

## Review of the List 99 decision making process and policy implications

### Introduction

1. This report presents the findings of the urgent review of the List 99 decision making process and policy implications which was announced by the Secretary of State in her oral statement to the House of Commons on Thursday 12<sup>th</sup> January 2006<sup>1</sup>. As set out in that statement, the review has included:
  - An exhaustive review of all cases where an individual subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (commonly referred to as being on the Sex Offenders Register) has not been placed on List 99 and hence barred from working in schools. This review has confirmed the number of these individuals, whether or not they are working with children, and whether their behaviour has given any cause for concern;
  - An assessment of how the closest possible alignment can be secured between List 99, the Sex Offenders Register and other data sources;
  - An assessment of whether Ministers can be removed from the decision-making process; and
  - An assessment of how police advice can be more fully considered prior to decisions being made.

### The current system for safeguarding children in schools

#### *Making safeguarding everyone's business*

2. The Government is committed to improving the already tight safeguards for children. That is why it has introduced new legislation, new guidance, new

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<sup>1</sup> See Hansard at [http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060112/debtext/60112-10.htm#60112-10\\_spmi0](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm060112/debtext/60112-10.htm#60112-10_spmi0). Statement repeated in the House of Lords on the same day, see Hansard at [http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60112-13.htm#60112-13\\_head0](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds06/text/60112-13.htm#60112-13_head0).

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structures and new policy initiatives to make children safer. The Government's ambition is to make safeguarding children everyone's business. Our children can only be safeguarded when everyone plays their part – in Government, as parents, citizens, in the police, local authorities, health bodies, voluntary and private sector organisations.

3. The legislation and reforms we have introduced have sought to improve safeguards for all children as well as those known to be at risk or who have suffered harm. This programme of legislation and reform has reflected improvements in our knowledge and understanding of how to safeguard children and our response to tragic events and the lessons learned from them, such as the death of Victoria Climbié, or the Waterhouse Inquiry into Children's Homes in North Wales.
4. Notwithstanding the improvements that have been made, and the lessons that have been learned, we have recognised the legitimate concerns expressed by parents over the last 10 days. We regret these concerns that have been raised by a small number of recent cases, and have committed to take action that will deliver an even more rigorous system, and one which will improve public confidence.

*Vetting the school workforce – List 99 and the Criminal Records Bureau*

5. The Secretary of State has the power to bar an individual from working in schools, Further Education (FE) colleges and Local Education Authority (LEA) education services. Educational organisations are under an obligation not to allow an individual to work in contravention of the bar. The list of those individuals subject to a bar is known as "List 99". The Secretary of State's powers are currently contained in section 142 of the Education Act 2002, but List 99 has been in place for 80 years. 4,045 people are currently included on List 99. The vast majority have a full bar, but a much smaller subset – 210 – are subject to restrictions short of a full ban. Most of these partial restrictions were imposed before 2000, which is when the rules were changed to prevent partial bars for convicted sex offenders.
6. List 99 is just one of the checks and responsibilities in place to ensure that

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applicants to the school workforce are appropriately vetted. The fact that an individual is not included on List 99 does not mean that they have been approved as suitable for any particular position. That decision has always rested with the employer, taking account of the full range of information available.

7. Schools must do more than simply check List 99. As guidance to schools makes clear<sup>2</sup>, it is strongly recommended that the decision on whether or not to appoint an individual to the school workforce should also include a criminal record check from the Criminal Records Bureau (CRB), wherever the individual has not been working in a school, FE institution or LEA education service for at least 3 months. This is in addition to the standard previous employer references, a check of qualifications and – where the individual is required to be a registered teacher – a check of General Teaching Council for England (GTCE)<sup>3</sup> registration.
8. Checks carried out through the CRB go much wider than the check of List 99, and are a critical element of the recruitment process. Criminal record checks show the full criminal record of potential employees, including all convictions and cautions and whether the applicant is on List 99 or other centrally held databases (as detailed in para 33). The CRB's performance has significantly improved since its 2002 inception, and has brought about a step change in child protection arrangements from the situation in place just 5 years ago.
9. List 99 is an important complement to the strongly recommended CRB check inasmuch as it acts as an extra safeguard which must be checked for all new appointments. List 99 also goes further than the CRB check in one important regard, by making it a criminal offence for any individual on List 99 to seek employment in the education settings covered by List 99, if they are banned on grounds of unsuitability; and by making it a criminal offence for any employer to employ in these settings these individuals.

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<sup>2</sup> See section beginning para 49.

<sup>3</sup> General Teaching Council for Wales (GTCW), in Wales.

