Education Committee

25th Meeting, 2006

Wednesday 22 November 2006

The Committee will meet at 10.00 am in Committee Room 1

1. Protection of Vulnerable Groups (Scotland) Bill: The Committee will take evidence at Stage 1 of the Bill in round table format from—

   David Williams, Senior Director, Quarriers
   David Little, Scottish Association of Local Sports Councils
   Lucy McTernan, Director of Corporate Affairs, Scottish Council For Voluntary Organisations
   Judith Gillespie, Development Manager, Scottish Parent Teacher Council
   Jim Duffy, Chief Executive, Scottish Council of the Scout Association
   Kelly Donaldson, Information Officer, Voluntary Arts Scotland
   George Thomson, Chief Executive, Volunteer Development Scotland
   Norman Dunning, Chief Executive, ENABLE
   Michael Hankinson, Operations Manager, Princes Trust
   John Harris, Strategic Head, Central Registered Bodies Scotland
   Joe McIvor, Development Manager, Youth Scotland

2. Protection of Vulnerable Groups (Scotland) Bill: The Committee will take evidence at Stage 1 from—

   Donald Mackenzie, Lead Officer Child Protection; and Jim Murray, Senior Solicitor, Dundee City Council
   Andrea Batchelor, Head of Service (Inclusion), South Lanarkshire Council
   Allan Gunning, Chief Operating Executive, NHS Ayrshire and Arran
   Dr Helen Hammond, Child Health Protection, NHS Lothian
and then from—

Professor Kathleen Marshall, Scotland’s Commissioner for Children and Young People

Maggie Mellon, Director of Children and Family Services, Children 1st

Dr Jonathan Sher, Director of Research Policy and Practice Development, Children in Scotland

Heather Coady, Children’s Policy Worker, Scottish Women’s Aid

Eugene Windsor
Clerk to the Committee
Room T3.40, Committee Office
Ext. 0131 348 5204

The following papers are enclosed for the meeting:

**Agenda item 1**
Submission from Quarriers ED/S2/06/25/1.1
Submission from SCVO ED/S2/06/25/1.2
Submission from Scottish Parent Teacher Council ED/S2/06/25/1.3
Submission from Scout Association Council ED/S2/06/25/1.4
Submission from Youth Scotland ED/S2/06/25/1.5
Submission from Prince’s Trust Scotland ED/S2/06/25/1.6
Submission from The Scottish Association of Local Sports Councils ED/S2/06/25/1.7
Submission from ENABLE Scotland ED/S2/06/25/1.8
Submission from Volunteer Development Scotland and The Central Registered Body in Scotland ED/S2/06/25/1.9

**Agenda item 2**
Submission from Dundee City Council ED/S2/06/25/2
Submission from South Lanarkshire Council ED/S2/06/25/3
Submission from North Ayrshire and Arran ED/S2/06/25/4

**Agenda item 3**
Submission from Scottish Commissioner for Children and Young People ED/S2/06/25/5
Submission Children 1st ED/S2/06/25/6
Submission #1 from Children in Scotland ED/S2/06/25/7.1
Submission #2 from Children in Scotland ED/S2/06/25/7.2
Submission Scottish Women’s Aid ED/S2/06/25/8
SUBMISSION FROM QUARRIERS

Thank you for giving Quarriers the opportunity to respond to this consultation. Quarriers is a Scottish charity providing practical care and support for children and adults with a disability, children and families, homeless young people, people with epilepsy, and carers. Through more than 85 projects in over 100 different locations, we challenge inequality of opportunity and choice, to bring about positive change in people’s lives.

Whilst we recognise and agree with much of the purpose behind the Bill, we do have concerns that there may be fundamental difficulties with the cost and logistics of its implementation in practice, and support the collective activity of SCVO and of CCPS in attempting to address these issues. We do not intend to duplicate this effort and our response, therefore, focuses on other issues in Parts 1 and 2, and on Part 3 of the Bill, relating to the sharing of information for child protection purposes.

How effective is the bill likely to be in providing children and protected adults with additional protection from harm?

We are broadly supportive of the aims of the Bill, and welcome the recognition that those working with protected adults should be subject to the same scrutiny as those working with children.

We do, however, have a number of concerns about the practicalities of the bill as introduced.

• There is potential for confusion caused by the overlap between a child under 18 years old and a protected adult, aged 16 or over. For example, it is unclear to which list a worker should be referred if the person harmed, or at risk of harm, is 16 and or 17, and receiving services, i.e., they are both a child and a protected adult.

• In addition, there are circumstances where it is possible that agencies with responsibility for child protection will believe that those with responsibility for adult protection will act, and vice versa. A more clearly defined line between an adult and a child would be useful.

• A person who is barred from working with children could still be employed to work with protected adults (and vice versa), and the barring information a potential employer would receive would relate only to one regulated workforce. In our opinion, scheme record disclosures should indicate whether a person is on EITHER list, regardless of which regulated workforce the person has applied to join. It is clear that the onus, quite rightly, is on the employer to assess and make reasoned decisions about recruitment, but to disadvantage them by providing only partial information on which to base these decisions, is unreasonable. We can see additional potential difficulties with, for
example, redundancy and redeployment, staff development and workforce planning.

- We would not be comfortable with having someone working for Quarriers whilst they are being considered for listing. If a person has committed an act so serious that they were referred for listing, it is likely that we would normally suspend or dismiss, however under the proposals, a person being considered for listing may continue to undertake regulated work. There is also the possibility that if the CBU fails to list a person, there may be a legal challenge on the employer. Whilst mention is made of guidance being issued, we believe that there is significant potential for confusion and conflict with employment law.

What are the likely impacts of the bill on employers, employees and volunteers?

It is highly unlikely that a short scheme record would satisfy our robust recruitment processes and we would always want to see the full Disclosure information. The increased costs associated with this will place an enormous financial burden on Quarriers, at a time when the cost of Enhanced Disclosures has just increased, when care providers are already experiencing significant difficulties due to the failure of many local authorities to adopt a Full Cost Recovery position when funding care packages, and when insurance companies are putting increasingly onerous demands on employers.

The provisions contained in the bill will also necessitate multi-agency training and awareness-raising across organisations and sectors, and resources must be made available to ensure that all staff across all sectors understand. It is unclear how it is proposed to provide the required resources.

It might also be useful to consider actively involving staff who work in frontline recruitment to ensure that all aspects are included and that key issues are not omitted.

Other issues

Whilst we recognise the importance of information-sharing within child protection practice and acknowledge this has been identified as a contributory factor in a number of failures of child protection, we do feel that it would have been more appropriate to have included the duty to share child protection information in legislation arising from Getting It Right For Every Child (GIRFEC), which we understand has been delayed. There are likely to be significantly greater opportunities to engage and influence those who are not directly involved in child protection but whose interaction with children and families is, nevertheless, considerable, through GIRFEC than through Protecting Vulnerable Groups. It would appear that greater emphasis has been put on introducing legislation speedily rather than most effectively.

In relation to sharing child protection information, the development of appropriate guidance will be key and could play a major part in progressing the cultural and attitudinal changes that will make a real difference. There are,
however, numerous codes of practice that provide guidance for anyone working in the social care field, and there may be more arising from GIRFEC, and it is unclear how these will be integrated in a way that provides a useful and cohesive tool.

There also remains the issue that sharing information will not in itself make a child safer, but that the actions resulting from that information will be key. In this respect, greater emphasis needs to be put on implementation, including feedback for the person/organisation that has first put forward the information, to ensure that concerns are followed up systematically and cohesively.

To ensure greater consistency, it might be useful for a form of matrix to be developed, to allow a uniform risk assessment of information and knowledge, which is understood and followed by all agencies across Scotland.

In addition, in discussion with children and young people, it has been clearly identified that they are willing for information held by a trusted individual (eg a key worker) to be shared with others if necessary, provided that the child knew who was getting the information and why, and what would be done with the information. They were quite clear that they found the idea of professionals talking about them without their knowledge disturbing, so it is important that this is included as part of the code of practice.

Policy memorandum and financial memorandum

Both the policy memorandum and explanatory notes were a useful source of additional information and guidance.

However we found the financial memorandum lacking in insight into the realities of the resource implications, both for providers (see above) and other agencies, including those currently involved in the Children’s Hearing System.

I hope that this is useful, and we would be happy to discuss further the work of Quarriers and the people we support, if that were helpful.
SUBMISSION FROM SCVO

About SCVO

SCVO is the umbrella body for the voluntary sector in Scotland. Our 1300 members represent a large constituency covering the majority of charitable activity in Scotland. Many of these members are themselves intermediary bodies representing the interests of many thousands of voluntary organisations locally and with respect to specific types of work. Through them we maintain a further contact with the sector at large and the issues that affect it.

The elected SCVO Policy Committee represents large and small, local, national and international organisations, covering many different fields of activity. The Committee’s experience and knowledge is instrumental in informing our policy positions.

Background

The protection of vulnerable groups is a very important issue for the voluntary sector. Voluntary organisations typically work with a disproportionate number of vulnerable groups.

We estimate that there are up to 106,000 paid staff, 850,000 volunteers and tens of thousands of voluntary organisations that will be within the scope of this legislation. Any legislation on the issue will therefore have a very large impact on the work we do as a sector.

The proposed Vetting and Barring scheme will be the third major upheaval relating to working with vulnerable groups in recent times, following only a year after the implementation of the Protection of Children (Scotland) Act 2003 (PoCSA). We therefore hope that this legislation will create a system that will work successfully for many years to come and we will work enthusiastically to make this happen.

Voluntary Sector Coalition

SCVO would highlight our participation in a voluntary sector coalition formed in response to the Protection of Vulnerable Groups Bill (PVG). We strongly endorse the asks outlined in the coalition’s own written evidence to the Education Committee. On the basis of the explanatory notes and financial memorandum accompanying the bill as introduced, we, as a coalition, are far from convinced that sufficient consideration has been given to the realities of implementation.

We are appreciative of the opportunity presented by the Education Committee to identify some serious omissions in the Bill and accompanying documents.

SCVO’s position

SCVO welcomes much of the PVG Bill, seeing it as potentially a vast improvement on the current PoCSA regime. We are delighted, for example, at proposals under the new scheme for the ‘constant updating’ of disclosure checks and the option of subsequent nominal checks, hopefully reducing multiple checks in the sector. In addition we commend the Executive for retaining free volunteer checks under the new scheme.
However, we believe there are significant problems with the Bill and the Financial Memorandum that could risk efforts to protect vulnerable groups in Scotland. Voluntary organisations are very often at the frontline of efforts to protect vulnerable groups, working to the benefit of children and adults across Scotland. If this legislation inhibits this voluntary activity, by diverting precious resources from frontline activity or by closing projects, groups or organisations, it will at the same time harm the vulnerable groups the Bill sets out to protect.

We believe the best way forward would be to slow this process down to allow sufficient time to consider the implications of the proposed scheme and the fundamental principles underlining it. We believe legislative action is required to amend the current system particularly on those issues where consensus exists. The voluntary sector is desperate for changes to the current system. However, we believe a full debate must be had as to whether we are in the right direction of travel in regards to protecting vulnerable groups.

A realistic approach to risk

A vetting and barring scheme will form only a small part of a successful protection regime. Many in the voluntary sector are concerned that a disproportionate focus is being given to criminal checks in these proposals and that, a proper balance has yet to be found between protecting vulnerable groups from harm and allowing vulnerable groups to lead fulfilling lives.

The sheer scale of what is being proposed should not be underestimated. On the Scottish Executive’s own figures, 1 in 4 adults in Scotland will be within the scope of this Scheme, experiencing the invasions of privacy stemming from the Scheme. We question whether a vetting and barring scheme of this scale is the correct and proportionate way to use finite resources to protect vulnerable groups in Scotland.

It is possible to overprotect vulnerable groups if the efforts designed to protect them from harm actually end up causing greater harm than good or increase exposure to risk. If a protection regime is too intrusive and constraining, then many activities, projects and organisations, currently working for the benefit of vulnerable groups, will cease to exist. The Executive must find the correct balance between true protection and over zealous risk aversion when dealing with vulnerable groups.

We have raised a number of our specific technical points directly with the Scottish Executive Bill Team since the introduction of the Bill. Engagement with the Executive has been positive and we will continue to work with them over the legislative process.

Summary of key asks:

1. Amendments, or public statements of policy intention, must be made regarding the key aspects of the Bill to put an end to current damaging uncertainty
2. The current definition of a protected adult must be rethought. As drafted it will create an intolerable administrative treadmill for organisations delivering services in unregulated settings

3. The definition of work should be improved to exclude the most informal voluntary activity from the legislation’s scope

4. Scheme members should not be under a legal duty to notify the Scheme, within three months, of changes to their address

5. The voluntary sector cannot write a blank cheque for these proposals. Disclosure fees for paid staff in the voluntary sector must be capped at their current £20 level

6. Whether an original certificate contained vetting information or not should be disclosed under a short scheme check

7. The administrative burden stemming from these proposals as they stand must be reduced, particularly for the smallest voluntary organisations

8. The voluntary sector must be allowed a 12 month lead-in prior to commencement

9. Specific guidance for the voluntary sector must be produced 12 months in advance of commencement

10. The new scheme will bring additional start-up costs of up to £3million for voluntary organisations. These costs must be funded or waived and acknowledged in the Financial Memorandum.

11. The voluntary sector will require up to £1million for training over the lead up to, and phasing in of, the new Scheme. These costs must be funded and allocated in the Financial Memorandum.

12. The administration costs across the sector from checking all paid staff and volunteers will amount to up to £20million. Allowance for these costs must be made in the legislative process and through a substantial phasing-in period.
Consultation Process

We are disappointed that a number of the Executive’s proposals in the consultation document were less than fully worked up. For example, proposals for information sharing have not been consulted on at all. We believe that the consultation process occurred too late in the process to influence the principles of the proposed legislation and too early in the Executive’s thinking to comment on many of the specific proposals for action. Follow-up dialogue to the consultation, relating to implementation and resource issues, which we expected during summer 2006, did not materialise.

Many in the sector have the impression that the general approach from the Executive to this piece of legislation has been to pass primary legislation at great speed and work out the details later in secondary legislation. We believe that it is crucial that implementation of this complex legislation must be considered at this stage, by both the Education and Finance Committees, together with an evaluation of whether sufficient time is available to consider a Scheme of the scale proposed.

Uncertainty

Amendments, or public statements of policy intention, must be made regarding the key aspects of the Bill to put an end to current damaging uncertainty

Despite the Bill’s length we believe that inappropriate levels of detail have been left for secondary legislation. The Bill provides for many open-ended powers for Ministers that, depending on how they are used, could cause serious problems for the voluntary sector. This has led to a great deal of uncertainty as to how this legislation will look in practice, and makes it very difficult to quantify the likely impact for the voluntary sector.

We believe amendments to the primary legislation, or at least public statements of policy intention, must be made to reduce this damaging uncertainty and allow Parliamentarians to accurately consider the likely impact of the new system.

Uncertainties include:
- The phasing-in period of the Scheme
- The fee for a Scheme disclosure check
- The fee structure of the Scheme
- The length of Scheme membership
- The Code of Practice on Sharing Child Protection Information
- The tracking of ‘current’ organisations on an individual’s Scheme record
- The costs on organisations stemming from their ‘duty to refer’

Definitions

The current definition of a protected adult must be rethought. As drafted it will create an intolerable administrative treadmill for organisations delivering services in unregulated settings

SCVO is deeply concerned by the definition of a protected adult used in the Bill. Because a ‘protected adult’ is defined by the services used by an adult, rather than any intrinsic characteristic or identifiable vulnerability, a protected adult will be a very transient and fluid term. For many organisations delivering services to adults in unregulated settings, it will become an administrative treadmill to keep track of who is
and who is not currently a ‘protected adult’ and therefore which staff members can
become scheme members and which cannot. **We strongly urge the Executive to
think again about the definition of a protected adult used in the Bill. Without
amendment this could seriously damage voluntary organisations delivering
services outside of regulated settings.**

Equally, for those organisations working with vulnerable adults, who may not currently
be defined as a ‘protected adult’, there is no provision in the Bill to refer inappropriate
staff behaviour directly to the Scheme, even when it may be very relevant to working
with protected adults. By using a service-related definition as a proxy for an adult’s
vulnerability, the Bill may exclude adults who require the level of protection offered by
the scheme.

We are also concerned that an overlap in the definitions of a child (under 18) and a
‘protected adult’ (over 16) could cause confusion and uncertainty in the protection
system. We note that the equivalent Westminster Bill defines ‘protected adults’ as 18
or over.

Finally, we are confused as to the justification for having a lower standard of protection
for children and protected adults in employment. As drafted, the Bill would remove
many of the responsibilities on organisations that employ children between the ages of
16 and 18, and protected adults in a paid capacity. We are unsure of the logic behind
this and would ask why children/protected adults in employment should be at less risk
than children/protected adults in receipt of a service?

Furthermore, if it is acceptable to lower the level of protection for vulnerable groups in
paid employment we would query why it is not acceptable to do likewise for vulnerable
groups working in an unpaid capacity. We believe volunteering, unpaid internships,
and unpaid work experience should be treated as equivalent to paid employment to
avoid discouraging these valuable opportunities.

**Definition of Work (Section 95)**

> The definition of work should be improved to exclude the most informal voluntary
activity from the legislation’s scope

We are concerned that the proposed legislation, as with the current PoCSA system,
will include within its scope activity at a very informal level. We believe the definition of
work in Section 95 could be improved by excluding from the scope of the Act the most
informal activity, often carried out by individuals in unconstituted voluntary groups.
Many of these groups provide crucial activities for vulnerable groups, and by their very
nature, do not have the capacity to cope with the administrative burden imposed on
organisations by this legislation.

**Barriers to Volunteering**

As stated, we are very happy that the Executive has made clear its intention to
continue to fund free checks for volunteers in the voluntary sector. However there is a
growing body of evidence that the current Disclosure system is proving a barrier to
volunteering. Without changes we believe the new Scheme may also fail to resolve
this problem. The exact value (financial or otherwise) to organisations, individuals, and
wider society is hard to quantify, yet undisputedly significant. The Executive’s National
Volunteering Strategy and policy of promoting volunteering, which is widely supported
in the sector and wider public, will be jeopardised by this legislation unless careful consideration is given to primary and secondary legislation and its implementation is properly resourced.

