

# Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme

## Consultation Paper

## Response Booklet

### Responding to this consultation paper

We are inviting written responses to this consultation exercise by **Tuesday 2 May 2006**.

We would be grateful if you would indicate clearly in your response to which questions or parts of the consultation paper you are responding. We recommend using this response booklet, if possible. Please complete the responsee information form contained within the booklet.

### Please send your response to:

[bichard.legislation@scotland.gsi.gov.uk](mailto:bichard.legislation@scotland.gsi.gov.uk)

or

Scott Wood  
Scottish Executive Education Department  
Children and Families Division  
Area 2B (North)  
Victoria Quay  
EDINBURGH  
EH6 6QQ

If you have any queries or any comments on the consultation process, please contact Scott Wood at the address/email above or telephone 0131 244 7612

### Consultation seminars

It is intended that a number of consultation seminars will be held, including one on 16 March in Glasgow and another on 20 March in Edinburgh. All seminars will cover the same material and will follow the same format. Spaces at the seminars will be limited: if you would like to attend one, please email [bichard.legislation@scotland.gsi.gov.uk](mailto:bichard.legislation@scotland.gsi.gov.uk) or call 0131 244 7612 to register your interest. You will be contacted in due course to confirm whether or not you have a place and to confirm the details of the venue and timings.

Information on the Bichard Inquiry can be found at [www.bichardinquiry.org.uk](http://www.bichardinquiry.org.uk).

### **Accessing this and other consultations**

This consultation, and all other Scottish Executive (SE) consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. The Scottish Executive now also has an email alert system for [SE consultations](#). You can register to receive a weekly email containing details of all new SE consultations at <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

### **Access to consultation responses**

We will make all responses available to the public in the SE Library by 1 June 2006 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Scottish Executive Education Department  
Children and Families Division  
February 2006**

**RESPONDEE INFORMATION FORM**

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

**Your details**

Name	<b>Janet Law</b>
Address	<b>Scottish Out of School Care Network</b>
	<b>100 Wellington Street</b>
	<b>Glasgow</b>
Postcode	<b>G2 6DH</b>
E-mail	<b>janet_law@soscn.org</b>

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

- (a) an individual  (go to 2a/b)
- (b) **on behalf of** a group or organisation  (go to 2c)

**2a. INDIVIDUALS:**

Do you agree to your response being made available to the public (in SE library and/or on the SE 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

**2c. ON BEHALF OF GROUPS OR ORGANISATIONS:**

Your name and address as respondents **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
- No  (We will treat your response as confidential.)

## BACKGROUND

3. In analysing your response, it would help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with children and vulnerable adults and add any further comments you wish to make about this.

Early Years	<input type="checkbox"/>	Education	<input type="checkbox"/>	Health	<input type="checkbox"/>
Justice	<input type="checkbox"/>	Parent/Carer	<input type="checkbox"/>	Police	<input type="checkbox"/>
Social Work	<input type="checkbox"/>	Sport and Leisure	<input type="checkbox"/>	Voluntary Organisation	X
Other	<input type="checkbox"/>				

Further comments: **The Scottish Out of School Care Network (SOSCN) is the national organisation supporting play, care and learning services for school age children. A substantial proportion of these organisations are managed by parent-led management committees. According to the Care Commission (Feb 2006) there are around 1400 voluntary sector providers of registered daycare of children services. There are also a substantial number of small private providers of daycare of children services. These organisations are likely to be familiar with the Disclosure process, and will be aware of the implications for them of the Protection of Children Scotland Act. Small organisations need greater assistance to comply with new legislation than large organisations such as local authorities, particularly where they are voluntary led. SOSCN provides information, support and advice as appropriate to voluntary, local authority and private providers.**

## SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other SE 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 Executive to contact you again in the future in relation to this consultation response?

Yes	X
No	<input type="checkbox"/>

## YOUR VIEWS

### Part I. General

This part asks more general questions. Part II asks about the specific proposals contained in the consultation paper.

1. **Current system.** Please identify what you consider to be the three greatest issues with the current system for checking those who work with children and vulnerable adults.

1) Duplication of checks required for staff and volunteers

- working in more than one service,

or

- to comply with Care Commission, and in the future SSSC, requirements

2) Lack of a transparent strategy for the dissemination of appropriate levels of information in the early stages of the implementation of the Protection of Children Scotland Act

3) Negative publicity surrounding the POCSA which encourages an attitude that regulations are necessarily burdensome and discourage voluntary involvement.

2. **Richard recommendations.** Do you have any comments you would like to make on the recommendations, especially recommendation 19 in respect of vetting and barring?

