

**PROTECTION OF VULNERABLE GROUPS  
(SCOTLAND) ACT 2007:  
SECONDARY LEGISLATION**

**PARTIAL  
REGULATORY IMPACT ASSESSMENT  
FOR CONSULTATION**

**THE SCOTTISH GOVERNMENT**

**15 November 2007**

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## TITLE OF PROPOSAL

1. This partial Regulatory Impact Assessment ("RIA") relates to the Scottish Statutory Instruments to be made under powers in the Protection of Vulnerable Groups (Scotland) Act 2007. The most significant of these are those which relate to:
  - the scope of regulated work with adults;
  - contractors' access to disclosure records;
  - offences which lead to automatic listing or automatic consideration for listing;
  - the arrangements for retrospective checking; and
  - fees for disclosures and scheme membership.
2. These are considered in some detail in the options section of this RIA. Other powers are summarised briefly and cross-referred to the consultation paper on proposals for secondary legislation ("the consultation paper").

## PURPOSE AND INTENDED EFFECT

3. The primary purpose of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the Act") is to establish a vetting and barring scheme and this RIA is concerned with the secondary legislation proposed to be made under powers in that Act. This is a partial RIA for consultation which coincides with the consultation on proposals for secondary legislation. This RIA is designed to stand alone but indicates where further information about proposals may be found in the consultation paper.

## Sources of further information

4. The Protection of Vulnerable Groups (Scotland) Bill was introduced to the Scottish Parliament on 25 September together with its accompanying documents: Policy Memorandum, Explanatory Notes and Financial Memorandum (one document) and Delegated Powers Memorandum. The Bill was amended during its parliamentary passage so some explanation in the accompanying documents is no longer accurate. The Bill and accompanying documents are available on the Scottish Parliament website at:

[www.scottish.parliament.uk/business/bills/73-ProtVulGro/index.htm](http://www.scottish.parliament.uk/business/bills/73-ProtVulGro/index.htm)

5. The Act can be found on the Office for Public Sector Information website at:

[www.opsi.gov.uk/legislation/scotland/s-acts2007a.htm](http://www.opsi.gov.uk/legislation/scotland/s-acts2007a.htm)

6. Links to the consultation paper and other related documents can be found on the Scottish Government website at:

[www.scotland.gov.uk/pvglegislation](http://www.scotland.gov.uk/pvglegislation)

## Objectives

7. The Scottish Government has proposed a new vetting and barring scheme with the following aims:

- to ensure that people who *are unsuitable* do not gain access to children or protected adults<sup>1</sup> through work;
  - to ensure that people who *become unsuitable* are detected early and prevented from continuing to work, or seeking to work, with children or protected adults; and
  - so far as practicable, ensure the underlying processes minimise bureaucracy.
8. In support of these aims, the Scottish Government has the following objectives:
- those who have a history of behaviour that indicates they are unsuitable to work with children or protected adults are prevented from doing so and those who become unsuitable are quickly removed from such work;
  - employers have an improved tool to assess suitability and make safe and informed recruitment and retention decisions;
  - the scheme is fair, consistent and easy for people to understand and use;
  - the underlying processes are as streamlined, responsive and efficient as possible; and
  - the scheme dovetails with arrangements and the rest of the UK to ensure that cross-border loopholes do not develop which could be exploited by those who would harm children and protected adults.

## Background

9. The vetting and barring scheme established by the Act was developed in response to recommendation 19 of the Bichard Inquiry Report published in June 2004 by Sir Michael Bichard following his inquiry into the murder of two schoolgirls in Soham in 2002. Recommendation 19 states that *new arrangements should be introduced requiring those who work with children or vulnerable adults to be registered*. Following a feasibility study by the Home Office, the UK Government proposed an agency operating a scheme by which individuals would, where appropriate, be barred from working with children or vulnerable adults. Sir Michael Bichard was satisfied that this proposal met with the material requirements of his recommendation and endorsed the approach.
10. Sir Michael Bichard's report was directed at England and Wales but the significance of the underlying issues prompted the then Scottish Ministers to agree that the recommendations should also be considered in a Scottish context and acted upon where appropriate. In response to the report, and to policy developments in England and Wales, three options were considered:
- (1) do nothing;
  - (2) a single, unified UK-wide vetting and barring scheme; or
  - (3) a Scottish vetting and barring scheme, dovetailing with the scheme for England, Wales and Northern Ireland.
11. This latter option was pursued and led to the Act for the reasons set out at Annex A.
12. A summary of the operation of the vetting and barring scheme can be found in chapter 1 of the consultation paper (or see the Policy Memorandum which accompanied the Bill for a

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<sup>1</sup> Protected adult is the term used in the Act, and consequently this RIA, for adults protected by the scheme by virtue of receiving a care service. For the purposes of enhanced disclosure, they are currently known as "adults at risk".

fuller exposition of the details of the scheme).

13. The vetting and barring scheme offers the following improvements on the current system:
- **effective barring** - Disclosure Scotland will not just collect vetting information, it will also be assessed so that individuals who are considered unsuitable on the basis of vetting information are prevented from entering the workforce;
  - **the adults' list** - a new list of individuals who are unsuitable to work with protected adults;
  - **continuous vetting** - continuing to collect vetting information about an individual after the initial disclosure check has been made so that new information indicating that they might be unsuitable can be acted upon;
  - **streamlined disclosures** - recognising that some people may have several roles (for example, a supply teacher in several different locations and a scout leader in their spare time) and that people move and change jobs over time;
  - **access to disclosure for personal employers** - they can check that the person they are seeking to employ is not unsuitable, e.g. a parent employing a sports coach for their child or someone buying a care service directly; and
  - **more vetting information** - more information for employers considering the suitability of an individual for their particular post.

#### **Rationale for government intervention**

14. The Bichard Inquiry Report identified a need to develop an improved system of vetting the workforce in order to ensure that those individuals who are or become unsuitable to work with children and protected adults are prevented from doing so. The Act and proposed secondary legislation aims to enhance and support, not replace, existing recruitment processes.
15. The main difficulties for organisations in vetting individuals for employment are access to vetting information itself and, in some cases, the assessment of that information. The nature of the information under consideration is primarily sensitive information that would not generally be available to employers without a disclosure process and, even where it was available, it would be costly to gather and interpret.
16. Without government intervention, it is likely that there would be widely varying practice across the workforce depending on the employer's assessment of the balance between the following competing tensions:
- keeping recruitment costs down, which points to minimising data collection;
  - minimising barriers to recruitment (applicants will be attracted to the least bureaucratic employer) which points to minimising data collection; and
  - minimising risks to clients (a moral good but also important to protect the employer's reputation and avoiding compensation to injured parties) which points to gathering as much relevant data as possible.
17. Government intervention through a vetting and barring scheme has two elements: firstly, legal requirements and sanctions for failing to comply (e.g. offences around employing a

barred individual) and, secondly, providing a straightforward mechanism for employers to meet these legal requirements and ensure compliance.

18. It is not proposed that the scheme is funded by general taxation or by employers but by fees charged to individuals for outputs (scheme membership and/or disclosure certificates). The exception is volunteers working for voluntary organisations where the Scottish Government will pay the fees. Employers may choose to pay the fees for their employees but this is a matter of choice for them. This builds on the existing operation of the enhanced disclosure system currently used by individuals working with vulnerable groups. There are a number of reasons for taking this approach:

- to reflect the principal beneficiaries of the system. The vulnerable groups are better protected. The employer gets information to assist them in recruitment and risk management much more fully, cheaply and easily than would be the case without government intervention. The individual has a means of confirming their criminal history and relevant information about them which facilitates the recruitment process (although in some cases the individual may not be appointed). Although the aggregate effect of the system as a whole is a widespread benefit to society, the benefits of any particular check are localised;
- to manage demand for disclosure, since a system which was free at the point of use could result in overuse (see also paragraph 62); and
- as a part of the deterrent for requesting disclosure when it is not appropriate (there are also offences to protect the system from abuse).

19. It is intended that the individual (as opposed to the other beneficiaries, the employer and vulnerable groups) will pay the fee but the scheme will allow flexibility: the only requirement will be that a fee is paid. In any event, nothing prevents the employer from reimbursing the individual or from adjusting remuneration accordingly. The subsidy for volunteers working for voluntary organisations recognises the wider public good derived from such activity and is in support of the Scottish Government policies towards encouraging volunteering.

20. In summary, the rationale for government intervention is that it:

- improves the protection for vulnerable groups through the changes set out at paragraph 13;
- gives controlled access to information relevant to recruitment decisions and continued employment which would otherwise be unavailable to employers;
- means that a single body can consistently interpret relevant information in relation to potentially unsuitable individuals on entry to the workforce and through continuous vetting thereafter;
- offers economies of scale and scope for greater automation;
- allows the burden of the process to be spread evenly across individuals in the affected workforce, ensuring that a set cost is incurred by each individual irrespective of the information held about them; and
- minimises the transaction costs of providing consistency across all UK jurisdictions with a similar vetting and barring scheme also being introduced in England, Wales and Northern Ireland as a result of Sir Michael Bichard's recommendations.