*How does List 99 work?*

10. The purpose of List 99 is not only to prevent individuals who have committed sexual offences from working with children. Rather, the purpose of List 99 is to safeguard children and young people from contact with people who are considered unsuitable because the individual presents a risk to their safety or welfare – including those convicted for crimes such as deception and those unsuitable for health reasons, as well as those convicted for specified sex offences. In addition, List 99 contributes to upholding the high standards of behaviour expected of members of the teaching profession, working alongside the GTCE<sup>4</sup>.
11. List 99 cases are typically triggered by reports from the police, schools or local authorities, wherever there are grounds for concern about an individual working in a school, FE institution or LEA education setting. In addition any relevant information received by the Department – for example through the media – may cause a List 99 case to be investigated. It is important to be clear that List 99 only automatically covers those individuals who are already working in the education sector when they commit an offence – further emphasising the need for other checks, especially through the CRB.
12. Under the current system, the Secretary of State can bar an individual on four grounds: misconduct; unsuitability to work with children; inclusion on the Protection of Children Act 1999 (POCA) List<sup>5</sup>; or on medical grounds. There is an additional ground of professional incompetence in relation to taking part in the management of an independent school.
13. There are three situations in which the Secretary of State is required to include a person in List 99 (“auto-barring”). The Secretary of State is required to include a person in List 99:
  - On receipt of a certificate of conviction in respect of a specified offence

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<sup>4</sup> GTCW in Wales.

<sup>5</sup> The Protection of Children Act 1999 put on a statutory basis a list of those unsuitable to work with children outside the field of education (previously operated by the Department of Health).

against or involving a child under the age of 16<sup>6</sup>; where the person was carrying out work to which section 142 of the 2002 Act<sup>7</sup> applies before or at the time he committed or was convicted of the offence; and was aged 18 or over at the time the offence was committed;

- Where the person is included in the Protection of Children Act List (other than provisionally);
- On receipt of notification that on or after 1<sup>st</sup> June 2003 the person has been made subject to a Disqualification Order (i.e. disqualified by the courts); and was carrying out work to which section 142 of the 2002 Act applies before or at the time (s)he committed or was convicted of the offence to which the disqualification order relates.

14. The list of offences covered by the first of these conditions includes around 40 offences, including sexual offences, offences involving child pornography and murder<sup>8</sup>. The majority of auto-bars arise, however, as a result of inclusion on the POCA List (see paragraph 23).

15. In these automatically barred cases there is no consideration of barring by either Ministers or officials. A bar is imposed when a certificate of the conviction is received by the Department. Equally a bar imposed automatically under those regulations is not time limited. There is no appeal against the imposition of a bar in those cases. The bar would only fall to be reconsidered by the Secretary of State if the conviction on which it was based were quashed (see also para 17). All other cases involve an element of discretion, and are subject to decision by Ministers or officials on behalf of the Secretary of State.

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<sup>6</sup> The conviction must be on or after a specified date which differs according to the offence.

<sup>7</sup> Section 142 sets out the types of setting and the types of activity from which an individual is barred in List 99. The work that section 142 specifies is: providing education at a school (including an independent school) or further education institution; providing education under a contract with a local authority; taking part in the management of an independent school; and work for a local authority, proprietor of a school or further education institution which brings a person regularly into contact with children.

<sup>8</sup> The full list of offences is set out in Schedule 2 of the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (SI 2003/1184) as amended, and attached at Annex A.

16. Inclusion on List 99 is not time-limited. In some cases there is the right of appeal to the Care Standards Tribunal. This does not apply where the individual is automatically deemed unsuitable to work with children. Only 13 appeals have been heard in respect of List 99 since the establishment of the Tribunal in October 2000. In only two of these cases has List 99 status been removed – for one case heard on medical grounds, and another on grounds of misconduct. Two appeals have resulted in a restriction rather than a full ban, and one has led to a review of the case. In eight cases the bar was retained.
  
17. In addition the Secretary of State has power to review a decision to include a person in List 99 except where a direction was given on the grounds that a person is unsuitable to work with children and that person claims (s)he is no longer unsuitable. A direction may be revoked or varied, for example, if new information comes to light which is relevant to the original decision to include a person in List 99.
  
18. Where a direction was given on the grounds that an individual was unsuitable to work with children and that individual claims (s)he is no longer unsuitable, the Care Standards Tribunal has power to review the direction. The Tribunal can only grant leave to apply for a review in limited circumstances. In particular, an individual who was made subject to the direction as an adult cannot apply for leave for 10 years. The Tribunal can only grant leave to apply if it considers the individual's circumstances have changed.

*Tightening the system over time*

19. The Children Act 2004 has provided the legislative spine for the most wide-ranging reform of children's services in decades. It has safeguarding children at its heart and this is reflected in the section 11 duty placed on a wide range of public bodies to make arrangements to safeguard and promote the welfare of children. We are establishing Local Safeguarding Children Boards (LSCBs) in all English local authorities from 1 April 2006<sup>9</sup>. These legislative changes are supported by

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<sup>9</sup> LSCBs are the key statutory mechanism for agreeing how the relevant organisations in each local area

guidance including the revision of “Working Together to Safeguard Children”, the core Government guidance on safeguarding children. This revised guidance, on which we consulted last year and plan to issue in March, includes specific sections on how allegations against staff who work with children should be handled and a chapter on managing individuals who pose a risk of harm to children.

20. These changes are consistent with successive moves to tighten the system for ensuring that unsuitable individuals are barred from working with children, stretching back over successive Governments. For example:

- In 1982, the bar which the Secretary of State could impose was extended to cover all work involving contact with children in schools, FE institutions and LEA education services – prior to that, only teachers and youth workers had been covered;
- In 1994, List 99 was extended to cover independent schools as well as maintained schools;
- The first provisions for automatic barring were introduced in amendments to the Education (Teachers) Regulations made in 1995.