Requirement to notify address change

*Scheme members should not be under a legal duty to notify the Scheme, within three months, of changes to their address*

We are very worried about the requirement in the Bill that members of the Scheme must update their address within 3 months of it changing. We believe that this is an unnecessary burden on the over one million individuals within the scope of this system, especially volunteers. We believe it could mark a substantial change in the relationship between volunteer and voluntary organisation. Furthermore we question whether those that are actually likely to generate vetting information are likely to update their personal details. This could therefore paradoxically place the heaviest burden on those least likely to be a risk.

We are unsure as to the purpose of harvesting this information from Scheme members, and as to whether the benefits outweigh the costs of doing so. However, if required, we would suggest one solution could be to ask, and compel, scheme members to update their address each time they request a scheme check, rather than, as currently drafted, within three months of a change. This would be an easy way to reduce the red tape stemming from this legislation without harming the Bill’s intentions.

Cap Disclosure Costs

*The voluntary sector cannot write a blank cheque for these proposals. Disclosure fees for paid staff in the voluntary sector must be capped at their current £20 level*

It is unrealistic to expect the vetting and barring scheme to be self-financing. The voluntary sector does not have the finances to fund a new disclosure system, through disclosure fees, without damaging frontline services or even risking the closure of groups, projects and organisations working to the benefit of vulnerable groups. If the Executive are serious about protecting vulnerable groups then substantial additional resources will be required.

Due to inaccurate estimates of what the current system requires to be ‘self-financing’ disclosure fees for paid staff have already increased from £13.60 to £20 (an increase of 47%), only a year after commencement of PoCSA. According to Executive estimates, the proposed legislation is likely to see an initial rise in the cost of a paid disclosure check, from their current £20 to £26 (a further increase of 30%). An upfront cost increase of 30% could have a very negative impact across the sector.

Furthermore, we are very concerned that Executive estimates for the income to the Scheme from fees may, again, be incorrect. If so, there will be scope for disclosure fees to increase substantially, even from their £26 level. The voluntary sector cannot write a blank cheque for these proposals. We believe the Executive must ensure disclosure fees from paid checks in the voluntary sector are capped at their current £20 level to avoid a damaging increase in disclosure costs, and damaging uncertainty regarding future rises. We must avoid inhibiting frontline activity benefiting vulnerable groups.
Nominal checks – Reliance on original certificate

*Whether an original certificate contained vetting information or not should be disclosed under a short scheme check*

We have received concerned feedback from voluntary organisations regarding the Scheme’s reliance on prospective employees to provide their original full vetting and barring disclosure certificate. Many organisations that deem it necessary to access vetting information (in addition to barred status) have stated that they could not trust the integrity of a further check that relied on the original certificate, seeing potential for fraud. If the system creates a weak link, because organisations feel they cannot ‘trust’ the nominal checks, then a greater number of full checks will be accessed by organisations. This will increase costs from the estimates set out in the Financial Memorandum.

We would suggest a solution could be to provide limited information from the original certificate through a short scheme record. The current proposals are that a short scheme record would reveal: the date on which the scheme record was last disclosed, whether any new vetting information exists, and whether the individual is under consideration for listing. We would suggest that the short scheme record should also reveal whether the last full scheme record had or did not have vetting information on it. With 90% of disclosures containing no vetting information, this would provide a further safeguard against potential fraud and could increase ‘trust’ in the option of a nominal check. At the same time it would avoid the risk of sensitive disclosure information being accessed illegally through a website or other source.

Delegation of Council responsibilities

We have fears that obligations placed upon councils could, in turn, be placed on voluntary organisations carrying out services by grant, service level agreement or contract. Many voluntary organisations are not equipped to exercise the many responsibilities placed on councils in the Bill. We believe that a strict division of responsibility must be clearly marked to avoid unintended consequences for voluntary organisations.

Information sharing

We are concerned that this aspect of the Bill has not been given the attention it deserves through being included in a Bill with a vetting and barring scheme. There has been minimal consultation on this part of the Bill and we are very concerned that this leaves a great risk of unintended consequences. The code of practice on information sharing proposed by the Bill, together with the definition of child protection information and the duties and powers placed on employers and employees, will be outlined in secondary legislation. At this stage, it is difficult to determine the impact this could have on the voluntary sector. This part of the legislation must not be rushed through. We look forward to a genuine and extensive consultation with the voluntary sector when it comes to outlining the code.

Proportionality – smaller voluntary organisations
The administrative burden stemming from these proposals as they stand must be reduced, particularly for the smallest voluntary organisations

SCVO has concerns that the compliance requirements of some of the proposals, as they stand, will be beyond the capacity, in terms of money, time and administrative support, of some of the smallest voluntary groups and associations in Scotland. We believe that the Bill must be amended to be responsive to, and realistic about, the information needs and capacity of voluntary organisations, by reducing administrative burdens from the proposed level.

One solution could be to promote the option of a 'statement of barred status' check for the smallest voluntary groups, allowing them to access this as an alternative option to a full or short scheme check. The legal obligation in the Bill not to employ barred individuals would be met, but smaller organisations would be able to choose from the full range of checks offered by the Bill in accordance with their capacity. This would ensure the same level of protection across all employers, with the Central Barring Unit interpreting the vetting information, but would help to ensure that the administrative burden on the smallest voluntary organisations was in proportion to their capacity.

Phasing-in period

The scale of the Scheme proposed cannot be underestimated. If retrospection is to happen, it is crucial that the phasing-in period of the new Scheme is long enough to avoid irreparable damage to voluntary groups and organisations working to the benefit of vulnerable groups in Scotland. If the phasing-in period is too short it will be impossible for voluntary organisations to absorb the additional administrative costs outlined above. In addition, costs in general will be front-loaded in the system creating a spike in costs again at the expiration of scheme membership.

Furthermore, it is crucial that the phasing-in of this legislation is synchronised with voluntary sector regulators. A mismanaged phasing-in process could in fact accentuate the administrative burden on the voluntary sector.

Lead-in to commencement

The voluntary sector must be allowed a 12 month lead-in prior to commencement

The voluntary sector will require a great deal of preparation for the new scheme. Once the secondary legislation has been drafted and passed we believe there should be a 12 month period before commencement. It is essential that awareness-raising and training takes place in the sector, many months before the legislation comes into force, to prepare trustees, managers, staff and the general public for the changes stemming from the Bill.

Guidance

Specific guidance for the voluntary sector must be produced 12 months in advance of commencement

The Executive must produce early and accessible guidance, specifically written for the voluntary sector, 12 months before the commencement of the legislation. To ensure a high level of compliance the voluntary sector must be given ample time between the
publication of guidance and commencement, in order that training and awareness-raising can take place.

Guidance will also be important for those other bodies with which the voluntary sector works. SCVO has received numerous reports from voluntary organisations that local authorities, funders and regulators across Scotland have interpreted the current protection legislation in varying ways, adding to voluntary organisation’s administration costs. We have been deeply concerned that some third parties have behaved in an over-zealous manner with regard to current protection legislation and fear that without early and extensive guidance the new proposals will still leave significant scope for inconsistency and misinterpretation by third parties.

Start up costs of the scheme

The new scheme will bring additional start-up costs of up to £3 million for voluntary organisations. These costs must be funded or waived and acknowledged in the Financial Memorandum.

Under the current PoCSA legislation only new staff, or staff moving positions, have been compelled to be disclosure checked. However, under the Bill as introduced all staff (existing and new) will need to join the scheme within a prescribed period. This will be a very significant additional start-up cost to the sector, currently not acknowledged in the Bill or accompanying documents.

Under PoCSA, the voluntary sector has accessed a total of around 60,000 disclosure checks annually. Of these, around 7500 per year have been for paid positions, incurring a charge of £150,000 per year for voluntary organisations (in practice organisations pay for checks even if technically the cost falls on individuals). However at the proposed fee level of £26, with up to 106,000 paid staff in the sector within the scope of this legislation, the new system will see a cost of around £3 million to the sector over the phasing-in period.

We believe that unless the Executive finds funds to cover, or more practically, waive this start-up cost, over the phasing-in period, a significant number of voluntary organisations will see a real reduction in frontline activity benefiting vulnerable groups or could even risk closure. There simply is not the financial slack in the voluntary sector to absorb an additional cost of this size and type.

Training costs

The voluntary sector will require up to £1 million for training over the lead up to, and phasing in of, the new Scheme. These costs must be funded and allocated in the Financial Memorandum.

The Financial Memorandum accompanying the Bill allocates £600,000 for training to the ‘care/children workforce’ in relation to the new scheme. This figure is insufficient. In implementing the current PoCSA regime, the Executive made £360,000 available to the sector for training for one year. With the inclusion of protected adults in the new system for the first time, and significant changes to the children’s protection system, we believe that the voluntary sector alone will need at least £1 million in training prior to and over the phasing-in period. Faith groups, public and private organisations will need equivalent funding for training.
Administration costs

The administration costs across the sector from checking all paid staff and volunteers will amount to up to £20million. Allowance for these costs must be made in the legislative process and through a substantial phasing-in period.

The additional administrative burden faced by voluntary groups could be very large indeed. We estimate that the total administrative cost faced by voluntary organisations over the phasing-in period of the new scheme will be up to a value of £20million. This is on top of the £3million start-up costs and £1million required for training in the sector.

This scale of additional bureaucratic burden - cost of staff and management committee time, paperwork and postage etc. - could be catastrophic for voluntary organisations. We believe that more must be done to reduce the potential red tape stemming from the proposed legislation. An extended phasing-in period for the new Scheme may contribute to the sector's ability to absorb these costs, as should the proper implementation of full cost recovery in grants and contracts, at least to those delivering formal public services.

Financial Memorandum

We do not believe that the true costs to voluntary organisations have been accurately reflected in the Financial Memorandum and some of the figures do not appear to be based on hard evidence. More worryingly, those with the necessary expertise or knowledge were not consulted on their derivation or basis.

The Financial Memorandum is inadequate and inaccurate in a number of ways:

- The proposed Scheme will bring start up costs of up to £3million for the voluntary sector, over the phasing-in period alone. The Financial Memorandum makes no reference to these. Funding must be found, or more practically these costs must be waived, to avoid seriously inhibiting frontline activity in the voluntary sector.
- It allocates only £600,000 to train the whole of the care/childcare workforce. As stated above we believe £1million will be required for the voluntary sector alone. Faith groups, public and private sector bodies will need equivalent financial commitments.
- The proposed Scheme will bring £20million of administration costs for voluntary organisations over the phasing-in period. This is not acknowledged in the Financial Memorandum. The phasing-in period to the new Scheme must be sufficient to allow organisations to absorb costs without harming frontline activity.
- As far as we are aware the Executive has not made contact with the key voluntary sector bodies regarding the costs of the proposed legislation. We would be very interested to see the Executive calculations on which the Financial Memorandum is based.
Evidence to the Scottish Parliament’s Education Committee on the Protection of Vulnerable Groups (Scotland) Bill

We welcome this opportunity to comment on the principle of the legislation as the consultation made it clear that the intention was for English and Scottish legislation to be identical. As the English legislation has now been passed, we were concerned that there would be no scope for change in Scotland. We hope our fears prove groundless.

**Proportionality**

This Bill builds on and takes further the Protection of Children (Scotland) Act, but our experience of that legislation is that it is disproportionate, takes no account of actual risk and applies to both low and high risk activities without discrimination. We accept that there is a need to be very vigilant when people are appointed to work in children’s homes and in situations where adults have a close, regular one-to-one relationship with children, particularly when the child is dependent on that adult for care. However, the same does not apply to the school based Mums who turn up to help several other parents run a disco for the pupils. We even know of a case where villagers responsible for managing the use of their village hall were required by the local authority to have enhanced disclosure checks. We are unaware of any case of abuse that has arisen out of such activities.

Moreover, the numbers speak for themselves in terms of proportionality. The consultation refers to 500,000 disclosure checks in one year, whilst the current estimate is that, once the new legislation is operational, some 1,000,000 people will fall within its scope. That is 25% of the total adult population in Scotland.

**The legislation fails to define important terms so that it has no limits**

One of the reasons for the excessive level of checking is that the legislation fails to define terms like “child care”, “normal” or “for the benefit of the child”, so many people are brought within the scope of the legislation as people play it safe. We know of some local authorities where no one is able to enter a school unless they have undergone a disclosure check. This applies equally to parent volunteers and plumbers there to mend the radiator. Moreover, some authorities, just to err on the safe side, exclude anyone with any kind of police record, not just those records that are relevant to child abuse.

**Introduces a “back-watching” system that does not help children**

It is quite clear from the many seminars and conferences that we have attended on this subject, that many organisations are using the legislation to protect their own backs rather than to protect children. They are concerned that they will be able to provide an audit of
diligence should anything go wrong. Moreover, it is also clear that many organisations are not using the checking process simply to determine whether someone is barred from working with children; they are using the information disclosed to them to pass judgement on people in terms of their whole police record. We know that many parents are unwilling to volunteer because they have some youthful indiscretion in their past which resulted in a conviction and they are worried that this will be rediscovered and, in the small community of a school, label them as “dodgy”. As we have said before, we have written evidence that some authorities have a zero tolerance policy on anyone being involved in their schools if they have any criminal conviction. However, this runs totally counter to the Parental Involvement legislation which the Education Committee recently approved. This latter legislation aims, in particular, to involve hard-to-reach parents – the very folk who are most easily excluded under this vetting and barring process.

**Destroys social trust**

The legislation, which assumes adults are potentially paedophiles until proven otherwise, is building up a climate of social distrust and destroying the natural and healthy relationship between adults and children. Men in particular are very wary of having anything to do with children or offering help to a child who is in trouble. A recent report by the Institute for Public Policy Research found that “Britain is in danger of becoming a nation fearful of its young people” and that “British adults are less likely than those of other European countries to intervene to stop teenagers committing anti-social behaviour”. It identified “paedophobia” as a significant contributory cause.

The converse of this situation is that children are being taught to fear all adults. They are taught that all – not some – adults are a danger to them. This can pose serious problems when for example a child is lost and does not know to whom they can turn.

**Builds a false sense of security**

Despite the intention of the legislation, people are starting to treat a disclosure as a qualification, as proof that an adult is “safe”. However, even though the evidence used to provide a disclosure is not just conviction evidence, but also soft evidence, it is still possible for the paedophile with a clean record to get a clean disclosure and the much valued “qualification”. Disclosure offers no guarantee.

**It is generating paranoia about the risks of paedophilia**

Recently official figures were published for the reasons for children being referred. The headline story was that cases of child abuse had increased by 33%. However, a closer look at the figures painted a rather different figure. Child abuse cases had indeed risen, but this followed a drop last year and in fact there were fewer cases than in 2003. Over all, child abuse accounted for only 11% of the cases. The main reason for referral was child neglect which accounted for 45% of the referrals and is a steadily growing problem. We understand that drug dependency by parents often lies behind such cases but there is nothing like the same focus of energy and spend on this problem. Moreover, in 79% of cases where the main abuser was known, it was the biological parent, with the mother being cited twice as often as the father. (see Appendix 1)

**Drives adults out of volunteering**

When this legislation was first introduced it was claimed that it had no effect on volunteering. We now know otherwise. There is the well documented shortage of volunteers to help with
Scout Groups. In our own area, we are often told of the problems PTAs have in getting anyone to help in the first place; if you then require the volunteer to undergo an enhanced disclosure check for the doubtful pleasure of policing a teenage disco, the average parent will say “no thank you”. I know of people who have decided not to take part in a walking bus because they couldn’t be bothered with the hassle. Similarly, the requirement for checks is stopping school exchange visits. For many parents having a foreign child to stay for 10 days is a duty rather than a pleasure; the need to undergo a disclosure check is enough to stop many from bothering. We have even had parents phone us concerned to know whether parents who have not been disclosed should be allowed in to watch their children perform in an end-of-term school play.

Problems with accuracy of database

Anyone who works with a database is aware of how easy it is for errors to creep in. Data is entered by people and people make mistakes. This problem is compounded because many old records are not precise enough to bear this level of scrutiny. We are aware of a retired vet who volunteered to give talks to children on animal management and care. He was asked to undergo an enhanced disclosure check. Five weeks later he was shocked to be told his check showed that he had spend time in Barlinnie in the Sixties. It transpired that his record had been confused with that of another man with the same name and date of birth who came from the same part of Scotland. Moreover, when the record is based not just on conviction evidence, but on “soft” evidence, the opportunities for error are compounded. In May, it was reported that in England some 3,000 innocent people had been falsely labelled as having a criminal record. It has to be assumed that errors work both ways and that there were also those with criminal records who were falsely deemed not to have them. These problems are compounded by malicious allegations. Given that the system requires checks to be made on the slightest suspicion, and evidence of being charged is treated the same as a conviction, it does not take much before such allegations become significant and damaging facts.

It is worrying that under the new legislation, if someone is listed as a result of a conviction, then even a successful appeal against conviction will not mean that the person is automatically removed from the list. As with the death penalty in America, innocence is not a sufficient reason to have the penalty removed.

Information sharing

Use of “soft information” based on suspicion or concern, means that proposals to share information could result in considerable files of circumstantial evidence being generated about some people without their knowledge. The limits and terms of knowledge-sharing are again not well defined and will result in everyone sharing everything, just to be on the safe side. As has been pointed out, in the recent Western Isles case there was plenty of shared knowledge; it was use or non-use of that knowledge that was the problem.

Value for Money

The consultation document (3.2.9) did briefly suggest that opportunity costs of the legislation should be considered, but that suggestion does not seem to have carried much weight. The Scottish Executive’s own figures (which, if true to experience, will be an underestimate) put the cost of implementing the legislation at £23 million, but this does not take account of the costs incurred by the various groups and organisations required to have their appointees checked. Many organisations are having to set up special administrative arrangements/departments, at considerable cost, to manage the checking procedure.
Age confusion

We note that the age of the child is taken as being up to the age of 18, whilst a vulnerable adult is deemed to be aged 16 or over. In Scotland, youngsters move into adult decision-making at the age of 16, and it would make sense to use this as the dividing date between adult and child and not increase the confusion that exists for 16-18 year-olds as to their legal status. Moreover, when youngsters put themselves into the adult world of work, perhaps even to work one-to-one as the apprentice of a master tradesman, none of the adults responsible for their supervision needs to be checked. However, when youngsters put themselves into the adult world of further or higher education and generally sit in a public environment, whether that is the lecture or tutorial, then all lecturers and tutors have to be checked. We support the exclusion of the work situation but challenge the anomaly as regards HE and FE and would urge that the adult/child division be placed at the age of 16 years for all situations.