## CONSULTATION

### Within government

21. The following government agencies, departments and public bodies have been involved in the development of the vetting and barring scheme and will be included in the consultation on secondary legislation:
- Relevant Directorates of the Scottish Government;
  - Scottish regulatory bodies: Scottish Social Services Council (SSSC), Care Commission and General Teaching Council for Scotland;
  - UK-wide health regulatory bodies, e.g. the General Medical Council;
  - Mental Welfare Commission;
  - Office of the Public Guardian;
  - Disclosure Scotland;
  - Central Registered Body in Scotland (CRBS); and
  - Registrar of Independent Schools.

### Public Consultation

22. A public consultation on proposals for the Bill was undertaken between 8 February and 2 May 2006 in which the then Executive sought views from a wide range of organisations and individuals on all aspects of the proposed scheme. Details of the consultation process can be found in the Policy Memorandum at paragraphs 14 to 19 and by topic throughout the document. The consultation report was published on 18 August 2006 and is available on the Scottish Government website (see paragraph 6).
23. This partial RIA has been produced for public consultation, to coincide with the consultation on proposals for secondary legislation which runs from 1 November 2007 to 12 February 2008. Many aspects of the vetting and barring scheme with the greatest direct impact for stakeholders (e.g. fees for the new types of disclosure) will be set out in secondary legislation. The powers to make orders and regulations are summarised in Annex A1 of the consultation paper.

## OPTIONS (FOR SECONDARY LEGISLATION)

24. This section summarises the various options for the development of the detail of the scheme through secondary legislation. It follows the ordering of the consultation paper (and chapter numbers refer to the consultation paper). In all cases, further information may be found in the corresponding chapter of the consultation paper.

### **Chapter 2. Scope of regulated work and access to disclosures**

#### 2.2 Regulated work with children

25. There are no proposals to significantly change the scope of regulated work with children. However, the consultation paper sets out proposals for developing detailed guidance to help individuals and organisations be as clear as possible about the scope of such work.

### 2.3 Regulated work with adults

26. The scope of regulated work with adults affects the number of workers in the adult care workforce who should be scheme members. The scope is affected by both the positions and activities which constitute regulated work (set out at schedule 3 of the Act) and the scope of the definition of protected adult, i.e. the vulnerable individuals requiring protection. It has always been the intention to use the powers in the Act to extend the definition of protected adult and this was signalled during the parliamentary passage of the Bill. The consultation paper sets out options for expanding the scope of the definition of protected adult in the Act to cover receipt of health care and welfare services.
27. The consultation paper proposes extending the definition of protected adult to encompass any individual receiving *any* NHS service or *any* private or independent healthcare service. The consultation paper seeks views on this approach and asks whether there are services which should not be so included.
28. The consultation paper sets out three options for defining welfare services, the receipt of which makes an individual a protected adult. The first option is to define welfare services on the basis of the nature of the services provided; the second option is to set out an explicit list of welfare services; and the third option is to define welfare services as types of service provided by virtue of personal characteristics of the individual receiving services (e.g. disability or mental disorder).

### 2.4 Contractors and disclosure

29. Currently, a successful application for an enhanced disclosure leads to a copy of the disclosure being sent to the individual and the registered body who countersigned the application. This may be an employer, voluntary sector organisation or regulatory body. Nobody else has the right to ask to see the disclosure certificate, in order to protect the individual's privacy and promote the rehabilitation of offenders. The consultation paper seeks to identify what, if any, circumstances exist in which a third party should be able to request to see disclosures obtained by a contractor to that party. The consultation paper sets out some examples of circumstances where the contractor has obtained disclosures in respect of employees doing regulated work and it might be appropriate for the third party to ask for access, such as where the contractor provides transport services for children or protected adults (e.g. school buses).

### 2.5 Changes to registration of registered bodies

30. Registered bodies are organisations (including voluntary sector organisations) registered with Disclosure Scotland to countersign applications for standard or enhanced disclosures now and who will countersign scheme record disclosures in future. It is not desirable to have a large number of registered bodies requiring very few disclosures each year. The Act allows a minimum number of disclosure applications in any 12 month period to be specified as a requirement of registration. The consultation paper seeks views on what this minimum number of disclosure applications should be.

## **Chapter 3. Referrals and listing**

### 3.2 Making referrals

31. A range of organisations have either a duty or a power to refer individuals for consideration for listing: organisational employers, employment agencies, employment businesses, regulatory bodies and courts. The consultation paper sets out the basic identity information and information about the incident(s) which it is proposed should be provided as part of a referral from all these bodies. Organisations are only required to provide the prescribed information which they hold.

### 3.4 Automatic listing

32. The Act provides the power to set criteria for automatic listing. Automatic listing means without any determination process and without the opportunity for the individual to make representations. The purpose of automatic listing is to prevent people who are clearly unsuitable from doing regulated work without unnecessary procedure or delay (i.e. when it is clear-cut). The consultation paper proposes that convictions for certain types of particularly serious offences lead to automatic listing and asks for views on the details of how this is applied and whether there are other offences which should be included.

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

33. Automatic consideration for listing occurs when a court makes a referral about a serious offence against a child. The Act contains a list of these serious offences (which it calls "relevant offences") and when a court convicts an individual of a relevant offence, it must make a referral and the individual must be considered for listing on the children's list. The consultation paper proposes that further offences also lead to automatic consideration for listing and asks for views on these further offences and whether there are any other offences which should be included.

### 3.7 Listing procedure

34. The consultation paper proposes extending the time limit for individuals to make representations when placed under consideration for listing and organisations to respond to those representations. It proposes: increasing the length of time afforded to individuals to submit initial observations from 21 days at present (under the 2003 Act) to 28 days; and providing a similarly extended period for referring organisations to respond.

### 3.8 Removal from lists

35. Once an individual is listed, they will not normally be removed from the list(s) unless or until they make an application for removal. An individual may apply for removal from the list(s) if their circumstances have changed. In addition to the right to make an application on the basis of change of circumstances, the listed individual also has the right to make an application after a certain period of time has elapsed. The consultation paper explores two particular aspects:

- where to set the age threshold at listing for an individual to be able to make an application for removal after a shorter period of time (e.g. should an individual listed at age 22 be able to apply for removal from the list after a shorter time than an individual aged 42); and
- whether the period should begin from the date of inclusion on the list(s) or the date of the most recent incident or offence material to the listing decision.

## **Chapter 4. New types of vetting information**

#### 4.2 Regulatory bodies and councils

36. Vetting information currently included on an enhanced disclosure for an individual working with children or adults at risk includes: all convictions; relevant non-conviction information from the police; and any exclusion from doing that type of work through being listed in Scotland or in England and Wales. At present, Disclosure Scotland simply collates this information and passes it on. In future, under the Act, this vetting information about scheme members will be continuously updated and made available through scheme record disclosures as well as being assessed as it arises, which could lead to the individual being considered for listing.
37. The Act expands vetting information to include the fact that an individual is on the Sex Offenders Register, so that this will always be disclosed and considered. The consultation paper examines what further information should be prescribed as vetting information: the policy intention has always been to prescribe certain regulatory body and council information. We have started discussions with regulatory bodies and councils over what information it might be appropriate for them to provide but the consultation exercise will also help inform this process.

#### *Regulatory bodies*

38. For example, where regulatory bodies investigate allegations of poor or inappropriate practice, the decisions they take in relation to their registrants may be relevant. Broadly speaking, regulatory bodies have the power to refuse registration, change the conditions of registration and de-register individuals if their conduct breaches the standards expected in that profession. The consultation paper proposes that any change in registration status or practice conditions which derives from harm or risk of harm to a vulnerable person, over and above harm which is purely a consequence of a professional failing, should lead to consideration for listing. We hope that at least some regulatory bodies will be providing vetting information when the scheme goes live in spring/summer 2009. Others will be brought on stream as and when the processes and systems are in place to do so.

#### *Councils*

39. As employers, councils have a duty to refer any employee meeting the referral grounds set out in the Act. However, they also hold other information which may be relevant, particularly in social work / children's services departments. For example, where child (or adult) protection proceedings identify that an individual has harmed a vulnerable person, that individual may be unsuitable to do regulated work. In cases where criminal offences may have been committed and the police are involved, this information will be recorded on police information systems. But there will be cases where only the council has the information. This is a very sensitive and difficult area and the consultation paper makes no specific proposals but encourages stakeholders to express any views they have. Even if a decision was made to proceed with collecting vetting information from councils, it is not expected that it would be available when the scheme goes live and it would be unlikely to come on stream for a few years thereafter.

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

40. Vetting information will normally be both disclosed (on application) and, if relevant, lead to consideration for listing. The Act provides the flexibility to customise the use of regulatory body and council vetting information, in recognition of the sensitivity around it.

For example, it is possible to keep sensitive vetting information on an individual's scheme record without disclosing it to employers. This information would, of course, have to be disclosed to the individual as part of any consideration for listing so that they could make effective representations. The consultation paper indicates that it may be appropriate to make some provision in respect of vetting information from councils but makes no specific proposals and encourages stakeholders to express any views they have.

#### 4.4 Civil orders

41. At the moment, most civil orders are disclosed only on enhanced disclosure if the police considered that they are relevant. The consultation paper proposes that some civil orders should be routinely disclosed on standard, enhanced and scheme record disclosures:

- Risk of Sexual Harm Order (and any interim order);
- Sexual Offences Prevention Order (and any interim order);
- Notification Order (and any interim order); and
- Foreign Travel Orders.