21. Since 1997, changes have been made which have strengthened the system even further:

- With the addition of the grounds of “unsuitable to work with children” in 2002, an individual can be included in List 99 if (s)he presents a risk to children even without there having been any misconduct. This change built on the previous introduction in 2000<sup>10</sup> of the grounds for barring that an individual is “not a fit and proper person to be employed as a teacher or worker with children or young persons”;

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will co-operate to safeguard and promote the welfare of children in that locality, and for ensuring the effectiveness of what they do.

<sup>10</sup> Made following the amendment of section 218 of the Education Reform Act 1988 by section 5 of POCA.

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- It is now a criminal offence for someone on List 99 on the grounds that (s)he is unsuitable to work with children to seek to work in a “regulated position” within the meaning of Part 2 of the Criminal Justice and Court Services Act 2000, which covers a very wide range of work with children;
- There has been an increase in the number of offences that are subject to automatic barring under List 99;
- The Criminal Records Bureau has been introduced, and schools and LEAs are strongly recommended to obtain a criminal records check through the CRB before appointing anyone to work with children – alongside the mandatory List 99 check;
- Section 175 of the Education Act 2002 imposed an obligation on LEAs, maintained schools and FE colleges to ensure that they exercise their functions with a view to safeguarding and promoting the welfare of children. Regulations made in 2003 have set out independent schools' obligations in relation to safeguarding and promoting the welfare of children and have imposed an obligation to perform CRB checks on staff. We issued guidance in 2004 entitled “Safeguarding Children in Education” to which all schools, FE colleges and LEAs must have regard;
- The Protection of Children Act 1999 introduced the "POCA List" (see paragraph 28) and imposed an obligation to check the list on certain child care organisations such as children's homes. Regulations made under the Care Standards Act 2000 include the obligation on certain organisations to obtain a CRB check on staff. An individual who has not been checked cannot be used in a child care position, whether or not they are supervised.
- The Sex Offenders Register introduced in 1997 was further strengthened in the Sexual Offences Act 2003 (see para 35 onwards).

Review of individual cases

22. Decisions such as those examined in this review have been made for decades, since List 99 was established in 1926. To better understand how current decisions are taken in the context of trends over time, the review has looked at a sample of cases from 10 years ago and 20 years ago – 1995 and 1985.
23. Taking 2005 the overall number of cases considered was 2,554. 513 of these cases resulted in a full bar, of which 354 met the conditions for an auto-bar. Of these 354 auto-bar cases, 227 arose because the individual was already on the POCA List.
24. A preliminary comparison of these numbers with historic data from 1985 and 1995 suggests that the number of decisions reached each year has increased substantially. Yet, in all three years, both Ministers and officials have made a wide variety of decisions on individuals with convictions, cautions and subject to allegations which have been referred for a wide variety of reasons, including sexual offences. These issues are complex, always have been and successive Ministers have been required to make the most difficult decisions.
25. The focus of our case review has, however, been on those cases since the introduction of the Sex Offenders Register in 1997. Specifically, we have focused on cases in which a decision has been taken by Ministers not to include an individual on List 99, despite that individual being on the Sex Offenders Register. We have found 10 such cases. Of these, five decisions were made in 2005, one in 2004, two in 2002 and two in 2000.
26. In each of these cases, the recommendation made to Ministers after expert evidence was that these individuals posed no threat to children. As a result, these individuals were issued with a grave warning to the individual concerned, with the requirement for disclosure if they applied for a job in school.
27. As part of this review, we have taken steps to assess the current risk of harm to children from any of these individuals. Officials and the police have examined

each case. Current enquiries suggest that none of the individuals concerned is working in a school. The police have visited each of these individuals to check whether there is any cause for concern. None of the individuals is judged by the police to pose a current risk.

28. In addition to that check on Ministers' decisions, the review has gone further in two ways. It has looked at:

- The similar decisions of officials since the introduction of the Sex Offenders Register in 1997 – in other words, those cases in which a decision has been taken by officials not to include an individual on List 99, despite that individual being on the Sex Offenders Register; and
- Decisions by Ministers and officials on cases since 1997 where the relevant offences were committed prior to the Sex Offenders Register (and hence the individual concerned has not been placed on the Register).

29. This part of the review has identified a further 46 cases. As many of these cases deal with very old offences and are not monitored under sex offender monitoring arrangements, the information available is much more limited. Officials, and where relevant the police have found the following:

- For 32 of the 46 cases, there is no evidence the individuals are working with children;
- In 1 case, an individual is working in education but has been assessed by the police as of no cause for concern;
- In 13 cases preliminary checks have shown no reason for concern but our information is as yet not complete. In 2 of these cases, inconsistent data needs to be reconciled. Further action – if necessary – will be considered in conjunction with the police on a case by case basis.

30. The full cooperation and hard work of the police in following up on individual cases

has been a key element of this case review. In addition, the police have carried out an initial trawl which raised questions about whether some individuals should have been – but were not – referred to the Department for consideration on List 99 because they were being monitored on the Sex Offenders Register and had a potential connection with education. Initial investigations suggest there may be 32 such cases in England and Wales. As a precaution, the police have assessed all these cases, and have no cause for concern. In one case, however, investigations are continuing.

