

Protection of Vulnerable Groups (Scotland) Act 2007

Protecting Vulnerable Groups Scheme

Scottish Government Response to the Consultation on Significant Draft SSIs, RIA and Guidance

23 April 2010

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MINISTERIAL FOREWORD

Across Scotland, thousands of organisations and groups provide vital services for children and adults in need of care or support. The vast majority of people who deliver such services are committed and caring individuals who want only the best for their clients.

However, we must remember that tragedies occur because there are unscrupulous people in positions of trust who would use the work place to do harm. None of us would wish a person who is known to behave in a harmful or abusive way to be responsible for the care of a child or an older, ill or disabled relative.

Safe recruitment is at the core of safe services. Robust child and adult protection policies, checking references and gaps in employment and ongoing employee supervision along with disclosure checks all contribute to safe recruitment practice.

The Protecting Vulnerable Groups Scheme (PVG Scheme), which is due to commence towards the end of 2010, will make a significant and lasting contribution to the range of safe recruitment measures that organisations and groups use.

Its core aim is to help ensure that those who have contact with children and protected adults through paid and unpaid regulated work do not have a known history of harmful behaviour.

It is a membership scheme that will replace and improve upon the current disclosure arrangements for people who work with vulnerable groups. It will be managed and delivered by Disclosure Scotland which, as an agency of the Scottish Government, will take on additional responsibilities. This will include taking decisions, on behalf of Scottish Ministers about who should be barred from working with vulnerable groups.

There has been much debate about, and interest in, the detail of the PVG Scheme and how it will operate. I am grateful to all those who have contributed to the debate by responding to the recent and previous consultations and who have participated in our series of consultation and information events.

Scottish Ministers have listened carefully to your views and as a consequence have changed and improved on some of the legislative proposals. These changes are detailed in this Response. We have also taken into account your thoughts on how to strengthen the guidance associated with the PVG Scheme, to ensure it is as clear and concise as possible.

I believe that this Response marks a significant step towards commencing a scheme that strikes the balance between robust and proportionate protection without compromising on the need for a system that is quick, easy and, in the long run, cheaper for people to use.

Robust, because its system of continuously updating PVG Scheme membership records will ensure that information that indicates that a person may be a risk to vulnerable groups is quickly identified, enabling swift action to be taken.

Proportionate, because it only applies to people who do regulated work with children and protected adults. It does not apply to personal arrangements that people may make with friends and family to look after their loved ones or where there is no opportunity to cause harm to vulnerable groups.

Quick and easy to use, because it ends the need for people, once they become PVG Scheme members, to complete a detailed application form every time a disclosure check is required.

And cheaper in the long run for organisations and groups, because less time will need to be spent processing and following up disclosure checks and because after people become members of the scheme, the cost for Scheme Record Updates will be less than the cost of an enhanced disclosure under the current system.

None of us will forget the tragic murders in Soham in 2002 that prompted the recommendation from Sir Michael Bichard that that new arrangements should be introduced requiring those who work with children and vulnerable adults to be registered.

The PVG Scheme is Scotland's response to this recommendation. I look forward to publishing guidance and training materials in advance of it commencing at the end of 2010 and to further engaging with the vulnerable groups' workforce as we work out the details of how to get the existing workforce onto the scheme in the years after commencement.

Adam Ingram
Minister for Children and Early Years

April 2010

INTRODUCTION

Background

1. Under Part 5 of the Police Act 1997 (“the 1997 Act”), the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks are carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. Since then, over 4.6 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year, 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.
2. Since 10 January 2005, Scottish Ministers have kept a list of individuals who are considered unsuitable to work with children - the Disqualified from Working with Children List - introduced by the Protection of Children (Scotland) Act 2003. It is an offence for anyone on the list to work in a child care position in Scotland. In the first five years of operation to 9 January 2010, 393 individuals have been listed on DWCL.
3. The 2007 Act (when fully commenced) will provide for a new vetting and barring scheme. This means that the use of disclosure checks under the 1997 Act for work with children and protected adults will end. They will be replaced by new types of disclosure requests under the 2007 Act. For ease of reference, the Scottish Government is referring to this as the PVG Scheme. The PVG Scheme will ensure that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of abusive behaviour. It will exclude people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detect those who become unsuitable while in the workplace. Scottish Ministers will continue to keep a list of individuals who are considered to be unsuitable to work with children (“the children’s list”). Under the 2007 Act, Scottish Ministers will, for the first time in Scotland, keep a list of those who are barred from working with protected adults (“the adults’ list”).
4. The PVG Scheme will be managed and delivered by Disclosure Scotland as an executive agency, which will also continue to deliver the other types of disclosure (which will still be available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). A new team within Disclosure Scotland will receive and consider referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The

5. For more information about how the PVG Scheme will work, see the draft guidance and FAQs which have been published on the Scottish Government website: www.scotland.gov.uk/pvglegislation
6. Similar changes are being made in England, Wales and Northern Ireland through the Vetting and Barring Scheme (VBS), which will be managed by the Independent Safeguarding Authority in partnership with the Criminal Records Bureau for England and Wales and AccessNI for Northern Ireland.

Consultation process and history

7. A Scottish Government consultation "*Protection of Vulnerable Groups (Scotland) Act 2007 Scottish Vetting and Barring Scheme - Consultation on Policy Proposals for Secondary Legislation*" took place between 1 November 2007 and 12 February 2008. The purpose of the written consultation was to allow respondents to inform the detail of policy proposals for secondary legislation. It set out a number of options for each major issue as well as seeking general comments on the proposals. The Scottish Government received 199 responses to the consultation.
8. The consultation was supported by seven PVG consultation events in cities across Scotland attended by 875 people and nine events provided by the Central Registered Body in Scotland (CRBS) attended by 176 people from November 2007 through to January 2008. The CRBS events were not formal consultation events, but were supported by the Scottish Government and intended to complement the PVG consultation events. The CRBS events reached rural communities and delegates were primarily from the voluntary sector.
9. The analysis of the consultation was published in the "*Protection of Vulnerable Groups (Scotland) Act 2007, Scottish Vetting and Barring Scheme, Analysis of consultation on policy proposals for secondary legislation*" on 27 June 2008 and the Scottish Government's Response was published in the "*Scottish Government response to the analysis of consultation on policy proposals for secondary legislation*" on 6 October 2008.
10. In June 2009, the Scottish Government hosted a series of eight information events to bring organisations up to speed with implementation activities and provide an opportunity to consider and discuss aspects of the PVG Scheme. The events were attended by around 1300 people from organisations that are registered with Disclosure Scotland, have a regulatory role, or that represent groups and/or organisations that work with vulnerable groups. Although not part of a formal consultation exercise, the opportunity was taken to seek feedback on policy developments around regulated work and the structure of the guidance.