#### 4.5 Other possible vetting information

42. The consultation paper seeks views on whether the fact that an individual has been referred for consideration for listing in the past should appear on a disclosure certificate.

### **Chapter 5. Retrospective checking and fees**

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

43. From day 1, all individuals new to the regulated workforce will become scheme members. Retrospective checking is the process whereby the existing workforce is brought onto the scheme. Three substantive issues are explored in the consultation paper:

- whether to have retrospective checking or simply rely entirely on natural turnover of staff to bring people into the scheme; and,

*if there is to be retrospective checking,*

- in what order to bring individuals onto the scheme; and
- how long should the process take.

44. If there is a programme of retrospective checking, the consultation paper sets out three options for prioritisation:

- **by date since last disclosure** so that individuals who have never had a disclosure check are considered first, followed by individuals ordered by date of most recent check for those who have had a disclosure check;
- **by sector or occupation** so that individuals are checked by geographical area, sector, employer, or combination of factors; or
- **by "random" individual characteristic** so that individuals are considered by some random, but not sensitive, personal characteristic such as month of birth.

45. The consultation paper then explores how long the process should take, including whether there should be any delay to allow natural workforce turnover to reduce the scale of the programme. The consultation paper asks for views on the length of any delay and subsequent period of checking. There are a large number of possible permutations, for example setting different timetables, or using different methods for prioritisation, for different sectors.

### 5.3 Fee levels and charging regime

46. The consultation paper sets out two basic options for charging fees for disclosure:

- a two-tier charging regime with fees payable *per disclosure* (currently a flat rate of £20 is charged per disclosure); and
- an annual subscription with fees payable for *membership*.

Either option is likely to operate across the entire workforce (i.e. the two options are mutually exclusive) because it is hard to see how it would work for individuals moving around the workforce or holding several positions simultaneously in different charging regimes. No changes are proposed to the fees for basic, standard or the residual enhanced disclosures.

47. In the two-tier charging regime, the first disclosure and any scheme record disclosure is charged at the higher tier and any *other* scheme disclosure is charged at the lower tier (option 1a). The application for the first disclosure registers the individual as a scheme member, a membership which lasts for ten years. Scheme membership is renewed every time a scheme record disclosure is requested and the higher tier fee is paid. The fees will not depend on whether the disclosure is in respect of one or both workforces. The fees for volunteers in the voluntary sector will continue to be paid by the Scottish Government.

48. The consultation paper proposes to set a modest differential in the range of £5 to £20 between the tiers and suggests this might mean:

- a higher tier fee in the range £20-£30; and
- a lower tier fee in the range £10-£15.

However, this is based only on initial estimates and preliminary modelling. There is much more detailed calculation to be done following the outcome of the consultation and further work on system design to inform the fee levels.

49. The consultation paper also discusses a variation on the two-tier regime which is to charge the higher tier fee *only for joining the scheme* and to charge all subsequent disclosures at the lower tier (option 1b).

50. In the annual subscription charging regime (option 2), scheme membership is funded through an annual subscription, paid either by the individual or employer and all disclosure checks are provided at no further cost. The fees for an annual subscription are proportionately higher than the two-tier regime for infrequent users. The reason for this is that the costs of the disclosure checks themselves are spread evenly across all subscribers independently of how many checks they request. There may also be additional costs associated with collecting the annual subscription, e.g. managing 800,000 direct debits and handling non-payment of subscriptions, which are not present in the two-tier charging regime.

51. Based on current best estimates, the annual subscription could be as low as £5 per annum but is more likely to be in the range £10-£15. Subscriptions for individuals doing regulated work solely as volunteers in the voluntary sector would be paid by the Scottish Government but those who are also in paid employment would need to pay the subscription.

## COSTS AND BENEFITS

### Sectors and groups affected

#### Paid employees

52. At most 580,000 individuals are expected to be scheme members through their paid employment and we taken this upper limit as our estimate so that we do not underestimate costs to employers. This figure is based on the breakdown by sector shown in table 1. It is difficult to be precise about every sector because it is difficult to access sufficiently detailed information on specific job titles and responsibilities to gauge what proportion of work is regulated work. Note that the 120,000 paid employees of voluntary organisations are included in this group.

<b>Paid employment</b>	<b>Scheme members</b>
Further education	20,000
Healthcare	150,000
Paid voluntary sector workers	120,000
School teachers and support staff	70,000
Social work and social care	100,000
Miscellaneous (self-employed, emergency services, faith groups, transport etc)	120,000
<b>Total</b>	<b>580,000</b>

**Table 1.** Breakdown by sector of individuals in paid employment which might be within the scope of regulated work.

#### Volunteers

53. We estimate that 800,000 volunteers undertake some form of voluntary work in the child care / adult care sector. Approximately half of these individuals (400,000) are assumed to undertake voluntary work within the scope of regulated work, with remainder undertaking activities such as administrative tasks or door-to-door collections. Of these, around 175,000 individuals are estimated to be doing regulated work through paid employment as well as through volunteering, leaving 225,000 volunteers doing regulated work exclusively as volunteers. These 225,000, together with the 580,000 paid employees, comprise the best estimate of 805,000 scheme members.

<b>Paid employment and volunteering</b>	<b>Scheme members</b>
Paid employment only	405,000
Paid employment and voluntary work	175,000
Voluntary work only	225,000
<b>Total</b>	<b>805,000</b>

**Table 2.** Individuals whose work (paid or unpaid) might be within the scope of regulated work.

#### Numbers of scheme members and numbers of disclosure checks

54. The Scottish Government estimates that somewhere around 600,000 - 700,000 individuals have received standard or enhanced disclosure to work with vulnerable groups in the five years since they were made available in 2002 (see Annex B). There have been many more disclosures than this because some individuals have applied for more than one disclosure for the same or different posts. These individuals and the remainder of the 805,000 individuals doing regulated work who have never had a disclosure check are expected to join the scheme.

55. The Protection of Children (Scotland) Act 2003 effectively made enhanced disclosure checks for new posts working with children a requirement from 10 January 2005 (because

of the offence of offering work in a child care position to a barred individual). However, many organisations would have been undertaking checks before then and, similarly, many organisations are already checking posts for working with adults at risk even though there is currently no disqualified from working with protected adults list in Scotland. The 2003 Act also envisaged retrospective disclosure checks of existing staff, although implementation of this was deferred and has not been brought into effect to date.

56. The latest modelling suggests around 212,000 applications for checks per annum by individuals joining or on the scheme once the whole workforce has been brought on stream. But only 37,000 of these will be scheme record disclosures like enhanced disclosure. The remainder of the 212,000 checks will be simpler short scheme record disclosures or disclosure of scheme membership.

### **Benefits**

57. The scheme as a whole offers the benefits set out at paragraph 13 (above) and paragraphs 15 and 19 of Annex A. The relative merits of each option or proposal in the consultation paper are set out in that paper and are not repeated here. The principal benefits of the scheme are holistic and problematic to quantify: for example, the improved safety for vulnerable groups is difficult to measure and assess in a cost-benefit analysis. However, there should also be some quantifiable cash benefits in terms of reduced administrative costs over the longer term. These quantifiable benefits are discussed in conjunction with the costs discussion below.

### **Costs (and cash benefits)**

58. By far the most significant costs to individuals, employers and voluntary organisations will be:

- **administrative costs** (e.g. completing the application form); and
- **fee costs.**

These costs will be greater during any period of retrospective checking since the number of checks will exceed the normal turnover rate for that organisation. There will also be transitional costs in adjusting to the new system (e.g. retraining countersigning staff etc).

### Administrative costs

59. During the parliamentary passage of the Bill, SCVO suggested a unit administration cost of £21.50 per volunteer or paid staff member in the voluntary sector to undertake enhanced disclosure now or join the scheme for the first time. This administrative cost derives from: time spent by the employee, administrative staff and management staff in completing and countersigning the application; ID checking; and postage, stationery, telephone and office overheads. It is almost certainly an over-estimate for larger statutory and private sector employers with dedicated HR staff and processes in place. For the purpose of this RIA, this unit cost is used but the Scottish Government will be seeking to explore this further with voluntary organisations (and other employers) as part of preparation for implementation.
60. Once an individual is a scheme member, subsequent checks will be much easier. Short scheme record disclosure will be available on-line and should be capable of being requested very simply and easily by the individual and authorised and accessed equally easily by the countersigning body. Even where the application is completed on paper, it

will be a lot more straightforward. For the purpose of this RIA, we estimate the *administrative* cost of short scheme record disclosure to be £5.

#### Fee costs

61. The principal ongoing cost for individuals and organisations derives from the fees charged and these will be calculated to cover the cost of operating the scheme. The details of the charging regime will affect how the costs divide between individuals and organisations with different user profiles. For example, individuals who require frequent checks because they change employer often would benefit most from a two-tier charging regime with a large differential, whereas individuals who do not require frequent checks would benefit most from keeping the higher tier as low as possible (i.e. a narrow differential).
62. Most requests for checks are driven by necessity and so demand for checks should not be curtailed by the requirement to pay a fee, provided that the fees are “modest”. Indeed, a clear policy aim in setting fees will be to ensure that they are not so high as to suppress legitimate demand. In the two-tier model, the fees per disclosure should not be set so low as to encourage an excessive frequency of checks. Clearly, a subscription model with disclosures at no further cost provides no financial disincentive against excessive requests and other mechanisms may need to be put in place to curb such requests.