Problems with the current system

31. Sir Michael Bichard's 2004 inquiry<sup>11</sup> and report into child protection procedures has already considered in some depth the potential failings of local and national systems to protect children. The findings of that report have fed directly into the development of the new Vetting and Barring Scheme, which is a key element of our future plans to improve safeguarding children in schools, children's homes and other settings. In total the report made 31 recommendations, 13 of which have been implemented, with the remainder being taken forward.
32. The review commissioned by the Secretary of State on Thursday 12<sup>th</sup> January has built on the Bichard Inquiry, and has identified that – notwithstanding the increased protections of recent years – there are still a number of aspects of the current system which could be further strengthened.

*The complex interface between List 99, the Sex Offenders Register and other sources of data*

33. The Secretary of State's oral statement to the House of Commons on Thursday 12<sup>th</sup> January made reference to seven data sources. In addition to List 99, these are as follows:

➤ The POCA List (referred to above) is a list of those individuals deemed

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<sup>11</sup> The Bichard Inquiry was commissioned by the Home Secretary following the conviction of Ian Huntley in December 2003 for the murders of Jessica Chapman and Holly Wells in Soham, Cambridgeshire.

unsuitable to work with children which receives referrals from the child care field.

- The Protection of Vulnerable Adults (POVA) List<sup>12</sup> mirrors the POCA List, but applies to work with vulnerable adults rather than work with children. Care workers are referred to the list if they have harmed, or put at risk of harm, a vulnerable adult in their care. Checks against the list are required for those who work in care positions in regulated care homes, domiciliary care agencies and adult placement schemes.
  
- The Sex Offenders Register consists of those individuals subject to notification requirements under Part 2 of the Sexual Offences Act 2003, and is used by the police as a means of managing the risk of harm to the public, as well as to assist in the detection of sexual crime. Further detail on the Sex Offenders Register is provided below.
  
- Disqualification Orders may be applied by a Crown Court in certain circumstances when an individual is convicted for certain offences against a child (under 18). The list of offences is not the same as the list resulting in a List 99 auto-bar, nor is it the same as the list of offences which places an individual on the Sex Offenders Register. A Disqualification Order disqualifies the individual from working with children for life, subject to review. A Disqualification Order can result in an individual being placed on List 99 – see also paragraph 13 (third bullet).
  
- Sexual Offences Prevention Orders (SOPOs) are civil preventative orders designed to protect the public from serious sexual harm. A court may make a SOPO at the point of conviction, and the police may apply for a SOPO to a Magistrates' court. SOPOs last for at least 5 years, and any individual with a SOPO must, for the duration of the order, comply with the notification requirements of the Sex Offenders Register.

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<sup>12</sup> The POVA List is part of the POVA scheme, which came into force on 26<sup>th</sup> July 2004 under provisions in Part 7 of the Care Standards Act 2000.

- Risk of Sexual Harm Orders (RSHOs) are civil preventative orders used to protect children from the risks of harm posed by an individual who may or may not have a conviction, but who has on at least two occasions engaged in sexually explicit conduct or communication with a child or children, and who poses a risk of further harm. RSHOs are applied for by the police and last for at least 2 years. There is no direct relationship with List 99.
34. In all these cases, it has become clear that the lack of alignment between these different “lists” and with List 99 is a source of confusion and hence a potential source of risk to our efforts to safeguard children. We have paid particular attention to the degree of alignment between List 99 and the Sex Offenders Register.
35. The notification requirements under Part 2 of the Sexual Offences Act 2003 – originally introduced on 1st September 1997 – are an automatic and administrative requirement on certain categories of convicted or cautioned sex offenders. Most offenders become subject to the notification requirements as an automatic consequence of their conviction or caution for one of the sexual offences listed in Schedule 3 to the Sexual Offences Act 2003. This list of offences is not the same as that leading to an auto-bar in List 99. Some offenders will be made subject to the notification requirements because they are the subject of an order (such as a Notification Order<sup>13</sup> or a Sexual Offences Prevention Order) or because they breached a Risk of Sexual Harm Order.
36. The purpose of the notification requirements is to ensure that the police have the information they need to manage the risks such offenders may pose – for example, by having an up to date address. The “register(s)”<sup>14</sup> also assist in the detection of sexual crime. The Sex Offenders Register is not – and never has been – designed to be a comprehensive list of all sex offenders. 2005 data indicates 28,994 individuals on the Sex Offenders Register (though obviously this number changes on a daily basis).

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<sup>13</sup> Notification orders are orders, for which the police may apply to the court, which have the effect of placing on the Sex Offenders Register an offender who has been convicted, cautioned or had a relevant finding made against him for certain offences committed abroad.

<sup>14</sup> There is no single “register” as such. Information will be recorded by individual police forces on the Violent and Sexual Offender Register (ViSOR) which includes offenders who are not subject to the notification requirements.

