



# **Protection of Vulnerable Groups (Scotland) Act 2007 – Consultations on Implementation**

UNISON Scotland's response to Scottish Executive Consultations on Implementation of the Protection of Vulnerable Groups (Scotland) Act 2007

February 2010

## Executive Summary

- UNISON Scotland supports the principle of safe and effective public protection and welcomes the steps being taken by the Scottish Government to improve the protection of children and vulnerable groups.
- We have three main concerns surrounding the approach and implementation of the PVG Scheme which we set out in this response. These are:
  - Duplication of registration.
  - The cost to individuals of registration
  - The right to a fair hearing

### **Duplication of Registration**

- Many individuals who will be subject to the PVG Scheme are already included on a professional register for which they have to pay an annual fee. We believe it should be possible to establish a system of co-operation between the existing regulatory bodies which would enable the PVG scheme to fulfill its statutory function whilst recognising the existing structures for public protection.
- UNISON Scotland therefore urges the Scottish Government to ensure that the PVG process does not duplicate existing registration and costs for those already on a relevant professional register.

### **The costs to individuals of Registration**

- Individuals in paid employment will be required to pay £59 for a PVG Scheme Record Disclosure and £18 for subsequent Disclosures (Short Scheme Record Disclosures). These costs are significantly higher than those envisaged in the Financial Memorandum which accompanied the original Bill.
- Under existing arrangements, costs are usually paid by the employer and included in the employers' recruitment processes and costs. However, we believe that the PVG Act alters this and could move the cost on to a prospective individual employee.
- We are particularly concerned that the registration fee proposed for the PVG Scheme will have a disproportionate and detrimental impact on low paid and part-time workers, most of whom are women. We believe this could have a detrimental effect on an Equality Impact Assessment.
- We welcome the fact that volunteers do not have to pay to register with the PVG Scheme. However, those who register as volunteers will be required to pay the registration fee if they subsequently take up paid employment where PVG registration is required.

- UNISON Scotland believes that in all circumstances it should be mandatory for employers to pay for the registration fee, rather than the costs being born by an applicant.

**The Right to a Fair Hearing**

- UNISON Scotland has significant concerns about the standards by which Disclosure Scotland will make judgments on when an individual should be considered for listing on one of the barred lists. We believe this to be unfair and in breach of the Human Rights Act.
- We cannot accept, therefore, the assertion in Paragraph 241 of the Draft Guidance that Disclosure Scotland's assessment process is "backed up by a full appeals process".
- In addition, we do not believe that an appeal to a sheriff against a listing decision should only be on the grounds that "Disclosure Scotland has failed to follow correct procedures" or in circumstances where an individual believes that the "conclusion is not justified based on the information available to it," but not against the facts on which the individual was considered for listing.
- UNISON Scotland believes that everyone has the right to a fair hearing, an appropriate appeals process and to be provided with specific details about any charges against them.

## **Introduction**

UNISON is Scotland's largest public sector trade union representing over 160,000 members. UNISON Scotland represents workers from the NHS and education, social services and the voluntary sector throughout Scotland, a large number of whom work with children and vulnerable adults. We have members working in schools as classroom assistants, support and administrative staff, cleaners, janitors and caterers; members working in social services caring for children and vulnerable adults such as social workers and support staff and those involved with the justice service; members working in early years establishments as nursery nurses; and members working across the whole of the NHS as nurses, ancillary staff, cleaning and catering staff, etc. We also have members working in sport and leisure as well as the police service.

Over the past 10 years, UNISON Scotland has supported all of the consultations and legislation aimed at protecting children and vulnerable adults promulgated by the Scottish Executive and Scottish Government. We now welcome the opportunity to respond to the various consultations on implementation of the Protection of Vulnerable Groups Scheme (PVG Scheme), as set out in the Protection of Vulnerable Groups (Scotland) Act 2007.

## **Response**

### **The Consultations**

There are 9 consultations that the Scottish Government is seeking comments on for the POVG Implementation – Draft Guidance, a Partial Regulatory Impact Assessment and the following SSIs:

Automatic Listing Order  
Automatic Consideration for Listing Order  
Contractors and Disclosure Regulations  
Protected Adult Regulations  
Fees Regulations  
Regulated Work with Children Order  
Regulated Work with Adults Order

UNISON Scotland will be making one response on the consultations, with general comments

## **General Comments**

UNISON Scotland supports the principle of safe and effective public protection and as said above, we welcome the steps being taken by the Scottish Government to improve the protection of children and vulnerable groups.

Every day our members care for the most vulnerable people in society and are fully committed to public services.

We welcome the proposals to practice proportionality in the types of worker required to be regulated, by prescribing certain occupations and definitions of regulated work and setting out other occupations that would not need to be regulated, in that no unsupervised contact would be likely to take place.