Conclusion

There are those who would argue that it doesn’t matter about the cost, the bureaucracy, how many people are caught up in the process, how much it reduces volunteering – as long as it saves one child, it would all have been worth it. We strongly disagree. We think the opportunity costs are considerable.

- We think the destruction of social trust is very damaging to society; we think the divisions that are growing between adults and children are damaging to children’s well-being; we think the loss of volunteering, particularly for children’s activities, is similarly damaging to children; we think the limiting of children’s trust in the society in which they live is damaging to children.
- We think the costs and bureaucracy are facing in entirely the wrong direction. They are focused on the lowest areas of risk leaving children exposed in areas of much higher risk. The figures for child referrals would suggest that there is a need to spend more and take more action to address the problem of physical neglect. Children suffer most at the hands of their own families or from friends of their families (facts born out by figures on child murders where more than 50% are committed by parents). There is clearly a need to spend more money on front line social workers.
- There have recently been a number of tragic cases where children have been killed or abused by known paedophiles who are no longer in protective custody. There is a serious need to develop a better system of monitoring such people.

If we could free ourselves from this over-burdensome, costly and bureaucratic checking system which is more effective in creating jobs than in protecting children, then we could start to address better the risks that children actually face.

Finally, it is worth pointing out that this system of vetting and barring might have stopped Ian Huntley from becoming a janitor at the Soham Village College; it would not necessarily have stopped him killing children, although he might have done it in a different place and at a different time. As far as we know the girls went to his house to visit Maxine Carr. She was out and they met her partner. The circumstances would have been the same if he had worked in a local supermarket. It was a chance and tragic encounter. He was not in a child care post in respect of the girls. Their tragic encounter with Ian Huntley was similar to Rory Blackhall’s tragic encounter with Simon Harris. Proper care of children needs proper analysis of the situations.

November 2006
## Appendix 1

### CHILDREN REGISTERED FOLLOWING A CASE CONFERENCE: 1999/00-2005/06
### BY CATEGORY

<table>
<thead>
<tr>
<th>Category of abuse/risk</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2006</th>
<th>% of total</th>
<th>% change</th>
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<tbody>
<tr>
<td>Physical injury</td>
<td>713</td>
<td>688</td>
<td>644</td>
<td>766</td>
<td>741</td>
<td>628</td>
<td>779</td>
<td>28%</td>
<td>24%</td>
<td></td>
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<tr>
<td>Sexual abuse</td>
<td>286</td>
<td>256</td>
<td>249</td>
<td>310</td>
<td>234</td>
<td>226</td>
<td>301</td>
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<tr>
<td>Emotional abuse</td>
<td>235</td>
<td>270</td>
<td>264</td>
<td>438</td>
<td>434</td>
<td>376</td>
<td>442</td>
<td>16%</td>
<td>18%</td>
<td></td>
</tr>
<tr>
<td>Physical neglect</td>
<td>639</td>
<td>558</td>
<td>809</td>
<td>969</td>
<td>1,015</td>
<td>1,035</td>
<td>1,243</td>
<td>45%</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Failure to thrive</td>
<td>18</td>
<td>11</td>
<td>13</td>
<td>33</td>
<td>16</td>
<td>11</td>
<td>6</td>
<td>0%</td>
<td>-45%</td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>18</td>
<td>20</td>
<td>1%</td>
<td>11%</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,890</td>
<td>1,783</td>
<td>1,979</td>
<td>2,517</td>
<td>2,440</td>
<td>2,294</td>
<td>2,791</td>
<td>100%</td>
<td>22%</td>
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</table>
SUBMISSION FROM SCOUT ASSOCIATION COUNCIL

The Scout Association (Scottish Council) is pleased to have the opportunity to present a briefing paper to the Education Committee with respect to the above proposed legislation. We are committed to protecting our young people from physical, sexual and emotional harm and are happy to endorse proportionate measures that support that objective.

1 Background Information - The Scout Association

1.1 The Scout Association is the largest co-educational voluntary sector uniformed youth organisation in Scotland. It is positioned as a key provider of non-formal education. It aims to promote the development of young people in achieving their full physical, intellectual, social and spiritual potentials, as individuals, as responsible citizens, and as members of their local, national, and international communities. The method of achieving the aim is by providing an enjoyable and attractive scheme of progressive training, based on the Scout Promise and Law and guided by adult leadership.

1.2 Our current membership of 35,000 in Scotland is supported through c.600 local Scout Groups, 94 Districts and 31 Areas, covering all 32 local authority areas, albeit not administratively co-terminus with local authority boundaries. Our 2006 census of membership recorded 6,248 adult volunteer members providing regular voluntary service in support of the delivery and administration of Scouting in Scotland.

1.3 Not recorded are the thousands of additional volunteers – chiefly parents – whose support and assistance is vital to sustaining Scouting in local communities throughout the country. They provide occasional support for programme delivery, operating in roles that engage them in supervision, instruction and tuition, at weekly meetings and in residential settings, in addition to providing logistical and administrative support. Many may serve on Executive Committees of local Scout Groups, thus becoming Trustees of a children’s charity. As a consequence a large proportion of such helpers fall within the scope of requirement for checking current DWCL status.

1.4 During the period December 2002, when it commenced Disclosure Scotland checks, to September 2006, The Scout Association processed almost 9,000 Enhanced Disclosures. The volume of Disclosure checks doubled from 2003 to 2004 following the introduction of the Protection of Children (Scotland) Act, reflecting the broad scope of volunteering activity covered by the Act. The proposed legislation to protect vulnerable groups is unlikely to diminish the demand for such checks in the future.

2 Key Concerns

2.1 From the outset The Scout Association has been supportive of the general thrust of proposals to establish a Scottish Vetting and Barring Scheme. Initial information held out the prospect of a more efficient system to that currently in place in connection with PoCSA, with the added benefits of on-line application, a reduction in requirement for individuals to secure multiple Disclosures, automatic updating of vetting information, and an environment that would legislate for improved information sharing. Subsequent information contained in the various Memoranda accompanying the Bill gives cause to temper our expectations.
2.2 We have noted the submission to the Education Committee from SCVO on this Bill and are generally supportive of its contents. As an organisation that is so totally dependent on volunteers for the delivery of our service to young people we feel, however, that some points require further highlighting.

2.3 The Scout Movement celebrates its Centenary in 2007. As with other national youth work organisations, we have depended throughout on the generosity of local volunteers. For most of our first century the willing involvement of volunteers has been assumed – and indeed increasingly taken for granted! There is, however, growing evidence that an increasing culture of litigation and blame seeking, compounded by an ever-growing compliance agenda, is beginning to deter adult voluntary involvement. Most pertinently here, the step change in administrative requirements and responsibilities arising from PoCSA has placed enormous strains on local volunteer resources and has additionally stretched the financial resources of national organisations. It is giving rise to calls for a level of paid administrative support for volunteers that voluntary youth organisations are in general unable to respond to.

2.4 It should be noted that the 2003 Mapping of the Youth Work Sector in Scotland revealed that 83% of the sector workforce are volunteers. The seven largest volunteer-led youth organisations between them provide more than 50% of youth work opportunities for young people in Scotland. We believe we are supported by sector colleagues in suggesting that the Bill Memoranda fail to reflect, or in any realistic way quantify, the resource impact on and capacity of our organisations to meet the requirements of the proposed legislation, both in manpower and financial terms.

2.5 It is essential that lessons from the introduction of PoCSA are reflected in the approach adopted for this legislation. To be effective regulations and proposals for their implementation must demonstrate an understanding of volunteering and voluntary organisations that is not readily in evidence at present. As examples we highlight the following:

3 **Scheme Membership – new legal duties on volunteers**

3.1 The current PoCSA arrangements place a legal duty on ‘employers’ to ensure that their workforce excludes / removes individuals who are on the DWCL. The individual membership scheme proposed by the Vulnerable Groups Bill imposes a new set of legal duties and responsibilities directly on volunteers (and paid employees) over and above those already applying to employers. Most particularly, we are concerned at the potential impact on volunteering of the Duty to Notify a change of address within 3 months (47 (1) a). Although listed as a minor offence (139 – Policy Memorandum) carrying a level 3 fine, this Fine scale tops at £1,000.

3.2 Desirable as it is to require address update information, this proposal is not grounded in volunteer behaviour reality. We are concerned that current proposals may lead to unwitting criminalisation of volunteers and act as yet another deterrence to volunteering. In the absence of any impact assessment that substantiates the practicality of this proposal we suggest that address change be required at short scheme / barring record application.
4 Vetting Information – increasing risks for employers

4.1 There are seriously flawed assumptions in the Financial Memorandum. Firstly there appears to be an assumption (201(g)) that employers will be satisfied with a level of vetting information that is less informative than that currently available under PoCSA.

4.2 It is our understanding that the first level of information is a Full Scheme Record. An individual applying to join the Scheme for the first time will generate a full vetting record (akin to an Enhanced Disclosure) that will be supplied to their employer. The individual applicant will receive a statement of barred status, but will not themselves receive vetting information. Thus they will have no vetting record (as per current Disclosure certificate) that can be presented to a subsequent employer.

4.3 The Financial memorandum assumes that such subsequent employers will be satisfied with a nominal check. At best a Short Scheme Record will confirm barred status and will identify if any new vetting information has been recorded since the previous check. It will not reveal the vetting information. Thus it is expected that such employers will be happy to base appointment decisions on a level of information that is less detailed than that currently available.

5 ‘Unnecessary Checks’ – false assumptions

5.1 Within the children and youth sector at present there is an acceptance of Enhanced Disclosure checking as a standard element of an adult recruitment and vetting process. The successful ‘marketing’ of PoCSA has created an expectation by, and provided a reassurance to, parents that such checks are undertaken. It seems incongruous that a Bill designed to enhance safeguards to children and vulnerable adults should assume acceptance of a higher level of risk of an inappropriate appointment decision arising than at present.

5.2 The reality is that most employers will seek a Full Scheme Record. Youth organisations are committed to safeguarding young people from harm. Full vetting information helps to inform assessment of risk across a range of tasks that impact on the safety of young people.

5.3 201g, in the absence of any clarification, assumes that subsequent full checks are ‘unnecessary’. We do not accept this assumption. It also notes that such checks would be cost neutral. We question this conclusion, as multiple checking under the current Disclosure system is most prevalent in the voluntary sector. It would thus be expected that such costs would fall on the Executive.

5.4 Whilst we are pleased that Ministers are committing to paying fees for volunteers, we would wish reassurance that this applies to all scheme record checks that ‘employers’ deem essential to their sound recruitment and risk management policies.

5.5 We suggest that cost savings and efficiencies could arise through secure on-line access to full vetting information for registered employers. We further question the value of the proposed Short Scheme Record, which, we note, is not intended to be available elsewhere in the UK.

6 Scope
6.1 Many of the concerns around the scope of PoCSA remain within the proposed Bill. Appropriate guidance must be available, with consistency in application.

6.2 In particular we suggest that the requirement to check ‘Trustees of a children’s Charity’ (Schedule 2, Part 4, 25) should be revisited and more clearly defined in relation to an assessment of risk in relation to their role. Many such Trustees do not have involvement with children and are not in a position to influence appointment decisions.

7 Retrospective Checking / Transition

7.1 The Scout Association is committed to phased retrospective checking. From experience, however, we would strongly argue for at least a 5-year period to be allowed to achieve such a goal.

7.2 What is not clear is the status of Disclosures carried out prior to the launch of a new Vetting and Barring Disclosure. Will there be some form of updating possible without requiring individuals to complete a new Disclosure? If ‘no’, then it will be a hard message to deliver to our thousands of already Disclosed volunteers that we must start the process again from scratch. We suspect that there would be considerable annoyance and disillusionment if this were to be the case. It would certainly have a significant impact on determination of a realistic time limit.

7.3 There are considerable resource and capacity issues that need to be addressed when agreeing a sensible time scale. It is not simply a matter of generic training and information. Vetting is part of a more extensive recruitment and review process. Changes in legislative and processing requirements necessitate a rewrite of all organisation specific appointment system documentation and information, withdrawal of old materials, informing all members, and training those specifically charged with operating the appointment / review process.

7.4 The financial support of the Executive that contributed to meeting costs of national voluntary youth organisations in implementing PoCSA was hugely valued. Monies channelled directly through such organisations enabled them to respond quickly and efficiently across the country. We would hope that similar support would be available for new legislation. In this case consideration must be given to the costs on such organisations of creating an appropriate IT interface in order to maximise efficiencies in Scheme operation.

8 Conclusion

8.1 The volunteer led nature of our organisation is a key strength, providing significant capacity across Scotland and embedding operations within the communities from where the volunteers are drawn. It is also a challenge for our HQ operation (to include senior volunteers and staff) which has a key role in supporting the volunteer managers at national and more local levels.

8.2 The opportunity given by the Education Committee to discuss our concerns with respect to this proposed legislation is to be welcomed. We are committed to the same goal as the Executive to protect vulnerable groups. We wish to work for measures that can be readily applied without detriment to the recruitment and retention of volunteers, without whom our capacity to engage constructively with young people in local communities will be diminished.
8.3 The requirements of the scheme must take account of the capacity of the voluntary (particularly volunteer-led) sector to respond and implement it effectively without detriment to the quality and volume of support services available to young people and vulnerable adults. Lessons from PoCSA must be learned. There is a need for consultation and listening!
Protection of Vulnerable Groups (Scotland) Bill

Evidence of the potential impact of proposed legislation on Youth Scotland

Introduction
Youth Scotland welcomes the opportunity to provide evidence as part of the Scottish Executive’s Education Committee Stage 1 scrutiny of the Protection of Vulnerable Groups (Scotland) Bill.

In this paper, we demonstrate the progress of our current child protection strategy, outline the key issues for youth groups in relation to the proposed legislation, address the potential impact to the voluntary sector as a whole and look at what action is required to ensure the effective implementation of the bill.

Background to Youth Scotland
Youth Scotland is the largest non-uniformed voluntary youth organisation in Scotland with a membership of 608 youth groups with over 44,000 young people and 5,601 full-time, part-time and voluntary workers - 3,400 are volunteers. 365 of these groups are volunteer led and volunteer run. The Youth Scotland membership is diverse, ranging from small rural youth groups to large urban projects – the common goal that they all share is a commitment to young people and their development through social and educational opportunities.

Child protection strategy
Over the past three years, Youth Scotland has invested a substantial amount of its own resources (just over £100,000) to achieve an effective and efficient child protection strategy that ensures the safety of all young people within the Youth Scotland network. A significant change management programme that supports youth groups to meet external legislative requirements has been successfully implemented, through training, support and information. These include:

Training
- Three training modules developed – “Quality standards”, “POCSA” and “Safe & Sound Awareness”
- Training programme implemented throughout the national network
- 15 area based staff given training to ensure message could be taken to local areas
- 82 training courses delivered
- 1100 volunteers trained across Scotland.
- Estimated cascaded training audience reach of over 4000 volunteers

Support and Guidance
- Telephone support
Partnership working – links made to child protection co-ordinators, voluntary organisations, local authorities and area associations

1141 disclosure checks undertaken

Resources
- "Safe and Sound" Toolkit – in the last three years, over 4000 toolkits have been issued free to affiliated groups and sold to external organisations
- POCSA supplement – 2400 copies of a 12 page supplement and good practice guide were circulated to affiliated youth groups and used at training sessions

Communication
- Magnet – Youth Scotland’s magazine, push e-mails and newsflash articles – informing youth groups of legislative changes.
- Website – links made to key child protection organisations

Issues for Youth Groups
Youth groups in Scotland depend on volunteers for their survival. However, there is anecdotal and factual evidence that increasing legislative requirements are affecting the number of people that volunteer.

A Youth Scotland survey carried out at the end of 2004 asked youth workers (both paid and voluntary) how they would describe the level of responsibility being placed on workers. 9% said that it had remained the same, 31% said that it had slightly increased; 51% said that it had dramatically increased and 6% said that it was becoming intolerable.

The survey also revealed that:

- 71% of workers/volunteers agreed that they needed more support particularly relating to child protection and legislation
- 83% of workers/volunteers agreed that they needed more training

The number of groups within the membership of Youth Scotland has declined significantly during this time following a steady growth over the previous decade.

Youth Scotland Membership

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
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<td>Youth Groups</td>
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<td>43250</td>
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<td>46115</td>
<td>41965</td>
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Youth Scotland’s consultation with volunteers during the recent National Youth Work strategy also raised considerable issues around training. In particular, access routes to training for volunteers and knowledge of legislative change were seen as key issues. Youth groups also stated that:
• Child protection procedures were a major barrier to volunteer recruitment
• The most important training need for volunteers/workers was disclosures and child protection

Although not shared by all voluntary youth groups, the view was being expressed that volunteers in youth work should be given a financial reward, or full pay or that there should be at least one paid, qualified worker in each youth group to support the voluntary workers. Many of the respondents saw the paid worker as a ‘buffer’ between them and the growing number of administrative duties.

Impact on Voluntary run Youth Groups
There are a number of points within the Protection of Vulnerable Groups (Scotland) Bill which Youth Scotland would support, for example, the proposals under the new scheme for the ‘constant updating’ of disclosure checks and the option of subsequent nominal checks, hopefully reducing multiple checks in the sector. In addition, we commend the Executive for retaining free volunteer checks under the new scheme.

However, we are concerned that the key elements of the Bill will:

• Reduce volunteering activity generally – there is growing evidence that this is already happening – thereby reducing the opportunities for young people to participate in activities within a safe environment;
• Increase the administrative burden on small voluntary youth groups who are already saying that the administrative burden is significant;
• Increase the number of youth groups operating on an independent basis with little or no regulation from a parent body;
• Place a disproportionate focus on criminal records checks which should only be one part of the recruitment and selection process;
• Significantly increase the already substantial costs, currently being underwritten by organisations such as Youth Scotland, through further information, support, guidance and training for what is the third major upheaval in six years.

Youth Scotland believes that there needs to be:

• A balance between protecting vulnerable groups from harm and creating a bureaucratic system which actively works against safeguarding children and young people;
• A reduction in the administration burden being placed on small voluntary youth groups. The new system needs to be proportionate and fit for purpose;
• Financial support to those volunteering involving organisations (in line with the Scottish Executive’s Volunteering Strategy) that are currently underwriting existing legislation through the application of their own limited resources to inform, guide, support and train a significant number of volunteers. Volunteering organisations such as Youth Scotland, Guides and Scouts can easily demonstrate that this is good value for money.
• Funding for administration costs associated with the proposals.
• **A significant lead-in time** to commencement (or a phased lead-in which could be sector based) to enable organisations and groups to prepare for the new scheme, raise awareness and put training in place.