37. The evolution of the notification requirements under Part 2 of the Sexual Offences Act 2003 has been very different to the evolution of the offences resulting in an auto-bar under List 99. In short, the SOR and List 99 are designed to serve different purposes. That is why there is understandable confusion arising from the fact that an individual can be subject to the requirements of the Sex Offenders Register but not included on List 99. This confusion has damaged public confidence in the system, and has made the system less clear than it should be.

*Lack of clarity about local and national responsibility*

38. The system of protections to safeguard children from harm and to ensure that unsuitable individuals do not work in schools has evolved over time. This piecemeal tightening of the system has contributed to a significant amount of complexity in the system.
39. The new Vetting and Barring Scheme (VBS), to be introduced in a Bill at the end of February 2006 with the aim of full implementation by the end of 2008, will help to remove much of this complexity (see para 65 onwards). Sir Michael Bichard has welcomed the progress made. The new scheme will bring together the existing List 99 and POCA List into a single list barring individuals from the children's workforce where they pose a risk to children. This will be aligned with another list barring people from the vulnerable adults workforce, building on the existing POVA List operated by the Department of Health. Because the full VBS will not be in place until end-2008, there is an urgent need to clarify what is expected of different organisations at local and national level. For example:
- Notwithstanding published guidance, there needs to be even more clarity amongst local authorities, schools and agencies providing employment for individuals working with children, in terms of who is responsible for ensuring different checks are carried out.
  - There needs to be even more clarity about the role and contribution of local risk assessment mechanisms such as Multi-Agency Public Protection

Arrangements (MAPPA).

- There needs to be even greater clarity about the information that should be provided by external bodies, such as the police, in order to inform decisions about List 99 cases – and indeed POCA and POVA cases.

*Ministerial involvement in decisions*

40. Except where an individual fulfils the criteria for an auto-bar to be put in place, all List 99 decisions require an element of discretion and judgement. At present, those discretionary decisions are made either by Ministers or by officials on behalf of the Secretary of State. These decisions are informed by information and expert advice provided by a number of external organisations, including the relevant local police force(s).
41. Recent cases have caused questions to be asked regarding the suitability of these arrangements. Given the complex nature of these cases, there are strong arguments for taking the decision-making responsibility away from the Secretary of State and placing it instead in the hands of an appropriately constituted independent expert body, which can draw directly on expert advice and information in its decision-making. While Ministers are clearly accountable for decisions, there would be considerable benefits from more direct involvement of experts with additional expertise and experience, who could command a high level of public confidence.

*Weak information transfer arrangements*

42. A common theme running through several of these other areas of concern is the need for more effective information transfer arrangements at national and local levels. Our review has revealed that there are insufficiently robust arrangements in place to guarantee that relevant information is exchanged between the Department and the police and other bodies in List 99 decisions; and between the police, local authorities and schools at local level. It is important of course that Data Protection Act obligations are fully honoured, but these cannot justify any withholding of

information that could put children and young people at risk of harm.

Principles for reform of the system

43. The problems identified with the current system provide a strong case for reform. The new VBS and associated provisions will play a major role once the relevant legislation is in place. But we need to take action now to ensure that our children and young people are fully safeguarded from harm.
44. A reformed system should meet a number of key characteristics:
- First and foremost, safeguarding children must continue be the top priority. All other considerations are secondary to this imperative.
  - The reformed system must be even more rigorous, drawing in proper expert advice at appropriate points
  - The reformed system must be even clearer in its operation, with a clear relationship with other data sources, and clear responsibilities and accountabilities on Government Departments, the police, employers, agencies and other stakeholders.
  - The reformed system must be even fairer to individuals, in particular not penalising any individual beyond what is reasonable to ensure the protection of children from harm, and including appeal and review proceedings which take note of relevant new evidence. We cannot tolerate a culture of false accusations and unnecessary suspicions.
45. The reformed system must also meet the test of public confidence. This means that it must be transparent and accountable – especially to parents and to children and young people themselves.
46. Putting these principles into practice has led us to develop a package of immediate reforms and further legislative reforms.

Immediate reforms to the system

*Improving the alignment between List 99, the offences which trigger the notification requirements of the Sex Offenders Register and other data sources*

47. We have considered in this review the case for alignment between List 99 and the Sex Offenders Register. We have concluded that we should go further. We propose to bar from working with children in schools, FE institutions and LEA education services all those who are now convicted or cautioned for sexual offences against children, whether or not the individual is on the Sex Offenders Register. This will mean more child sex offenders will be included on List 99 than would be the case if we simply aligned with those included on the Sex Offenders Register.
48. We will bring forward new regulations<sup>15</sup> to enter automatically on List 99 anyone who is convicted or cautioned for a sexual offence against children and for a range of other serious sexual offences against adults. By including cautions as well as convictions the anomaly between offenders who are convicted and those who admit their guilt and accept a caution will end. Individuals will have the right to appeal but they will need to prove that they do not pose a risk of harm to children before they can work in a school, FE institutions or LEA education services. We will consult widely on the detailed implementation of this measure.

