

## Chapter 7: Responding to the Consultation

### 7.1 Response form

**We are inviting responses to this consultation by 12 February 2008.**

It is possible to respond to this consultation online at [www.scotland.gov.uk/pvglegislation](http://www.scotland.gov.uk/pvglegislation). Alternatively respondents may remove chapter 7 from the consultation paper itself and send it to:

Susan Robinson  
Protection of Vulnerable Groups Implementation Team  
Children, Young People and Social Care Directorate  
The Scottish Government  
Victoria Quay  
Edinburgh  
EH6 6QQ

Space has been provided in the form for responses to be written. Please feel free to continue your answers/comments on additional pieces of paper. If doing so, please ensure that answers can be clearly associated with the questions.

#### Background

In analysing your response, it would be help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with vulnerable groups. Feel free to add any further comments in the box provided.

Early years	<input checked="" type="checkbox"/>	Education	<input checked="" type="checkbox"/>	Health	<input checked="" type="checkbox"/>
Justice	<input type="checkbox"/>	Parent/carer	<input type="checkbox"/>	Police	<input type="checkbox"/>
Social Work	<input checked="" type="checkbox"/>	Sport and Leisure	<input type="checkbox"/>	Voluntary Org	<input checked="" type="checkbox"/>
		Other (please specify)	<input type="checkbox"/>		

#### Section 2.2: Regulated work with children

Q 1: Do you have any comments on the content and structure of guidance on the scope of regulated work with children as discussed in section 2.2?

#### Section 2.3: Regulated work with adults

Q 2a: Do you believe an individual should be a protected adult if they are in receipt of any health service (NHS or private)?

Yes                       No                       Don't Know

Space is provided below if you wish to give reasons for your decision.

Q 2b: Are there any health services that should not be included? If so, please specify them as precisely as you can and explain why they should not be included.

Q 3a: Should the definition of welfare services be based upon: (Tick one box only)

- the nature of service provided?
- an explicit list of prescribed services?
- the personal characteristics of the individual receiving care?
- an alternative proposal? Please specify below.

Please explain the reasons for your preferred option.

The nature of the service provided is the basis for the definition of regulated work. The definition of welfare services should be consistent with this.

Q 3b: Should the definition of welfare services be expanded to include commercial (i.e. for profit) organisations who provide services similar to those provided by the statutory and voluntary sector?

Yes                       No                       Don't Know

Space is provided below if you wish to give reasons for your decision.

There is no reason to leave commercial organisations out of any definition of a welfare service that impacts upon children. Any differentiation between these sectors would not be based on a concern for child protection and safety and should not be supported. It may also result in an anti competitive environment.

## Section 2.4: Contractors and disclosure

Q 4a: Do you believe that disclosure information should be shared with third parties?

Yes                       No                       Don't Know

Space is provided below if you wish to give reasons for your decision.

The responsibility for ensuring that any service being provided is fit for purpose should rest with the contractor. In the example given, the bus company should be required to ensure that all drivers who will be operating the school bus are appropriately checked in order to secure the service contract. The contracting agency, in this case the Local Authority, should not be required to see the disclosure certificates of the specified employees. However, an exception should be made when investigating a complaint.

In addition, responsibility for ensuring that the contractor is fully disclosing the relevant workforce should rest with the contracting agency. Third party access to records, in this administrative and supervisory context, are appropriate.

Q 4b: If you answered yes above, in which of the following circumstances should disclosure information be shared with a third party? (Tick as many boxes as you feel appropriate)

- Where a third party is contracting a transport provider for the purposes of transporting children or protected adults.
- Where a third party is contracting a provider for the purposes of maintaining premises in which services are delivered predominantly to children and/or protected adults and where the maintenance will take place whilst these individuals are on the premises.
- Where a council is offering direct payments in return for the delivery of care to a protected adult.
- Where a council is letting premises to individuals and the intended use of the premises involves regulated work.

Please expand on your answers by explaining your choice(s). Alternatively please suggest other situations in which sharing disclosure information with a third party would be appropriate.