11. During consideration of the Protection of Vulnerable Groups (Scotland) Bill at the Scottish Parliament, the previous administration gave commitments to consult on a number of the more significant SSIs in draft. The current administration reaffirmed this commitment in the consultation paper published in November 2007. Seven significant draft SSIs were published for consultation (together with draft guidance and revised draft Regulatory Impact Assessment) over the period 10 November 2009 to 2 February 2010. These SSIs were the:
- Automatic Listing Order
 - Automatic Consideration for Listing Order
 - Contractors and Disclosure Regulations
 - Fees Regulations
 - Protected Adult Regulations
 - Regulated Work with Children Order
 - Regulated Work with Adults Order

Response to the 2009 consultation

12. In total, 108 responses were received from the sectors as set out below:

Grouping	Response rate
Adult Protection Committee	2
Church representative body	8
College or representative body for colleges	12
Council	11
Individual	5
NHS Board or NHS related	4
Other (OSCR, Balfour and Manson)	2
Professional bodies, Associations, Unions etc	18
Regulatory body	5
Voluntary organisation / representative body / umbrella body	41
Total	108

13. The consultations which attracted the most comment were the Fees Regulations and the guidance. The response rate for each consultation was as follows:

Consultation	Number of responses	% (out of 108)
Automatic listing	58	54%
Automatic consideration for listing	59	55%
Contractors and disclosure	58	54%
Fees	75	69%
Protected adult	58	54%
Regulated work with children	62	57%
Regulated work with adults	60	56%
RIA	59	55%
Guidance	73	68%

14. The consultation responses, where appropriate, have been published by the Scottish Government Library Service.

Consideration at the Scottish Parliament

Laying of the Instruments

15. The vast majority of the secondary legislation required for the PVG Scheme will be laid at the Scottish Parliament during April and May and this includes all the SSIs which were published for consultation in draft, highlighted in italics in the list below. The Scottish Government hopes that these SSIs will complete their Parliamentary passage prior to the summer recess, enabling final guidance to be issued to stakeholders in late June. For various reasons, it is necessary to hold some secondary legislation back until the autumn session, principally that concerning registration, but the guidance will make clear where there are any dependencies on such legislation.
16. The instruments will be available on the Office of Public Sector Information (OPSI) website within days of being laid at the Scottish Parliament and, later, links will be put on the PVG Implementation web pages. The Scottish Government has asked OPSI to publish the instruments as quickly as possible. Neither the Scottish Government nor the Scottish Parliament will be able to make them available prior to the web publication by OPSI. The instruments will be found at:

www.opsi.gov.uk/legislation/scotland/ssi-2010-index
17. At the time of publication of this report, no final decision has been made with respect to the go-live date for the PVG Scheme. For this reason, the coming into force dates specified on the face of each instrument are tied to the commencement of the most appropriate section of the PVG Act. The go-live date will be announced following passage of the package of SSIs being laid before Parliament in April and May 2010.

Scottish Parliament

18. It is expected that all PVG secondary legislation will be considered by the Education, Lifelong Learning and Culture Committee of the Scottish Parliament. The instruments are likely to be considered 2-3 weeks after they are laid. For more information about the ELLC Committee, its membership and meetings, see the Scottish Parliament website:

<http://www.scottish.parliament.uk/s3/committees/ellc/index.htm>
19. Seven of the SSIs are subject to the affirmative procedure, one consequence of which is that the Minister and officials will give oral evidence to the ELLC Committee at the relevant session(s). Affirmative SSIs are marked with an asterisk in the list below.

Forward programme

20. The Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No. 3) Order 2010 was made on 25 March 2010 and brings into force the relevant powers in the PVG Act to allow the orders and regulations to be made and / or laid before the Scottish Parliament.

21. The following five instruments were laid on 22 April:

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010**

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010**

The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010**

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010**

22. The following instruments are expected to be laid in the weeks following 22 April in approximately this order (the titles may be adjusted prior to laying):

The Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Consequential Modifications) Order 2010**

*The Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Order 2010**

*The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010**

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Corresponding Disqualifications) Order 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies)

(Prescribed Information) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Courts) (Prescribed Information) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Power to Refer) (Information Relevant to Listing Decisions) Order 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from Lists and Late Representations) (Procedure Etc.) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Savings and Transitional Provisions) Order 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Vetting Information) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Place and Manner for the Taking of Fingerprints and Prescribed Personal Data Holders) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Administration of the Scheme) Regulations 2010

The Protection of Vulnerable Groups (Scotland) Act 2007 (Health Professionals) (Family Health Service Lists) Regulations 2010

The Police Act 1997 (Alteration of the Meaning of Suitability Information Relating to Children and Protected Adults) (Scotland) Order 2010

23. In the autumn, the Scottish Government proposes to lay the Police Act 1997 (Registration) (Scotland) Regulations 2010, together with any other provision which could not be made in the summer. In the weeks leading up to go-live, a further commencement order will be made which will specify the date on which all the provisions in the PVG Act, orders and regulations come into force.
24. It will also be necessary to work with the UK Government to legislate at Westminster to make sure that all the right cross-border connections are made between the PVG Scheme and the Vetting and Barring Scheme (VBS) for England, Wales and Northern Ireland, allowing the sharing of information between jurisdictions as appropriate.

25. The instrument making provision for retrospective checking will be published for consultation in draft in due course ahead of laying in 2011.

Summary

26. The following table summarises the changes made to the seven consultation draft SSIs, guidance and RIA following the 2009 consultation:

Consultation	Summary of changes to consultation drafts
Automatic listing	<ul style="list-style-type: none"> • Equivalent offences from the Channel Islands and Isle of Man included. • Individuals charged on indictment for the automatic listing offences and acquitted on the grounds of insanity or found unfit to stand trial included.
Automatic consideration for listing	<ul style="list-style-type: none"> • An additional offence which leads to inclusion on the sex offenders register added.
Contractors and disclosure	<ul style="list-style-type: none"> • Provision in respect of children and protected adults harmonised.
Fees	<ul style="list-style-type: none"> • The 14 day time limit for "upgrading" from a Scheme Record Update extended to 30 days. • The public benefit test removed from the definition of qualifying voluntary organisation. • Copies of Scheme Records requested by relevant employers for new PVG Scheme members provided to GTCS and SSSC free of charge. • <i>Registration fees have also been announced at £15 per counter signatory per annum subject to an annual minimum charge of £75.</i>
Protected adult	<ul style="list-style-type: none"> • No change.
Regulated work with children	<ul style="list-style-type: none"> • Some barring offences around host parents disapplied so that whether they should be PVG Scheme members or not is now a matter for local discretion. • Provision in respect of charity trustees narrowed and brought into line with that for regulated work with adults.
Regulated work with adults	<ul style="list-style-type: none"> • Provision in respect of charity trustees adjusted and brought into line with that for regulated work with children.
RIA	<ul style="list-style-type: none"> • RIA redrafted to address points made in the consultation responses and is now published in final form.
Guidance	<ul style="list-style-type: none"> • The guidance is in the process of being redrafted for issue in the summer. This report summarises some of the changes which are being made following comments made in consultation responses. Final guidance will be issued following passage of the SSIs listed above.