*Improving and monitoring the rigour of on-appointment checks on the school workforce*

49. We have made it clear in successive guidance that CRB checks are strongly recommended as part of the appointment process for new staff working in schools, FE institutions and LEA education services. For example, "Child Protection: Preventing Unsuitable People from Working with Children and Young Individuals in

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<sup>15</sup> The Secretary of State is able to make regulations which set out the procedure for giving a direction under section 142 of the Education Act 2002 to bar or restrict an individual's work in the educational sector in England and Wales (i.e. including someone in "List 99 "). The National Assembly for Wales is also able to make regulations in relation to barring an individual from working in the educational sector in Wales only, although there is currently no separate Welsh List 99. These changes would not apply to Scotland or Northern Ireland.

the Education Service” (May 2002) stated that: “*Teachers, other staff and volunteers whose job involves regularly caring for, training, supervising or being in sole charge of children under 18 years of age should obtain an Enhanced Disclosure. This includes applicants for teacher training courses, and trainee teachers.*”<sup>16</sup>

50. That guidance also noted that all applicants to relevant positions (including any work in a school FE institutions or LEA education services) should be asked to declare whether they have a conviction, caution or bind-over (including those regarded as “spent” in other circumstances). In all such cases, the employer should seek a CRB disclosure, if the individual is or has been resident in the UK, and is selected for appointment. This requirement remains in place today.
51. It is also the case that, where an employer has concerns about any existing member of staff, they are at liberty to carry out a CRB check, provided that the individual gives their consent.
52. More recent guidance has reiterated these expectations, and has emphasised the wider responsibilities on employers – for example “Safeguarding Children in Education” (September 2004) states that:

*“Safe recruitment practice means scrutinising applicants, verifying identity and any academic or vocational qualifications, obtaining professional and character references, checking previous employment history and that a candidate has the health and physical capacity for the job, and a face to face interview as well as the mandatory check of List 99 and, where appropriate, a Criminal Records Check.”*

53. Further information is provided in the online training materials published in the light of the Bichard Inquiry Report. On 4<sup>th</sup> July 2005, the Safer Recruitment online training site that has been developed in partnership with the National College for School Leadership (NCSL) began roll out to schools. The training provides

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<sup>16</sup> Subsequently, “Guidance on applying for CRB Disclosures” issued in December 2002 provided some discretion to Head teachers on when CRB checks should be run during the appointment process.

valuable information on a safer school culture, and advice and guidance to strengthen safeguards against employing unsuitable people in schools. It has been universally welcomed, including by organisations specialising in child safety and protection, as well as organisations representing Head teachers, governors, local authorities and faith groups.

54. However, we have concluded in this review that we now need to go further. As a result, we have decided to introduce new regulations which will make an on-appointment CRB check compulsory for all new appointments (i.e. appointments of individuals who have not worked in a school, FE institution or LEA education service in the last 3 months) to the schools workforce.
55. As now, Head teachers will be able to exercise some discretion in allowing people to start work pending the result of a check, but in exercising that discretion they will need to be confident that other pre-employment checks (e.g. List 99) have been carried out and that they have implemented arrangements to ensure that no risk to children could arise.
56. At present, when a school uses a supply agency for teaching staff they can ask the individual supply teacher to show a CRB disclosure<sup>17</sup>. But we believe the situation here also needs to be strengthened. The duty on schools to carry out on-appointment CRB checks will strengthen the system, and will in effect require agencies to carry out such checks in order to meet the requirements of the employer. We will consider whether there is a case to go even further by using regulations to introduce a formal requirement on all supply agencies to have a CRB disclosure for all staff who work in schools, FE institutions and LEA education services. We will also consider whether there is a case for doing more, for example by licensing supply agencies providing staff to education settings. And we will also consider what further steps could be taken to improve safeguards with respect to foreign nationals.
57. These requirements will be taken forward under the Regulations made under

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<sup>17</sup> The agency may pass the certificate to schools with the consent of the teacher. Alternatively the school may ask the teacher to provide the certificate.

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sections 35 and 36 of the Education Act 2002 (and s.72 of the School Standards Framework Act (SSFA) 1998) - currently the School Staffing (England) Regulations 2003. The Secretary of State is today writing to all schools, FE institutions and local authorities setting out what will be expected of them.

58. These new arrangements will generate demand for additional checks on top of the existing annual total of 2.9 million checks. Our initial estimates suggest that the increase in demand should not cause a problem to the CRB, but we will work with them to ensure that the system has the capacity to cope with these additional checks.
59. In addition, we have formally commissioned Ofsted to conduct a survey looking specifically at on-appointment procedures in a sample of schools. This survey will report to the Secretary of State in the Spring. This survey will be in addition to existing inspection arrangements and will help to ensure compliance with the regulations, as well as helping schools to identify areas for improvement in their current practices.

*Improving procedures and working effectively with external agencies*

60. The conscientious work of the police continues to be a major lynch-pin of the List 99 process. Information provided by the police in respect of List 99 cases is critical in ensuring that appropriate decisions are taken. The Home Secretary is writing today to all Chief Constables, Chief Officers of Probation, the Prison Service and the Youth Justice Board to restate how the current system works, how it is changing and the priority he attaches to this area.
61. In addition, we will continue to improve the operational effectiveness of the current decision-making unit, in particular to enhance the use of risk-assessment processes. We shall also build on the Memorandum of Understanding developed with the Association of Chief Police Officers (ACPO) for improving the provision of police information relevant to barring decisions. And appropriate training will continue to be provided for all staff working on these decisions.