• **Clear guidance**, well before the commencement of the legislation, for voluntary organisations but also for local authorities to ensure that the new legislation is not interpreted in different ways adding significantly to the barriers.

• **Capping of the cost of disclosure checks** for paid voluntary sector staff at no more than £25.
Protection of Vulnerable Groups (Scotland) Bill: Written evidence to the Education Committee

The Prince’s Trust is one of the UK’s leading voluntary organisations involved in the provision of training and personal development programmes to socially excluded young people aged 14 to 25. We help nearly 4,000 young people in Scotland every year to develop their motivation and to gain the confidence and personal skills necessary to make a change to their lives. We achieve this through a portfolio of high quality programmes delivered in partnership with a range of public, voluntary and private sector partners and through working to influence public policy. Our target group is young people who are educational underachievers, including young people with low basic skills and those truanting and excluded from school; the long-term unemployed, particularly those out of work for 6 months or more; those in or leaving care; and offenders and ex offenders including serving prisoners.

The Prince’s Trust regards the welfare of the young people who make up our client group as of paramount importance and we support any changes in legislation which will help ensure the protection of this vulnerable group. We support the intention of the Protection of Vulnerable Groups (Scotland) Bill to extend the existing protection to groups of vulnerable adults. From our experience the current system of disclosure is now working well: the time taken to process disclosures is now quite acceptable and the CRBS has provided helpful advice to us on developing policy and practice in relation to disclosure.

The following are comments on the focus of the legislation, rather than the detail.

1. With successive changes in legislation and a continuing strong focus on child protection, in particular ‘stranger danger’ there is increased potential for a ‘climate of fear’ surrounding adult interaction with children and young people which might deter people from wanting to work or volunteer in this area. People may be reluctant to become involved if they fear that their actions may be misinterpreted, or that their background will be questioned. This will apply particularly to volunteers on whom the voluntary sector relies. Fear may also affect the relationship that exists between employees or volunteers and their client groups – for example, rendering them unable to offer comfort through touch or physical contact and generally making them more remote and having a negative impact on relationships.

2. There is a continuing need to recognise that disclosure does not establish competence or suitability for working with children/vulnerable adults. Reliance on the scheme may give rise to a problem of false security – that individuals not listed are verified as safe to work with children or vulnerable adults.
3. From our experience the current system is working well and disclosure turnaround times are now expeditious. We hope that further training and guidance will be resourced for the introduction of the new system.

4. We all recognise that there have been failures to share information which has resulted in disastrous consequences (as with Ian Huntley at Soham) and look forward to contributing to the consultation on the code of practice for information sharing. We would support safeguards to ensure that the child’s views are taken into account in any information sharing. Otherwise the trust and confidence necessary to confide in adults will be harmed. The experience of Childline indicates that children want control and influence over any action taken, even in the most harmful of situations. The unintended consequence of this legislation could be that children will be deterred from seeking help and advice and will be even more reluctant to be open with adults.

5. It is important that people are given the chance of rehabilitation, and this should be taken into account by those who are taking decisions on listing an individual. A stringent regime of barring individuals who have previously broken the law works against the employment of ex-offenders or anyone who has been compromised in their past. Whilst there are some offences, such as sex offences, which should automatically prevent someone from working with children, other offences, committed in childhood or early adulthood at a time in the past should be set in the context of subsequent behaviour. Decisions on disclosed information, particularly for existing employees, are best made by the employer who will be able to add personal knowledge and references for the individual concerned and an awareness of the degree of involvement with the client. The Prince’s Trust actively promotes equality of opportunity for all with the right mix of talent, skills and potential and invites applications from a wide range of candidates, including those with criminal records. The Trust ensures that all those involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences. We also ensure that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders such as the Rehabilitation of Offenders Act 1974.

6. Like others in the voluntary sector we have some concern about the level of resource required to administer the scheme which it has been estimated will involve disclosing the background of 1 in 4 of the Scottish workforce. The increasing costs of disclosure and of administering the Scheme will place an additional burden on all organisations working with children, young people and vulnerable adults diverting resources away from those who need help. The cost of disclosure has already risen from £13.50 to £20 in one year and there is no commitment in the Bill to limit future rises. It is unlikely that this cost will absorb the additional financial impact of administering the Scheme. We welcome the Executive’s commitment to continuing the provision of free disclosure checks for volunteers.

Michael Hankinson
Operations Director
The Prince’s Trust- Scotland
November 2006
SUBMISSION FROM THE SCOTTISH ASSOCIATION OF LOCAL SPORTS COUNCILS

The Scottish Association of Local Sports Councils (SALSC) seeks to represent and support the 65 Local Sports Councils of Scotland and Local Sports Development agencies throughout Scotland. Through consulting with its membership the Association endeavors to represent Local Voluntary Sport at International, National and Local level.

SALSC seeks to:
- Establish, promote and maintain Local Sports Councils in all areas of Scotland
- Act as a forum to enable the membership to meet and discuss matters of common interest
- Co-ordinate and disseminate information on the work of Local Sports Councils and share good practice
- Act in an advisory, consultative and advocacy role with a wide range of International, National and Local agencies on the subject of sport and the volunteer at local level
- Establish a Voluntary Sports Network with all other relevant and interested agencies and groups in the sporting and voluntary sector

The Scottish Youth Football Association (SYFA) is a national organisation affiliated to the Scottish Football Association (SFA), the Scottish Association of Local Sports Councils (SALSC) and the Scottish Sports Association (SSA).

SYFA was constituted in May 1999 and consists of 1 national association, 6 regions, 62 leagues, 3400 member clubs, 279 additional signatories, 15941 volunteer officials and approximately 40,000 players.

Capacity
The introduction of the Protection of Vulnerable Groups (Scotland) (PVG) Bill will require all volunteer organisation to carefully examine the work that has been carried out over the past 7 years. There has been various legal requirements placed upon voluntary groups and they have reacted with various degrees of success.

At the inaugural meeting of the Scottish Governing Bodies of Sport, Lead Child Protection Officers Group there were 65 sports in attendance out of 70, at the last meeting there were only 12 sports represented.

44 out of 70 Scottish Governing Bodies of Sport have a policy in place
43 out of 70 Scottish Governing Bodies of Sport have a lead protection officer in place
16 out of 70 Scottish Governing Bodies of Sport have club protection officers in place
23 out of 70 Scottish Governing Bodies of Sport have mandatory protection for clubs in place
23 out of 70 Scottish Governing Bodies of Sport have training programmes in place
34 out of 70 Scottish Governing Bodies of Sport have affiliation to CRBS in place
24 out of 70 Scottish Governing Bodies of Sport offer Disclosure checks to clubs (figures supplied by The Child Protection in Sport Service)

Over 9 million hours are volunteered in Scotland each month that equates to £2.52bn to the Scottish economy per annum.
SYFA volunteers spend on average 10 hours each per week training, coaching, arranging matches and participating in matches. This equates to approximately 6 million hours per annum. There is no further capacity available. That is why the SYFA is responsible for the ultimate decision regarding suitability for membership and why the SYFA constitution has been amended to reflect this practice.

Any future development of the grassroots game in Scotland can only be achieved by engaging sufficient committed volunteers. Volunteers are Scottish sport’s greatest asset.

**Capability**

Of the 70 Scottish Governing Bodies of Sport only 44 have in place Child Protection Policies

There are also a large variety of clubs in membership of the SYFA and SALSC covering the spectrum from completely enthusiastic to leave us alone to get on with our sport. This causes various complications when trying to implement protection.

A sizeable section of the volunteer sector has by and large implemented the process of carrying out Disclosure Application checks. However a major question mark still hangs over the issue of protecting children. Are we more concerned with meeting the legal requirements of POCSA or are we genuinely trying to protect children?

If the answer is to protect children we must look at capabilities within governing bodies.

- The capability to raise sufficient funds
- The capability to raise sufficient volunteers
- The capability to rescind POCSA and implement the new legislation
- The capability to change Disclosure Application forms in one year and then again during PVG
- The capability to meet the legal requirements of POCSA and implement PVG at the same time
- The capability to also carry on with the organisation of grassroots participation in sport

Perhaps we need to carry out an Audit of what is currently happening in order that we learn lessons before implementing further changes which could result in even further skill requirements.

The SYFA has currently carried out 6000 Disclosure Scotland checks and is one of the volunteer sectors main users of CRBS. Only 10 Scottish voluntary organisations carry out 1000 or more checks. The final decision on suitability of membership is made on behalf of the members by a Player Protection Panel. This has two effects, one that a volunteer does not need to make a decision on other volunteers within their club and that a consistency of decision is reached. Otherwise we could range from no decision to 3400 different decisions.

**Education & Training**

During the implementation of the Protection of Children (Scotland) Act 2003 the volunteer sector was supported by a comprehensive training manual. Before we start to discuss the implementation of The Vulnerable Groups (Scotland) (PVG) Bill we need to evaluate the manual against the current process and determine how it can be simplified and made much more workable.

We do not require the simple circulation of the Bill complete with instruction to implement.
We do require education and training on dealing with vulnerable adults.
We do require education and training on new IT system for checking status of Certificates
We do require education and training on Protection awareness
We do require education and training on reporting of abuse (In safe Hands)

We do not require the implementation of legislation and then a commitment to education and training.

**Administration & Costs**
SYFA currently has a full time staff to administer grassroots football. The implementation of the SYFA Player Protection Policy takes up approximately 70% of our administration time.

During the financial year 2005 / 2006 SYFA spend on protection was as follows:

1 off New Administrator (Part season)
Job function: To implement SYFA Protection Policy £4,000

Existing Administration £16,000

SYFA awareness training plus administration costs £5,000

**TOTAL** £25,000

During the financial year 2006 / 2007 SYFA activity on protection will increase and costs will also increase as follows:

1 off Administrator
Job function: To implement SYFA Protection Policy £13,000

1 off Administrator – part time
Sole job function: To manage the SYFA Protection database £5,000
(Input new data plus update existing)

Existing Administration £18,000

SYFA awareness training plus administration costs £5,000

**TOTAL** £41,000

**Additional Training**
Required UKCC ‘Basic Awareness’ and Children 1st ‘In Safe Hands’
Training for 150 child protection officers for each of the six regions **£18,000**
(This would cover 900 protection officers out of 3400 clubs)

**General Concerns**
POCSA states a child is aged 18 and under PVG states an adult is 16 years and over, what about players caught between the bills?

Will representatives of grassroots volunteer sport be involved in consultations prior to implementation of PVG?

If sports organisations like SYFA are struggling to copy with the added financial and resource problems associated with protection what of Local Sports Councils and small Scottish Governing Bodies of Sport?

In closing both SALSC and the SYFA are fully committed to the 2006 Accord for the Protection of Children in Scottish Sport and the Protection of Vulnerable Groups (Scotland) (PVG) Bill. Sport at grassroots participation in Scotland is SAFE but to ensure that this continues support is required.

Support for **Capacity**

Support for **Capability**

Support for **Education & Training**

Support for **Administration & Costs**

David Little
National Secretary
Scottish Youth FA
SUBMISSION FROM ENABLE SCOTLAND

In 2000, the Scottish Executive’s review of learning disability estimated there were 120,000 people with learning disabilities in Scotland. ENABLE Scotland is the largest charity in Scotland of and for people with learning disabilities. We have a strong voluntary network with around 4000 members in 68 local branches throughout Scotland as well as 500 national members. Around a third of our members have a learning disability. The views represented in this paper are those of our members who have been consulted about these proposals.

Summary of ENABLE Scotland’s position

Our position is set out in more detail below. However, the main points we would like to bring to the attention of the Education Committee are:-

- The Bill will have a potentially damaging effect on small, informal organisations. Our branches rely almost entirely on volunteers giving up time each week and provide a crucial support system for people with learning disabilities and their families. They do not have the time, resources or experience to implement checks and consider referrals.

- The Bill may exclude people with learning disabilities from accessing important support or attending self help groups because either they or someone running the group is listed.

- The circumstances in which personal employers need to carry out checks are not clear. In addition, there is a strong argument that people with capacity should have the right to evaluate and manage their own risk when buying services.

- The Bill is likely to have a serious effect on the willingness of people to volunteer. They may fear old convictions being made known or worry about unsubstantiated allegations. They may also believe their motivation will be questioned.

- The measures are disproportionate in relation to risk. This is particularly the case if the proposal is to check one in five people in Scotland on a routine basis.

Submission
1. **The Bill assumes a professional model of volunteering which in many cases does not exist**

Many volunteers make an important contribution in informal settings. For example, we have around 4000 members in 68 branches. Our branches are essentially self-help groups where people with learning disabilities and their families and friends meet and support each other in a number of ways. The size of branches varies but some may have as few as 20 members and are run by small committees of 4 or 5 individuals who give up time each week to be involved.

Although carrying out checks is not mandatory, allowing someone on the list to volunteer in certain roles is a criminal offence. This means that in effect branches will need to carry out checks on members and other volunteers involved in their activities. For example, if someone volunteered to help out a trip away there would appear to be a duty on the branch to make sure they were not listed before accepting their offer. It would be impossible for our branches to operate in such circumstances.

Other difficulties for branches will include:

(i) **Increased cost and administration** - Even if checks for volunteers are free a system of checking will need to be administered and monitored. It may be difficult to find a volunteer prepared to take on this responsibility and risk committing a criminal offence. In addition, many branches will not have the facilities to allow this to happen. Often branches are run from a member’s home and they are unlikely to have secure or appropriate storage for confidential information.

(ii) **Evaluating information** – there is a real risk that due to human rights concerns the Central Barring Unit will only list those convicted of more serious crimes. In the remainder of cases information will be passed to employers who will need to make a judgement about whether or not they still want to make the appointment. While such decisions will be difficult for employers they at least have experience in making judgements about suitability as well as monitoring, supervision and complaints procedures to minimise risk. Branches may understandably be much less willing to take a risk on someone who has a conviction. As a result people who pose no threat and could make a valuable contribution may be excluded from voluntary work.
2. **The duty on employers or other organisations to make referrals is too wide**

Employers and other organisations must refer a person they decide to dismiss or change their duties because a child or protected adult has been put at risk of harm. This assumes that the employer has undergone a fair and reasonable disciplinary procedure at the end of which a judgement can be made about an existing or continuing risk - **Section 3(1)**.

**Section 3(2)** of the Bill attempts to go further by placing employers under a duty to refer a person after they have left their employment. This would be in situations where information comes to light that makes the employer think they would dismiss that person if they were still working for them. This will be an incredibly difficult judgment for employers to make particularly as it will not normally be possible to have a proper investigation. However, it will be an almost impossible judgement for branches or personal employers many of whom will have no previous experience in this field. This is a particularly serious issue given that a failure to refer is a criminal offence.

3. **Issues for personal employers**

People who pay for their own services, or for services for a relative, using either their own funds or a direct payment could face particular issues. Some examples are:

(i) **When should they ask for a check?** It appears they have the same duty not to give work to anyone who appears on the list. If, for example, they pay for swimming lessons or a course of aromatherapy sessions and the person they go to is listed then does the individual or family member commit a criminal offence?

(ii) **What is the position of the person providing the service?** Children are relatively easy to identify with reference to their date of birth. However, there may be no reason for someone providing a service to know a client falls within the definition of a protected adult. This is potentially serious as the person providing the service will commit a criminal offence if they offer a service while on the list.

(iii) **Does an individual have the right to manage their own risk?** What happens if someone with capacity wants someone on the list to work with them? Should they be in the position where both they and the person carrying out the work are committing a criminal offence? Does someone with capacity have the right to
make a judgement on what they think is an acceptable level of risk?

4. **The Bill does not recognise that a protected adult might be listed**

There is an assumption that people who are traditionally viewed as being vulnerable are always the victim. This is clearly not the case. People with learning disabilities also commit crimes and as a result of this may end up on the list. The Bill should not operate to bar people with learning disabilities who offend from attending support and self help groups as part of their rehabilitation. We also need to accept that in some instances the workers or other individuals attending such groups may also be listed.

5. **The potentially negative effect on volunteering**

The Bill could have a serious effect on the recruitment of volunteers. For example people may be discouraged from volunteering because: -

(i) They fear the embarrassment of old, spent or irrelevant convictions becoming public knowledge. This may particularly be the case in smaller communities or in branches where friends are carrying out checks.

(ii) They are worried about the stigma of being subject to an investigation based on a misunderstanding or an unsubstantiated allegation. Potential volunteers may see it as not being worth the risk of volunteering at all or may refuse to carry out some activities e.g. taking people they support to swimming lessons or working with people who need assistance with using a toilet.

(iii) The Bill creates a climate of suspicion around volunteering. There can be a perception that the only reason a person would want to give up time to volunteer is because they are a potential abuser. Those who do not have children or a protected adult in their family are particularly likely to have their motivation questioned.

(iv) The bureaucracy seems an excessive. For example, under **Section 47** once you have been checked once you become a “scheme member”. This means you need to notify the Central Barring Unit if you move house or get married and change your name. Failure to do so is a criminal offence. This may deter people who only intend to volunteer for a short period but have
no intention of doing long term regulated work e.g. students during university holidays, people who are between jobs or parents whose child attends a certain club.

5. **The measures do not seem proportionate in relation to current statistics**

The Scottish Executive estimate that around one million people in Scotland work with children and protected adults. This means potentially one in five people may need to be registered.

In June 2006, there were 84 people on The Disqualified from Working with Children List in Scotland. This list started in 2003. Over 70% of the people on the list are the result of Court referrals. As many are as the result of court referrals they many of those individuals may never have worked or volunteered in “regulated work”.

Taking such a broad approach does nothing to target those who may be most likely to offend.
SUBMISSION FROM VOLUNTEER DEVELOPMENT SCOTLAND AND THE CENTRAL REGISTERED BODY IN SCOTLAND

1 Introduction

Volunteer Development Scotland (VDS) appreciates the opportunity to provide oral evidence to the Education Committee Stage 1 scrutiny of the Protection of Vulnerable Groups (Scotland) Bill because of its importance to volunteering and the protection of vulnerable groups, and also in our role in providing for Ministers the Central Registered Body in Scotland (CRBS) service.

This paper provides a summary of the key points for oral evidence regarding our background, evidence from our experience, anticipated impacts of the legislation, key issues and recommendations.