#### Modelling the costs of retrospective checking

63. The costs of retrospective checking for any given individual or organisation is the fee and administration costs for checks they would not have otherwise incurred. I.e. the cost over and above business as usual. The overall costs of retrospective checking vary according to the timescale and the particular costs to any given organisation will depend on the method used to prioritise retrospective checking. Any programme of retrospective checking which is not random (i.e. not option 3 in the consultation paper) may spread costs unevenly between employer, sector or geographical region.
64. It is not possible to be definitive about the costs of retrospective checking until the charging regime and programme for retrospective checking have been determined following the outcome of the consultation on secondary legislation. Furthermore, the precise fee levels (which will be the subject of a future consultation on the draft Scottish statutory instrument on fees) are needed to give a specific estimate for any particular organisation. This partial RIA includes a number of example scenarios which are intended to illustrate the possible range of costs *without prejudice to the outcome of the consultation exercise*.
65. We set out three models for retrospective checking and measure them against two baselines:

##### *Model 1: retrospective checking over 3 years*

66. In this model, the entire workforce of 805,000 individuals is brought onto the scheme over three years in three equal tranches. Note that this does not translate into equal numbers of checks in each of the first three years because of the complex interaction between attrition (i.e. checks for new entrants), turnover and retrospection.

*Model 2: retrospective checking over 5 years*

67. In this model, the entire workforce of 805,000 individuals is brought onto the scheme over five years in five equal tranches. Again, note that this does not translate into equal numbers of checks in each of the first five years because of the complex interaction between attrition (i.e. checks for new entrants), turnover and retrospection.

Model for retrospection	Paid employees (580,000)		Volunteers in the voluntary sector (400,000)		Total admin costs for both groups
	Admin	Two tier fee	Admin	Two-tier fee	
	£ million	£ million	£ million	£ million	
<b>Baseline 1: no scheme - continuing with standard and enhanced disclosure</b>					
10 year total	45.0	42.0	10.8	10.0	56.0
<b>Baseline 2: natural turnover on the scheme</b>					
Year 1	3.0	3.6	1.0	1.2	4.0
Year 2	2.7	3.4	0.9	1.1	3.6
Year 3	2.3	3.0	0.8	1.0	3.1
Year 4	2.0	2.7	0.7	0.9	2.7
Year 5	1.8	2.5	0.6	0.9	2.4
Year 6	1.7	2.4	0.6	0.8	2.3
Year 7	1.5	2.2	0.5	0.8	2.0
10 year total	19.1	26.1	6.5	8.8	25.6
<b>Model 1. Retrospective checking over 3 years</b>					
Year 1	6.2	7.6	2.7	3.7	8.9
Year 2	4.5	5.7	2.1	2.8	6.6
Year 3	3.2	4.3	1.5	2.1	4.7
Year 4+	1.2	1.8	0.5	0.9	1.7
10 year total	22.1	30.0	9.9	14.7	32.0
Additional cost over baseline 2	3.0	4.4	3.4	5.9	6.4
<b>Model 2. Retrospective checking over 5 years</b>					
Year 1	4.9	6.0	2.1	2.8	7.0
Year 2	3.4	4.2	1.5	2.0	4.9
Year 3	2.8	3.6	1.2	1.7	4.0
Year 4	2.2	3.0	1.0	1.4	3.2
Year 5	1.8	2.5	0.8	1.1	2.6
Year 6+	1.2	1.8	0.5	0.9	1.7
10 year total	20.9	28.6	9.1	13.4	30.0
Additional cost over baseline 2	1.8	2.5	2.6	4.6	4.4
<b>Model 3. Retrospective checking over 6 years: paid employees over 3 years followed by volunteers over 3 years</b>					
Year 1	6.1	7.6	1.5	1.9	7.6
Year 2	4.4	5.7	1.2	1.6	5.8
Year 3	3.2	4.3	0.9	1.2	4.3
Year 4	1.1	1.8	1.4	1.9	2.6
Year 5	1.1	1.8	1.2	1.6	2.4
Year 6	1.1	1.8	0.9	1.4	2.2
Year 7+	1.1	1.8	0.5	0.9	1.7
10 year total	21.7	30.4	9.2	13.1	30.9
Additional cost over baseline 2	3.6	6.4	2.7	4.3	6.3

**Table 3.** Fee and administrative costs for each of the three models for retrospective checking, assuming a £26/£10 structure. Fee costs for volunteers (in italics in column 5) would be met by the Scottish Government. The additional cost is over and above baseline 2 over the 10 year period from go live. Note that 175,000 individuals are counted in both sectors because they are both paid employees *and* volunteers. Note that model 1 does not change beyond year 4, model 2 does not change beyond year 6 and model 3 does not change beyond year 7. In the natural turnover baseline, more and more of the workforce become scheme members year-on-year but scheme membership never reaches 100%.

*Model 3: retrospective checking over 6 years: paid workers over three years followed by volunteers over three years*

68. In this model, the 580,000 individuals in paid employment are brought into the scheme over the first three years (as model 1). During this time, the 225,000 individuals who volunteer in the voluntary sector only join the scheme through attrition and turnover but the 175,000 who are also in paid employment join the scheme through the programme of retrospective checking. Over years 4 to 6, the remaining volunteers who are not scheme members join the scheme through a programme of retrospective checking.

*Baseline 1: no scheme - continuing with standard and enhanced disclosure*

69. The first baseline is the cost of the existing standard and enhanced disclosure regime, had it continued. This baseline assumes that the current level of standard and enhanced disclosure for adult and child care positions would continue indefinitely.

*Baseline 2: natural turnover on the scheme*

70. A better baseline for measuring the cost of retrospective checking is the cost of joining the scheme through natural turnover. (However, it is important to note that, although retrospective checking pushes up the costs in the early years, it does so because it gets more individuals onto the scheme more quickly so delivering the benefits of improved protection of vulnerable groups earlier than through natural turnover.)

### Illustrative results

71. The results of the three models for retrospective checking are set out in tables 3 and 4. The purpose of the tables is to illustrate trends and facilitate comparisons between different approaches, rather than to make precise predictions of actual costs. Note that the figures scale linearly: if the unit administrative cost is 20% larger or smaller than we have assumed, then all the administrative costs in the table are also adjusted up or down by 20%. Some of the main assumptions which support the data in the tables can be found in Annex B.

Assumption	Range of annual subscription fees (depends on model for retrospection)	
	Minimum	Maximum
(a) No additional administrative costs for agency	£5.00	£6.00
(b) Additional administrative costs of £1 per year	£6.00	£7.00
(c) 2x as many short scheme record disclosures	£5.50	£7.50
(d) 5x as many short scheme record disclosures	£9.50	£14.00

**Table 4.** Subscription fees (rounded up to the nearest 50p) incurred *per individual per year* for a range of assumptions: (a) that there are no additional costs in running a subscription-based charging regime over and above those for a fee per disclosure charging regime; (b) including an additional £1 per person per year management cost for Disclosure Scotland, e.g. to manage direct debits; (c) and (d) assuming an increase in the number of short scheme record disclosures because they are free at point of use. The administrative cost to individuals and organisations will be similar to that for the two-tier model as the initial application process would need to cover the same ground and subsequent checks (although free) would require similar administrative effort. The two columns reflect the range of values which derive from the different models for retrospection.

72. The main points to emerge are:

(i.) The baseline total administrative cost in applying for disclosure is £5.6 million per annum whereas, once the scheme is fully rolled out, the administrative cost across all

sectors should be no more than £1.7 million per annum. This is a **long term administrative saving of around £3.9 million per annum**. This is obviously a consequence of the administrative cost of short scheme record disclosure being estimated to be around 25% of that for enhanced disclosure (see paragraph 60).

- (ii.) The **10 year administrative costs are fairly insensitive to the model for retrospective checking**, being around £21-22 million for those in paid employment and £9-10 million for volunteers in the voluntary sector for all three models.
- (iii.) However, **the cost profiles for fees and administration are sensitive to the model**. Note that, although the administrative costs for volunteers is marginally more expensive in model 3 than model 2, the annual cost is more evenly spread.
- (iv.) Obviously, **the administration cost of retrospection is the most significant issue for the retrospective checking of volunteers in the voluntary sector organisations**, whose fees are paid by the Scottish Government.
- (v.) **The three different models for retrospective checking and the natural turnover baseline yield different revenues for the two-tier fee charging regime**. This reflects a variation in costs in running the scheme which in turn depends on the number of scheme members and volumes of disclosure requests. Natural turnover has fewer scheme members registered with Disclosure Scotland in any given year and so it costs less to run.
- (vi.) The **affordability of a subscription model depends on how much subsequent checking takes place** through short scheme record disclosures (and other types of disclosure).

73. Caution must be exercised in interpreting what is only an approximation to a partially designed system. We would be interested in receiving comments on any aspects of the models described above (or in Annex B) which would help us to develop and improve them for subsequent calculations and the final RIA.