**The proposed Vetting and Barring system will be an improvement if it simpler and addresses the issue of duplication.**

3. **Interests of vulnerable groups.** Do you have any concerns about the way the proposed system might adversely affect the opportunities for children and vulnerable adults to participate in education, employment, sport and leisure activities? What could be done to mitigate this? **Compliance with legislation does not need to deter volunteers from the responsibilities of being a member of a management committee. What is required is good support. SOSCN has worked hard to help to provide appropriate information for providers of registered childcare and has taken a positive approach to this. Our job has not been made easier by negative publicity surrounding the POCSA. If the new system does away with the need for duplication of checks, this will be helpful in terms of encouraging confidence in the system and willing compliance with requirements. SOSCN would like to work with the Executive to produce appropriate information designed for providers of registered daycare, particularly voluntary management committees. i.e. information that is simple, reassuring and highlights the main changes to existing system**

- 4 **Interests of employers.** Do you have any concerns on the impact of the proposals on the recruitment and selection of individuals to work with children and vulnerable adults? What could be done to mitigate this?

**If the new system does away with the need for duplication of checks, this will be helpful in terms of encouraging confidence in the system and willing compliance with requirements. SOSCN is aware of the need for advice and support for managers, particularly those in small organisations, to help to ensure that appropriate information is given to applicants, and that time is given for applicants to discuss their personal concerns. SOSCN would like to work with the Executive to provide appropriate advice for employers in the registered daycare of children sector.**

- 5 **Interests of applicants.** Do you have any concerns on the impact of the proposals on those who might apply for disclosure to work with children and vulnerable adults? What could be done to mitigate this?

**SOSCN is aware of the need for advice and support for managers, particularly those in small organisations, to help to ensure that appropriate information is given to applicants, and that time is given for applicants to discuss their personal concerns. SOSCN would like to work with the Executive to provide appropriate advice for employers in the registered daycare of children sector.**

**The repetition of our comments about the interests of employers demonstrates that these are overlapping areas. Good management practice meets the needs of applicants appropriately.**

- 6 **Other matters.** Please make any other comments which are relevant to the Scottish Richard Vetting and Barring Scheme.

## Part II. Consultation Paper Proposals

This part asks about the specific proposals contained in the consultation paper. Part I asks more general questions.

**Proposals 1-3** **Scope of new Vetting and Barring Disclosure.** Do you have any comments on the type of position for which the new scheme will apply?

**SOSCN would be concerned if there was any intention to narrow the scope of those covered by the new Vetting and Barring Disclosure as opposed to the definition of childcare position under the POCSA.**

**Proposal 4** **Costs of Vetting and Barring Disclosure.** How much more would you be willing to pay upfront for the new Vetting and Barring Disclosure? Please be as specific as you can, e.g. £10.

**Our concern is how the proposed increases will affect our sector, registered daycare of children. Volunteers should still be eligible for free checks, but our sector employs paid staff, many of whom work part time. With the level of turn over in the sector, it is likely that the burden of any increases in costs will appear particularly disproportionate to the many small providers of childcare which struggle with sustainability. The system should take account of issues of sustainability.**

**Proposals 4-5** **Funding the Vetting and Barring Scheme.** Do you agree with the broad proposals for: a more expensive initial disclosure, low-cost or free subsequent checks and free disclosure for volunteers?

**Again the costs are likely to appear disproportionate to small voluntary sector providers of childcare who struggle with sustainability due to uncertainties of funding. Childcare workers enter into employment before registering with the SSSC, therefore the SSSC may benefit from the checks conducted by employers. It is to be hoped that the whole area of overlap of responsibilities with the SSSC is being investigated thoroughly in discussion between the SSSC and the Executive, as suggested by the SSSC Registrar at the Edinburgh consultation event.**

**Proposal 6**      **Retrospective Vetting and Barring Disclosure.** Do you agree with the proposals for phasing the vetting and barring of the existing workforce?

**Where there may be concerns about inadequate practice in the past, the case for conducting disclosures on existing employees is already made and does happen.**

**In any circumstances where retrospective disclosures are to be carried out, there needs to be period of time for management and staff to consider the implications of the process for individuals.**

**Proposals 7-8**      **Disqualified from Working with Vulnerable Adults List.** We are not looking for comments on the DWVAL, since this has been covered by previous consultation. However, *we would like to know if this new context raises any new issues.*

**The reasons for having separate lists should be explained clearly. If there are good reasons which will make the legislation work better then this would be acceptable. Indeed, if the reason is simply to make it easier to introduce the new legislation then this would also be acceptable. Obviously it would be important to ensure that services supporting young people approaching adulthood are covered by the most appropriate legislation or both, and that this does not pose problems in practice.**

**It will also be important to clarify for all childcare employers whether they will be in breach of any legislation if they state that they would not employ someone who is on the DWAL. There may need to be some provision in the legislation to allow this, as it seems hard to justify the right of someone on the DWAL to work with children.**

**Proposal 9**      **Changes to the Disqualified from Working with Children List.** Are there any changes, other than those outlined, which you would like to see made to the DWCL?

