

Briefing on ...

Protection of Vulnerable Groups (Scotland) Act 2007

Consultation on Secondary Legislation

Background

The Protection of Vulnerable Groups (Scotland) Act 2007 received Royal Assent in the Scottish Parliament in April 2007. The act came about as a result of the Bichard Enquiry Report into the murder of two schoolgirls in Soham in 2002. Recommendation 19 of the report stated that “new arrangements should be introduced, requiring those who wish to work with children, or vulnerable adults, to be registered”.

The Act, therefore, created the framework for a new scheme for those working with children and protected adults in Scotland.

The secondary legislation following from this Consultation will be introduced into the Scottish Parliament from autumn 2008 and come into force from 2009.

Similar schemes operate in England, Wales and Northern Ireland and the Scottish Scheme will dovetail with these schemes.

Current Position

Around 800,000 people in Scotland work with children or protected adults. A statutory framework had been put in place via Part V of the Police Act 1997 which allowed for criminal record checks of specific groups of workers, including social workers, teachers, certain health care workers, etc.

For working with certain groups of children, or adults at risk, applicants require to undertake an enhanced disclosure, which checks lists from other parts of the UK as well as carrying out additional checks, such as on non-conviction information, which can be relevant to the particular positions being considered.

Since April 2002, Disclosure Scotland has provided these checks in Scotland, which involves an individual applying for a Disclosure Certificate, at a cost of £20, payable by the applicant or in some cases, their employer. For those working in the voluntary sector they are paid by the Scottish Government.

The Disqualified from Working with Children List (DWDL) was established by the Protection of Children (Scotland) Act 2003 and came into force in January 2005. The list is maintained by civil servants in the Scottish Government and any decisions on disqualification made by a panel chaired by a senior civil servant.

Summary of the New Scheme

The Scheme introduces the following changes to the current system:

- **Effective barring** – the scheme will assess information collected to ensure that individuals who are unsuitable are not allowed to enter the workforce
- **The adults list** – a new list of people who are unsuitable to work with protected adults
- **Continuous Vetting** – collecting information about an individual after the initial disclosure check will ensure

that new information can be acted upon quickly

- **Streamlined disclosures** – recognises that some people have several roles and change jobs, so simplifies and speeds up the process, by removing the need for repeated disclosures
- **Access to disclosure for personal employers** – enables them to check that the person they wish to employ is not unsuitable
- **More sources of vetting information** – gives both the scheme and employers more information about an individual

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The scheme will be managed by a Central Barring Unit (CBU) which will form a single organisation with Disclosure Scotland, providing a joined up service to users. The CBU will manage the lists and take the necessary decisions, whilst Disclosure Scotland will carry out the vetting function and issue the certificates

under the 1997 Police Act for purposes not covered by the current Bill.

Being listed in Scotland, i.e. being included on either the adults' or children's list, means that an individual is barred from carrying out that type of regulated work in Scotland (or anywhere else in the UK) and can be imprisoned if they do so.

Scheme Membership

The 2007 Act establishes a scheme which people undertaking regulated work with children and/or protected adults will join. Scheme membership is not mandatory but is the only mechanism to provide employers with the assurance that they are not employing a barred person. If employers do so, they will be committing an offence. (This does not apply to

personal employers such as parents or those buying care services directly.)

- **An individual can only be in the scheme if they are not barred**
- **An employer can only ensure that the person is not barred by establishing that he or she is a member of the scheme.**

Continuous Vetting

A member's scheme membership will be updated with any new information as it arises and be added to their record. If the information is relevant to their employment, the CBU may place the individual under formal consideration for listing and, subsequently, to remove them from the scheme if the information determines that they are unsuitable.

The CBU will also consider listing an individual following:

- A referral by an employer or regulatory body
- A court referral
- The naming of an individual in a relevant inquiry report.

The individual and all employers will be notified of any formal consideration for listing and the outcome. Whilst under formal consideration, a scheme member can continue to perform regulated work although their employer will know of their status. Any new employer would also be informed through the disclosure certificate.

Employers **must** refer where the grounds for referral are met, eg following disciplinary action leading to dismissal or being transferred from regulatory work. The CBU will first ensure that the referral is "not vexatious or frivolous" before giving it proper consideration.

Courts can refer following conviction for **any offence** if they believe it is appropriate

Legislative Process

The current consultation which **closes on 2 February 2008**, will form secondary legislation in the form of draft Scottish Statutory Instruments on the following subjects:

- The definition of protected adults
- Contractors' access to records
- Criteria for automatic listing

- Arrangements for retrospective checking
- Fees for disclosure and scheme membership

The consultation consists of 23 questions on the topics listed above. The final one relates to cross-border arrangements with the rest of the UK.

If you or your branch have any comments please advise Diane Anderson by Friday, 11 January 2008.

Further Information

Protection of Vulnerable Groups (Scotland) Act 2007
<http://www.scottish.parliament.uk/business/bills/73-ProtVulGro/b73s2-aspassed.pdf>

Protection of Vulnerable Groups (Scotland) Act 2007:
Scottish Vetting and Barring Scheme: Consultation on Policy Proposals for Secondary Legislation
<http://www.scotland.gov.uk/Publications/2007/11/01111737/0>