## Social costs

### Rehabilitation of offenders

74. The scheme will have social costs in terms of its impact on the rehabilitation of offenders. Some individuals who are unsuitable because of their criminal convictions will be prevented from doing regulated work by the vetting and barring scheme (this is the principal aim of the scheme). The Scottish Government considers that the restriction on the employment options for these offenders and others whose conduct indicates a propensity to harm vulnerable groups is legitimate and can be justified on the grounds of crime prevention, public safety and protects the rights and vulnerable people.

75. The scheme safeguards the rights of ex-offenders in two important ways: firstly by protecting sensitive information (confidentiality) and secondly by focusing regulated work on the types of activity that really need to be within the scope of the scheme (proportionality). Confidentiality is achieved by limiting access to disclosure information, scheme membership information and the lists of unsuitable individuals to those who need to know for the purposes of protecting vulnerable groups. This means that employers who do not need this information are not able to access it and it cannot prejudice the employment opportunities in other sectors for individuals who are unsuitable to work with vulnerable groups.

Effect on volunteering numbers

76. During the parliamentary passage of the Bill, some stakeholders suggested the disclosure system was deterring volunteers. It is difficult to determine volunteering numbers, especially since there is confusion between the number of individuals and the number of volunteering opportunities: one individual may volunteer in more than one context. We have used the best evidence available to make a reasonable estimate of numbers of volunteers in the child care / adult care sectors and numbers of those within the scope of the scheme.
77. Any recent decline in volunteering, if indeed one has taken place, may not be linked to the disclosure system. For example, any decline may be due to an increased fear of litigation if anything goes wrong or the general demands of modern life, rather than the disclosure process. There are many and varied reasons why people start and stop volunteering. Indeed, the episodic nature of volunteering, where people dip in and out of volunteering at various times of their lives, needs to be taken into account. Various studies have shown that a variety of different influences are at play with regard to the involvement of young people in volunteering.
78. Even if there is a decline in volunteering and the disclosure system is identified as a cause, it may be that this is based on a misrepresentation of the system or a misapplication of it. For example, requests for an enhanced disclosure certificate where this is not appropriate or, indeed, lawful. As part of the introduction of the new scheme, the Scottish Government will issue guidance on when someone should/should not be a scheme member and monitoring to ensure disclosures are not being requested erroneously.
79. Finally, if there is a decline and it is due to the disclosure system, it may be due to the bureaucracy of the current system which the scheme will greatly reduce. The Scottish Government will work with the voluntary sector to ensure that the scheme is rolled out in such a way that it does not adversely affect voluntary organisations and the level of participation. We recognise that there will always be some individuals who may object to obtaining a disclosure as a matter of principle or because of concerns about information which may be disclosed. We will work to allay unfounded concerns but it will be appropriate for some individuals with criminal histories indicating unsuitability to be deterred by disclosure process. We are also working with the Voluntary Sector Issues Group on the issues surrounding volunteering with a view to conducting further research on the impact of disclosure.

**Environmental costs**

80. There will be no significant environmental impact as a result of pursuing any of the options.

**SMALL FIRMS IMPACT TEST**

81. For the purposes of this test we have identified small businesses as those with 250 employees or less, in accordance with Cabinet Office guidance.
82. The small firms most likely to be affected are smaller care homes, voluntary organisations and charities. However, it is expected that there will be minimal adverse impact on small firms as a result of the new vetting and barring scheme, particularly as there is an ongoing expectation on all employers to follow good HR practice in recruitment.

### Duty to refer

83. The duty to refer individuals for consideration for listing may have an administrative impact on smaller firms in terms of preparing the referral and including the requisite information. The main additional burden will be the extension of the duty to the adult care workforce, since there is already a duty to refer individuals for provisional listing in respect of work in child care positions under the 2003 Act. The experience of the children's list established by the 2003 Act to date is that the administrative impact on smaller firms is minimal. Indeed, larger and smaller organisations can have similar issues in preparing a referral. However, we do recognise that some small community-based organisations are not aware of the 2003 Act and are not, therefore, making referrals when perhaps they should. We are working to address this in relation to both the 2003 Act and the vetting and barring scheme through working with umbrella bodies and the Central Registered Body in Scotland.

### Consideration for listing

84. There may also be some impact on a business if they decide to take any action when informed that a member of staff is being considered for listing, a process which may take several months. The main additional impact will be the extension of the provisions to the adult care workforce (since there is already a notification of provisional listing in respect of work in child care positions under the 2003 Act). It is entirely a matter for the employer as to what action, if any, to take, given the particular circumstances of the case. Some employers may decide to increase supervision, suspend them on full pay, or move them away from regulated work. Some options, such as moving an employee to other duties outside the scope of regulated work, may not be practicable for smaller firms.

### Countersigning disclosure applications

85. The activity level should not increase (apart from any new posts covered by regulated work which were not previously subject to enhanced disclosure). Recruitment will still require a disclosure check but it may not be necessary to require subsequent checks as often as under current arrangements because continuous vetting provides reassurance that the individual is not unsuitable. Furthermore, even if the activity level is not diminished (i.e. the number of checks requested is not reduced), the new system should make the process of obtaining a subsequent disclosure check faster, cheaper and simpler for scheme members. Once an individual is a scheme member, a short scheme record disclosure will be all that is required in the vast majority of cases to confirm that there is no new information about the individual.

### Providing disclosure information

86. Small firms may incur a cost in providing information to assist with a listing decision (e.g. about an ex-employee) or vetting information on an ongoing basis in the case of regulatory bodies. For reasons given in the Financial Memorandum, it is not considered that these costs will be significant.

### Consultation

87. Small firms had the opportunity to comment on proposals for the Bill through the consultation exercise discussed at paragraph 22. Over 850 individuals and organisations were sent copies of the consultation paper, including the Federation of Small Businesses

Scotland, and just over 200 written responses were received of which around 40 were submitted by small businesses. Some small businesses expressed concern about the fees for disclosure under the new system during that consultation exercise. Small businesses were concerned that a higher up-front fee for disclosure was potentially a deterrent for joining the workforce and would be a particular problem for charities that have a small number of paid staff.

88. The current consultation exercise provides an opportunity for small firms to engage with policy development on the basis of much more detailed options for fees and other issues. The Scottish Government will be actively seeking the views of small firms in both the private and voluntary sector during this consultation exercise through:

- the Voluntary Sector Issues Group, at which a number of voluntary sector organisations, large and small, meet with Scottish Government officials on a regular basis;
- engagement with the Central Registered Body in Scotland, which countersigns disclosure applications on behalf of a wide range of voluntary organisations;
- engagement with registered bodies (i.e. employers requesting disclosure certificates in respect of their employees); and
- engagement with the Regulatory Review Group (although this RIA has not been selected by them for particular attention).

## LEGAL AID IMPACT TEST

89. Demands on the legal aid fund may arise from the three procedures in the Act set out in table 5.

Procedure in the Act	Use of similar procedure in 2003 Act in period from 10 January 2005 to 1 October 2007
Appeal to the court against a decision by the Scottish Ministers to list an individual;	1 case, withdrawn before court hearing. See paragraph 90(iii)
Appeal to the court against a decision by the Scottish Ministers to refuse an application for removal from a list; and	0 cases. See paragraph 90(iv)
Objection to an application to the court by the Scottish Ministers to extend the period of consideration for listing.	3 objections to 9 extensions. See paragraph 90(v)

**Table 5.** Procedures in the Act which may lead to demands on the legal aid fund.

90. These procedures are similar to those which are already established by the 2003 Act in respect of the DWCL. However, the demands on the legal aid fund might be expected to change as a result of the following developments:

- (i.) The scope of regulated work with children as defined in the Act is different to the scope of child care position in the 2003 Act. Some new positions have been included and the scope of some existing provision has been narrowed and the overall effect is difficult to quantify precisely but unlikely to have a significant effect on legal aid.
- (ii.) The Act establishes a list of individuals barred from doing regulated work with adults for the first time in Scotland and so all the procedures which now only relate to the children's workforce will apply to the adult care workforce too. This is potentially a significant increase in the demand on the procedures at paragraph 89 as the adult care workforce is at least as large as the children's workforce and could lead to many new cases being considered by Scottish Ministers.
- (iii.) The procedure for appeals against listing has been adjusted compared to current procedure under the 2003 Act. Only one listing has been appealed and this was

withdrawn by the individual concerned. In future, appeals can only be made from the sheriff principal to Inner House on a point of law only (appeals on fact are also admissible under the 2003 Act). The effect of this change is a theoretical reduction in demand for legal aid but for practical purposes the effect is negligible.

