police the barred list or information about the barred individual. Proposed new clause 15 would place new duties on the Independent Safeguarding Authority to share information with the police. The Safeguarding Vulnerable Groups Act 2006 already allows the ISA to provide information to the police in connection with the prevention, detection and investigation of crime, or the apprehension and prosecution of offenders. The ISA uses that capacity on a regular basis, both in response to inquiries from the police and in making proactive disclosures to the police, where the ISA judges that to be appropriate. As the hon. Lady says, it is very experienced and can judge what information needs to be shared.

In addition, Government amendment 149, as the hon. Lady said, would oblige the ISA to respond to a relevant question from a chief officer of police about whether or not a person is barred. Therefore, there is already considerable information sharing between the ISA and the police. However, the hon. Lady made some reasonable points. If she would agree to withdraw proposed new clause 15, I will undertake to reflect on the points that she has made. However, if we were to place an additional duty on the ISA to refer certain matters to the police, we would need to be very careful how we framed that duty. We do not want to place unnecessary and unproductive requirements on either the ISA to pass on information or on the police to consider such information if that information is of little value—if it is not of a substantive nature that would make it worth passing on. That might deluge the police and it is the ISA with information that is not relevant to the point that the hon. Lady wants covered. I cannot give any undertaking to bring forward an amendment regarding this issue on Report, but I will certainly look at it, and I hope that the hon. Lady will withdraw the new clause.

Diana Johnson: I am grateful for the Minister’s comments, and on the basis that she is willing to look at the points I have raised I shall not press new clause 15 to a vote. Perhaps we will return to it on Report if appropriate.

Amendment 143 agreed to.

Amendment made: 144, in clause 71, page 56, line 7, leave out from beginning to end of line 11 and insert ‘and the word “or” before it.’—[Lynne Featherstone.]

Question proposed, That the clause, as amended, stand part of the Bill.

Diana Johnson: The clause replaces some of the provisions lost when monitoring was scrapped, and sets out the introduction of the right to find out whether someone is barred. As I read the clause, however, not everybody can find out; it is not open to everybody. The list of people who have the right to find out whether someone is barred is limited by schedule 7 of the Safeguarding Vulnerable Groups Act 2006, as I read it; if I am wrong, perhaps the Minister will correct me.

The Secretary of State will establish a register of people who have expressed an interest in a person, and notify such a registered person if the person in whom they are interested becomes barred. As I understand it, that is subject to a fee. Who is paying it? At what level will it be set? In the clause there is also the opportunity for registration to be reviewed, and for it to be ceased if fees are not kept up to date. Could the Minister comment further on that?

The issue that particularly concerns me is that of the register. Will there be one register or two? How exactly will this work? When a provider registers to be updated on a CRB check, will there be one list where people will be told proactively, and another? I do not quite understand
how this will work, so could the Minister explain the procedure? If there are two lists, will different fees be paid? How will that work? How is the individual meant to know the difference between the two lists, if that is the case? I am struggling to understand the practicalities of how this will operate, so it would be helpful if the Minister could explain.

Would it not be easier if the issue of barred status could be put on the enhanced CRB check? Then it is clear for everyone to see. On the previous amendment, we spoke about the problems with employers not being able to know whether someone has been barred. In its evidence, Fair Play for Children says:

“Clause 71 would introduce new arrangements for informing bodies providing regulated activities about whether a person is barred. Two options would be available:—

so it seems that people think there are two options—

“reactive and proactive. The reactive option would enable a regulated activity provider to apply to the ISA to find out whether a particular person is barred. Under the proactive option, the regulated activity provider could register with the ISA to be automatically informed if a particular person becomes barred. Both options would require the consent of the individual”.

That goes back to the problem that I think the Government are creating, whereby an individual employee could withhold consent and put the employer or organisation in a very difficult position. I do not think that they would have a remedy against that withholding of consent, and it would place them in some difficulty. Fair Play for Children said that it “cannot see how a barring system which makes it mandatory for employers to check at application stage can make much sense unless there is the automatic updating system.”

That goes back to the point that I was trying to make earlier on employers being left without information.

Girlguiding UK has also put forward some evidence, which said:

“We believe both the proactive and reactive options for informing bodies providing regulated activities about whether a person is barred would be effective. The reactive option would be preferable for Girlguiding UK because around 8,000 volunteers both leave and join the organisation every year.”

Will the Minister comment on what other discussions with charities and groups like Girlguiding UK have been held, and whether that is generally a view that the Minister has come across, which supports how the clause will work?

The General Social Care Council seems to be concerned about how this will work. It said:

“We are greatly concerned about the fact that these changes will not be introduced until the Protection of Freedoms Bill receives Royal Assent. In the meantime, there is the continued possibility of the ISA barring a social worker and the GS CC not being informed about this. It would be useful if Ministers could set out how information exchange between regulators and the ISA is expected to work during this interim period.”

It has concerns about that flow of information in the Bill. On the basis of those questions, I would appreciate it if the Minister clearly sets out what the clause intends to do.

**Lynne Featherstone:** Clause 71 replaces previous requirements in the Safeguarding Vulnerable Groups Act 2006, which provided for the ISA to proactively notify employers, and others who registered an interest in a person engaged in regulated activity—who was hence subject to monitoring—that the person had become barred. As we have discussed in the context of clause 68, that meant that a person engaged in regulated activity had to register with the scheme and consent to being continuously monitored. While that was well-intentioned, the effects were disproportionate. Of course, employers and voluntary organisations still need to know whether someone is barred before employing them or engaging them in a position that falls within regulated activity. We will come on to the duty that they will be under.

Clause 71 also introduces new section 30A to the 2006 Act, which provides arrangements for an interested party to obtain information from the Secretary of State, on application, indicating whether an individual is barred from regulated activity. That is the nub of the question on the change from proactive to reactive: the person has to register the interest. We think that that is more proportionate than the huge bureaucracy that would attend to the proactive provision of that information. I cannot imagine the situation where any employer in a school would not register to be updated on someone who has become barred.

Such information, as the hon. Lady said, can only be provided with that individual’s consent. A fee may be charged for such an application. The fee will cover the costs of providing information, as is already the case for other disclosure services. That would result in a reactive notification system where the interested party is told, upon request, whether a particular individual is barred.

**Diana Johnson:** Is that correct, or is the employer or organisation just told that there is fresh information? Are they told that the person is barred? Is that the information that is provided for regulated activities?

**Lynne Featherstone:** Yes, they are informed that that individual is barred.

The hon. Lady asked about professional regulators. As I indicated in response to the earlier debate, if the professional regulators are not receiving barring information now, the Government will look into that. We are happy to have further discussions with the General Social Care Council on that point. Under the new arrangements, regulators may register to receive information on barring under new sections 30A and 30B.

New section 30B of the 2006 Act enables persons mentioned in Schedule 7 to that Act, which includes, for example, regulated—

1 pm

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Four o’clock.