VDS supports the need for new legislation and the objectives of achieving the protection of vulnerable groups.

2 Background

VDS is Scotland’s centre for excellence in volunteer development. VDS advances the boundaries of volunteering, increasing accessibility, scope, understanding and value to all involved. We play a key role in informing and connecting people. With extensive networks and evidence based approach we influence policy and strategy and advocate quality standards and best practice in all aspects of volunteering including the provision of disclosure services and expertise. VDS provides the essential service of free disclosures to volunteers in the voluntary sector through the CRBS.

Services available from the Central Registered Body include registration of organisations, processing of disclosures, together with a full service of advice, guidance, reference materials, support and training. The CRBS enables the access of free disclosures of volunteers in the voluntary sector.

VDS and its CRBS service work in partnership with the national network of Volunteer Centres and other partners to implement the Scottish Executive’s Volunteering Strategy. The strategy aims to increase the numbers of people who positively experience volunteering.

George Thomson has been CEO of VDS for 5 years and has experience in developing services for children, young people and adults particularly in community settings.

John Harris is Head of Legislative and Regulatory Services in VDS and is lead officer in the CRBS service, a role he has had for 4 years. He has a specialist understanding about protection issues and the operation of legislation in this field.
3 Evidence from our own knowledge and experience

There are approximately 1.56 million adult volunteers and 119,000 (73,000 FTE) dedicated paid staff who make up around 50,000 diverse organisations who may be affected by the legislation.

The Scottish Executive has stated that it anticipates 1 in 4 of the workforce to be covered by the Bill, and there may also be a major impact on the number of volunteers requiring disclosures.

VDS research has found that 84% of people would not be put off from volunteering if their volunteer position required a disclosure. However, there is also anecdotal evidence to show that where there is a demand for disclosures that are not seen as justifiable that the system comes into disrepute.

There is an unprecedented interest in Scotland’s population at large (and estimated 85% of the population expressing an interest in volunteering), and contact with children, young people and adults will, of course, be essential. The nature of volunteering is changing as lifestyles and changes in society affect people. One of the greatest challenges is the need for flexible and responsive volunteering opportunities and different ways in which volunteers express themselves and experience volunteering. This creates a tension in designing protection legislation which minimise risk without creating barriers to volunteering and the importance of engaging the population in the giving of their time for others.

Currently, the Central Registered Body processes disclosure applications for nearly 11,000 organisations. It is estimated, that during the financial year 2006 – 2007, that 70,000 disclosures of individuals will be processed.

The process is demand driven - influenced by a variety of factors amongst which are to be found: -

- High “turnover rates” amongst volunteers;
- Requirements imposed on not for profit groups by funders & provider’s of accommodation;
- Policies of local authorities, NHS Scotland and the care sector regulator.

The healthy growth trend in registered organizations shows that, although one could argue that many more organization should currently be registered that there is a developmental approach in raising awareness, training and guiding organizations to operate good practice and meet their legal obligations.

Utilising figures derived from the Scottish Council for Voluntary Organisations
The (SCVO) database reveals that there may be up to 50,000 voluntary organisations requiring to participate in the new scheme. Three key points need to be mentioned:

SCVO’s definition of a voluntary organisation is any group with a constitution or set of rules (there are a variety of legal personalities available) that has the characteristics of having unpaid leadership; independence from government and are not for profit.

The sector is highly diverse in respect of organisation’s aims and aspirations, scale, remit methodology and resourcing. There is a question about the point at which a body is sufficiently formed to have legal responsibilities, and the basic requirements for registration with the Central Registered Body are as set out in legislation and the Ministerial Code of Practice issued by Scottish Ministers under section 122 (1) of the Police Act 1997 Part V. These requirements include amongst other things, the ability to demonstrate a need to-

- ask the “exempt question” set out in the Rehabilitation of Offenders Act 1974 (Exclusions & Exemptions)(Scotland) Order 2003;
- demonstrate that positions requiring to be disclosed conform with the definition of “childcare” position, as defined by the Protection of Children (Scotland) Act 2003, and “adult at risk” position as defined by the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006;
- confirm the existence and operation of procedures in relation to child protection, rehabilitation of offenders and data protection; and
- exhibit an entitlement to access “free” disclosures because of their not for profit status.

The voluntary sector’s turnover of members and leaders, management committees and paid and unpaid staff, is in our experience, an important factor in the design of the legislation to ensure that its objectives are met.

Considerable weaknesses have emerged at all levels in organisations abilities to respond appropriately to the Police Act 1997, Part V and subsequently the Protection of Children (Scotland) Act 2003.

4 The anticipated impact on voluntary organisations

4.1 Organisations will benefit from certain reductions in bureaucracy, from the portability of disclosures, from the updating and reassessment of individual barred status and new information services that will be provided to them. This will improve risk management.

These advantages need balancing against the additional responsibilities placed on organisations by the new legislation. At a basic level, organisations will need to ensure that they have adequate record systems
to deal with the flow of information. This will be especially the case where organisations are acting on behalf of others. In addition, confidential information will be communicated this will need to be handled appropriately especially if an individual’s barred status changes. Furthermore, the existence and imposition of criminal penalties may have a profound effect on the perception of volunteering by volunteers and managers of voluntary organisations.

4.2 The massive variations in the governance, size, scope and capability of voluntary organisations will result in a complex range of demands for services to meet their different needs in compliance.

4.3 The direction of policy in protecting the vulnerable is towards proactive protection, joint working and cooperation as evidenced by the integrated planning agenda and joint inspections of children’s services. The reforms contained in the PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL 2006 are designed to promote and support the development of information sharing and cooperation at all levels.

This element of the Bill poses significant challenges for the voluntary sector as many simply do not have in place the necessary infrastructure and understanding to support this policy objective.

4.4 There will be an additional demand for mediated services which ensure that disclosure information is properly handled and understood, and that organisations do not breach legislation which protects individuals.

4.5 There will be an increased demand for services for voluntary organisations to ensure that they understand and comply with new legal requirements and do not commit new criminal offences.

4.6 Specific consideration needs to be given to structures to support all groups and particular attention requires to be given to small to medium sized bodies and how they comply with the new framework. Proposals being developed by the Central Registered Body would provide a coherent national framework of support to organisations in communities throughout the country to enable and facilitate organisations’ ability to come alongside and meet the objectives of the legislation.

(The Financial memorandum to the Bill commits additional funding of £320,000 to the CRBS, however, it is not specified what this is for).

4.7 The Ministerial Code of Practice on information sharing will be pivotal in improving practice. A key consideration will be the impact of the
information sharing provisions on the voluntary sector. It is believed that where a voluntary organisation is undertaking a public function (for example, a local authority taking residential places in a care home run by a voluntary organisation), it is expected that the local authority would ensure that appropriate arrangements or measures are in place. This would include sharing information where there is a concern that a child or protected adult is, or may be, “at risk of harm”.

4.8 Preparatory work will require to be undertaken well in advance of commencement of the Protection of Vulnerable Groups (Scotland) Bill to ease the process of transition to the new framework for organisations of all sizes

5  **Anticipated impact on individual volunteers**

5.1 The introduction of one application which is transferable will meet a major weakness of the current scheme.

5.2 The legal; requirements to inform of change of address may be impracticable.

5.3 Civil liberties and human rights concerns may emerge if a clearly delineated arrangement for two way communication of sensitive material is not put in place between the Central Vetting and Barring agency and the multiplicity of not for profit organisations. To reduce the scope for inappropriate or potentially dangerous use of sensitive material, is the view of the Central Registered Body that access to such information requires to be mediated for those organisations registered with it.

Without dedicated advice, support and training on legal, policy and procedural issues the scope for random, indeed prejudicial decision-making, is greatly enhanced amongst voluntary groups.

6.  **Recommendations**

6.1 Commission an impact assessment study into the impact of the legislation on volunteering

(There is concern about the lack of research and evidence on the potential impact on volunteering of the new legislation. The Education Committee is urged to initiate research on an impact assessment, either from VDS or from an independent organisation, to determine the impact on volunteering of the introduction of this legislation).
6.2 Recognize the diversity of voluntary organizations in size, scope, capacity and awareness, and that a developmental approach is required to establish good practice in protection and risk reduction policy and practice.

6.3 Give due regard to the need for balance and proportionality regarding the “capture” of loosely formed and informal associations groups (unincorporated), and in the numbers of individual volunteers required to go through a disclosure process.

6.4 Give due regard to the need for balance and proportionality, and practicality in the threat of criminal actions particularly in regard to the requirements on individual volunteers.

6.5 Give due regard to the need to protect individuals from inappropriate requests for disclosures and in the use of highly sensitive information contained in disclosures (VDS believes that mediated services may be required to be designed and developed in this area).

6.6 Definitions within the legislation need careful consideration. This is especially so in the case of that definition pertaining to “vulnerable adult.” This may provide difficulties for organisations to determine whether their paid or unpaid staff require to be checked. In addition, the definition of work must be refined to ensure that it does not capture informal arrangements.

6.7 Where there is a duty on scheme members (Disclosure applicants) to notify changes of address, that duty should be imposed on organisations rather than scheme members. This is a matter of practicality.

6.8 A key benefit of the new scheme is the provision of updated information. The Scottish Executive should ensure that information supplied in Short Scheme checks is sufficiently comprehensive to enable employers to make sound decisions with respect to suitability.
SUBMISSION FROM DUNDEE CITY COUNCIL

We welcome the opportunity to present oral evidence to the Education Committee during its Stage 1 considerations of the Bill and are pleased to provide this written submission in support of that.

We generally welcome the proposals in the Bill. We would, however, urge that everyone upon whom the Bill will impact must be educated to realise that it can only ever be part of a package of robust selection and recruitment procedures. We must avoid any stakeholder, particularly the personal employer or smaller voluntary organisation, considering that disclosure records amount to a thorough assessment of a person's suitability to work with vulnerable groups.

As so much that is relevant to how the legislation will operate in practice is being left to orders, regulations, guidance and the code of practice on sharing child protection information it is difficult to comment on what some of the operational implications may be. Some of these key areas are highlighted as part of this submission. This submission refers to the first three Parts of the Bill only as these Parts are considered to have the most impact on Dundee City Council's operations and decision making.

Part 1 of the Bill

The proposed provisions in Part 1 leave detailed explanation of relevant 'criteria' at clause 14 to future Order. As this will relate to automatic listing it is crucial that further possible criteria are specific and it is assumed that such criteria do not relate to descriptions that can be interpreted subjectively.

The option to publish guidance regarding steps to be taken by an employer pending consideration of listing in terms of clause 29(4) shall be welcomed if and when made available. Such guidance would also inform the person potentially to be listed of what is deemed to be reasonable treatment on their part.

Perhaps the reference to 'findings in fact' at clause 17 should explicitly relate to formal proceedings undertaken by the organisations where the individual has been afforded the opportunity to be heard and respond to any allegation made.

Clause 19(1)(a) makes reference to '46(a)(c)' and this perhaps should read '46(1)'.

The implications of clause 19 (and clause 46) are expanded upon in Paragraphs 95 and 96 of the Policy Memorandum in terms of what information is likely to be required from public bodies in the future.

The Policy Memorandum discusses the possibility of:
a) local authorities making a judgement about whether the reasons for placing a child on a Child Protection Register might warrant providing relevant information to Disclosure Scotland about the person and circumstances that caused the child to be placed at risk.

b) responsibility to provide information being placed in the hands of the Keepers of the Child Protection Registers.

Whilst the detail of this is a matter for the future, we would suggest that, at this stage, there is a clear commitment to ensuring that guidance is provided in relation to a), to ensure consistency across the country. This could be incorporated into the code of practice referred to at Clause 76.

In relation to b) above, we suggest that any such reference in approved guidance or as drafted in further legislative provision should be to the Chief Social Work Officer rather than the Keeper of the Child Protection Register. This places responsibility at the appropriate level of seniority and takes account of the fact that information from sources other than a child protection case conference might be seen as relevant to pass onto Disclosure Scotland.

Clause 29 should perhaps narrate that where Ministers are considering listing an individual this notification is via the issuing of a scheme record.

**Part 2 of the Bill**

We consider that for the proposed legislation to genuinely be centred on the interests of vulnerable groups participation in the Scheme requires to be mandatory. In effect the vast majority of people who work with vulnerable groups will require to ‘volunteer’ to allow their employers to be satisfied that they are not barred. The inconvenience to the remaining persons requiring to join the Scheme e.g. the self-employed or the informal tutor/coach, would, in our view, be outweighed by the benefits of a more robust compulsory Scheme with a shift in decision making from the non-organisation employer to the persons who are to undertake the regulated work.

It is easy to agree that placing a duty on a personal employer to establish the status of a prospective coach/tutor could be seen as the state interfering excessively in family life. If, for example, a parent or guardian chooses not to establish the barred status of an individual whom they engage to tutor their child, then they retain responsibility for that. This is different, however, from placing an obligation upon the person who wishes to tutor or coach, to subject him or herself to the system of national scrutiny to establish whether he or she should be barred from doing so.

Exceptional though it may be, it is not beyond the bounds of reason to think that a person would establish themselves as a coach or tutor, offer his services to parents or guardians who may not know what they should be asking or looking for in relation to checks and easily convince them that nothing is required or present a falsified document that purports to show his suitability.
If it were an offence for any person to undertake regulated work without participating in the Scheme, a loophole would close and, in so doing, discourage anyone who sought to find a way around the legislation.

This would not cause the disclosure of sensitive information to anyone who did not have a legitimate interest in it. It would allow any person to report a concern, for that to be followed up by the relevant authority and action taken if it was found that someone was undertaking regulated work without participating in the Scheme.

The proposal to renew Scheme membership after 10 years is not supported. The addition of vetting information and consideration to list is seen as a continuous process and accordingly there does not appear to be any merit in renewal of membership other than as a prompt for an employer to periodically obtain a scheme record directly from the Ministers.

There are circumstances where vetting information contained in an original published scheme record will not be seen by a future employer. This employer might only have sight of a short scheme record disclosing no new vetting information. However the original vetting information may be pertinent to this employer. This can perhaps be rectified by clause 50 being amended to allow the short scheme record to detail that vetting information was included in the scheme record as last disclosed. This will allow the employer to then consider that a scheme record should be disclosed by the Ministers.

Renewal also allows those who no longer undertake regulated work, who are retired or who have died to no longer be Scheme members. An update of Scheme membership in these circumstances could also occur through periodic confirmation from individuals that they wish to continue to be members of the Scheme failing which their membership would come to an end.

It is suggested that at clause 43 the phrase and document title 'statement of barred status' may be misleading to non-organisation employers due to use of the word 'barred'. Such employers may mistakenly think that the individual is actually barred. It is noted that the statement of barred status will detail where an individual is being considered for listing so it would also not be appropriate to give non-organisation employers the false impression that there were not any concerns regarding an individual who may be listed in due course.

Perhaps at clauses 49, 50 and 51 it could be made explicit that disclosure is to the person as described at Condition A, C and, where relevant, D.

Clause 56 also appears to support the suggestion that the Scheme is not really voluntary as removal is only where the ministers are satisfied the individual is not doing the relevant type of regulated work.

The Policy Memorandum (Paragraphs 153-155) discusses retrospective checking and phased implementation and notes that the Bill makes provision for Ministers to set fees. Whilst it is appropriate that those currently employed
who will become regulated workers must join the Scheme, we would highlight the financial implications. Some 4300 people will have to become scheme members in order to remain employed by Dundee City Council. Using the figures in Model 3 on page 46 of the Financial Memorandum, and assuming Dundee City Council would meet the cost, this would result in an additional cost of £111800 over 3 years.

We also note that a significant number of those who will do regulated work will require to join the scheme whilst they are still students; e.g. teachers and social workers, given that they carry our regulated work as part of student placements and for the purposes of registration with regulatory bodies. Students currently pay the cost of a Disclosure Check under the present scheme. There is nothing in the Bill that suggests they will not have to carry the financial burden of joining the new Scheme. We assume Ministers would not wish to discourage potential students from these professions by placing an excessive financial burden upon them.

We also note that the provisions of the Bill will mean that upon taking up employment with, for example, a local authority, the cost to be met by that first employer will be for a short scheme record only. There is no obligation upon a potential employer to obtain a scheme record. We welcome the fact that it will have reduced ongoing costs as a result of this.

**Part 3 of the Bill**

As is noted above, we are concerned that so much that will impact on the effective implementation of the legislation is not known at this stage. The code of practice will be key to addressing the issues of information sharing and co-operation.

Paragraphs 175 - 177 of the Policy Memorandum set out the reasoning behind introducing legislation covering the sharing of information and the need to co-operate. Paragraph 177 refers to the, "critical importance of child protection".

We note that much already exists regarding the sharing of information, a great deal of which is set in the context of confidentiality, human rights, data protection, etc.

If, as a society we are serious about the importance of sharing information and co-operating to assist in the protection of children, then we have to ensure that what already exists does not provide a barrier behind which some may find reason not to share or co-operate. So, rather than demand that the code of practice 'fit' with what already exists by way of policy or guidance, this legislation and the code of practice it spawns should be seen as the primary commentary on the subject and other documents should be modified as necessary to be consistent with it. We trust that Ministers would apply clause 81 to ensure action with particular regard to clause 75. This will be demanding on those who need to review existing documents. But this returns
us to the question of how important we consider proper information sharing and co-operation to be.
SUBMISSION FROM SOUTH LANARKSHIRE COUNCIL

The Scottish Parliament
Education Committee calls for evidence on the
Protection of Vulnerable Groups (Scotland) Bill

Introduction

South Lanarkshire Council welcomes the opportunity to present oral evidence to the Education Committee. The Council supports the principles of the Protection of Vulnerable Groups (Scotland) Bill to improve current provisions to safeguard children and protected adults from harm and to improve the consistency of recruitment practice for people working with children and adults in Scotland. The implementation of the provisions of the Bill will require further consideration regarding a range of issues to ensure both its effectiveness and public confidence in the new arrangements.

How effective is the Bill likely to be in providing children and protected adults with additional protection from harm?

The Bill will provide additional protection for both groups. For adults the maintenance of a list of barred persons provides protection which currently does not exist. For children the duty to share information is a significant addition to the legislation. Sharing information is already a matter of good practice in child protection procedures. However, the inclusion of this provision in the Bill will remove doubt for agencies who have hesitated because of concerns over confidentiality, and will improve the area of practice which has most consistently been an issue in child protection inquiries.