*Wider expert input to Ministerial decision-making*

62. We propose to transfer to a statutory body the decision-making powers currently residing with the Secretary of State, in respect of the combined list replacing List 99 and POCA under the new VBS. However, this is a measure requiring primary legislation. More immediately, we will establish an expert panel made up of eminent and respected experts, for example in policing, child protection and education. Sir Roger Singleton – former Chief Executive of Barnardo’s – has agreed to chair this panel.
63. We will consult with stakeholders on the make-up of this panel. The panel’s advice will be sought on all decisions referred to the Secretary of State, and without fettering her discretion, it is envisaged that the Secretary of State will follow the panel’s advice in all cases.
64. The expert panel will also review cases determined before 1997. The panel will examine cases which, had the Sex Offenders Register existed, would have resulted in the individual’s inclusion on the Register and all cases involving a sexual offence or allegation which resulted in a decision not to include in List 99 or which resulted in a restriction or partial bar. The aim of this review will be to establish whether any individual poses a risk of harm to children and if any action should be taken. The Permanent Secretary at the Department for Education and Skills will ensure that the relevant former Minister is consulted in any such case. Current Ministers will not be involved in this process.

Proposed legislative reforms

*Implementation of the Bichard Inquiry Report*

65. As noted in paragraph 31, the Government has made good progress in implementing the recommendations of the Bichard Inquiry report. Further progress will be made through the Safeguarding Vulnerable Groups Bill – announced in the Queen’s Speech and to be introduced in February 2006 – which will introduce a centralised Vetting and Barring System integrating the current barring schemes in

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the children's workforce, List 99 and POCA, to create a central record of all bars and restrictions placed on people working with children where they pose a risk to children and a separate, but aligned, record of all bars and restrictions placed on people working with vulnerable adults. The new system will also provide for:

- A central body to make decisions on imposing a bar either as a result of an application to work, including voluntary work, or following referrals from employers and other bodies, on the basis of criminal records history and information from referrals and other sources. This will ensure consistency and transparency;
  - Continuously updated decisions on the basis of any new information that becomes available such as new convictions or referrals from employers;
  - Employers to be notified if the status of their employee changes during their employment;
  - Instant checks of an applicant's up-to-date status to be available online;
  - Domestic employers to be able to check for bars or restrictions placed on applicants such as private tutors or nannies;
  - Disclosures to be available at Enhanced level throughout the workforce, to provide relevant information to employers, including confirmation of the applicant's barred status.
66. All those who are working or applying to work in jobs that bring them into contact with children or vulnerable adults will be vetted. This allows the scheme to provide a broader workforce coverage.

*Removing decision-making power from Ministers*

67. In addition to the measures already planned as part of our implementation of the Bichard Inquiry Report, we will use the forthcoming Bill to take powers to establish new arrangements for making discretionary decisions for the combined List. We are clear that any new decision making process must command the confidence of the public, be clearly accountable and have access to the necessary expertise.
68. The new decision-making process must also be able to cope with the increased volumes of cases expected under the VBS. At present approximately 250 - 300 people are added to List 99 each year. However, the different nature of the VBS will add significantly to this number, with associated resource implications. The implications will be even greater if the vulnerable adults work-force is to be covered by the same process.
69. In this context, the powers to be taken in the forthcoming Bill will seek to establish a statutory body which will be the holder of the new combined register and will take all decisions about who should be barred. Individuals will retain the right to appeal. The statutory body will have the following characteristics:
- Although funded and appointed by the Secretary of State, the body should be clearly independent of ministers. It would exercise the functions which legally the Secretary of State currently holds. This would include making decisions in all cases. Ministers should no longer have any role in making decisions on individual cases.
  - A panel with a balance of different expertise should make decisions. The exact membership of this body should be the subject of consultation, but we believe that representatives should cover a range of expertise. It will be particularly important that the police and other experts should be represented.
  - Clear accountability is vital. We believe that this could be achieved in a number of ways. The body could have a statutory responsibility to prepare an annual report to be laid before Parliament accounting for its work. The Secretary of State could also retain the power to order an inquiry into the

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body when there is any concern that it has failed either in a specific case or generally.

70. How to ensure a system which meets the above requirements will be the subject of consultation in parallel with the passage of the Safeguarding Vulnerable Groups Bill. A robust system which has the confidence of the public – and of all those working with children and vulnerable adults – will need to be developed in discussion with key stakeholders. We will want to discuss, for example, the precise nature of the panel and the interface with cases involving the vulnerable adult's workforce as well as the children's workforce
71. We will also need to consider the relationship between this body and the Care Standards Tribunal, and we will seek the view of Parliament on the most appropriate form of Parliamentary scrutiny for the body.

### Conclusions

72. The package of measures arising from this review will significantly strengthen our vetting and barring procedures. In addition, constant vigilance by schools, employers and the police and continual updating of our processes locally and nationally is needed. The task of Government is to set in place the right framework to make that work, and to close any loopholes where they exist. That is what the reforms set out in this report will do.