- (iv.) The procedure for application for removal from the list differs from current procedure under the 2003 Act. These will be made to the Scottish Ministers in the first instance and not directly to the sheriff as now. This change will, if anything, reduce the need for legal aid since it would be expected that a significant number of cases will be resolved without going to court and without the appellant requiring representation from a solicitor. Since January 2005, when the children's list was established, there have been no applications for removal from the list so there is no way of quantifying any potential saving. Under the 2003 Act, most of the 200 or so listed individuals cannot apply for removal until 10 years have elapsed since they were included on the list or their circumstances change in a material fashion. These conditions are set out in regulations and the consultation paper proposes modest adjustments to procedure (see paragraph 35).
- (v.) The procedure for extensions of periods of consideration for listing has been nuanced compared to current procedure under the 2003 Act. The changes are more to do with providing the Scottish Ministers and the courts with greater flexibility rather than any change in scope which affects legal aid. Under the 2003 Act, this procedure has been used on 9 occasions so far and contested on 3 of these. With the extension of this provision to the adult workforce, the numbers can be expected to increase accordingly.

## **"TEST RUN" OF BUSINESS FORMS**

- 91. The Act provides that the forms for applications to join the vetting and barring scheme or disclosure requests will be determined administratively (i.e. not set out in regulations). In contrast to having a statutory procedure, this enables forms to be revised and improved quickly if the need arises. However, the forms for the vetting and barring scheme will be developed in conjunction with registered bodies and rigorously tested by Disclosure Scotland to try to avoid the need for any early revisions.
- 92. Employees, employers and Disclosure Scotland share a strong interest in well-designed forms. Form-filling is the principal administrative burden arising from disclosure on employees and employers. Difficulties in completing forms lead to difficulties for Disclosure Scotland through increased calls to the helpdesk and failed applications (e.g. because a mandatory field was not completed correctly). Historically, around 7% to 10% of applications received are returned to the sender almost immediately because preliminary checks indicate a problem (e.g. missing data). The remainder are scanned onto the system but may cause an exception, creating additional work and possible delay, if the application contains a more sophisticated error (e.g. the National Insurance number is present and in the right format but there is a typographical error so it does not match the applicant). Disclosure Scotland has plenty of experience from having processed over 2.4 million applications since 2002, which will be brought to bear on developing the new forms.

## **COMPETITION ASSESSMENT**

- 93. The principal sectors affected will be education, health, social care, faith groups, sport and leisure, with some impact on transport, supported housing, the prison service and the part of the retail sector which employs children.

94. The Act and proposals for secondary legislation are not be expected to have any significant impact upon competition regardless of which of the options discussed above are pursued. For most organisations, disclosure costs are only a small part of recruitment costs but the Scottish Government will be sensitive to smaller voluntary sector organisations for whom compliance with disclosure requirements could be a significant burden.
95. Whichever option for retrospective checking is pursued, care will be taken to ensure that *competing* service providers are treated in the same way so that the cost burden falls equally. For example, there is no impact on competition by putting Edinburgh social workers onto the scheme before Glasgow social workers since this is a public service and anyway there is no overlap in the client group. In theory, it would not be fair to bring workers at one group of Edinburgh care homes onto the scheme before another because the first group would potentially face higher costs although, in practice, the effect on competition between businesses is minimal.
96. Fees must be paid in respect of individuals who are not exempt (i.e. because they are volunteers in the voluntary sector). The fee may be paid by the individual or the employer. Clearly, all employers offering the same type of service are affected equally by the level of fee. In the case that the employer does not reimburse the individual, the individual may regard the fee as a barrier to entry to regulated work, as opposed to other types of work for which no disclosure is required. I.e. there could be a very modest labour market distortion in comparison to other sectors. The proposed fees (which are unrelated to the individual's income) will obviously be more significant to individuals in lower paid parts of the regulated workforce. This effect is considered to be very slight given that many employers in other sectors will ask for basic disclosure for which a £20 fee is currently payable.

## **ENFORCEMENT, SANCTIONS AND MONITORING**

### **Offences**

97. The primary means for enforcement of the terms of vetting and barring scheme is through offences created by the Act, and their corresponding penalties. These will be enforced by the police and by compliance work done by the agency.

### **Serious offences**

98. There are three serious offences which relate to doing regulated work when barred, employing/supplying someone to do regulated work when they are barred and failing to refer an individual for consideration for listing. These offences are the most serious because they relate directly to unsuitable individuals getting access to vulnerable groups through the workforce. These offences attract a maximum penalty of a fine or 5 years imprisonment on conviction on indictment or, on summary conviction, to 12 months imprisonment or to a fine not exceeding the statutory maximum:
- Section 34 creates the offence of working or seeking to work in a regulated position when barred.
  - Sections 35 and 36 make it an offence to employ or supply for employment a barred individual.
  - Section 9 creates the offence of failing to refer an individual for consideration for listing.

### **Intermediate offences**

99. Three offences centre around protecting personal, sensitive information and attract a maximum penalty of a level 5 fine or 6 months imprisonment on summary conviction only:

- Section 65 makes it an offence to falsify vetting records.
- Section 66 makes it an offence to disclose scheme records unlawfully.
- Section 67 makes it an offence to request scheme records unlawfully.

100. Additionally, there are two offences in relation to a failure to provide information with potentially serious consequences which attract the same penalty:

- Section 33 makes it an offence for a listed individual to fail to notify the Scottish Ministers (Disclosure Scotland) of a change of name, address or gender.
- Section 20 makes it an offence for any regulated work provider to fail to provide vetting information to the Scottish Ministers in response to a request.

### **Minor offences**

101. There is one offence attracting a maximum penalty of a level 3 fine on summary conviction only:

- Section 50 makes it an offence for scheme members to fail to notify a change of name, gender or other prescribed information.

### **Offences by bodies corporate**

102. Section 89 extends the liability for offences committed by bodies to those responsible for controlling or managing those bodies: officers of the body, members of the body if they manage it, an officer or member of a council, a partner or an individual concerned with the management of an association.

### **Administrative enforcement measures**

103. Essentially, Disclosure Scotland provides a vetting service and failure to comply with the terms and conditions of that service (e.g. failure to provide the requisite fee) may lead to the service being withdrawn or unavailable. For example, failure to pay a scheme membership subscription would eventually lead to removal of that individual from the scheme. Further information on enforcement measures will be provided in the final RIA, once the final options are known.

## **IMPLEMENTATION AND DELIVERY PLAN**

104. A rolling programme of implementation has begun with the transfer of Disclosure Scotland staff to the Scottish Government on 1 October 2007. To support the implementation and delivery of the vetting and barring scheme, the Scottish Government has developed a detailed implementation plan. Further information will be provided in the final RIA.

## **POST-IMPLEMENTATION REVIEW**

105. An important measure of the impact of the legislation is through the identification and review of performance targets for the vetting and barring scheme. Whilst measures have yet to be identified, it is envisaged that they will build on the existing performance measures used by Disclosure Scotland with new measures for the Central Barring Unit.

106. Potential indicators could include:

- time taken to process applications for scheme membership and scheme disclosures, as well as for existing disclosures (basic, standard and enhanced);
- volume and nature of complaints received by the agency and appeals against listing decisions;
- workforce compliance, e.g. statistics on the committing of offences created by the Act and on the proportion of individuals undertaking regulated work who are scheme members by sector (all should be scheme members); and
- stakeholder satisfaction (ease of use, fairness, accessibility).

107. The principal objective is to keep unsuitable people out of the workforce or prevent them from continuing to work in the sector(s) once relevant information is identified. Whilst this does not mean that everyone else in the workforce is suitable, an important longer term indicator must be developed to measure of the anticipated reduction in harm to vulnerable groups by those who work with them if progress towards this objective is to be quantified.

## SUMMARY AND RECOMMENDATION

108. This partial RIA has attempted to identify the risks, costs and benefits associated with the most significant options in the proposals for secondary legislation. This section of the RIA will be completed once the final options have been chosen after the outcome of consultation is known.

## DECLARATION AND PUBLICATION

*I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.*

Signed [FINAL RIA ONLY]

[Date]

Fiona Hyslop MSP, Cabinet Secretary for Education and Lifelong Learning

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ANNEX A

**OPTIONS FOR RESPONDING TO THE BICHARD INQUIRY REPORT IN SCOTLAND**

**OPTIONS**

**Option 1: Do nothing**

1. Option 1 was to do nothing and rely on current arrangements. The Bichard Inquiry Report focussed on child protection procedures, intelligence recording and information sharing in the English system and the recommendations were designed to remedy those weaknesses. However, the issues highlighted in the Bichard Inquiry Report and its recommendations suggested ways in which Scottish procedures could be tightened and improved yet further to ensure that vulnerable groups were afforded the best protection. Additionally, as policy developed in England, Wales and Northern Ireland, further developments would be needed in Scotland to avoid cross-border loopholes that could be exploited by those wanting to harm children or protected adults.
2. Under this option the following risks would have existed:
  - problems with the current provisions would persist;
  - risks to children and protected adults from unsuitable people working with them would not be reduced;
  - expectations raised that the Scottish Government would improve safeguarding would not be met; and
  - it would deny vulnerable groups in Scotland the protections afforded to them elsewhere in the UK since a vetting and barring scheme is being developed for England, Wales and Northern Ireland (through the Safeguarding Vulnerable Groups Act 2006 and Safeguarding Vulnerable Groups (Northern Ireland) Order 2007).

Viability:

3. Option 1 was not viable. It did not meet the requirement of recommendation 19 of Sir Michael Bichard's report. Although the report was not aimed at the Scottish Government, it was agreed that the recommendations of the Report should be considered in Scotland and acted upon where appropriate.