27. These are elaborated in more detail in Part I of this report. Other policy developments around referrals from the NHS tribunal, family health service practitioners and regulatory bodies are elaborated at Part II.

PART I: CONSULTATION ANALYSIS AND RESPONSE

Automatic Listing Order

Automatic listing offences and insanity

28. Some stakeholders suggested that where an individual is acquitted on the grounds of insanity, or found unfit to stand trial and is given a mental health disposal such as a compulsion order; compulsion order with restriction; or hospital direction for offences conviction for which would otherwise lead to automatic listing, then that the individual should also be automatically listed.
29. Scottish Government Response. The Scottish Government acknowledges that there was a gap in the draft Automatic Listing Order and considers that provision should be made for individuals charged on indictment for the automatic listing offences and acquitted on the grounds of insanity or found unfit to stand trial. The Scottish Government proposes to make similar provision to that which already exists at section 32(3) of the PVG Act in respect of automatic consideration for listing offences. Listing is about risk management, not criminal responsibility. There is no reason to treat automatic listing offences committed by a mentally disordered person any differently from those committed by others because the risk posed to vulnerable groups from that person, as demonstrated by the commission of the offence, is as unacceptable. Of course, a mental disorder may be treated, potentially reducing the risk an individual poses to vulnerable groups. In such circumstances, the individual may apply to be removed from the lists on the basis of a change of circumstances.

Foreign convictions corresponding to automatic listing offences

30. Some stakeholders suggested that the automatic listing criteria should be extended to include foreign convictions which were the direct equivalent of the Scottish convictions.
31. Scottish Government Response. The Scottish Government is not proposing to extend the automatic listing criteria to foreign convictions. For those individuals who are applying to become, or are already, PVG Scheme members, any foreign conviction information will be considered as it becomes available. The Scottish Government believes it is appropriate to give the individual the opportunity to make representations on foreign convictions as the policy and cultural context for the foreign conviction may not correlate easily with that for UK convictions.
32. In some cases (as determined by a cross-border protocol agreed between the Scottish and UK Governments), the Independent Safeguarding Authority will have responsibility for handling cases around foreign offences committed by a person with a Scottish connection. This might be, for example, where the individual lives in Scotland but works in England and is a member of the VBS only. Such cases would be

determined under the rules of the VBS, for which distinct automatic listing criteria exist and these do extend to foreign offences where the conduct which constitutes the offence would, if carried out in England and Wales or Northern Ireland, amount to an offence equivalent to an automatic listing conviction.

Channel Islands and Isle of Man convictions corresponding to automatic listing offences

33. Some respondents suggested extending the automatic listing criteria to include offences committed in the Channel Islands and Isle of Man.
34. Scottish Government Response. The Scottish Government has amended the Order to include specific Islands offences which correspond to the Scottish offences already included in the Order. In practice, the numbers of PVG Scheme members convicted of an automatic listing offence in the Channel Islands and Isle of Man is likely to be very low but the information will be available from the ongoing monitoring of the Police National Computer of PVG Scheme members. The automatic listing criteria for the VBS Scheme for England, Wales and Northern Ireland are also being extended in this way.

Automatic Consideration for Listing Order

Addition of an offence around importing obscene materials

35. There is an offence under section 170 of the Customs and Excise Management Act 1979 (c.2) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs and Consolidations Act 1876 (c.36) (indecent or obscene articles), if the prohibited goods included indecent photographs of persons under 16. This offence is included in Schedule 3 (Sexual Offences for the Purposes of Part 2) of the Sexual Offences Act 2003. Consequently, an individual convicted of this offence will be made subject to the notification requirements of the sex offenders register. This is the only offence contained in Schedule 3 of the Sexual Offences Act 2003 which is not included in Schedule 1 to the PVG Act as amended by our proposed modifications.
36. Scottish Government Response. The Scottish Government has adjusted the Order to include conviction for such an offence so that it leads to automatic consideration for listing.

Automatic listing offences and insanity – summary procedure

37. Three of the automatic listing offences can be prosecuted either on indictment or under summary procedure. Where an individual is prosecuted for an automatic listing offence under summary procedure and is acquitted on the grounds of insanity or deemed unfit to stand trial, the individual will be automatically considered for listing on the children's list.

This is in line with the treatment of automatic listing *convictions* under summary procedure. (See also paragraphs 28 and 29 above.)

Contractors and Disclosure Regulations

Transportation of protected adults to educational establishments

38. The contractors and disclosure regulations make provision for access to disclosures for health bodies where the transportation of either children or protected adults is contracted out to a third party. However, the regulations only make provision for access to disclosures for educational establishments and councils where the transportation of children is contracted out to a third party. It was suggested by one respondent that this ought to be extended to protected adults too, remembering that 16 and 17 year-olds can be both children and protected adults and some protected adults over 18 years old will be transported to such establishments. The effect of this is likely to be modest in practice, but has the significant advantage of simplifying the regulations (as the same provision would apply to both children and protected adults).
39. Scottish Government Response. The Scottish Government has adjusted the Regulations in line with the respondent's suggestion so that provision in respect of regulated work with children and adults is the same.

Fees regulations

The level of fees

40. There was general concern about the level of fees, especially in the context of a recession, but no significant demand for the balance between the £59 higher tier fee and £18 lower tier fee to be re-examined. Nor were any other realistic options presented by respondents. However, some respondents suggested that the four-year window for retrospective checking be extended to reduce the implementation costs over this difficult financial period.
41. Scottish Government Response. The Scottish Government will give consideration to extending the period of retrospective checking in order to assist organisations in spreading the costs of joining the scheme. A balance needs to be struck between the financial interests of organisations and the protection of vulnerable groups. This will be informed by ongoing discussions between Disclosure Scotland and its registered bodies and picked up in the consultation on retrospective checking as part of finalising the SSI which will be required to enforce it. This SSI will not be laid before 2011.

Future fee increases

42. Some respondents cited the increase in fees from £13.60 in 2002 to £20 in 2006, £23 in 2009 to be followed by £59 for the PVG Scheme in 2010 and expressed concern that the fee would rise higher and higher.
43. Scottish Government Response. The Scottish Government has noted the comments on fees and will keep these carefully under review as the PVG Scheme settles. As has been the case since Disclosure Scotland began operating in 2002, there will continue to be a three yearly review of the impact of inflation and other cost changes on Disclosure Scotland. Any further change to fees, whether an increase or decrease, would require approval by the Scottish Parliament.