## Section 2.5: Changes to registration of registered bodies

Q 5a: Should there be a minimum threshold number of applications per annum from a registered body as a condition of registration?

Yes       No       Don't Know

Q 5b: If so, should the threshold be

- 50 per annum?

- 100 per annum?
- 200 per annum?
- a higher or lower level (please specify)?

Space is provided below if you wish to give reasons for your decision.

Q 5c: Approximately how many disclosure applications does your organisation make in a typical year (if applicable)?

### Section 3.2: Making Referrals

Q 6a: Is the proposed list of prescribed referral information set out in 3.2 acceptable and proportionate?

Yes       No       Don't Know

Space is provided below if you wish to give reasons for your decision.

Q 6b: Would providing any of this information (if you hold it) be problematic for your organisation?

Yes       No       Don't Know

Space is provided below if you wish to give reasons for your decision.

Q 6c: Should any further information be added to the list to help establish identity or background to the case?

Yes       No       Don't Know

If yes, please specify below.

### Section 3.4: Automatic Listing

Q 7a: What offences listed in Annex 3 should lead to automatic listing: (tick one box only)

- None
- Group 1A on the children's list and group 2 on the adults' list only
- Groups 1A and 1B on the children's list and group 2 on the adults' list only; or
- All groups lead to automatic listing on both lists.

Space is provided below if you wish to give reasons for your decision.

Group 1A on the children's list and group 2 on the adults' list only

Group 1B of Annex 3 requires more consideration as many of the offences listed are broad spectrum offences that require clarification. Children in Scotland believes that it may be more appropriate for those offences in group 1B to be automatically considered for listing but for the decision to list to be made on a case by case basis. For example

1. ChildLine Scotland is receiving an increasing reports of inappropriate sexual behaviour between children. This behaviour may be considered a lewd, indecent or libidinous act towards another child. However, the decision about whether the offence will result in listing should be sensitive to the individual circumstances of each case.

2. A parent, suffering from mental health problems, may have been guilty of cruelty and neglect towards his/her child. However, if that parent can show that the offence was a direct result of his or her illness, and that these circumstances have changed with treatment, automatic listing may not be appropriate. Again, decisions about listing in such as situation should be made on a case by case basis.

Q 7b: Are there offences which should be added to or removed from these groups?

Yes, added       Yes, removed       No       Don't Know

Please give reasons for your answer below.

### Section 3.5: Automatic consideration for listing (children's list only)

Q 8a: Should the list of relevant offences against children set out in schedule 1: (tick one box only)

- remain as set out in the Act?

- be expanded to include those set out in annex A4 group 2?
- be expanded to include those set out in annex A4 group 3?
- be expanded to include those set out in annex A4 groups 2 and 3?

Please give reasons for your choice.

Automatic consideration for listing should expand to include statutory rape.

Q 8b: Are there any offences identified in the Act which should not be relevant offences?

Yes       No       Don't Know

If yes, please specify below.

### Section 3.6: Listing Decisions

Q9: Do you have any comments on the approach to making listing decisions set out in 3.6?

No

### Section 3.8 Removal from lists

Q10: Should the age threshold for the shorter minimum no-review period be set at:

- 18
- 25

Space is provided below if you wish to give reasons for your decision.

An age threshold of 25 would be consistent with the UK.

Q 11a: Should the minimum no-review period start:

- always from the date of listing?

Or for historic offences should it start from

- the date of the incident/offence or
- from the date of dismissal/conviction?

Space is provided below if you wish to comment further on your decision.

Q 11b: Do you have any other comments on the proposals for applications for removal from the lists?

#### Section 4.2: Regulatory Bodies and Councils

Q 12a: Is there any regulatory body information other than that set out in 4.2 that should be regarded as relevant vetting information?

Yes       No       Don't Know

If yes, please specify.

Q 12b: Would there be any circumstances where sharing this type of information would not be appropriate? If so, please describe these circumstances.

Q 13a: What information do councils hold that might be relevant when considering an individual's suitability to do regulated work with children or adults?