We welcome the duty to share information about children and would wish to see the duty extended to protected adults. We also welcome the duty on Ministers to prepare and publish a code of practice on sharing child protection information and the requirements to consult on this. Consideration of the issues should include a focus on the provision and use of “soft information” since this is an area where many public concerns arise, for example in relation to children’s rights and the rights of employees, in relation to who might have access to information about them. We welcome the provision that referrals can now be made on the basis of inappropriate conduct as well as harm. The provisions in section 63 relating to the disclosure of information to any employees should be restricted to relevant employees.

The new provisions should improve the effectiveness of present arrangements by introducing additional consistency into the decision-making process. However, the effectiveness of the Bill will depend on the capacity of the system to adjust to change and to the robustness of the information provided through the vetting and barring process.

Preparation of all parties through clear expectations and appropriate, timeous guidance will be essential to ensure that organisation and individuals are aware of the new duties. A useful example to consider in this context is the requirement for councillors to be vetted: will there be timeous information for candidates, for next year’s elections?

The implementation of the Bill will only be effective where information is known because of a conviction or there is sufficient information available to justify including a person on the list. Although we are now better at recognising abuse and have more successful convictions, those who engage in abusive behaviour can be sophisticated in covering their tracks. Therefore this can only ever be a partial protection and it is important that publicity emphasises this to ensure that people remain vigilant.
What are the likely impacts of the Bill on employers, employees and volunteers who work with children and protected adults.

For employers/employees there is a concern that new arrangements might lengthen the process for disclosure checks leading to a longer period for filling posts.

In particular, the possibility that Disclosure Scotland might face the same capacity issues as previously experienced with the introduction of new arrangements must be avoided. Particular consideration needs to be given to the phasing of individuals into the new scheme over 3 years as proposed. Peak periods in ordinary recruitment practice should be taken into account. There should be consultation over the criteria for inclusion in each of the 3 years of phasing. Consideration should also be given to streamlining the need for employers, colleges and HEIs, profession associations and registration bodies in using the new scheme. Further, account needs to be taken of the continuing requirement of employers in many instances for full disclosure information, rather than just information on barred status. This will remain part of the robust recruitment procedures employers require. We query the need for renewal of membership in the Scheme after 10 years, since the process of continual updating together with the access to full disclosure when the employer requires it should remove the need for this.

The provisions for vulnerable adults might result in increased appeals regarding decisions not to appoint.

There will be a positive benefit to employees resulting from increased consistency of decision-making.

For volunteers, there has been a concern that vetting and barring results in a decrease in numbers wishing to go through the process with a consequent decline in the number of people volunteering. In many instances, it may not be the disclosure process itself that results in individuals declining to volunteer: it may be associated factors such as different working patterns and economic status, or the more general climate which results in people fearing their motives might be a focus for suspicion. The process should nevertheless be as straightforward as possible for volunteers and voluntary organisations to access.

On the positive side, volunteering is still a valuable community development mechanism to enable people to move into employment and to enrich the quality of their lives. The value of volunteering must continue to be promoted to offset potential changes of public perception.

The issue of proportionality has also recently been raised, with the suggestion that 1,000,000 people might be covered by the Bill. The risk is to set this estimate against only the potential incidence of serious incidents of harm to children and vulnerable adults. A more appropriate comparison would be against the risk of incidence of trauma to children or vulnerable adults exposed unnecessarily to unsuitable adult behaviour. The effect of reassurance to employees themselves, for example in incidents where they might legitimately need to restrain a challenging child, should also be taken into account when considering proportionality. Similarly, reassurance is provided to parents and relatives of vulnerable adults that all possible steps to safeguard vulnerable groups are being taken.

The implications of the global economy for workers needs to be given further consideration, in relation to the vetting of migrant workers, refugees and individuals taking gap years or special leave.

The guidance that supports the Bill will be important – for example, we are aware that there can be inconsistency in decision-making because different employers consider potential issues arising from disclosure in different ways. Guidance on the interpretation of disclosure would be
helpful, and might take the form of a code of practice on the use of disclosure information to eliminate inappropriate use and to improve consistency of decision making across organisations. There is the potential for confusion regarding who the Act will cover. This also requires to be clarified in guidance.

Are there any other issues raised by the Bill’s provisions?

There is no recognition in the financial memorandum of the additional costs to public bodies which will impact on other services. For all groups covered, the issue of cost remains to be clarified, particularly with respect to retrospective checking and membership of the scheme. This will potentially impact on local authorities because of the scale and timing of retrospective checking, and on small voluntary organisations regarding their employees.

The recommendation is that volunteers should be able to access the information free of charge. We agree with this. Volunteers should have free access to the arrangements regardless of their volunteering situation: at present, vetting of volunteers in local authority locations is not free.

Although we welcome the introduction of a framework to ensure unsuitable people do not gain access to children or protected adults through work, we have some concerns that no review process is automatically built in and that review depends on individuals making application for review. We recognise to introduce this would have significant resource implications. The policy memorandum does recognise that risk may reduce for some people with maturity depending on the type of behaviour that is of concern. This may disadvantage certain groups in our community who are less aware of their rights or the implications of being included on a list.

How helpful do you find the policy memorandum and financial memorandum accompanying the Bill?

We do not find either helpful in understanding the full implications of the Bill on current practice. As mentioned above we need good clear guidance to support the implementation of legislation.

Do you have any comments on the consultation the SEE carried out prior to the introduction of the Bill?

We welcomed the opportunity to be involved in the consultation. Many of the issues arising during the earlier consultation related to implementation rather than to the legislation itself and we would hope that earlier comments will continue to be taken into account as implementation proceeds.

A M Batchelor
Head of Service (Inclusion)
17.11.06
SUBMISSION FROM NHS AYRSHIRE AND ARRAN

Voluntary nature of the scheme / appropriate dissemination of information

There are questions surrounding the voluntary nature of the scheme, unlike in England and Wales where it is compulsory. In order to ensure there are no loopholes in Scotland the scheme would be more effective if it were compulsory from its initiation. There are a number of private agencies now working in the social care arena e.g. providing respite care or social activities. Parents and carers would have more confidence if they know that these agencies are part of the scheme. A key area where membership should be mandatory is education departments.

The giving of inappropriate medical treatment to a child or vulnerable adults is a key issue. This could include, for example, sedating children or vulnerable adults in order to make caring for them easier or having fewer members of caring staff on duty. There may be employers who are not part of the scheme (as this is voluntary) and caring staff may be employed by more than one agency at a time. Only those that are part of the scheme will get the relevant information. In addition, a member of staff may be a registered health professional but not require their registration as part of their current caring role.

Costs of disclosure

The costs for disclosure are met by individuals although some employers bear the cost. Costs associated with the new Central Barring Unit are likely to increase the costs to the individual. This could have implications for new employees and needs to be considered, particularly if employees are applying for relatively poorly paid employment. This could cause inequity and should be considered in conjunction with other government policy to move people out of poverty – could the costs make it more difficult to narrow the gap between rich and poor? The costs to local authorities are recognised in the memorandum, however costs are also likely to be high for the NHS due to the regulated nature of much of the work.

Access to the system

With more vulnerable adults now being cared for in the community, it is crucial that carers of vulnerable adults are made aware that they can access the system being put in place. The example included throughout the policy memorandum focuses on parents sending their child to a piano teacher. Carers of vulnerable adults may wish to ensure that their clients have as normal a life as possible and may consider the involvement of the vulnerable adult in social clubs – they need to ensure that this is a safe environment.

Training and guidance
The memorandum highlights the importance of training on the new Bill – this is to be welcomed.

On first reading the Bill looks straightforward, however reflection and detailed consideration highlights the complexity. Relevant staff therefore must have access to adequate training which enables them to give consideration in depth to some key issues. This will be resource and time intensive and will place further pressure on public bodies and others. This needs to be recognised by Ministers when scrutinising the performance of these agencies as there could be knock on effects in terms of service delivery. In particular the human rights issues are complex and will require some scrutiny.

The code of practice to accompany the Bill, to be prepared by Scottish Ministers, needs to be in place and shared as soon as possible as staff may need support in understanding and interpreting the content.

Guidance needs to be provided in relation to responsibilities for people working in an establishment who are not employed by that establishment e.g. a member of staff from a voluntary organisation working in a school.

**Public perception**

There is a clear need for NHS to have procedures which will satisfy public that measures in place to protect those receiving services. Issues of how this is presented to the public could be double edged (e.g. contentious issue, therefore decisions to be made as to whether a position statement is made, e.g. leaflet which states what we do to protect vulnerable groups), or if we simply ensure our policies and procedures are fit for public scrutiny (should they be requested).

On a more general Patient Focus and Public Involvement front, this is not necessarily an issue upon which we would seek out the public view, due to the nature of it being a "given" that they expect to be protected when in our care, and that the specifics and processes on how we must do this are set out in a Parliamentary Bill and therefore not something we can necessarily alter.

**Joint working**

There will be an absolute need for "joined up" work with partners around such issues. Processes for sharing data, etc., would reflect our commitment to ensuring that the seamless service provision sought after is as safe as it can possibly be. There should be an emphasis again on how partners are communicating with each other, and an emphasis on tight procedures for joint working reflecting this issue at every turn (and again, back to how NHS and partners decide to present that to the public e.g. joint procedures for child protection).

A key aspect of the lists will be the need to continuously update these, on the basis of information provided from various sources.
What this is about...

The Education Committee of the Scottish Parliament has called for evidence from interested parties on the general principles of the Protection of Vulnerable Groups (Scotland) Bill.

The Bill will set the framework for a new Vetting and Barring Scheme for people seeking work with children or ‘protected’ adults. The Bill takes forward recommendations made during the Bichard Inquiry and builds on existing arrangements in Scotland, such as the Disqualified from Working with Children List introduced by the Protection of Children (Scotland) Act 2003.

The Bill also makes provision for the sharing of child protection information.
1 The Commissioner’s Role

The office of Commissioner was established by the Commissioner for Children and Young People (Scotland) Act 2003. The general function of the Commissioner is to “promote and safeguard the rights of children and young people”. In particular, the Commissioner must review law, policy and practice relating to the rights of children and young people with a view to assessing their adequacy and effectiveness. Specific regard must be had to any relevant provisions of the United Nations Convention on the Rights of the Child, especially those requiring that the best interests of the child be a primary consideration in decision-making, and that due account be taken of the views of affected children and young people.

The Commissioner must exercise this responsibility towards all children and young people in Scotland who are under 18 years of age, or under 21 if they have at any time been looked after by a local authority or in their care.

2 United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (UNCRC) was passed by the UN General Assembly in 1989 and ratified by the UK in 1991. Ratification commits the UK to bringing its law, policy and practice into line with the Convention. Whilst not directly enforceable in UK courts in the way that the European Convention on Human Rights now is, it should be noted that the European Court of Human Rights increasingly makes reference to the UNCRC in its judgments as a common standard amongst member states.¹ Section 2 of the Human Rights Act obliges UK courts to take account of European jurisprudence in making their own decisions.

The UNCRC sets out the fundamental human rights to which all children around the world, without discrimination, are entitled. It sets out minimum benchmarks in rights for children rather than ‘best practice’; countries are thus encouraged to exceed the standards laid out in the Convention, but should not fall short of its basic requirements.

When the UK ratified the UNCRC, it made promises to the children and young people in this country that it would make life better for them by respecting and promoting the standards set out in the Convention. The promises relevant to the Bill include the four basic principles of the UNCRC:

- non-discrimination - that is, the rights in the Convention should be respected, no matter what the race, colour, sex, ethnic origin, or status of the child or the child’s legal guardians (Article 2);
- the best interests of the child should be at least a primary consideration in decisions made by legislative bodies or administrative authorities (Article 3(1));
- the state should ensure, to the maximum extent possible, the survival and development of the child (Article 6); and
- the views of the child concerned should be given due weight in all matters affecting the child (Article 12).

The articles most closely connected with the Bill’s provisions are set out below under section 4 (Vetting and Barring) and section 5 (Information Sharing).

3 General Comment

I welcome both the opportunity to comment on the Bill and the Executive's continued efforts to ensure children in Scotland are protected. Both the vetting and barring and information sharing provisions of the Bill fall within the priority areas on which my office is focusing its work. These priorities – ‘Things To Do’ and ‘Promoting Proportionate Protection’ – were identified through consultation with 16,000 young people and almost 140 organisations working with and for them. With regard to all parts of the Bill, we must be sure that both the aim and consequence of the provisions is child protection, and not the protection of professionals and agencies.

4 Vetting and Barring

Several articles of the UNCRC are relevant to the vetting and barring provisions of the Bill, including:

- Article 1 – a child is defined as all those under 18 years of age (relevant given crossover between children and protected adults (aged 16-18) in the Bill);
- Article 3(1) – in all actions concerning children, the best interests of the child shall be a primary consideration;
- Article 3(2) – the State must take all legislative and administrative measures as are necessary to protect children;
- Article 3(3) – institutions, services and facilities for care or protection of children should conform to established standards, including in the area of suitability of staff;
- Article 19 – States should take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment; and
- Article 31 – children have the right to engage in play and recreational activities.

As we are all aware, there are many deficiencies in the current vetting system and I welcome efforts to address these. I am pleased to note that the Executive has taken on board many comments made during the consultation process earlier this year (for example, the need for two lists rather than one). Nonetheless, some issues remain outstanding.

Proportionate Protection

As stated above, one of the current priorities of my office is ‘Promoting Proportionate Protection’. This priority was identified by organisations working with and for children and young people during a formal consultation process earlier this year. This consultation revealed much concern among a range of organisations, including from the voluntary, statutory and private sectors, about vetting. In particular, respondents felt that vetting processes are often cumbersome, bureaucratic and put adults off from working with children. The emphasis placed on vetting checks at the expense of other safe recruitment methods was also a cause for concern. In addition, child protection systems generally were seen to be focused on protecting the adult and the organisation, rather than the child.

"In the UK, it now seems to be normal to over-protect children. We deny many children the opportunities offered by outings, adventure play and outdoor activities." (Voluntary sector organisation)

"We are increasingly aware of the potential for well-meaning regulations to effectively work against the best interests of the child or young person." (Local authority)

I am concerned that the focus on the new vetting systems will give rise to defensive practices, whereby employers will be unwilling to take on those with any criminal record history, however irrelevant to the post applied for. Raising awareness of and providing guidance on the new scheme affords an opportunity to highlight the need for safer recruitment generally, emphasising the other aspects of safe recruitment such as taking up references. The Bill seems to be allowing for the
updating of checks periodically by employers and I am unsure why this is necessary – not only is it an added and arguably unnecessary expense, it implies that organisations may still feel the need to resort to formal records checks even where an organisation has employed an individual for a long time, is happy with their performance and has no cause for concern.

Vetting and barring procedures should be as fair and transparent as possible – if adults do not have confidence that their rights will be respected or if they perceive it to be cumbersome, bureaucratic, expensive or intrusive, they will withdraw from work with children and young people. Children, young people and adults who wish to work with them have a shared interest in ensuring fair treatment in the vetting and barring process.

**Secondary Legislation**
At the consultation stage, I expressed concern that much of the detail of the new system was being left to a later date. While the publication of the Bill provides extra detail, there are still some unknowns and some elements of the new system are being left to secondary legislation. This situation is not ideal – it can be difficult to accept some of the ‘principles’ of the new system without knowing how they will be applied in practice.

**Impact on Employers, Employees and Volunteers**
The impact of the Bill on those working with children and young people will be significant. Implementing the new system will require training, guidance and resources. In addition, the new fee structure must be carefully implemented: it is imperative that the cost of joining the new scheme is not set at a prohibitively high level for those seeking work with children.

**Sharing of Information by Police**
Under the new system, when making a decision as to what information to pass on to Disclosure Scotland, police forces will have regard to the sector as a whole, rather than the particular job applied for. It would be useful to know the extent to which this change will result in an increase in the amount of information passed on by the police. In future, will the police just pass on all information held on an individual? Will the police receive guidance and training in assessing what information should be passed on?

**Duration of Scheme Membership**
The Executive has suggested that scheme membership may last for a defined period, e.g. 10 years. The rationale for renewal of membership should be clarified – is it so scheme records can be ‘purged’ after 10 years of all those who are no longer engaged in regulated work (and, therefore, new information about them no longer has to be passed on) or is there some other reason?

**Notification**
The Bill requires scheme members (that is, those working with children or protected adults) to notify Ministers if they change name, address or gender (or if there is a change in other information as prescribed by Ministers). If they fail to do so within three months, they incur a fine not exceeding level 3 on the standard scale (currently £1,000). While I understand that the updating of a member’s details is designed to facilitate the continuous updating of their record, I am concerned that this may be perceived as yet another ‘hurdle’ to be jumped for those who wish to work with children and may act as a disincentive.

It is also commonplace that people simply forget to update changes of name and address and so it must be made clear to people on entry to the scheme exactly what is required of them.
Similarly, a person who is barred from working either with children or protected adults must notify Ministers if they change name, address or gender, but must do so within a shorter timeframe (one month). A person who fails to notify Ministers will commit an offence and be liable to a fine not exceeding level 5 on the standard scale (currently £5,000) or imprisonment for up to six months, or both. Given the grave consequences of an individual being barred, including this long-standing and potentially onerous duty to notify, it is essential that when making decisions to bar, a knowledgeable and skilful assessment must be made of the evidence. Consideration should be given to the implications for, for example, a person who has never sought work with children and has no intention to do so, or for someone who is barred on the basis of non-conviction information, and who is then subject to this notification requirement for an indefinite period of time (potentially for their lifetime).

5 Information Sharing

Law and policy which facilitate appropriate information sharing are positive child protection measures and should encourage those working with children and families to share information if the child is at risk of harm and where to do so would be in the child’s best interests. There is obviously no doubt that the purpose of Part 3 of the Bill – to ensure effective protection for children – is commendable and justified. However, what is in question is whether the Bill’s provisions are the most appropriate means of achieving that purpose.

In assessing the information sharing provisions, regard should be had to the UNCRC and, in particular, to the following:

- Article 3(1) - in all actions concerning children, the best interests of the child shall be a primary consideration;
- Article 12 – in all matters affecting the child, the child shall have the right to express his or her views freely. Those views should be given due weight in accordance with the age and maturity of the child;
- Article 16 - no child shall be subjected to arbitrary or unlawful interference with his or her privacy; and
- Article 19 - States should take all appropriate measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment. Such measures should include effective procedures for prevention, identification, reporting, referral and investigation of instances of abuse.

