



PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 - CONSULTATION ON SECONDARY LEGISLATION

**UNISON Scotland's response to the Scottish Government's
Consultation on Policy Proposals for Secondary Legislation
associated with the Protection of Vulnerable Groups (Scotland)
Act 2007**

February 2008

Executive Summary

- UNISON Scotland welcomes the opportunity to comment on the Scottish Government's Consultation on Policy Proposals for Secondary Legislation associated with the Protection of Vulnerable Groups (Scotland) Act 2007
- UNISON Scotland supported the introduction of the Protection of Vulnerable Groups (Scotland) Act 2007 which will ensure as far as possible that unsuitable persons are prevented from working with children and vulnerable groups.
- We believe that the introduction of the new, continuously updated, "membership" scheme which will mean that individuals do not have to reapply for a new disclosure each time they move jobs is a very positive step.
- We also welcome the setting up of the cross-sectoral working group to develop interim guidance on child care positions and to further develop the guidance under the Act.
- However, we believe that the practice of charging individuals for inclusion in the Scheme is in effect making them pay for the right to work. If the Scottish Government wants care workers to be included in a scheme, they should be prepared to pay for it.
- We believe that the role of the Central Barring Unit to only determine suitability and not to investigate cases could prejudice individuals' rights to a fair hearing by the people making the decisions on whether or not to list them.
- We are very disappointed that none of the problems of the DWCL have been removed with the introduction of these new lists. In particular the fact that an individual will only have the opportunity for face-to-face representation against the decision to list at the stage of an appeal to a sheriff.
- UNISON also believes that there should be an appeals procedure built into the CBU's determination process, which takes place before the final decision to list is made by the Minister and again, prior to the final appeal to a sheriff or sheriff principle.

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.

UNISON Scotland welcomes the opportunity to comment on the Scottish Government's Consultation on Policy Proposals for Secondary Legislation associated with the Protection of Vulnerable Groups (Scotland) Act 2007

Response

General

UNISON Scotland supported the introduction of the Protection of Vulnerable Groups (Scotland) Act 2007 which will ensure as far as possible that unsuitable persons are prevented from working with children and vulnerable groups. Clearly there is a need to protect vulnerable people from individuals who may cause them harm. UNISON Scotland supported the establishment of a list of people who were deemed to be unsuitable to work with children as a good step to protect children, and welcome its extension aimed at preventing individuals who may harm or cause danger to other vulnerable groups from having regular contact with them.

We believe that the introduction of the new, continuously updated, "membership" scheme which will mean that individuals do not have to reapply for a new disclosure each time they move jobs is a very positive step.

We also welcome the setting up of the cross-sectoral working group to develop interim guidance on child care positions and to further develop the guidance under the Act. UNISON would be pleased to have the opportunity of involvement in the work of this Group.

In addition, we do support the decision to increase the time for individuals to submit initial observations from 21 to 28 days, as we are aware that some individuals do need longer than 21 days to take advice, arrange for witness statements, etc.

We are, however, concerned at certain aspects of the implementation proposals of the Act and the operation of the lists, which will be expanded upon in answering the various questions below.

In particular, the practice of charging individuals for inclusion in the Scheme is in effect payment for the right to work, in addition to the current drive to register many more groups of workers in the care industry, which also has to be paid for. If the Scottish Government wants care workers to be included in a scheme, they should be prepared to pay for it.

With regard to referrals for placement on one of the new Barring lists, the proposals do not make it clear at which stage there is a duty on an organisation to make the reference.

We believe that the role of the Central Barring Unit to only determine suitability and not to investigate cases could prejudice individuals' rights to a fair hearing by the people making the decisions on whether or not to list them. We believe that the removal of the process from the civil service to a quango removes the little democratic control that applied to the Disqualified from Working with Children List (DWCL).

We are very disappointed that none of the problems of the DWCL have been removed with the introduction of these new lists. When an individual is under threat of being placed on one of the lists, they will only have the opportunity for face-to-face representation against the decision to list at the stage of an appeal to a sheriff. Although the actual process is not spelled out, the current experience of the DWCL list is that the appeal is again on the basis of the unfair and unreasonable application of the listing process, rather than the actual

issues for which the person is referred. This is against natural justice, as there is no right for the individual to have representation against the grounds of the listing. The costs of representation will again have to be borne by the individual, who can of course apply for legal aid if applicable.

Questions

Section 2.3: Regulated work with adults.

Q 2a

UNISON does not believe that an individual should be a protected adult if they are in receipt of any health service (NHS or private) as we believe this is too wide a definition which would be onerous to operate and could lead to unwarranted allegations.

Q 3a

We believe that there should be an explicit list of prescribed services, which will make it easier to clarify the scope of the legislation.