**Option 2: A single, unified UK-wide vetting and barring scheme**

4. Option 2 was to bring the Scottish disclosure system for children and protected adults into a single, unified, UK-wide scheme. Any safe haven effect could have been avoided by the adoption of a UK scheme. This would have required the current Scottish operation and infrastructure to be subsumed into the scheme being developed for England and Wales. This could have been achieved by extending the Safeguarding Vulnerable Groups Act 2006 to Scotland using a Legislative Consent Motion through the Scottish Parliament. However, the issues inherent in vetting and barring and the protection of vulnerable groups are devolved and the transfer of legislative responsibility for such substantive issues to Westminster was not considered appropriate. There are also legal and operational differences in Scotland compared with England and Wales and there was seen to be benefit in a system which reflected the Scottish context and was responsive to Scottish requirements which might change in the future.

5. Under this option the following risks would have existed:

- The Scottish Government would have significantly reduced accountability for the systems supporting the protection of children and protected adults in Scotland. The Scottish Government would no longer be directly accountable for the disclosure system and would be waiving their right to exercise devolved powers in health, education and justice as set out in the Scotland Act 1998.
- This option would make it more difficult to make changes in the system, specifically tailored to Scotland, in the future. Related to this, the Scottish Government's ability to influence the governance, make-up and strategic direction of a UK-wide Independent Safeguarding Authority would be diluted due to sharing responsibility with the UK Government.
- The Scottish Government would lose the ability to tailor the operation of the scheme in Scotland to meet Scottish needs, in particular the ability to set fees, processing times and other operational matters.

6. The timetable for delivery would be largely out of the control of the Scottish Government.

Viability:

7. Option 2 was viable but would have required transferring legislative responsibility to Westminster and losing operational control of the vetting and barring scheme and substantial parts of the disclosure system in Scotland. It would have met the requirement of recommendation 19 of Sir Michael Bichard's report.

**Option 3: A Scottish vetting and barring scheme, dovetailing with the scheme for England, Wales and Northern Ireland**

8. Option 3 was to introduce a new proactive, comprehensive and continuously updated vetting and barring scheme underpinned by new primary legislation. The new scheme would build on existing systems and good practice to offer an improved service with new functions, helping to eliminate the existing gaps which could be exploited by unsuitable people seeking access to the vulnerable through their work. A Scottish scheme which dovetailed with that being developed for the rest of the UK was felt to be the optimal choice. It would guard against cross-border discrepancies whilst building on the current Scottish legislation and infrastructure, particularly the Protection of Children (Scotland) Act 2003 and existing disclosure arrangements. It would also allow more flexibility in responding to Scottish circumstances and priorities. Critically for this important area, it would ensure appropriate accountability to the Scottish Parliament.

9. The detailed features of option 3 are explained in the Policy Memorandum. Under this option the following risks would exist:

- Tight timetable for implementation, with greater effort required for the Scottish Government than for option 2 which would be driven by Whitehall.
- Significant, Scottish-specific awareness raising required to ensure that the system was understood and used appropriately by a wide range of employers and voluntary bodies who would have access. It would need to be made clear that this system

complemented, rather than replaced, effective recruitment practices for those working with children and protected adults.

- The new Scottish scheme would need to be compatible with schemes operating in other UK jurisdictions.

Viability:

10. Option 3 was viable and would have a positive impact on the protection of vulnerable groups. Option 3:

- Met the requirement of recommendation 19 of Sir Michael Bichard's report.
- Built on existing systems and good practice to offer an improved service tailored to Scotland's specific needs.
- Received widespread approval among stakeholders in response to the consultation exercise in spring 2006 which proposed a Scottish vetting and barring scheme.

11. The then Scottish Government concluded that a Scottish scheme carefully aligned to that developed for the other UK jurisdictions was the most appropriate way of proceeding in responding to the Bichard recommendations.

## **COST / BENEFIT ANALYSIS**

### **Option 1: Do nothing**

#### Benefits

12. There would be no additional benefits associated with this option.

#### Costs

13. There would be additional costs from adopting this option, in light of developments in the rest of the UK to develop a vetting and barring scheme:

- The protection afforded to vulnerable groups in Scotland would be likely to be less than that afforded in the rest of the UK and could result in a higher proportion of unsuitable individuals seeking work in Scotland.

### **Options 2 and 3: A vetting and barring scheme**

14. Before examining options 2 and 3 separately, the common benefits and costs are summarised.

#### Benefits

15. Both options would offer the following benefits for Scotland. Both options would:

- Assist employers in recruiting and managing the vulnerable groups workforce and reduce the likelihood of unsuitable people working with them, thus increasing protection for vulnerable groups.

- Offer increased protection to protected adults by introducing a list of people unsuitable to work with them.
- Provide for consistent decision-making about unsuitability to work in the vulnerable groups workforce.
- Create mechanisms to prevent unsuitable individuals entering the workforce with strong deterrents for trying to circumvent the system (criminal offences).
- Establish arrangements for "continuous vetting" which would remove some of the difficulty with enhanced disclosure only being valid on the day of issue and enables subsequent disclosures to be issued more quickly (because the vetting information has already been gathered).
- Allow individuals to become scheme members in anticipation of employment making it easier to start work quickly.
- Inform all those employing an individual to do regulated work of any decisions concerning consideration for listing and listing itself.
- Give personal employers the ability to check that an individual was not barred from regulated work before employing them.

#### Costs

16. The following costs would apply to both options:

- Change from the existing Disqualified from Working with Children's List established by the 2003 Act and enhanced disclosure regime potentially causing disruption and certainly requiring training and familiarisation with the new arrangements.
- The requirements on local authorities, regulatory bodies, employers and individuals to use the scheme and supply information for vetting and listing decisions. The costs identified in detail for option 3 at paragraph 20 would apply to a greater or lesser extent in respect of option 2 but it is not possible to evaluate them in detail.

#### **Option 2: A single, unified UK-wide vetting and barring scheme**

#### Benefits

17. In addition to those benefits identified as being applicable to both options 2 and 3 at paragraph 15, this option would offer the following benefits:

- A UK-wide vetting and barring scheme would achieve maximum consistency of approach to the disclosure and listing processes in relation to individuals working with children and protected adults across all UK jurisdictions.
- There would be a single piece of legislation making provision across the UK which would potentially be easier for UK-wide regulatory bodies and employers to interact with the scheme.

#### Costs

18. This option would give rise to the following additional costs on top of those already identified for both options 2 and 3 at paragraph 16:

- There would be more effort and cost in integrating the Scottish Intelligence Database (SID) and Criminal History System (CHS) with UK-wide vetting and barring systems and potential delays in implementation.
- The Scottish Government would lose some control over the disclosure process in Scotland and would not be less able to react to developments in Scotland. Changes in legislation and procedure would need to be made with agreement of the UK Government adding complexity, and possible delays, to making improvements in Scotland.

### **Option 3: A Scottish vetting and barring scheme, dovetailing with the scheme for England, Wales and Northern Ireland**

#### Benefits

19. In addition to those benefits identified as being applicable to both options 2 and 3 at paragraph 15, option 3 would offer the following:

- Scottish Government would retain full accountability for the systems being implemented to safeguard children and protected adults. Option 2 would remove much of this accountability by transferring the responsibility for vetting and barring functions to UK Government.
- Scottish police forces currently operate with a robust IT infrastructure in place which allows for the effective and efficient sharing of conviction information and police intelligence. The Scottish Government could develop a tailor-made IT infrastructure for the Scottish vetting and barring scheme more independently of developments elsewhere in the UK.

#### Costs

20. As well as the cost identified at paragraph 16 for both options 2 and 3, the following costs were identified with option 3 in the Financial Memorandum:

- **Start-up costs for Disclosure Scotland and the Central Barring Unit** was estimated at £3.35m, see paragraph 214 and table 1 of the Financial Memorandum.
- **Preparing training and guidance** was estimated at £1.4m, see paragraph 215 of the Financial Memorandum.
- **There should not be additional running costs.** The running costs of the Central Barring Unit were estimated at £1.5m but were expected to be offset by more efficient operation of Disclosure Scotland through the greater automation necessary to support continuous vetting and reduced workload associated with updated checks, see paragraphs 193 and 212 of the Financial Memorandum.
- **Local authorities should not experience significant additional costs**, either as employers or through providing information to Disclosure Scotland, see paragraphs 224 and 225 of the Financial Memorandum.
- **The scheme should not impose additional costs on employers** because it streamlined the disclosure process making it easier to use, see paragraph 226 of the Financial Memorandum. During parliamentary passage of the Bill, the Scottish Government

acknowledged that there will be *transitional costs* which were not identified in the Financial Memorandum (but which are discussed in the main body of this RIA).

- Professional regulatory bodies would need to exchange information effectively with Disclosure Scotland and **the cost to regulatory bodies should be minimised through effective IT systems and information sharing protocols**, see paragraph 227 of the Financial Memorandum.
- **Volunteers working with children and protected adults in the voluntary sector would continue to receive free disclosure checks.** The voluntary sector would be supported to ensure they could meet the obligations placed on them, see paragraphs 215 and 228 of the Financial Memorandum.