Annex A

As noted in the main report, the Secretary of State is required to include a person in List 99 (amongst other cases) on receipt of a certificate of conviction in respect of a specified offence against or involving a child under the age of 16, where the person was carrying out work to which section 142 of the 2002 Act applies before or at the time he committed or was convicted of the offence; and was aged 18 or over at the time the offence was committed.

The relevant offences in England and Wales are:

In place since 1995<sup>18</sup>:

- An offence contrary to section 1(1) of the Sexual Offences Act 1956 (rape).
- An offence contrary to section 5 of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of thirteen).
- An offence contrary to section 6(1) of the Sexual Offences Act 1956 (sexual intercourse with a girl under the age of sixteen).
- An offence contrary to section 10(1) of the Sexual Offences Act 1956 (incest by a man).
- An offence contrary to section 11(1) of the Sexual Offences Act 1956 (incest by a woman).
- An offence contrary to section 12(1) of the Sexual Offences Act 1956 (buggery).
- An offence contrary to section 13 of the Sexual Offences Act 1956 (an act of gross indecency between men).
- An offence contrary to section 14(1) of the Sexual Offences Act 1956 (indecent assault on a woman).
- An offence contrary to section 15(1) of the Sexual Offences Act 1956 (indecent assault on a man).
- An offence contrary to section 16(1) of the Sexual Offences Act 1956 (assault with intent to commit buggery).

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<sup>18</sup> By virtue of the Education (Teachers) (Amendment) (No. 2) Regulations 1995 (SI 1995/2594).

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- An offence contrary to section 1(1) of the Indecency with Children Act 1960 (indecent with children under the age of sixteen).
- An offence contrary to section 54(1) of the Criminal Law Act 1977 (inciting a girl under the age of sixteen to have incestuous sexual intercourse).
- An offence contrary to section 1(1)(a),(b) or (d) of the Protection of Children Act 1978 (indecent photographs with children).

In place since 2003<sup>19</sup>:

- An offence contrary to section 1(1)(c) of the Protection of Children Act 1978 (indecent photographs with children).
- An offence of murder, contrary to the common law.

In place since 2004<sup>20</sup>:

- An offence contrary to section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of child).
- An offence contrary to section 1 of the Sexual Offences Act 2003 (rape).
- An offence contrary to section 2 of the Sexual Offences Act 2003 (assault by penetration).
- An offence contrary to section 3 of the Sexual Offences Act 2003 (sexual assault).
- An offence contrary to section 4 of the Sexual Offences Act 2003 (causing a person to engage in sexual activity without consent).
- An offence contrary to section 5 of the Sexual Offences Act 2003 (rape of a child under 13).
- An offence contrary to section 6 of the Sexual Offences Act 2003 (assault of a child under 13 by penetration).
- An offence contrary to section 7 of the Sexual Offences Act 2003 (sexual assault of a child under 13).
- An offence contrary to section 8 of the Sexual Offences Act 2003 (causing

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<sup>19</sup> Added by the Education (Prohibition from Teaching or Working with Children) Regulations 2003 (SI 2003/1184).

<sup>20</sup> Added by the Education (Prohibition from Teaching or Working with Children) (Amendment) Regulations 2004 (SI 2004/1493).

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or inciting a child under 13 to engage in sexual activity).

- An offence contrary to section 9 of the Sexual Offences Act 2003 (sexual activity with a child).
- An offence contrary to section 10 of the Sexual Offences Act 2003 (causing or inciting a child to engage in sexual activity).
- An offence contrary to section 11 of the Sexual Offences Act 2003 (engaging in sexual activity in the presence of a child).
- An offence contrary to section 12 of the Sexual Offences Act 2003 (causing a child to watch a sexual act).
- An offence contrary to section 14 of the Sexual Offences Act 2003 (arranging or facilitating commission of a child sex offence).
- An offence contrary to section 15 of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc).
- An offence contrary to section 16 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity with a child).
- An offence contrary to section 17 of the Sexual Offences Act 2003 (abuse of position of trust: causing or inciting a child to engage in sexual activity).
- An offence contrary to section 18 of the Sexual Offences Act 2003 (abuse of position of trust: sexual activity in the presence of a child).
- An offence contrary to section 19 of the Sexual Offences Act 2003 (abuse of position of trust: causing a child to watch a sexual act).
- An offence contrary to section 25 of the Sexual Offences Act 2003 (sexual activity with a child family member).
- An offence contrary to section 26 of the Sexual Offences Act 2003 (inciting a child family member to engage in sexual activity).
- An offence contrary to section 47 of the Sexual Offences Act 2003 (paying for sexual services of a child).
- An offence contrary to section 48 of the Sexual Offences Act 2003 (causing or inciting child prostitution or pornography).
- An offence contrary to section 49 of the Sexual Offences Act 2003 (controlling a child prostitute or a child involved in pornography).
- An offence contrary to section 50 of the Sexual Offences Act 2003 (arranging or facilitating child prostitution or pornography).
- An offence contrary to section 57 of the Sexual Offences Act 2003

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(trafficking into the UK for sexual exploitation).

- An offence contrary to section 58 of the Sexual Offences Act 2003  
(trafficking within the UK for sexual exploitation).
- An offence contrary to section 59 of the Sexual Offences Act 2003  
(trafficking out of the UK for sexual exploitation).