The impact of the £59 fee for students and colleges

44. Responses from colleges indicated that they typically pay the enhanced disclosure fee of £23 for students sent on placements which require them to work with children or adults at risk. The change in fee from £23 to £59 would have a significant impact on college budgets. It was noted that, in many cases, the students were not from wealthy backgrounds themselves and were training for work which was not particularly well paid. Therefore, it was not an attractive option to pass this charge onto the students. Scotland's Colleges estimated an additional £3.5 million per annum cost to colleges if they continued their current policy of meeting the disclosure fees for students.
45. Scottish Government Response. The Scottish Government acknowledges this is an issue for colleges and estimates, from Disclosure Scotland statistics, that the cost impact is in the range of £1-2 million. Disclosure Scotland application statistics show that 50-60% of disclosure requests made by colleges are in the four months of July to October, with the peak in September. December to March are quieter months and this coincides with the period when the PVG Scheme is likely to commence. This means the financial impact of the PVG Scheme will not be felt in earnest until financial year 2011/12, as colleges prepare for the 2011/12 academic year. The Scottish Government is not changing the Fees Regulations for go-live but would like to consider the matter further with the Scottish Funding Council and Scottish colleges.

Annual subscription for registered bodies: fee levels

46. Organisations expressed concern that the rise in the membership fees will be mirrored by a similar rise in the registration fees and sought clarity over what those fees would be.
47. Scottish Government Response. The Scottish Government is proposing to replace the existing charges with an annual registration charge of £15 per counter signatory subject to a minimum annual charge of £75. Current registration charges are a one-off charge of £150 plus £10 per counter

signatory. The purpose of introducing a recurring registration fee is to place a duty on organisations on an annual basis to confirm the registration of all of their counter signatories, which will allow Disclosure Scotland to maintain accurate records and so reduce the possibility of fraudulent disclosure requests from individuals who are no longer employed in that capacity. Applying a small charge to the re-registration will provide an incentive to organisations to remove inactive counter-signatories while the overall cost of re-registrations should, for most organisations, be small (89% of organisations currently registered with Disclosure Scotland have four or less counter-signatories). Introduction of the annual subscription is subject to provisions in the Criminal Justice and Licensing (Scotland) Bill currently before Parliament and secondary legislation which will follow that. They are unlikely to be implemented until after the PVG Scheme goes live.

Eligibility for free checks

48. Some respondents argued that all volunteers should be entitled to free checks or made a special case for their particular area. There was also a request that the cost of including all volunteers be included in the RIA.
49. Scottish Government Response. The Scottish Government is not proposing to extend free checks to all volunteers. The Scottish Government estimates that the cost of doing so would be just over £1 million per annum and more during the period of retrospective checking. More background to this estimate is provided at paragraph 53 of the RIA.
50. The Scottish Government is continuing the policy in the PVG Scheme, which has been operating since Disclosure Scotland began issuing disclosures in 2002, of providing free checks to volunteers working in the voluntary sector in order to avoid placing a financial burden on voluntary organisations, especially smaller organisations operating on low budgets. The Scottish Government recognises the invaluable contribution to the public good made by volunteers working for voluntary organisations across Scotland and considers that the fee waiver is an essential element in facilitating these organisations to comply with their duties in respect of protecting vulnerable people in their care.
51. Other than in the voluntary sector, most volunteering which is relevant to the PVG Scheme is done for local authorities and Health Boards. These volunteers also make a very important contribution to Scottish public life. But, ultimately, these volunteers are assisting these bodies in delivering public services and, in this regard, the Scottish Government does not accept that the arrangements for charging fees for disclosure checks for these volunteers should be any different to the paid employees of these organisations.

Time limit to “upgrade” from a Scheme Record Update to a Scheme Record

52. Many responses suggested that the 14 day time period to “upgrade” from a Scheme Record Update to a Scheme Record was too short. They suggested that this period be extended to 30 days. The 14 day time period was prescribed in the draft Fees Regulations.
53. Scottish Government Response. The Scottish Government acknowledges this concern and has extended this time period to 30 days in the revised Fees Regulations.

Definition of “qualifying voluntary organisation”

54. Some responses from voluntary organisations objected to defining "voluntary organisation" in legislation on principle, although in many cases they had no specific objection to the definition proposed.
55. Some respondents sought clarity over whether the regulations preserved current entitlements. For example, Barnardo's raised the case of volunteers at their Blackford Brae School in Edinburgh:

“We note that the definition of what constitutes a qualifying voluntary organisation excludes schools. Barnardo's would like it to be clarified that this does not include schools run as voluntary organisation services (such as Barnardo's Blackford Brae School in Edinburgh).”

56. In this instance, volunteers working for Barnardo's are entitled to free checks, irrespective of whether they are doing regulated work in Blackford Brae School or elsewhere, because they are working for a qualifying voluntary organisation. However, volunteers directly recruited by Blackford Brae School, or any other school, are not entitled to free checks.
57. The greatest concern was around the public benefit test. The Scottish Council of Voluntary Organisations' (SCVO) definition of a voluntary organisation includes a public benefit test and this had informed the provision in the draft Fees Regulations but a number of respondents expressed concern as to how this might be interpreted. These concerns fell into two categories: some respondents concurred with the explanation given in the accompanying Executive Note but were concerned that the interpretation of the legislation might drift from the stated policy; and other respondents were concerned that the test was too stringent in some cases. SCVO commented as follows:

“... A further difficulty is in the interpretation of ‘for the benefit of the general public’. Even the charity regulator OSCR struggles with the notion of public benefit.”

58. WRVS were concerned about whether their services met the test:

“At first glance; regulation 6 apparently covers WRVS and many more such organisations besides. However, we are concerned that 6 (3) (c) could be interpreted to mean that services must benefit the general public as a whole as opposed to a group who form part of that general public, in WRVS’s case, for example; ‘older people’. We know that is not the intention of the regulations. We suggest that, for the avoidance of doubt, the wording needs to be changed, perhaps to: ‘for the benefit of members of the general public’. ...”

59. The policy intention was that WRVS services would meet the public benefit test and the Scottish Government believes that WRVS would have met the test in the draft Fees Regulations. It is not necessary for a service to benefit every single citizen for it to be regarded as providing a public benefit but it does require that the service extends beyond members of a club, for example. The Scottish Parent Teacher Council (SPTC) commented as follows:

“We note, with very real concern, that only volunteers for voluntary organisations will have their fees waived. It is not clear that the definition of a “qualifying voluntary organisation” would actually cover parents’ groups working in schools. It is not clear if a Parent Council would be deemed a “public body” and it is not clear whether either a Parent Council or a PTA would be seen as providing services etc. for the benefit of the general public when in general they are providing services etc. only for their members – for the Parent Council the members the Parent Forum and for the PTA the members are the parents and teachers at the specific school. ...”