Consultation

While vetting and barring was the subject of a consultation process earlier this year including opportunities to participate in several seminars and submit written responses, the information sharing provisions of the Bill have not been formally consulted upon. Any consultation has been limited to seminars to which my office has received invitations, but often at very short notice. It is also my understanding that no children and young people have been consulted about the proposals. I would like to note my concern at the lack of consultation, particularly given the serious implications of the provisions, for children and young people themselves but also for their families and those professionals working with them.

The Views of Children and Young People

In October 2006, our Reference Group, made up of twelve 14 to 21-year-olds, carried out a children’s rights impact assessment of the information sharing proposals. Their views on information sharing have informed this response and a summary of their assessment of the provisions is attached at Appendix 1.
Although not consulted specifically on the information sharing provisions of the Bill by the Executive, children and young people have been asked in the past for their views on the sharing of information. For example, children and young people were involved in the development of the ‘Children’s Charter’ as part of the Executive’s child protection reform programme. The Charter reflects what children have a right to expect and consists of key messages for those who deliver services to them. The key messages include:

- “listen to us”;
- “respect our privacy”;
- “think about our lives as a whole”;
- “think carefully about how you use information about us”; and
- “help us to be safe”.

As part of the Executive’s Getting it Right for Every Child agenda, children and young people were asked some questions about information sharing\textsuperscript{2}. The results of this consultation showed them to have significant concerns about the breach of privacy that might be involved in information sharing and their desire to be able to retain some control over the information held about them.

**Impact Assessment**

As well as the impact assessment carried out by the young people on SCCYP’s Reference Group, my office has also carried out an initial screening assessment of the information sharing provisions. This assessment has informed my comments on the Bill and is available at Appendix 2.

**Right to Privacy**

It should be noted that both Article 16 of the UNCRC and Article 8 of the European Convention on Human Rights (ECHR) state that children and young people have a right to privacy. Under the ECHR, any interference with that right must not only be for one of the stated purposes (for example, the prevention of disorder or crime), but must also be necessary. In determining whether an interference is necessary, consideration should be had to whether the reasons for interference are relevant and sufficient, as well as an assessment of proportionality – does the aim justify the interference?

**Confidentiality and Consent**

Where a child or young person is at risk of immediate or significant harm, it is accepted that a professional may share information supplied by the child where to do so would protect the child, even where sharing the information would represent a breach of confidence. However, placing a duty on professionals to share such information where there is any risk of harm, thereby breaching a child’s confidence, is cause for concern.

In deciding whether to disclose information about the child or young person, a professional should not only have regard to the child’s best interests, but should ask the child for their views and seek consent to pass the information on. While it may be necessary, in some cases, to share the information even where the child refuses to consent, it is still important to tell the child this is being done and to explain the reasons for doing so.

Young people have reported concerns about losing ‘control’ of information about them, and about it being passed on without their knowledge. When asked for permission to pass on information and given further details such as the person it is being passed to and what can be expected to happen next, young people feel a sense of empowerment.

While some information does have to be shared to protect children, it is possible that sharing will result in unintended consequences. If children and young people fear that any disclosures they make will be reported, they will lose faith in professionals who work with them and may stop accessing essential services. This is particularly true, and particularly worrying, in the context of sexual health services.

In assessing the information sharing proposals, the members of SCCYP’s Young People’s Reference Group expressed considerable concern regarding issues of confidentiality and consent. In particular, they were concerned that young people would feel less comfortable talking to adults and would become isolated if they did not talk to someone because they are worried something they say would be passed on. The Reference Group was also concerned that information might be passed on that is not really that serious and that, without a duty to ask the young person for consent to share the information, or at least to tell them that information is being passed on, professionals could wrongly interpret the information and the young person’s situation.

**Threshold for Information Sharing**

The Financial Memorandum claims that the Bill merely “formalises activities that organisations and agencies should be performing ... as part of their existing responsibilities.” As such, relevant persons would generally not be expected to incur any additional costs through this duty due to their existing responsibilities. This claim seems to fail to take account of a fundamental difference between current practice and that which would be required to comply with the new duties. Currently, there are a number of threshold triggers for different kinds of child protection activity: categories of abuse and neglect that might lead to a child being placed on the child protection register; grounds for referral to a children’s hearing that trigger duties to report on the part of local authorities and police, and powers to report on the part of anyone else; and more immediate child protection measures, triggered by belief or suspicion of a risk of ‘significant harm’. Under the new duty, information would be shared when a child is at risk of ‘harm’. This lower, and very vague, threshold for information sharing – and subsequent action by authorities – could result in a far greater amount of information being shared and referrals made than at present. This would have serious resource and practice implications.

**Mandatory Reporting**

Several jurisdictions, including states in the US and Australia, have so-called ‘mandatory reporting’ laws. Such laws commonly involve a description of situations which require reporting, the persons required to report and sanctions for failure to report among other things. While the proposals in the Bill do not – at present – include explicit sanctions, it is still the case that professionals are being put under a duty to share information and possibly face disciplinary action by their employer should they fail to do so. There is considerable research on the effects of mandatory reporting laws, one of which is that, particularly in the initial stages of the law coming into force, the system is ‘flooded’ with referrals as professionals learn of their new duties and become concerned that they face sanctions if they fail to report. There is some research that suggests that the number of reports may exceed the child protection systems capacity to respond. Furthermore, it has been suggested that where more cases are reported than the system can cope with, cases where children are at real risk are lost. The possibility of ‘over-reporting’ is of great concern given what we already know about the burdens and lack of resources faced by social work departments across Scotland and the children’s hearing system.

The stated intention of the Executive’s proposals is to encourage those professionals who do not currently share information to do so - some research on mandatory reporting has concluded that the introduction of mandatory report is unlikely to eradicate problems of under-reporting and that there will always be professionals who fail to report. The research stresses the need for mandatory reporting laws to be supported by training, guidance and awareness raising among professionals.

**Best Interests of the Child**
While I welcome the inclusion of a best interests test in the Bill (at s.79), I question the low profile given to it, and the rather complicated way in which it is expressed. It would be better were it phrased in simpler terms and placed nearer the beginning of Part 3.

**Code of Practice**

I welcome the introduction of a Code of Practice providing clear guidance to professionals regarding the law on information sharing and their responsibilities. The Code is an opportunity to clarify what is meant by ‘harm’ and how serious the risk of harm needs to be before confidentiality is breached and consent overridden. Clear and accessible guidance on what information should be shared, when, who with and what action should then be taken is essential. The mere fact of information being shared is not sufficient to protect children. Indeed, in several high profile and tragic child protection inquiries in recent years, the failures lay not in the sharing of information, but in professionals and agencies failing to take action based on the information already available.

The sheer range of agencies, professionals, situations and types of information to be shared will make the production of the Code a difficult task. Thus, I welcome the fact that the Code would be consulted on, but would also urge the Executive to consult with stakeholders as the Code is drafted, particularly as consultation has so far been minimal.

**16 to 18-year-olds**

It is interesting to note that while most child protection measures (aside from those relating to vetting) apply in respect of those aged up to 16, the information sharing provisions apply in respect of children up to 18. While this reflects Article 1 of the UNCRC, which defines ‘child’ as all those under 18, it does call into question how these provisions relate to existing child protection measures and the Children (Scotland) Act 1995.

**Sanctions**

At present, no formal sanctions are attached to the information sharing duties within Part 3 of the Bill. However, s.81 of the Bill grants Ministers an order-making power to make further provision to ensure that relevant persons comply with the duties. The possibility of criminal sanctions attaching to a failure to comply with the duty to share information in itself is cause for concern and these powers should not be used lightly or introduced without a thorough assessment of, and consultation on, the need for them. I would therefore question allowing such provisions to be made through secondary legislation.

**Links with Vetting and Barring**

In assessing the information sharing proposals, our Young People's Reference Group expressed concern that information shared about them would be passed to the police or would otherwise eventually end up on their disclosure records. Young people (and adults) will not disclose sensitive information and seek help if they fear that, at some point in the future, it will compromise their employment opportunities.

**Conclusion**

Given the concerns outlined above and the lack of consultation on these information sharing provisions, the Committee may wish to consider asking the Executive to withdraw Part 3 of the Bill. Revised information sharing provisions could be included (as originally intended) in the Bill that will come out of the Getting it Right for Every Child process, which is expected next year. This will allow time for reflection, research and consultation. In particular, it would allow for a more careful integration in the Bill of respect for the views of children in line with Article 12 of the UNCRC.

**6 Appendix 1: Impact Assessment by Children and Young People**

The SCCYP Reference Group, made up of twelve 14 to 21-year-olds, was given an overview of the information sharing provisions contained in the Protection of Vulnerable Groups (Scotland) Bill. The
Group was then split into two smaller groups and asked to carry out a children’s rights impact assessment of the proposals using SCCYP’s initial screening form.

Discussion in each of the groups was broadly similar, with both groups acknowledging the good intention behind the proposal and agreeing that the Government is right to take action to protect children and young people from harm. However, the groups were concerned about the way in which the Government was taking action and thought that the information sharing proposals would have unintended consequences which would be detrimental to young people.

**Relevant articles of the UN Convention on the Rights of the Child (UNCRC)**

Each group listed the articles of the UNCRC they thought were relevant to the information sharing proposals. These included:

- Article 3 – best interests of the child;
- Article 16 – right to privacy;
- Article 19 – protection of children from harm;
- Article 12 – child’s opinion;
- Article 24 – right to highest standard of health and to health care;
- Article 17 – access to information; and
- Articles 34 and 36 – the right to be protected from sexual exploitation and any other kind of exploitation.

One group noted that while the information sharing provisions were an attempt to fulfil some articles of the Convention (e.g. Article 19), information sharing also breached other articles, particularly Articles 16 and 12.

There was also concern that information sharing might breach other laws such as the European Convention on Human Rights.

**Consultation with children and young people**

Both groups were concerned that there appeared to have been no consultation with children and young people on the information sharing proposals. They recommended that this should be done.

**Positive impact**

Both groups said information sharing could have a positive impact. It could:

- protect and help children and young people
- it could prevent harm; and
- it would mean less cases of harm to children being ‘overlooked’.

**Negative impact**

Each group was concerned about the negative impact that information sharing could have. The groups thought that information sharing would have the following consequences:

- it would erode trust between young people and those who are supposed to help them;
- young people would feel less empowered;
- young people could become isolated if they did not talk to someone because they were worried what they said would be passed on;
- young people would feel less comfortable talking to adults;
- young people would have no privacy;
- young people living in small communities would be particularly affected if information was passed on about them;
- information would be shared that might not be that serious; and
- the authorities could wrongly interpret the information and the young person’s situation. It is therefore important to speak to the young person!
Conclusions
One group suggested that while problems might exist at the moment with information sharing between professionals, the proposals contained in the Bill are not proportionate and perhaps ‘over the top’ and ‘extreme’.

The same group wanted to know about when information would be shared – how much risk of harm must there be? The group was worried that information would be shared even in cases that were not that serious.

The second group suggested that, because the Government has decided to go ahead with information sharing, they have overlooked the potential problems.

This group also thought that while it is right to protect young people, the information sharing proposals have not been written with them in mind.

Recommendations
The Reference Group recommended that:

- the proposals should be more specific about the level of harm needed to exist before information is shared;
- the Government and those who will be required to share information should have regard to Article 12 – not only should children and young people be consulted about the proposal generally, but when information is being shared about a young person, they should be asked for their consent and for their views; and
- more information is needed about:
  - the effect on children of information sharing. For example, will young people no longer talk to adults when they should?
  - how long the information will be held for;
  - who the information will be passed to - is there one person or will it be passed around? If lots of information exists about a young person, will every professional connected to the young person know about it? One group was very keen that their teachers should not find things out about them from other sources;
  - whether the information shared will affect employment; and
  - whether information sharing breaches the right to privacy found in the European Convention on Human Rights.

Appendix 2: Impact Assessments by SCCYP

My office is carrying out a full impact assessment of the vetting and barring provisions of the Bill. This assessment is subject to on-going review. The latest version can be found on our website at www.sccyp.org.uk.

Appended to this evidence is an initial screening assessment carried out by my office in relation to the information sharing provisions of the Bill.
Information Sharing: Children’s Rights Impact Assessment – Initial Screening
1. **What is being proposed?**

   (Name/description of the policy, legislation)

   Protection of Vulnerable Groups (Scotland) Bill – Part 3: Sharing Child Protection Information (the remainder of the Bill relates to vetting and barring of those seeking to work with children and vulnerable adults and has been assessed separately).

   The Bill:
   - defines ‘child protection information’
   - imposes a duty to share information on ‘relevant persons’ (see section 4 below) with the local council;
   - imposes a duty on relevant persons to co-operate with councils and each other for the purposes of child protection;
   - requires Ministers to publish a Code of Practice on child protection information, what it is and how it should be shared;
   - requires Ministers to consult relevant persons and others in drafting the Code;
   - requires relevant persons to have regard to the Code;
   - imposes a duty on relevant persons to enable, encourage and help workers to share child protection information;
   - lifts restrictions on any person who does not have the power to share information;
   - states that a relevant person need not share information or co-operate with others where to do so would be contrary to another child’s best interests; and
   - permits Ministers to make by order any provisions to ensure that relevant persons comply with the duties imposed by Part 3 of the Bill.

2. **What is the aim, objective or purpose of the proposal?**

   (How does it relate to other initiatives; Does it seek to fulfil national targets...)

   Although information sharing is possible, it doesn’t always happen. Poor information sharing has been identified as a contributory factor in several tragic and high-profile child protection failures. Information sharing is also intended to support multi-agency working. The Bill is designed to encourage and promote information sharing for the protection of children. Although introduced as part of the Protection of Vulnerable Groups (Scotland) Bill, the information sharing clauses originated within the Executive’s Getting it Right for Ever Child (GIRFEC) agenda (the review of the children’s hearing system). Scottish Ministers are keen to progress the information sharing proposals and do not want to wait for the GIRFEC Bill as it will not be introduced until after the election in May 2007, hence the inclusion of information sharing in the present Bill. Information sharing is also linked to the Executive’s general child protection reform programme.

3. **Who initiated the proposal?**

   (e.g. Scottish Executive, Scottish Parliament...)

   Scottish Executive

4. **Who is to implement the proposal?**

   (e.g. Local Authorities, Police, Health Boards...)

   The Bill refers to ‘relevant persons’: councils, Chief Constables, Scottish Crime & Drug Enforcement Agency, Common Services Agency for the Scottish Health Service, Health Boards and Special Health Boards, Mental Welfare Commission for Scotland, Principal Reporter, Scottish Commission for the Regulation of Care, Scottish Social Services Council, General Teaching Council for Scotland, care service providers, managers of educational establishments, registered social landlords and any others persons as specified by order by Ministers. Expected that private and voluntary sector providers with service level agreements with statutory agencies will also be subject to the duties. The Code of Practice will be drafted by Ministers.

5. **Does the policy fall within a SCCYP priority area?**

   (Please provide further detail)

   Yes. The goal of information sharing is child protection and, as such, it falls within SCCYP’s ‘Promoting Proportionate Protection’ priority area. In particular, the question of whether information sharing is the proportionate and appropriate response to the issues which it is trying to address is relevant to SCCYP’s on-going work.

6. **Which articles of the UNCRC are relevant?**

   Several articles are relevant, but primarily: Art 1 – definition of child given that information sharing provisions apply to CYP up to 18 whereas other child protection measures generally apply to 16; Art 3 – best interests, obligation to ensure child has such protection and care as is necessary for well-being, compliance with child protection standards; Art 12 – child’s views; Art 16 – no arbitrary or unlawful interference with child’s privacy; Art 19 – protection of child from abuse, violence, neglect, exploitation etc.
7. Does the proposal contravene the UNCRC or any other laws?  
(e.g. ECHR, Children (Scotland) Act 1995...)

The requirement that decisions be taken in the child's best interests indicates that other possible infringements (e.g. breach of the child's privacy under Art 16 UNCRC) are justified. While it is assumed that this best interests determination will include having regard to the child's views, this is not explicitly stated on the face of the Bill. Sharing information about the child without consent could also be an interference with the child's right to private and family life under Art 8 ECHR. Such interference would be justified in certain circumstances if in the interests of public safety or if deemed necessary for the protection of health or morals or the rights and freedoms of others. 'Necessary' is interpreted as including a test of proportionality (is the infringement a proportionate response to the desired aim?). Not only would there be a possible breach of Art 8 where information about the child was shared without his or her consent, the rights of others in the child's family might be breached if it is information about the family as a whole or individual family members that is shared. Information might also be shared about an individual who is not a member of the child's family but who poses a risk to the child.

8. Which groups of children will be affected by the proposal?

The provisions will apply to all children, particularly those who access services, or whose families access services, provided by the list of 'relevant persons'.

9. Positive Impacts

(Note the groups affected)
The information sharing provisions are positive child protection measures and will encourage those working with children and their families to share information where the child is at risk of harm and where to do so would be in the child's best interests. Sharing information about the risk of harm to children would increase protection and may have resulted in different outcomes in several cases in which child protection failures were highlighted. There is no doubt that the aims of the information sharing proposals are worthwhile.

10. Negative Impacts

(Note the groups affected, gaps or inconsistencies in the proposal)

It is accepted that the aims of the provisions are worthy, however, we may question whether the means by which they will be achieved are appropriate, necessary, proportionate, have unintended consequences, or whether alternative means of achieving the same aims should be considered. There are several possible unintended consequences, e.g:

1) From previous consultations with CYP, we know that they are concerned about privacy issues and about the confidentiality of services they use. If this confidentiality was to be threatened (by a lower 'threshold' for passing on information about CYP), then they may no longer access those services. This is particularly true, and particularly worrying, in the context of sexual health services.

2) Once the new duty comes into force, professionals may 'flood' the system with referrals, putting a huge strain on other professionals, services and resources. This also risks masking those cases where CYP are most at risk of harm.

In addition, there is some concern that not enough has been made of a child's right to privacy and the need for children's views to be taken into account when decisions are being made in their best interests. Clear guidance on what information should be shared, when, who with and what action should then be taken is essential. The mere fact of information being shared is not sufficient to protect children.