Q 3b

The definition of welfare services should definitely be expanded to include commercial organisations who provide services similar to those provided by the statutory and voluntary sector. To omit these services could allow abuse in this sector to occur without recourse to any sanctions.

Section 2.4: Contractors and disclosure.

Q 4a

We believe that disclosure information should be shared with third parties in cases where, for example, services have been contracted out to third parties.

Q 4b

UNISON believes that disclosure information should be shared with a third party in the following circumstances:

- Where a third party is contracting a transport provider for the purposes of transporting children or protected adults;
- Where a council is offering direct payments in return for the delivery of care to a protected adult.

In the other circumstances suggested in the question, we believe there are other ways of ensuring safe practices are employed.

Section 2.5: Changes to registration of registered bodies

Q 5a

We do not believe there should be a minimum threshold number of applications per annum from a registered body as a condition of registration.

Section 3.2: Making Referrals

Q 6a

We believe that the proposed list of prescribed referral information set out in 3.2 is acceptable and proportionate.

Q 6c

We do not believe any further information needs to be added to the list to help establish identity or background to cases.

Section 3.4: Automatic Listing

Q 7a

UNISON does not believe that any offences should lead to automatic listing, as every case should be assessed on its own merit.

Section 3.5: Automatic consideration for listing (Children's list only)

Q 8a

We believe that the relevant offences against children set out in schedule 1 should be expanded to include those set out in annex A4 groups 2 and 3

Q 8b

UNISON does not believe there are any offences identified in the Act which should not be relevant offences.

Section 3.6: Listing Decisions

Q 9

Whilst the arrangements for carrying out the determination process outlined in paragraph 140 are not spelled out, if experience of the DWCL is replicated, this will not allow for individuals to make representation to those considering the listing on a face-to-face basis, on the issues involved, with the ability to call witnesses if required.

UNISON believes this is inherently unfair to individuals under consideration for listing.

We welcome the commitment for decisions to be underpinned by robust quality checking procedures as we are only too aware of the significance to our members of the listing decisions. However, we have some reservations at the potential inexperience of members of the Central Barring Unit who are making these decisions, and would wish assurance that comprehensive training and monitoring would be incorporated into the process. In particular we would wish to be assured that those carrying out caseworker assessments as outlined at stage 2 would have a comprehensive knowledge and experience of the procedures adopted by those working with vulnerable groups.

Section 3.8: Removal from lists

Q10

UNISON believes that the age threshold for the shorter minimum no-review period should be set at 25.

Q 11a

We believe that the minimum no-review period should start from the date of the incident or offence.

Q11b

UNISON believes that there should be an appeals procedure built into the CBU's determination process, which takes place before the final decision to list is made by the Minister.

As with the DWCL process, the 2007 Act provides for appeals to the sheriff against Minister's decisions for inclusion in either of the lists and subsequently to the sheriff principle. There can be a considerable cost to the individual making application for removal which we do not believe is justified.

Section 4.3: Handling sensitive information from regulatory bodies and councils.

Q 14a

UNISON does not believe it should be possible for vetting information from regulatory bodies and councils to be withheld from disclosure certificates

Section 4.4 Civil Orders

Q 15b

We believe the following civil orders should be disclosed on standard and enhanced disclosures:

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

Q 15c

We believe that the following orders should be included on Standard and Enhanced Disclosures:

- Interim interdicts banning violent partners from contact
- In certain circumstances, ASBOs

Section 4.5: Other possible vetting information

Q 16a

We do not believe that details of previous competent referrals should be included on scheme record disclosures.

Q 16b

We do not believe there is any other vetting information beyond that identified in 4.4 which should be included on disclosures.

Section 5.2: Retrospective checking: whether and how?

Q 17a

We believe that scheme membership should be phased in through a managed process of retrospective checking.

Q 18

We do not believe that the period of retrospective checking should be delayed until such time as a proportion of the workforce have joined by natural turnover.

Q 19

We believe that retrospective checking should be priorities by the date of the last disclosure.

Q 20a

If there is to be a period of retrospective registration of the regulated workforce onto the scheme, we would prefer this to be done over three years, as it is better to carry it out as soon as possible.

Section 5.3: Fees levels and charging regime

Q 21a

UNISON strongly believes that individuals should not be charged for inclusion in the scheme as this is tantamount to charging them for the right to work.

Q 22

We do not believe that individuals who become scheme members through volunteering should be required to pay a fee for joining the scheme if and when they join the paid workforce.

Chapter 6: Connecting with the rest of the UK

Q 23

UNISON wholeheartedly supports the proposals for cross-border arrangements with the rest of the UK as set out in Chapter 6 as we believe this is the only way to ensure the protection of children and other vulnerable groups across the whole of the UK.

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