60. The Scottish Government accepts that a Parent Council would fall outside the public benefit test in the draft Fees Regulations but that this was not the policy intention. The SPTC response illustrates that the public benefit test was drawn too narrowly to deliver the policy intention in full.
61. Scottish Government Response. The Scottish Government reiterates the fact that a definition of voluntary organisation is necessary (because of the way the PVG Act is framed) to deliver the policy of free checks for volunteers working for voluntary organisations.
62. The Scottish Government has come to the conclusion that a public benefit test is not necessary, and moreover unhelpful, for the purposes of these regulations. This is because the sort of “private benefit” organisations which SCVO’s definition is trying to exclude from its definition are unlikely to involve regulated work, not least because the 2007 Act definition of work excludes work done in the course of family relationships or personal relationships for no commercial consideration. Therefore, the public benefit test has been removed from the revised Fees Regulations. One effect of this is that Parent Councils fall within the definition of qualifying voluntary organisation. It also means that organisations like WRVS, who fell within scope before, do not need to worry about this criterion.

Protected Adult Regulations

63. There were no adverse comments in respect of the health services aspect of the definition of protected adult. The vast majority also considered that the identification of a protected adult will be easier in practice as a result of the “welfare service” definition rather than basing this on an adult’s individual characteristics, which can be viewed as stigmatising. However, there were requests for further explanation of some of the terms used in the regulations, which will be clarified in guidance. The Scottish Government has followed up various concerns, for example, in respect of church elders undertaking regulated work. The Scottish Government is content that the regulations deliver the policy and that many of the concerns expressed in consultation were based on misunderstandings about the way the PVG Scheme is intended to operate. The misunderstanding was reinforced by an error at paragraph 132 in the draft guidance.
64. Scottish Government Response. The Scottish Government proposes that no change is made to these regulations (other than correcting a minor publishing omission at the end of the regulations). The guidance will be corrected.

Regulated Work with Children Order

Host parents

65. Under current legislation, access to disclosure checks is governed by whether or not a position (in this case host parent) is a child care position as defined in the Protection of Children (Scotland) Act 2003 (POCSA). As there is no statutory definition of “host parents” in POCSA, this depends on the specific arrangements made. It is the responsibility of the relevant organisation to apply the law to the particular circumstances of their activity.
66. The child care positions specified in POCSA which would most commonly apply to host parenting would be those whose normal duties involve caring for, supervising or being in sole charge of children. Children being hosted by other parents who are not friends of the family are likely to be cared for / supervised / under the sole charge of the host parents for the times of the visit. Generally, normal duties can be considered as something the individual might be expected to do as part of their post on an ongoing basis, for example appearing in a job description or, in the case of host parents, set out in the arrangements made between the parents and the organisers.
67. At the present time, there is a variation in approach by organisations across Scotland on the checking of host parents, which is justified to the extent that it is a result of different circumstances of each case. Although the overwhelming majority of host parents pose no threat, there have been cases where the disclosure process has identified previous sexual

offences committed by prospective hosts who have, as a result, been removed from the hosting process.

68. Like POCSA, the 2007 Act does not make explicit provision for host parents. The 2009 consultation proposed to include explicit provision to bring host parenting into the scope of regulated work with children. The consultation sought views from stakeholders on this provision.
69. A range of views were presented by respondents, ranging from the provision not going far enough to a strong preference for no such provision to be made at all. Where respondents were broadly supportive, they also sought disclosure checks for other adults in the same household. Some respondents also highlighted a defect in the drafting of provision in the draft Order, which would have had adverse consequences for children staying with other family members.
70. Scottish Government Response. The Scottish Government wants hosting arrangements to be quick and efficient to organise, avoiding any inappropriate deterrent to potential host parents from disclosure requirements. However, there is also a need to ensure the protection of children in situations where they are potentially quite vulnerable. The Scottish Government wants to ensure the legislation strikes the right balance between proportionate and still robust protection.
71. The Scottish Government has given careful consideration to all the options in respect of host parents, recognizing that there is no consensus on this issue. The Scottish Government has amended the provision in the Order to correct the drafting defect. Furthermore, provision has been made to disapply the offences at section 35 and 36 of the PVG Act in respect of host parents. This leaves it to the discretion of organisations to determine for themselves whether they want to require PVG Scheme membership and disclosures for host parents. They can make this decision based on local circumstances and their view on the balance between flexibility and risk. The Scottish Government proposes to allow for enhanced disclosure for individuals aged 16 or over in the same household. Again, these will effectively be discretionary because there will be no offences around appointing a barred person to positions covered by enhanced disclosure (i.e. outside regulated work).

Charity trustees (children's and adults' workforces)

72. The 2007 Act included provision for trustees of certain charities to be doing regulated work with children and / or adults. The provision in respect of the both workforces was broadly similar. However, there was sufficient and ongoing dissatisfaction in a number of quarters with the provision in the 2007 Act. The 2009 consultation proposed revised provision which narrowed the scope, in line with the Scottish Government's general policy objective of keeping the PVG Scheme focussed and proportionate. However, one consequence of this attempt to achieve greater focus was a divergence in approach between the

workforces. The children's charity definition was narrowed to those whose main purpose was to provide benefits for children. The trustees doing regulated work with adults were narrowed further to those who had responsibility for the appointment, management or dismissal of individuals who themselves were carrying out regulated work with adults for the charity.

73. Some respondents were content with both the children's charity and adults' charity provision. But there were three strong criticisms which were reiterated in many responses: firstly, that the children's and adults' charity provisions should be brought into line; secondly, that the distinction between the roles of different trustees within the adults' charity definition could not be separated out given that trustees have legal joint and several liability for decisions, as advised by the Office of the Scottish Charity Regulator; and, thirdly, that organisations other than charities should be treated equitably.
74. Scottish Government Response. The Scottish Government has revised the provision for charity trustees in respect of both regulated work with children and regulated work with adults. The Scottish Government does not consider that the removal of charity trustee provisions in their entirety would be right nor was this course of action backed up by the consultation responses.
75. The first two criticisms have been addressed. Firstly, the provision for both workforces now mirror each other. For both workforces, the provision captures trustees of charities whose main purpose is to provide benefits for children / protected adults *and* where the principal means of delivery of those benefits is through regulated work with children / protected adults. This is narrower than the provision subject to consultation for either workforce. The definition excludes those charities whose benefit to children or protected adults is indirect, such as financial, legal or medical research. Secondly, the distinction made between the roles of different trustees in respect of the adults' workforce has been removed.
76. The Scottish Government has not amended the provision to address the third criticism, namely the equitable treatment of other organisations. Whilst the Scottish Government has some sympathy with the arguments made for treating equivalent positions in other organisations in a similar manner, this is a difficult policy to deliver in practice without greatly expanding the scope of regulated work. The 2007 Act already makes provision to capture individuals whose normal duties include the day-to-day supervision or management of an individual doing regulated work by carrying out the activities, or working in the establishments, listed in schedules 2 and 3. The main purpose of including charity trustees within the scope of regulated work is because of the trust and access to vulnerable groups *within and beyond the work of the charity itself* which that position confers or would be assumed to confer by a lay person. This separates out charities from businesses and other organisations and justifies the difference of approach.