Children in Scotland welcomes the emphasis placed upon employee and client information held by councils as relevant to the disclosure process. Councils hold records and details of instances where children have been harmed by an adult. Often, this harm is perpetrated by a family member or a family friend. An adult's record of harming any child, whether or not it is their own child, is always relevant information to assess the suitability of that adult working with children.

Children in Scotland do, however, accept the sensitive nature of this information and the complexity involved with the decision to, and the mechanics of, sharing it with a disclosure unit. As identified in the consultation paper, council held information is neither currently recorded in a format appropriate for sharing nor are there protocols and safeguards in place to allow for the safe and legal sharing of information. We recognise the need for a uniform system of information sharing is established across Local Authorities.

Yet, the risk to children of employing adults who have harmed a child, is significant and should guide policy and practice in this area. The Scottish Government should prioritise and support the development of a nationwide mechanism for recording, sharing and storing this information. It would be useful to set a deadline for this to be achieved that does not exceed the deadline for the full implementation of the

scheme. In the mean-time, guidance should encourage councils to share serious instances of harm and 'matters of fact' with the Central Barring Unit as they occur.

Re - Receiving and storing information versus trawling for information:

Whether councils should send relevant information about all individuals to be held at the CBU, versus 'trawling' their records for every scheme application is a difficult question. However, both options would require councils to trawl their records for relevant historic information and to change their record keeping and storing systems for future case notes. The cost and complexity of gathering information would be comparable in these circumstances.

The overall aim should be for councils to relate to the CBU in much the same way as the police; accessing information when a scheme application is made. It would not be appropriate for the CBU to hold all police information or council information 'just in case' an application was made.

Re- Council held information about children:

It cannot be avoided that in some circumstances the council will also hold relevant disclosure information about children harming other children. More discussion needs to be had with stakeholders over the desirability of sharing this information with the disclosure unit and the specific guidelines that need to be in place before this can happen.

Q 13b: Do you have any suggestions on how council vetting information could be gathered?

### Section 4.3 Handling sensitive information from regulatory bodies and councils

Q 14a: Should it be possible for vetting information from regulatory bodies and councils be withheld from disclosure certificates?

Yes       No       Don't Know

Space is provided below if you wish to give reasons for your decision.

Q 14b: If you answered yes above, in which circumstances should such information be withheld?

#### Section 4.4 Civil Orders

Q 15a: Which civil orders should be disclosed on scheme records: (tick as many as you find appropriate)

- none
- Risk of Sexual Harm Order (and any interim order)
- Sexual Offences Prevention Order (and any interim order)
- Notification Order (and any interim order)
- Foreign Travel Orders

Space is provided below if you wish to give reasons for your decision.

Q 15b: Which civil orders should be disclosed on standard and enhanced disclosures: (tick as many as you find appropriate)

- None
- Risk of Sexual Harm Order (and any interim order)
- Sexual Offences Prevention Order (and any interim order)
- Notification Order (and any interim order)
- Foreign Travel Orders

Space is provided below if you wish to give reasons for your decision.

n/a

Q 15c: Should any other civil orders be routinely included on:

- Scheme record disclosures?

Yes       No       Don't Know

- Standard and enhanced disclosures?

Yes       No       Don't Know

If yes, please specify below.

#### Section 4.5: Other possible vetting information

Q 16a: Should details of previous competent referrals be included on scheme record disclosures?

Yes                       No                       Don't Know

Space is provided below if you wish to give reasons for your decision.

It is not always the offence, but the pattern of behaviour, that raises concern for the safety of a child. The number of competent referrals, as well as their content, may be appropriate information for any employer during the recruitment process.

Q 16b: Is there any other vetting information beyond that from the police, regulatory bodies, councils and the civil orders identified in 4.4 that should be included on disclosures?

Yes                       No                       Don't Know

If yes, please specify below.