**It has been reported that some people have found ways round the definition of “in a childcare position” and that some services are claiming that their staff are not in a childcare position if parents are present. However other interpretations have allowed disclosures to be conducted on staff and volunteers in circumstances where parents are present. It is clear that the Parliament intended a broad definition. Care needs to be taken that amendments do not inadvertently narrow the definition. Some organisations have not been aware of the need to state that the disclosure is for someone who is in a childcare position. It appears from the statement made by Disclosure Scotland at the Edinburgh consultation event that they have been making the necessary checks against the DWCL and the application form on the Disclosure Scotland website indicates that the term “childcare” should be used.**

**Proposal 10**      **Decisions on barred lists by new Central Barring Unit.** Do you think decisions on barring should be made by a special panel, a case conference or administrators?

**Those making the decisions will presumably technically be advising Ministers. Ministers would presumably want to seek the best advice possible. Therefore there should be a specialist panel with expertise in the relevant area. This may be a reason for having separate lists for different vulnerable groups: adults and children.**

**Any such panel would require to be served by an experienced competent administrator.**

**Proposals 11-13**      **Central Barring Unit.** Do you have any comments on the status and governance arrangements for the Central Barring Unit? What degree of separation is needed from the Scottish Ministers?

**The Barring Unit could give advice to Ministers, who in the end of the day would have responsibility. Ministers should be accountable for ensuring that such a unit exists and that it acts expeditiously. Line management accountability within the Scottish Executive may be the simplest and most time and cost effective way to achieve this.**

**Proposal 14**      **Provisional listing.** What should the criteria be for provisional listing? Do you agree that the individual should be able to continue to work during the determination process?

**Provisional listing pending decision. Individuals should not be allowed to work.**

**Proposal 15**      **Appeals against listing.** Do you agree that the right of appeal should be to the sheriff court with a three-month time-limit?

**Yes**

**Proposal 16**      **Access to barred status.** Who has a legitimate interest in the barred status of an individual and how should "fishing trips" be prevented?

**Employers whether individuals or organisations have a legitimate interest.**

**Proposal 17**      **Information released to applicant.** How much information passed on to the Central Barring Unit should be released to the applicant and employer? What criteria should there be for not releasing information?

**As far as possible, all information should be shared with the applicant and the employer. As far as the employer is concerned, there will be no need to have the information about why an applicant is on the DWCL or the DWAL, but to avoid errors or confusion it is best to have openness. If an applicant is not on the DWCL or the DWAL then**

**Where information is withheld, this should be made clear. The criteria for not sharing information would be where this would breach the confidentiality of another person.**

**Proposals 18-20** **Information sharing between the Central Barring Unit, public authorities, employers, police and regulatory bodies etc.** Do you have any comments on who should be required to pass what information on to whom?

If the Central Barring Unit places someone on the DWCL or the DWAL they should inform the individual's employer(s), The police should therefore have the power to require someone who is being investigated by the Central Barring Unit to give them the name, address and contact details of all their employers including anywhere they do voluntary work.

**Proposal 21** **Role of regulatory bodies.** Which regulatory bodies should receive information through disclosure? What information should they receive?

**The relevant regulatory bodies for the Early Years and Childcare sector include the SSSC, the Care Commission and the GTC. These bodies should be given all information.**

**Proposal 22** **Disclosure of civil orders.** Which civil orders should be disclosed?

**All related to children, domestic abuse or violence**

**Proposal 23** **Cross-referencing with offender registers and other lists.** How do you think the DWCL and DWVAL should relate to other registers and lists, e.g. the Sex Offenders Register or Protection of Children Act List in England and Wales?

**The Central Vetting and Barring Unit should seek information from all know lists.**

**Proposals 24-25** **Referrals.** Do you agree with the proposals for who can make a referral? Should parents and personal employers be able to make a referral?

**Yes**

**Proposal 26** **Lifetime of certificates and checks.** Do you agree that the vetting and barring disclosure certificate should have a finite lifetime, after which a new application for full disclosure needs to be made?

**If the system is to be continually updated with new information concerning individuals, it is not immediately obvious why there would be a need for a full re-check.**

**The rationale for this needs to be made clear.**

**Thank you for your time.**