77. The Scottish Government notes that provision in respect of charity trustees does mean that different groups within the same organisational umbrella will be treated differently, depending on whether or not they are constituted as charities. However, the Scottish Government considers that this inconsistency is a matter best addressed by organisations operating a coherent policy across the board in respect of charitable status.

Regulated Work with Adults Order

Provision of care home services / working in establishments

78. The proposals were universally welcomed, supporting the more proportionate approach proposed.

Charity trustees (children's and adults' workforces)

79. See paragraphs 72 to 77 above.

Inspectorates

80. A small number of consultees raised the issue of making specific provision for positions in inspection bodies, such as the Mental Welfare Commission, Her Majesty's Inspectorate of Education (HMIE) and the Social Work Inspection Agency (SWIA). Although raised in the context of regulated work with adults, it applies as much to regulated work with children. It also raises the question as to whether those on Adult Protection Committees and Child Protection Committees should be explicitly brought into the scope of the PVG Scheme.
81. Scottish Government Response. We do not consider that any specific new provision is required. The PVG Act already makes provision for inspection of care services on behalf of the Care Commission to come within the scope of regulated work with adults. HMIE inspectors, though not the named explicitly, would be doing regulated work with children by virtue of working in educational establishments. SWIA inspectors have to be registered with the Scottish Social Services Council, who have the power to require PVG Scheme membership. With regard to those on Adult Protection Committees and Child Protection Committees, these people will usually be caught within the PVG Scheme by other dimensions of their work.

Guidance

82. A number of consultation responses indicated some misunderstandings about the way the PVG Scheme would operate in practice. Furthermore, many respondents made specific comments about the guidance and how it could be improved from their perspective. Comments divide into the following categories: structural - about how the guidance should be put

together; procedural - looking for more information about PVG processes; and terminology – looking for clearer definitions.

Structural

83. Respondents commented that the guidance:
- **was too long and repetitive** and that there should be short, focussed publications for specific scenarios which drew out the key messages e.g., a simple list of do's and don'ts for scheme members - shorter guides could be distributed by umbrella bodies;
 - should be **split into separate guidance** for e.g. unilateral applications, personal employers, regulators etc;
 - would benefit from **more case studies**, e.g. case study on those with access to information about protected adults but who don't do regulated work and therefore should not be scheme members;
 - should **focus case studies on more borderline real-life issues** rather than 'easy' examples and these should reinforce the proportionate approach to PVG Scheme membership which is Scottish Government policy;
 - should include **more, but shorter flowcharts**;
 - needed to be **complemented by other support measures**, such as training and telephone helpline; and
 - could take the Scottish Social Services Council Codes of Practice and the guidance on the Disability Discrimination Act as **useful models**.

Procedural

84. Respondents queried the **status of the guidance** and highlighted problems with advising employers to take appropriate legal advice on matters covered in the guidance.
85. In terms of matters relating to **listing and barring**, respondents commented that the guidance should explain:
- how individuals who are doing regulated work but become listed are removed from all their regulated work;
 - the criteria for making a referral given the two types of regulated work, e.g. where an individual harms a protected adult but in the context of regulated work with children;
 - risk assessments when notified an individual is under consideration for listing, especially for smaller organisations;
 - the appeals process against a listing decision, in the context of ECHR;
 - how the PVG Scheme works for employment businesses and temporary workers, in particular whether they show disclosures to their clients; and
 - what an organisation should do if they receive sensitive information about an ex-employee.
86. In terms of matters relating to **PVG Scheme membership and disclosure**, respondents commented that the guidance should explain:

- the expectation that all people doing regulated work in Scotland would be expected to be in the PVG Scheme (after the period of retrospective checking had concluded).
 - how individuals notify termination of employment to Disclosure Scotland, when to do so (especially in the context of likely re-employment such as temporary lecturers being reemployed the next academic year), and the consequences of not making a notification, emphasising that it is not an offence;
 - under what circumstances can individual apply to be a PVG Scheme member in respect of both workforces at the same time, especially if the *initial* posting does not involve work with one or other workforce;
 - the role of intermediary bodies, e.g. in assisting with updates about an individual's employment and personal information;
 - the limitations of the contractors and disclosure provisions to transport services only;
 - how employers should verify identity documentation;
 - the position for people who do voluntary work and paid work for the same organisation; and
 - what local authorities can and cannot require as part of funding criteria.
87. In terms of **cross-border matters**, respondents commented that the guidance should:
- provide greater clarity around when to join the PVG Scheme for Scotland or the Vetting and Barring Scheme (VBS) for England, Wales and Northern Ireland, especially in the context of temporary work outside of Scotland;
 - raise cross border issues and scenarios but must also provide answers to those issues; and
 - discuss issues around migrant workers and applicants from overseas.
88. In terms of the **wider context**, respondents commented that the guidance:
- should be clearer on the role of the Care Commission and its successor bodies, especially on raising issues relevant to a referral;
 - needed to explain the relationship to the notifiable occupational scheme;
 - should highlight the interaction between the PVG Scheme, Adult Support and Protection (Scotland) Act 2007, Mental Health (Care and Treatment) Act (Scotland) 2003, Adults with Incapacity (Scotland) Act 2000; and
 - should provide more information on safe recruitment practices more generally, including the wider child protection and risk assessment context.

Terminology

89. The following issues around terminology were identified:
- the **labelling of each type of disclosure**, in particular the short scheme record disclosure also referred to as Scheme Record Update;
 - interpreting **family and personal relationships** in the context of faith communities;

- wording around “compulsory” scheme membership;
 - the meaning of “**inappropriate medical treatment**” and whether it included cases of professional incompetence
 - clarity over the scope of “**welfare services**”;
 - the inclusion of extensive definitions of a number of terms including, “**host parents**”, “**unsupervised**”, “**supervised**”, “**normal duties**”, “**incidental**”, “**charity trustees**”, “**occasional**” and “**sole charge**”; and
 - the removal of terms such as “frequent” and “sustained” which are not in the PVG Act.
90. Scottish Government Response. Both the misunderstandings and suggestions for improvements including new case studies are being considered as part of preparing final guidance for issue in the summer. There will not be a further opportunity for stakeholders to review the guidance prior to its issue in final form. The final guidance cannot be issued until consideration of the summer batch of SSIs has concluded at the Scottish Parliament and we can therefore be certain about the legislative framework.
91. The guidance will be made available on Disclosure Scotland's website and will direct the enquirer to the relevant parts. One reason why many respondents found the guidance too long and repetitive was because they were looking at, in effect, the entire contents of what would be placed on the website. Normally, a user would not need to review the entire document. The Scottish Government has noted the need for a shorter document to be available in hard copy.
92. The Scottish Government will continue to review the FAQs to ensure they are as helpful as possible for stakeholders, and take account of the misunderstandings, in updating these on an ongoing basis.