It is not always the offence, but the pattern of behaviour, that raises concern for the safety of a child. The number of competent referrals as well as their content may be appropriate information for any employer during the recruitment process

## Section 5.2 : Retrospective checking: whether and how?

Q 17a: Should scheme membership be phased in through:

- natural turnover?
- a managed process of retrospective checking?

Please explain your preference.

Scheme membership by natural turnover would avoid any gaps in the disclosure system and prevent any duplicating disclosure checks and the associated costs. This should run for an initial period of up to 3 years. Children in Scotland believes that this would account for many staff members either through internal disclosure checking systems or natural job change.

Q 17b: If natural turnover was selected as the most appropriate option, would your organisation:

- make arrangements to expedite scheme membership for your staff; or
- allow turnover to complete this process over time?

Space is provided below if you wish to give reasons for your decision.

Q 18: Should the period of retrospective checking be delayed until such time as a proportion of the workforce have joined by natural turnover?

Yes       No       Don't Know

If yes, how long should this delay last and why?

This delay should last for three years - see previous answer to 17a.

In answer to Question 19 below

Implementing the new scheme by date of last disclosure would prioritise those who have never been checked, and ensure that any gaps in disclosure records are closed in a proportionate way.

Those sectors who that engage in unsupervised activities with children and vulnerable adults should also be prioritised. This should be done by date of last disclosure.

Q 19: If retrospective checking is to be undertaken, which of the options for prioritising retrospective checking of individuals do you prefer? (tick one box only)

- by date of last disclosure
- by sector
- by random personal characteristic
- other (please specify)

Please explain your preference.

Q 20a: If there is to be a period of retrospective registration of the regulated workforce onto the scheme, which of the following options would you prefer: (tick one box only)

- retrospective checking over three years
- retrospective checking over four years
- retrospective checking over five years
- retrospective checking over six years
- three years delay followed by three years retrospective checking
- four years delay followed by two years retrospective checking

Please explain your preference.

Allowing three years for natural turnover and three years for retrospective checking is proportionate and allows all sectors to ensure full membership to the new scheme at a reasonable speed but without causing financial instability in the various organisations.

Q 20b: What impact would a quick programme of retrospective checking have on your organisation?

Q 20c: What difference would it make if the phasing-in period was significantly extended?

### Section 5.3: Fees levels and charging regime

Q 21a: Which of the charging regimes do you prefer? (tick one box only)

- Two Tier
- All subsequent checks at lower tier
- Annual Subscription
- Other (please specify)

Please explain your preference.

Q 21b: What do you feel the maximum acceptable level for the higher tier fee should be (to keep the lower tier as low as possible or free)?

Ideally, fees would remain at current levels.

Q 21c: To what extent does the level of fee affect your answer to question 21a? (E.g. you prefer a subscription model if it's less than £x / year.)

As an employer, Children in Scotland would chose the most cost effective scheme - assuming that the level of information and security was comparable.

Q 22: Should individuals who become scheme members through volunteering be required to pay a fee for joining the scheme if and when they join the paid workforce?

Yes

No

Don't Know

Space is provided over the page if you wish to give reasons for your decision.

If the individuals would also need a disclosure check due to their permanent employment, the rate should be reduced in recognition of the value of voluntary workers. It may be that a minimum period of voluntary work should be stipulated to ensure that token volunteering wasn't used as a way of avoiding the full fee. However, Children in Scotland would encourage the use of discounted scheme membership as an incentive and reward for volunteering.

### Chapter 6: Connecting with the rest of the UK

Q 23: Do you have any comments about proposed cross-border arrangements with the rest of the UK set out in chapter 6?

Recommendation 30 of the Bichard Report asked that proposals be brought forward as soon as possible to improve the checking of people from overseas. This is a serious and fundamental issue that needs to be tackled in conjunction with the vetting and barring system in Scotland. If ignored, it will further undermine and incapacitate the disclosure system.

