

PROTECTION OF CHILDREN SCOTLAND ACT (2003)

Questions raised by participants at Drew McCanney's presentation at SOSCN Childcare Strategy Seminar, October 2004 and answers from Central Registered Body Scotland

We are grateful to the Central Registered Body Scotland (CRBS) for their responses to our questions. CRBS point out that it can be difficult to interpret legislation and direct us back to the Protection of Children (Scotland) Act 2003 and regulations. SOSCN commented on the original legislation and we will be familiarising ourselves with the regulations.

The CRBS website provides further information <http://www.crbs.org.uk/>

1) If an individual is working for two or more employers will there be notification to all if an individual becomes provisionally listed? (need for consistency of practice from all employers employing same person?)

Response from CRBS: In the DRAFT regulations Part 6 heading - Preliminary Matters section 5 it states - 'Where Scottish Ministers are aware that as at the time of a provisional entry being made under sub-paragraph (3), the individual is working for any organisation in a childcare position, send notice of the entry to that organisation'. Also in the Act itself part 7 (3) b. states ' The Scottish Ministers' shall if they are aware that the individual is working in a child care position for an organisation at the time when the individual is provisionally included in the list, provide the organisation with such notice'.

2) Will there be a need to keep carrying out disclosures on staff regularly, or existing staff retrospectively, to ensure that there isn't something which an employer is not aware of e.g. provisional listing?

Response from CRBS: With regards to checking staff on a regular basis this will have to be a decision that each individual organisation makes. As you will be aware Disclosure Certificates give details of convictions (non conviction information) that are on the system at the time of the check being requested. Any convictions (non-conviction information) gained after a check has been accessed will not be forwarded to an organisation. A number of organisations have approached the CRBS with regard to doing retrospective checks and also looking at the process of doing checks on a regular basis (For example annually). . If, you feel as an organisation that you want to do checks on an annual basis or wish to carry out retrospective checks you will need to ensure that you have effective policies and procedures in place to manage any decisions that you may have to make (e.g. Discipline, re-deployment or dismissal). You will also need to consult staff/volunteers regarding a proposed change in policy (retrospective checking) as you cannot enforce existing staff/volunteers to

carry out a disclosure check under terms of the Police Act 1997 Part V without a consulting process.

3) Who would be responsible for the referral of someone who is part of a child protection investigation?

Answer: Employer is always legally obliged to refer if the criteria are met, but of course they might not be.

For example: might it not be possible that an employer hears that an individual is part of a child protection investigation concerning staff behaviour towards young people at another place of employment / yet the criteria re placing a child at risk of harm and being moved away are not met in first employment.

If the person has been moved away from children by one employer does this count? How can it be proved that an individual has placed a child at risk of harm in another employment / or other context, without requirement to notify all employers?)

Response from CRBS: Please refer to the response to question 1 (above).

4) Is handing children over to family member where a child has just disclosed abuse placing a child at risk of harm if social work cannot act quickly enough?

Answer: Refer to social work and ask their advice.

Response from CRBS: I would advise that you get a copy of the Local Authorities Child Protection Standards from the Child Protection Committee and to also seek guidance from Child Protection on how to implement good practice and guidelines that should be written into your policies and procedures to accommodate the situation detailed in your question.

5) What is the timescale between provisional and full listing?

Response from CRBS: The timescales between provisional listing and fully listing is as follows:

When an organisation refers an individual Scottish Ministers will look at the information provided - if they require more information from the referring body then they request this and the organisation has 7 days to submit the required information.

From this Scottish Ministers must decide to provisionally list the person or take no further proceedings -

In the DRAFT regulations section 6 (3), it states the following; If the Scottish Ministers are satisfied from the information submitted with the reference that it may be appropriate for the individual to be included in the List, they must enter the name of the individual on the List marking that entry as provisional.

Once an individual has been provisionally listed there are a number of consultation processes that take place that allow both the referring body and the individual to make comments on the information that has been supplied. Each party has up to 21 days to reply within each stage of the consultation process.

Further to this the following is included in the legislation:

In the Protection of Children (Scotland) Act 2003 section 7 part (5) states the following; where the circumstances or, as the case may be, act in respect of which a reference under section 2(1) or 4(1) above is made is the subject of legal or disciplinary proceedings, the period of six months which begins on the date on which the proceedings are finally determined.

If however a decision has not been made the Scottish Ministers will apply to the sheriff for a longer period. Act - Section 6 ' The sheriff may, on an application by the Scottish ministers and on cause shown, extend the period mentioned in paragraph (a) or (b) of Subsection (5) above by such period of up to six months as the sheriff may specify.

SOSCN's Policy Briefing on the Protection of Scotland Act (updated 2004) is at:

<http://www.soscn.org/policy.html>

If you have any further questions please contact: Janet Law, National Policy Officer, SOSCN janet_law@soscn.org

December 2004