Regulatory Impact Assessment

93. A final RIA, based on the consultation draft and revised in the light of consultation responses has been published at the same time as this consultation report. In light of points made in the consultation responses, the following changes have been made:
- (a.) information about the secondary legislation has been comprehensively updated, paragraphs 30 to 74;
 - (b.) an estimate has been included as to the cost of providing free checks for all volunteers, paragraph 53;
 - (c.) information about the fees for registration has been included, paragraphs 57 to 59;
 - (d.) the Scottish Government is considering whether to extend the period for retrospective checking beyond three years, paragraph 74;
 - (e.) an explanation has been included of the estimate of £5 as the administrative costs for a Scheme Record Update, paragraph 84;
 - (f.) estimates of the cost have been provided for the scenario where organisations do not use Scheme Record Updates, paragraph 94;

- (g.) information has been included about the setup costs for organisations, paragraphs 97 and 98;
 - (h.) further information has been included in respect of the small firms impact test, paragraph 107;
 - (i.) further information has been included in respect of the test run of business forms, paragraphs 119 and 120;
 - (j.) the administrative enforcement measures have been elaborated, paragraphs 131 to 135; and
 - (k.) other modest changes have been made to update the material.
94. A number of other points made in the context of the RIA are more appropriately addressed through changes to the guidance, such as those clarifying some of the procedural aspects of PVG Scheme operation. For example, a number of respondents asked about when an application can be made to join the PVG Scheme in respect of both workforces simultaneously and when separate applications would be required, as the latter would be more expensive.

Other matters raised

Right to an oral hearing

95. UNISON, RCN and ATL Scotland suggested that an individual placed under consideration for listing should have the right to make representation in person prior to the final determination of their case.
96. Scottish Government Response. The Scottish Government does not agree that it is necessary to implement oral hearings. Firstly, under current proposals, Disclosure Scotland will gather all of the required information prior to making any decision. It will provide the individual with the opportunity to make representations on every piece of that information. If the individual is present at the hearing and unable to furnish any new facts or mitigating circumstances, then their presence is of no benefit. If they are able to furnish new facts or mitigating circumstances, then the hearing is likely to need to adjourn (maybe for days or weeks) for the investigation of those facts or circumstances. Secondly, the presence of the individual, in effect mounting their defence, makes the panel into both "judge" and "prosecutor" since there is no other person to take on the "prosecution" function. A listing determination is different to an employment or other tribunal where an individual has a case against another person/organisation, and the tribunal determines the case. A listing determination is a risk assessment by the state with no other party involved. Finally, there would be significant financial implications which would need to be met by the Scottish Government or through higher fees.
97. The Scottish Government obviously accepts the importance of making robust and fair listing decisions, taking full account of the effect of a listing on that individual's livelihood. It should be noted that there are tight criteria for making a competent organisational referral: the individual has to have harmed a child or protected adult and the harm has to be so serious that

the organisation has *permanently* removed the individual from doing regulated work. A referral based on “tittle-tattle” or even an individual suspended from their work pending an investigation by the employer is not competent and would not be considered.

98. Disclosure Scotland will apply a structured approach to decisions about unsuitability to ensure that decisions are fair, appropriate and consistent. This approach is being developed in consultation with a range of professionals and organisations who have knowledge and experience of risk assessment and the protection of vulnerable groups. Disclosure Scotland will also have powers to request advice from experts in individual cases to help them make a decision.

Health regulatory body access to Scheme Records

99. The Health Professions Council, General Medical Council and General Dental Council requested access to Scheme Records and, in particular, to receive duplicate copies of Scheme Records, in their responses to the 2009 consultation. They have a statutory basis for considering fitness to practise on the basis that an individual is barred from regulated work in a change made under the Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009 (SI 2009/1182).
100. Scottish Government Response. The Scottish Government proposes to seek provision for the healthcare profession regulators to have access to Scheme Records and access to duplicates at the earliest opportunity. The Scottish Government considers that it would help to close a gap in protection around private, self-employed practitioners if the health regulatory bodies had access to disclosure information. To the extent that making the necessary provision is reserved, the Scottish Government will work with the UK Government to identify an appropriate legislative vehicle.

Working abroad

101. Stakeholders raised the issue of whether disclosures are, and will continue to be, available for working outside of Scotland. Of concern was that Scottish organisations did not want to recruit and "export" unsuitable people to do harm abroad.
102. Scottish Government Response. Current provision allows basic, standard and enhanced disclosures to be issued for work abroad, for example where a Scottish charity is recruiting an individual to teach children in Africa, an activity which would be within the scope of existing and future disclosure checks if it was carried out in Scotland. The Scottish Government proposes that PVG Scheme membership and disclosures should be available where Scottish organisations are recruiting individuals to do work abroad which would have been regulated work had it been done in Scotland. Disclosure Scotland is best placed to undertake disclosure checks for individuals being posted abroad, as any previous

criminal history will be recorded in Scotland and not their host country. The Scottish Government will consider, with the UK Government as necessary, what, if any, legislative action is required to deliver this policy.

PART II: OTHER POLICY DEVELOPMENTS

Referrals from the NHS Tribunal

103. The NHS Tribunal is established by the National Health Service Act 1978 and is the ultimate disciplinary body to which family health service (FHS) practitioners may be referred. Family health services include: medical practitioners; dentists; optometrists and ophthalmic medical practitioners; and community pharmacists. The NHS Tribunal investigates cases as to whether an individual (or in some cases bodies corporate) should be included or remain on the relevant FHS list of a Health Board where the individual (or body corporate) has committed fraud, would prejudice FHS efficiency or is otherwise unsuitable. Unsuitability includes harm to vulnerable groups. The NHS Tribunal can disqualify a person from working in the FHS anywhere in Scotland (“national disqualification”), either substantively or subject to conditions. The effect of a national disqualification for an individual is to terminate their regulated work for the FHS.
104. Giving the NHS Tribunal the power to make a referral under PVG closes a potential loophole whereby FHS practitioners with no employer (e.g. self-employed GPs) cannot otherwise be referred unless or until the relevant regulator makes a referral. In some cases, a considerable time can elapse between the incident(s) first being detected and the conclusion of regulatory body proceedings.
105. The Scottish Government proposes to give the NHS Tribunal the power to refer a case to the Scottish Ministers for consideration for listing on the same basis as the regulatory bodies.