We have three main concerns surrounding the approach and implementation of the PVG Scheme which we set out in this response. These are:

- Duplication of registration.
- The cost to individuals of registration
- The right to a fair hearing

We believe it is vital that these issues are addressed before the implementation of the PVG Scheme, to ensure that a fair and workable system is put in place to protect the public.

### **Duplication of Registration**

Many individuals who will be subject to the PVG Scheme are already included on a professional register for which they have to pay an annual fee. The new scheme will duplicate the existing regulation of public protection for thousands of public and voluntary sector workers. UNISON Scotland believes that individuals who are already on a professional register should not also have to register with the PVG scheme.

Currently there are no practical arrangements in place for co-operation between the existing regulators and the PVG scheme but we believe it should be possible to establish a system of co-operation between the existing regulatory bodies which would enable the PVG scheme to fulfill its statutory function whilst recognising the existing structures for public protection.

We believe this duplication complicates matters and could have a detrimental effect on public protection. Removing the duplication would also bring the overall cost of the scheme down and ensure a more proportionate approach.

UNISON Scotland therefore urges the Scottish Government to ensure that the PVG process does not duplicate existing registration and costs for those already on a relevant professional register.

### **The costs to individuals of Registration**

Individuals in paid employment will be required to pay £59 for a PVG Scheme Record Disclosure and £18 for subsequent Disclosures (Short Scheme Record Disclosures). These costs are significantly higher than those envisaged in the Financial Memorandum which accompanied the original Bill, due, we understand to IT and other additional operating costs of Disclosure Scotland.

We accept that the PVG Act does not legislate who should pay the fees, as long as somebody pays the correct fee and that each organisation will decide who should pay. Under existing arrangements, it is the responsibility of the employer to undertake criminal record checks and ensure that an individual is professionally registered, where this is appropriate. These costs are usually included in the employers' recruitment processes and costs. However, we believe that the PVG Act alters this and could move the cost on to a prospective individual employee.

We have particular concerns that the registration fee proposed for the PVG Scheme will have a disproportionate and detrimental impact on low paid and part-time workers, most of whom are women. For example, a school cleaner or a healthcare assistant will be expected to pay the same amount as a head teacher or director of social work. We believe that the PVG fee could have an impact on recruitment as it could influence whether or not the individual chooses to work in public services, if working in schools and hospitals costs more than working in jobs where registration is not required. For example, a dinner lady or someone working in a hospital canteen could choose to work in a local café to avoid payment of the fee. We believe this could have a detrimental effect on an Equality Impact Assessment.

UNISON Scotland believes that this could have an adverse impact on the support and services provided to vulnerable groups, if people chose not to work in the sector. We believe it is vital that the system that is put in place does not have a negative effect on public sector service delivery.

We welcome the fact that volunteers do not have to pay to register with the PVG Scheme. However, those who register as volunteers will be required to pay the registration if they subsequently take up paid employment where PVG registration is required. This could deter individuals from taking up paid employment. Our view is that there should be no retrospective obligation to pay the registration fee which, as stated in the Act, is a one-off fee.

UNISON Scotland believes that in all circumstances it should be mandatory for employers to pay for the registration fee, rather than the costs being born by an applicant.

### **The Right to a Fair Hearing**

UNISON Scotland has significant concerns about the standards by which Disclosure Scotland will make judgments on when an individual should be considered for listing on one of the barred lists. We believe this to be unfair and in breach of the Human Rights Act. This is because it will be a paper exercise and an individual's only opportunity to defend themselves and cross examine the evidence will be in a submitted statement. They will not have the opportunity for a face-to face hearing or to call witnesses at any stage in the consideration for listing process. Unsubstantiated allegations could lead to someone having their livelihood taken from them and there is a risk that the process could lead to unnecessary and costly legal challenges. The Scheme has a role to play in considering such allegations, but should not become burdened with inappropriate or malicious complaints which prevent them from undertaking their statutory function. We do not believe that sufficient clarity has been given to fully explain what is a relevant referral to the PVG Scheme.

We cannot accept, therefore, the assertion in Paragraph 241 of the Draft Guidance that Disclosure Scotland's assessment process is "backed up by a full appeals process". In addition, we are concerned that listing decisions are made "on the balance of probabilities", stated to be the same standard of proof which is required in a civil court and that "**Disclosure Scotland** will determine whether it is more likely than not that someone is **unsuitable for regulated work.**"

In addition, we do not believe that an appeal to a sheriff against a listing decision should only be on the grounds that "Disclosure Scotland has failed to follow correct procedures" or in circumstances where an individual believes that the "conclusion is not justified

based on the information available to it,” but not against the facts on which the individual was considered for listing.

Every other regulator hears most cases in public. The PVG Scheme will not operate in a similar manner which seems at odds with other government requirements to seek public engagement, openness, transparency and adherence to Human Rights legislation.

UNISON Scotland believes that everyone has the right to a fair hearing, an appropriate appeals process and to be provided with specific details about any charges against them.

**For further information please contact:**

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