The meaning of the term 'individuals from overseas' is unclear. Children in Scotland has identified 6 groups who could fall within this definition;

1. Non-British EU citizens with the right to work freely within the EU,
2. Those non EU citizens who wish to work in the UK,
3. Asylum seeking individuals
4. UK citizens who have lived and worked in the EU
5. UK citizens who have lived and worked outside of the EU
6. UK citizens who have lived outside of the UK for over two months but never in one place. E.g. gap year students.

Currently, there is no Scottish guidance on what efforts need to be made, and by whom, to produce disclosure information for any of the above categories. Employers are often unsure that the checks they request are comparable to Scottish disclosure checks, or adequate. Guidance from the Scottish Government and Disclosure Scotland does not help employers wishing to thoroughly check the history of all their employees from overseas.

Children in Scotland has experience of employing a number of these individuals. To date, staff have been employed from (and where possible disclosure checked) in Canada, Australia, USA, Brazil, New Zealand, Iraq, Bulgaria, Belgium, Germany,

France, Republic of Ireland, Italy and India. These processes have been time consuming due to the requirements of the various countries in question. The lack of centrally held information containing a practical directory of contacts, and a brief description of the system for a criminal records check, has made the process more laborious than is necessary.

These processes are in addition to, and far more costly than, a Scottish disclosure check. For example a criminal records check in Australia costs £50. The fingerprinting requirements often take half a working day. The cost of this varies by the salary level of each appointment and is either met by the individual in lost annual leave or by the organisation. The whole process takes up to 4 weeks. For those UK citizens who have lived in Canada - the cost is \$25 and again the individual needs to be fingerprinted during working hours. The process can take up to 60 days to complete.

These circumstances are not a rare occurrence in Scotland as many students now take a gap year abroad after university, or are based abroad during their studies. Scotland is also a likely destination for non-UK workers, specifically from Canada, Australia, New Zealand and America, as well as migrant EU workers. This issue may affect all children's organisations to some degree, but it will have a disproportionate affect on specific workforces including the nursing profession, the pre-school profession and classroom assistants. This may have repercussions for recruitment of permanent but particularly voluntary employees in the sector.

Some problems in disclosure checking overseas employees cannot be resolved by the Scottish Government. For example, not all EU countries record comparable crimes, recording systems vary by country and there is little harmonised understanding of terms such as child protection and risk. The Scottish Government is leading the way in Europe in relation to disclosure schemes and should call on the UK Government and the EU to fast track the harmonisation of necessary cross border criminal information. The Government should also provide an up-to-date directory of contact points and disclosure processes in as many countries as possible. It should be recorded where it is impossible to check police records, for example Iraq.

Guidance should be produced clarifying :-

1. Whether it is the responsibility of the employer or the individual to obtain and pay for those checks. Can the employer claim funds in excess of the disclosure Scotland costs from the Government?

2.The advised time-frame of an overseas criminal check e.g 5 years / 10 years.

3.Requirements in the case of asylum seekers and immigrants. It may be impossible to request a criminal check for these individuals without endangering their safety , or the safety of their families. It may also be impossible and/or dangerous to request secondary information such as references. This makes the additional employer led checking system for verifying a person's appropriateness for working with children less reliable.

While the Scottish Government cannot approve the appointment of every individual in these circumstances they should provide guidance for employers. The Government should also explore the possibility of access to criminal/soft information gained by the UK government during the asylum and immigration processes.

## 7.2 Respondent information form

Please complete the details below and return it with your online response. This will help ensure we handle your response appropriately. Thank you for your help.

Name: Paula Evans

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Edinburgh

EH7 4AT

1. Are you responding: (please tick one box)

(a) as an individual  go to Q2a/b and then Q4

(b) **on behalf of** a group/organisation  go to Q3 and then Q4

### INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all  We will treat your response as confidential

**2b. Where confidentiality is not requested**, we will make your response available to the public on the following basis: (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

### ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No  We will treat your response as confidential

### SHARING RESPONSES/FUTURE ENGAGEMENT

4 We may share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No

### 7.3 Scottish Government consultation process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government website enabling a wider audience to access the paper and submit their responses.

Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: <http://www.scotland.gov.uk/consultations>.

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

**While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.**