Family health service practitioners

106. Family health service (FHS) practitioners include: medical practitioners; dentists; optometrists and ophthalmic medical practitioners; and community pharmacists. At present, Health Boards can ask individuals included or seeking to be included in certain FHS lists to have an enhanced disclosure check. The Health Board does not “employ” FHS practitioners. Medical practitioners provide NHS services under contractual and other arrangements and the other FHS practitioners have arrangements to provide services to NHS patients on behalf of Health Boards. Therefore, it is not clear that, without legislative action, Health Boards would have any authority to request a scheme record disclosure.
107. The Scottish Government intends to make regulations in the summer to *allow* Health Boards to ask an individual to be a PVG Scheme member as part of the process for inclusion on FHS lists. This is a necessary consequence of the move away from enhanced disclosure and towards PVG Scheme membership. The Scottish Government intends to amend various FHS Lists Regulations in the autumn to *require* list applicants to

provide PVG scheme disclosure records to Health Boards as part of the process for applying for inclusion on FHS lists.

Regulatory bodies

Regulatory body office staff

108. Currently, the SSSC receive enhanced disclosure for their office staff, the Care Commission are entitled to standard disclosure but GTCS only have access to basic disclosure. It is difficult to justify different treatment of each of the regulatory bodies.
109. The Scottish Government considers that standard disclosure is the most appropriate level of disclosure for these purposes. Standard disclosure is currently used by the NHS for non-clinical staff and volunteers in in-patient settings because they have regular contact with patients but are not directly responsible for their care. Standard disclosure is also appropriate for those with routine access to sensitive personal information, as in the case of regulatory bodies' office staff. PVG Scheme membership or enhanced disclosure are considered excessive for these purposes.

Regulatory body registrants

110. The General Teaching Council for Scotland, the Scottish Social Services Council and the Scottish Commission for the Regulation of Care have access to disclosure records under the PVG Act for the purposes of registering an individual under powers at section 73 of the PVG Act. For registration purposes, all three regulators may ask for an individual to be a PVG Scheme member and corresponding disclosure records in respect of both types of regulated work. However, the individual's employer is only entitled to ask for PVG scheme membership and disclosure records in respect of the type(s) of regulated work for which that individual has been employed to do.
111. Provision already exists in the Teaching Council (Scotland) Act 1965 prohibiting an individual included on the PVG children's list from being a registered teacher with the GTCS. The Scottish Social Services Council have requested provision which would lead to the automatic removal of an individual from their register on being barred from either workforce. The Scottish Government is considering this request but notes that it strikes at the heart of the balance between protecting vulnerable groups on the one hand and not unnecessarily restricting an individual's livelihood on the other.

Regulatory body disciplinary panels and councils

112. The disciplinary panels and councils of regulatory bodies are usually comprised of registrants and lay members. Registrant members may be required to be PVG Scheme members by virtue of their registration. But special provision is required for lay members.

113. The Scottish Government considers that individuals on disciplinary committees or councils for the General Teaching Council for Scotland, the Scottish Social Services Council and the eight healthcare profession regulatory bodies in the PVG Act should be eligible for PVG Scheme membership. Furthermore, the Scottish Government considers that an individual who is barred from either type of regulated work should be prohibited from being a member of a Council or a disciplinary committee and liaising with the UK Government to take forward this policy in respect of the eight healthcare profession regulatory bodies.
114. The Scottish Government proposes to make the necessary provision for the GTCS and the SSSC using powers in the PVG Act and, in the case of GTCS, in conjunction with the changes to the Council's constitution being made through an order under the Public Services Reform (Scotland) Bill which will be brought forward later this year.

LIST OF ORGANISATIONS WHO RESPONDED

ANNEX A

Aberlour	East Fife Women's Aid	Scottish Council of Jewish Communities
Aberdeenshire Council	ECAS (Edinburgh)	Scottish Council of the Scout Association
Adam Smith College	Educational Institute of Scotland	Scottish Council of Voluntary Organisations
Adult Protection Coordinator in Shetland	ELCAP	Scottish Council on Deafness
Allied Health Professions Federation Scotland	ENABLE Scotland	Scottish Episcopal Church
Angus College	Falkirk Council	Scottish Federation of Housing Associations
Anniesland College	Federation of City Farms and Community Gardens	Scottish Out of School Care Network
Apex Scotland	Free Church of Scotland	Scottish Parent Teacher Council
Argyll and Bute Council	General Dental Council	Scottish Preschool Play Association
ARK Housing Association Ltd	General Medical Council	Scottish Social Services Council
Association of Chief Police Officers in Scotland	Girl Guiding Scotland	Scottish Sub Aqua Club
Association of Directors of Social Work (ADSW)	Health Professions Council	Scripture Union Scotland
Association of Teachers and Lecturers Scotland	Inverness College	Secretary of the Scottish Churches Committee
Ayr College	James Watt College	Sense Scotland
Balfour + Manson LLP	KEY Housing Association	South Ayrshire Council
Ballater and Crathie Community Council	Killermont Bowling Club	South Lanarkshire College
Barnardo's	Kilmarnock College	South Lanarkshire Council
BMA Scotland	Lothian Assoc. of Youth Clubs	Stirling Council
Borders College	NAAPS UK	Turning Point Scotland
British Psychological Society	National Day Nurseries Association	UNISON
Cardonald College	NHS Fife	United Kingdom Homecare Association Limited
Care Commission	NHS Grampian	Universities Scotland
CCI	NHS Scotland	University and College Union
Central Council of Church Bellringers	North Lanarkshire Council	Voluntary Action Shetland
Chartered Society of Physiotherapy	Office of the Scottish Charity Regulator	Voluntary Arts Scotland
Chief Fire Officers Association (Scotland)	Perth and Kinross Council	Voluntary Sector Social Services Workforce Unit
Children 1 st	Quarriers	Volunteer Development Scotland
Church of Scotland	Recruitment and Employment Confederation	VSA
Churches Forum for Safeguarding	Redwoods Caring Foundation	West Dunbartonshire Council
Church's Child Protection Advisory Service	Royal College of Nursing	West Lothian College
Community Care Providers Scotland	Royal College of Psychiatrists	West Lothian Council
Cornerstone	SAY Women	WRVS
Dundee City Council	Scotlands Colleges	Youth Scotland
Dundee College	Scottish Ambulance Service	Youthlink Scotland
East and Midlothian Adult Protection Committee	Scottish Ass'n for Mental Health	