21. The costs and benefits for each option are summarised in table 6.

<b>Option 1: Do nothing</b>	
<b>Benefits</b>	<b>Costs</b>
There would be no additional benefits arising from this option.	There would be no additional costs arising from this option.
<b>Options 2 and 3: A vetting and barring scheme</b>	
<b>Common benefits</b>	<b>Common costs</b>
<p>Employers assisted in recruiting and managing the vulnerable groups workforce safely.</p> <p>Increased protection for protected adults by introducing a list of people unsuitable for work with them.</p> <p>Consistent decision-making on unsuitability to work in the vulnerable groups workforce.</p> <p>Prevent unsuitable individuals from entering the regulated workforce.</p> <p>“Continuous vetting”.</p> <p>Allow membership in anticipation of employment.</p> <p>Inform employers about listing decisions.</p> <p>Give personal employers confirmation that an individual is not unsuitable.</p>	<p>Disruption and training requirements in moving away from 2003 Act and enhanced disclosure regime.</p> <p>The requirements on local authorities, regulatory bodies, employers and individuals to use the scheme and supply information for vetting and listing decisions.</p>
<b>Option 2: A single, unified UK-wide vetting and barring scheme</b>	
<b>Benefits</b>	<b>Costs</b>
<p>Maximum consistency of approach across the UK.</p> <p>A single piece of legislation across the UK for regulatory bodies and employers to reference.</p>	<p>More effort and cost in integrating Scottish IT systems with UK systems.</p> <p>Loss of some control of the disclosure process in Scotland.</p>
<b>Option 3: A Scottish vetting and barring scheme</b>	
<b>Benefits</b>	<b>Costs</b>
<p>Scottish Government retains full accountability for the system.</p> <p>A tailor-made IT infrastructure for Scotland building on existing systems.</p>	<p>Start-up costs for the agency.</p> <p>Training and guidance for users.</p>

**Table 6.** Summary of costs and benefits of the three options for responding to the Bichard Inquiry Report in Scotland.

**COSTS AND BENEFITS: DETAILED MODELLING ASSUMPTIONS**Numbers of scheme members and numbers of disclosure checks*Paragraphs 54-56*

1. In the year to 1 October 2007, Disclosure Scotland received 670,000 applications for disclosure of which 360,000 were for standard or enhanced disclosure. Of these, we estimate some 260,000 applications were for the purpose of working with children or vulnerable adults. By 1 October 2007, Disclosure Scotland had carried out a total of 2.44 million checks, of which 1.48 million were enhanced or standard disclosures, since it began operating in 2002.
2. The Scottish Government estimates that around 1.1 million standard or enhanced disclosure checks have been carried out for posts involving work with adults at risk<sup>2</sup> or children since Disclosure Scotland began operating in 2002. With around 30-40% of applications being duplicates<sup>3</sup> (there has been a marked increase in the duplicate rate in 2006/07), this means that somewhere around 600,000 - 700,000 individuals have now been checked for posts that are likely to fall within the scope of the scheme since 2002. Therefore, around 600,000 - 700,000 individuals have already been through the disclosure process in five years compared to the 805,000 individuals who we estimate will become scheme members. But some of these "checked" individuals will have left the workforce over these five years. It follows that there are at least 100,000 - 200,000 individuals in both the child care and adult care workforces who have not been disclosure checked to date. Some of these, especially those in the public sector, may have been checked by the non-statutory arrangements which were in place prior to the establishment of Disclosure Scotland.
3. The latest modelling suggests around 212,000 applications for checks per annum by individuals joining or on the scheme once the whole workforce has been brought on stream. But only 37,000 of these will be scheme record disclosures like enhanced disclosure<sup>4</sup>. This means the number of full checks required per year will fall to just under 15% of the current value. The remainder of the 212,000 checks will be simpler short scheme record disclosures or disclosure of scheme membership. The total number of checks will be lower (212,000 compared with 260,000 in the year to 1 October 2007) because some of the repeat checks made by employers and regulators under current arrangements may no longer take place.

Modelling the costs of retrospective checking

4. We have made the following assumptions based on the best evidence readily available:
  - (i.) The total cost of operating the scheme is assumed to be the same as operating Disclosure Scotland now. The Financial Memorandum estimated the ongoing costs to be marginally less than the cost of running Disclosure Scotland (£10 million per annum

<sup>2</sup> "Adults at risk" is the term used in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 for the category of adult contact with whom through work entitles an individual to an enhanced disclosure check.

<sup>3</sup> Even this is likely to be an underestimate since name and address have to match to be counted as a duplicate and significant numbers of individuals will have changed address since 2002.

<sup>4</sup> These figures are significantly less than the 330,000 checks and 60,000 scheme record disclosures estimated in the financial memorandum (paragraph 207). There was a degree of double counting of workforce turnover in the modelling which has now been eliminated.

currently). Clearly the final costs will depend on the detailed system specification and design, some of which depends on the outcome of the consultation on proposals for secondary legislation. By investing upfront in the systems to support the scheme, a much better and more efficient vetting service can be provided, not least by giving the system "memory" which cuts down on the effort required to produce vetting information. These efficiency savings are anticipated to offset the cost of the new listing activity under the Central Barring Unit.

- (ii.) We have separated the 120,000 paid employees of the voluntary sector from volunteers and the voluntary sector for the purposes of dividing up fee and administration costs (and for the purposes of model 3 which retrospectively checks the 225,000 individuals who volunteer only after those in paid employment).
- (iii.) There is an overlap of 175,000 individuals who should eventually become scheme members as a result of both volunteering in the voluntary sector and paid employment. The smallest unit of time in the modelling is one year. Where the modelling anticipates that individuals will join the scheme as a result of both activities *in the same year*, it is assumed that the individual will join through paid employment. This may or may not be the case in practice but could, in part, be controlled by the level of detail in the programme for retrospective checking.
- (iv.) We have assumed administrative costs of joining the scheme or scheme record disclosure to be £21.50 (paragraph 59) and short scheme record disclosure and other circumstances to be £5 (paragraph 60).
- (v.) The workforce structure is static, i.e. there will not be large changes in the numbers of posts in each type of work (e.g. 10,000 new social worker posts).
- (vi.) We have assumed an attrition rate of around 4-5% per annum for paid employees and volunteers in the voluntary sector. These are individuals entering the workforce for the first time, replacing individuals leaving the workforce (e.g. retiring).
- (vii.) We have assumed a turnover rate of around 16% per annum amongst volunteers and 19% in paid employment. These are individuals changing posts within the scope of regulated work<sup>5</sup>.
- (viii.) For the two tier charging regime, we have taken a higher level fee of £26 and a lower level fee of £10 *which cannot be taken as an indication of actual fees* but does yield plausible results.
- (ix.) In the subscription charging regime, we have assumed that the annual subscription will be paid for every year that the individual is doing regulated work. We have calculated an annual fee per individual by dividing the costs equally between the scheme members irrespective of the number of positions in regulated work which they have. The alternative would be to allocate costs per post so that an individual who has two jobs pays twice as much. This would be much more difficult to administer.

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<sup>5</sup> In chapter 5 of the consultation paper, a figure of 30% is used for "turnover" meaning the aggregate of attrition and turnover which, for the purposes of this RIA is estimated at 20-24%. The higher figure was used in the consultation paper to emphasise the fact that, even with high turnover, without retrospective checking there are still significant numbers of individuals outside of the scheme many years later.

- (x.) The principal costs of operating the scheme are: the costs of the initial vetting when an individual joins the scheme; the ongoing costs of continuous vetting for each scheme member; the costs of consideration for listing a relatively small number of individuals; and the costs of producing subsequent disclosure certificates (there is no new vetting involved). The scheme costs have been modelled through transaction costs depending on the type of disclosure request which, although not strictly accurate, does generate plausible data and mimic the likely behaviour of the system sufficiently.
- (xi.) The costs are quoted in 2007 cash terms, despite running over a 10 year period. That is to say, they are not discounted because the benefits of joining the scheme and disclosure checks are also deferred.

Baseline 1: no scheme - continuing with standard and enhanced disclosure

*Paragraph 69*

5. This baseline assumes:
- the administrative cost of standard and enhanced disclosure is £21.50 (see paragraph 59);
  - the fee for standard and enhanced disclosure remains at £20;
  - the number of applications for standard and enhanced disclosure in respect of child and adult care positions would have remained at around 260,000 per annum; and
  - of these 50,000 are free checks for volunteers in the voluntary sector.

It is difficult to predict the future evolution of the current system because we are still in a transitional period from its go live in 2002. For this reason, the most recent application data is used without extrapolation.

Administrative cost comparison

*Paragraph 72(i.)*

6. Using the figures at paragraphs 1 to 3 above and paragraphs 60 and 61 in the main body of the RIA, the administrative cost across all sectors in applying for enhanced disclosure in the year to 1 October 2007 was £5.6 million whereas, once the scheme is fully rolled out, the administrative cost across all sectors should be no more than £1.7 million per annum. The £1.7 million figure appears in table 1 rows Year 4+ for model 1, Year 6+ for model 2 and Year 7+ for model 3. It can also be calculated from the 37,000 scheme record disclosures per annum at an administrative cost of £21.50 each and the (212,000 – 37,000) short scheme record disclosures etc per annum at an administrative cost of £5 each.