11. Has there been any consultation in the development of the proposal?  
(Please provide further details of groups consulted)

Consultation has been very limited – the Executive organised a few seminars in June and September with key stakeholders. Compared to information sharing provisions, the rest of the proposals in the Protecting Vulnerable Groups Bill (relating to vetting and barring) have been extensively consulted on. However, as part of the Executive's Getting it Right for Every Child agenda, CYP were asked some questions about information sharing (http://www.scotland.gov.uk/Resource/Doc/96074/0023275.pdf). CYP have not been consulted on the specific provisions contained within the Bill. Previously, children were involved in the development of a 'Children's Charter' as part of the Executive's child protection reform programme. The following messages from part of the Charter: 'listen to us'; 'respect our privacy'; 'think about our lives as a whole'; 'think care fully about how you use information about us'; and 'help us be safe'.

12. Have CYP and other stakeholders highlighted this as an area for SCCYP to work on?

Those working with and for children have raised concerns informally with SCCYP about the information sharing provisions and issues around proportionality and unintended consequences.
13. What conclusions have been reached by SCCYP?

(Is the proposal the best way of achieving its aims, taking into account children’s rights?)

Many of the information sharing provisions need to be considered further before we can decide whether they are the best means of achieving the aims. In particular, assurances should be sought about the importance and centrality of the child's views and obtaining the child’s consent wherever possible before information is shared. Allowing the child to retain 'ownership' wherever possible of their information is key.

The definition of 'harm' in the Bill is very general and could prove tricky in practice - this needs to be thought through and clarified in the Code of Practice. Thought needs to be given to the different thresholds of harm - 'harm' for the purpose of information sharing, and 'significant harm' for other child protection measures to come into play. The interface between the information sharing provisions and the Children (Scotland) Act 1995 needs to be thought through.

Further information is required on the effects of mandatory reporting - while mandatory reporting is not a feature of the Bill at present, the Bill does include an order-making power for Ministers to impose sanctions on relevant persons who fail to comply with their duties. The implications of sanctions being imposed should be researched and, given that they are potentially serious, is an order-making power appropriate?

The Bill applies to children up to the age of 18 - the implications for 16 to 18-year-olds are different for those under 16. Child protection systems (e.g. children's hearing system) do not generally cover 16 to 18-year-olds. Thus, when information is shared about them, we need to be sure it is also acted upon. Concerns have been expressed that professionals might be unsure what steps to take to protect a 17-year-old from harm.

14. What recommendations should be made and who should be informed of them?

(e.g. Should relevant groups be consulted)

SCCYP should respond to the Scottish Parliament's Education Committee's call for evidence on the Bill and then monitor the Bill's progress through Parliament. Depending on that progress, further action may be required. SCCYP should also engage with the Executive and share our thoughts on the provisions. SCCYP has already shared some of our concerns about the information sharing provisions with some MSPs and key stakeholders at a joint meeting of the Cross Party Groups on Sexual Health and Children and Young People (at Scottish Parliament, 05/10/06).

15. Is a full impact assessment required?

(Please elaborate)

There are several issues that need to be explored further and in consultation with CYP and stakeholders. Carrying out a full impact assessment can facilitate this process.

Preliminary Screening by: Laura Paton

Date: 06/10/06

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1 UN Committee on the Rights of the Child Concluding Observations
2 Regard should always be had to the four general principles of the UNCRC (United Nations Convention on the Rights of the Child), articles 2, 3, 6 and 12
3 European Convention on Human Rights
4 Children and Young People
Protection of Vulnerable Groups (Scotland) Bill
Protection of Vulnerable Groups (Scotland) Bill

For 120 years CHILDREN 1ST, the Royal Scottish Society for Prevention of Cruelty to Children, has been working to give every child in Scotland a safe and secure childhood. We support families under stress, protect children from harm and neglect, help them recover from abuse and promote children's rights and interests. We provide 40 services in 23 local authority areas as well as five national services including ParentLine Scotland which is the free, national telephone helpline for parents and carers. In 2005-06, we helped over 2360 children and young people, 1900 adult family members, 3560 callers to ParentLine Scotland and 5540 adults through training and consultancy. For more information about how we work to keep children safe in Scotland, visit www.children1st.org.uk

This response is in two distinct parts: comments on Parts 1 and 2 on new vetting and barring arrangements; and Part 3 on a duty to share child protection information. Due to CHILDREN 1ST’s remit, this submission focuses on the aspects of the Bill that directly relate to children.

Parts 1 and 2: Scottish Vetting and Barring Scheme
CHILDREN 1ST is pleased that this Bill goes some way to addressing the major problem of having to get a new disclosure check for each different role that involves working with children, and for this reason, we support the passage of this aspect of the Bill in this session of Parliament.

However, we are very concerned about the speed of the drafting of the Bill and encourage the Committee to flag up concern around this with Ministers.

The Bill should include a requirement on Ministers to have regard to criteria when making a decision about whether an individual should be barred from working with children.

The draft Bill merely states that Ministers will decide if ‘it is appropriate’ for a person to be listed. This is not sufficient. The Scottish Vetting and Barring Scheme is specifically designed to prohibit those who are not suitable from working with children. So, the key question is – who is ‘unsuitable’ to work with children?

In order to answer this question, consideration is needed around aspects such as:

- Does the age at which someone harmed a child matter?
- What about young people who have technically committed an offence by having consensual sex with a girl who is under 16 years old – should they be barred from working with children?
- Will evidence of remorse be taken into account?
- Does the extent of upset or harm to the child matter?
- Do we consider abuse of power or trust a key factor in determining if they are unsuitable?
- Given that people can be barred without having been convicted of a crime, what evidence do Ministers require before barring someone?
What depth of investigation would be required by police or employers before Ministers could rely on the soft information that they provide?

- Do we believe in the rehabilitation of people who have harmed children? Does this depend on certain factors?

Without transparent decision-making, people will slip through the net who should have been barred, others will be barred unnecessarily with considerable consequences for individuals’ lives, and public confidence in the Scheme will be uncertain. Clarity about the barring threshold will help deal with questions over barring decisions, such as those faced by Ruth Kelly, the former Minister for Education in England. It will help ensure that the Scheme does what it is meant to do, without negative consequences for children’s welfare.

CHILDREN 1ST strongly recommends that the Bill be amended to include a requirement on Ministers to follow criteria as laid out in regulations when making a decision about whether to bar someone from working with children and protected adults.

The full range of criminal record information must be kept up-to-date by Disclosure Scotland

CHILDREN 1ST welcomes the proposed change that will mean that information is kept up-to-date and therefore, subsequent checks can be quicker and cheaper. However, this new information needs to include all criminal record check information, including offences such as driving or theft – not just information that seems directly relevant to the type of regulated work. Unless it does so, these subsequent checks will not provide enough information for CHILDREN 1ST to make a recruitment decision and we would need to get a full disclosure check every time.

Remove offence of updating address with Scheme within 3 months

We believe that it is disproportionate and potentially off-putting to volunteers if any type of offence is attached to being registered with the vetting scheme, particularly given that the Scheme relies on honesty around past addresses.

Training and expert advice on child protection, including good recruitment practices, is essential if the Scheme is not to have a negative impact on opportunities for children

People have many anxieties and concerns around child protection and welfare procedures and related bureaucracy. The Scottish Executive needs to recognise and address these concerns. CHILDREN 1ST recommends that a full training programme is set up that is based both on the details of the vetting scheme as well as more generally around protecting children. An expert helpline, that provides in-depth information and advice to help with any uncertainty around child protection procedures and policies, is also needed to ensure that more safe opportunities for children and young people are encouraged, not less.

Questions looking for an answer

We highlight several questions around key elements of the new vetting and barring arrangements that are not clear in the Bill:

- **Who will make the decision about who is unsuitable to work with children or protected adults?** The consultation on new vetting and barring arrangements offered options such as a new government function and direct ministerial responsibility.
agency or a Scottish Executive department. However, it is unclear from the Bill which of these has been chosen. It is important that those who make the decision have the necessary experience and knowledge to make robust and fair decisions.

- **How will vetting information be kept up-to-date?** This is a core aspect of the new arrangements but the Bill gives no detail on the process that will be undertaken to ensure that this happens.

- **What are the ‘specified offences’ likely to be under Section 14?** Will these include offences that are not against a child? Being convicted of a ‘specified offence’ would lead to automatic barring, but it is not clear if this would include offences such as rape or sexual assault of an adult or serious physical assault. If these are not included, then Ministers would still be able to consider whether these people would be barred. Therefore, do we want certain other serious offences to lead to automatic barring?

- **Why is there a distinction between the requirements on bodies to refer individuals?** The bill states that employers and organisations must refer people who meet the referral grounds and have been dismissed/moved job etc. or the organisation will face criminal sanctions. However, other bodies, including the Scottish Social Services Council and General Teaching Council, may refer individuals who meet the referral grounds, but they don’t have to.

- **Will all disclosure checks be electronic, or will paper applications be possible?** We question whether Section 68 may dissuade individuals who do not have ready access to I.T. or find this problematic, such as some disabled people, from volunteering with children.

- **How much will a disclosure check cost?** We welcome the Scottish Executive’s assurance that volunteers will still be able to have free disclosure checks. We highlight however, that the checks mean significant administrative and direct cost for employers, and this may have an adverse impact upon many organisations in the voluntary sector. It is crucial that the cost of each disclosure check is kept to a minimum level, even if this means that a shortfall has to be made up by the Scottish Executive.

### Part 3: The duty to share child protection information

**Agencies should share information where this is needed to protect a child**

Sharing certain information about vulnerable children and adults is essential for protecting children. Without agencies communicating with each other about vulnerable children, they cannot make informed and effective decisions about action needed to keep children safe. This is evident in cases such as the tragic death of Caleb Ness in Edinburgh, where the inquiry found that social work and police did not adequately share information that could have been helpful in assessing the risk to Caleb’s safety and well-being.

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Information is often shared and available, but there is a lack of action to protect the child

It is CHILDREN 1ST’s experience however, that the biggest problem around sharing child protection information is not that information is not shared, but that shared information is not recognised for its importance and not adequately acted upon. When CHILDREN 1ST is working with a family and become aware of an unacceptable level of risk for the child(ren), the information that they pass on to social work often does not lead to any change in the child’s circumstance, in the extent or type of social work involvement, or in the services that the family are offered.

Several high profile cases highlight this issue:

- The report into the abuse of children in the Western Isles found that ‘information was shared but was not acted upon decisively’. There were a significant number of case conferences and children’s hearings but these did not ensure that staff responded proactively. The report goes on to state, ‘gathering together large amounts of information is not an assessment. Sharing it does not constitute a child protection plan’.  
- In the tragic case of Kennedy McFarlane’s death in 1997, the inquiry report found that ‘If the senior staff in either agency [health or social work] had carefully reviewed all the information available in their own records…it should have been clear that at the very least Kennedy’s care was inadequate to protect her from significant harm, even if it was not clear that she was suffering deliberate ill treatment’.
- The Caleb Ness Inquiry report found that there was enough information to correctly lead to the decision to place Caleb on the Child Protection Register. However, no detailed action plan was then agreed and therefore he was left at risk.

A legal duty, without the training to recognise and act on relevant information, does not help to protect children

There has been extensive research into the systems of mandatory reporting of child abuse that exist in other countries. This research seems to suggest that even with a statutory duty to report suspected abuse or harm, there will still be a group of professionals who fail to report child protection concerns. Some of the reasons for this failure to report seem to include a lack of skills, fear of negative consequences, a lack of time in post, and a perceived lack of evidence. Training is often identified as one of the best ways of counteracting these factors. We further note that the Data Protection Act is often cited as the reason given by professionals for not sharing information such as in the inquiry report into Danielle Reid’s death, but that this Act does not in fact prohibit sharing information for the purpose of child protection, as confirmed by the Scottish Executive in developing this proposed duty. We therefore suggest that giving training and clear guidance will be just as effective (and without the unintended consequences outlined below) in ensuring that all agencies are sharing appropriate child protection information.

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2 SWIA, An inspection into the care and protection of children in Eilean Siar, August 2005
3 Hammond, Dr H. Child Protection Inquiry into the circumstances surrounding the death of Kennedy McFarlane, dob 17 April 1997, September 2000
4 O’Brien, S (Chair), Report of the Caleb Ness Inquiry: Executive summary and recommendations, October 2003
5 Herbison, Dr, J., Independent Review into the circumstances surrounding the Death of Danielle Reid, 2005
Information sharing should not be seen as an alternative to personal responsibility
CHILDREN 1ST are concerned that if there is an exclusive focus on the need to pass on information and concerns, this may dilute individual's perceived need to take personal responsibility for keeping children safe. Passing on information to other agencies, though often important, is not enough to adequately protect children – we need each professional to consider what they can do to keep a child safe, within a culture where children’s safety is seen as everyone’s responsibility.

There are many likely unintended consequences of a statutory duty to share child protection information
The Scottish Executive’s express aim in introducing a duty on agencies to share child protection information is to simply put what is good practice into legislation. It does not change legal guidelines around confidentiality. However, CHILDREN 1ST are concerned that introducing the proposed legislative duty may have several unintended consequences:

- **Children and families will be more reluctant to access services and be honest about their needs and circumstance**
  CHILDREN 1ST's biggest concern is that, if children and families cannot be assured of the confidentiality of services, or if they feel that to ask for help from one service is to in effect publicise their need across all agencies, then it is very likely that some of Scotland’s most vulnerable families will not seek the help that they need. In particular, parents who misuse drugs or alcohol will fear that information will be passed to the police.

- **Child protection system will be flooded with information**
  It is very likely that requiring people by law to share information about children who are at risk of harm will mean that social work will receive far more information than they do at present. We are concerned that individuals will react by ‘covering their backs’ and sending on all information, regardless of how relevant or significant the information is. Apart from the social work services workload issues that this will exacerbate, it also increases the likelihood that important information about a child will be lost in the information systems.

- **The wide definition of harm could lead to unhelpful sharing of information, and unnecessary overriding of children’s privacy**
  The definition in the bill of child protection information is if the child is being ‘harmed’ or at ‘risk of harm’. This is not the threshold of ‘significant harm’ that is included within the Children (Scotland) Act 1995. So what might ‘harm’ mean in practice: if a child was very upset because he was given a row from his parents? If a step-dad was a bit rough in a game of football, knocked the child over and they sprained their ankle? If an adult allowed a child to watch a 12-rated film when they were 11.5 years old and the child had nightmares? We are concerned that such a broad definition of ‘harm’ will lead to needless information being passed on, and will only contribute to the child protection system being flooded with information.

In addition, there will be many times where a young person’s information is shared with other agencies with the young person’s full consent. However, this Bill sets out the circumstances where a young person’s confidence can be overridden and where they are no longer allowed control over information about themselves. This is a serious step which should only be taken in serious circumstances, not in relation to the proposed low threshold of ‘harm’.
Recommendation: remove Part 3 ‘Sharing child protection information’ from the Bill

In light of the reality of the issues around sharing information and our major concerns around the unintended consequences of the Bill, CHILDREN 1ST calls for the removal of Part 3 ‘Sharing Child Protection Information’ from the Bill.

Instead, the Scottish Executive should research, consult and consider in more depth the best way to ensure that agencies share appropriate information. If, after this discussion, it is clear that statutory measures of some kind are needed, then these should instead be included within the promised Bill to implement ‘Getting It Right For Every Child’ (GIRFEC). This is because, as outlined above, information sharing on its own is not an outcome but only one tool to help towards good decisions and actions that protect children. The GIRFEC bill will address information sharing within this ‘protecting action’ context, and will ensure that it links well, and is perceived to be linked, to related proposals. There is no significant reason for rushing through this legislative duty, particularly because it only aims to improve the practice of a small group of people. CHILDREN 1ST questions whether additional training and national guidance in the meantime would not have this same effect, without risking such unintended consequences.

If the duty to share child protection information remains in the Bill, then it is very important that the Bill be amended in the following ways:

- **Section 81 of the Bill that allows Ministers to introduce means of enforcing the duty by order, should be deleted.** CHILDREN 1ST are very concerned that attaching any kind of an offence to such a duty will only serve to increase a culture of protecting adults from investigation or inquiries, instead of protecting children’s safety and welfare. We believe that in an area where there is generally no lack of will to keep children safe, but there is a lack of confidence, resourcing and integrated working, it would be unnecessary and detrimental to introduce any offence.

- **The best interests of the child should be the first and primary consideration in every decision taken about sharing child protection information.** Currently the Bill allows professionals to consider the best interests of a child in deciding whether to override confidentiality guidelines. However, as the best interests of the child must be paramount in all practice around information sharing it should therefore be included in Section 74 which sets out the duty to share child protection information.

- **The definition of harm should be changed to be ‘serious harm’.** As outlined above, there should only be a statutory duty to share child protection information where the child is at risk of ‘serious harm’. In all other circumstances, a child’s information should only be shared with their consent.

- **The Bill should set out that the discloser of information must tell the child, young person or adult if they are going to disclose child protection information against their wishes.** This is well-recognised, baseline good practice – therefore, in legislative proposals that are all about consistent implementation of good practice, this must be included. Without it, children and young people will feel unsure
about what information is known about them, and by whom, without their knowledge.
The principle that all children and young people should be protected from individuals who may harm them in any way is unquestionably right. Parents should be secure in the knowledge that those employed to work with children and young people do not pose any known (or knowable) threat to their safety and well-being. Children in Scotland welcomes the vetting and barring provisions as a move to address these issues and to improve the current system of disclosure.

It is, however, worth noting that child harm and abuse overwhelmingly is committed by adults that the child already knows personally (e.g., family members) --not by strangers or providers of children’s services. Given this reality, the proposed legislation will have an important, but limited benefit. It would be detrimental to the safety of children if this legislation were perceived as a system of guaranteeing the fitness of any particular adult to work, or be in contact, with children. This level of certainty is not possible to achieve – and a false sense of security may lead to complacency in relation to other necessary measures.

The question of foreign employees needs to be more thoroughly addressed if this system is to be meaningfully implemented, primarily because of the difficulty of gaining access to reliable, complete background information across international borders. Finally, Children in Scotland also is keen that these improvements do not have a negative effect on the number of people applying to work with children (in a volunteer or paid role).

**Key concerns**
- Third country employees largely will be outwith the system
- The proposals may act as a disincentive to adults wishing to work with children and young people on a professional or voluntary basis
- The cost of the system may burden an already stretched sector
- There may be other more fundamental actions the Executive could and should take if protecting children and young people is the primary goal.

**Key recommendations**
- Address the issue of convictions in relation to offences against children
- Address the issue of overseas workers
- Remove the offence associated with section 47
• Make a commitment to keep the cost of vetting and barring to a minimum, particularly for the voluntary sector
• Give clear and transparent guidelines as to the criteria that Ministers must employ in the barring of an individual
• Improve the opportunities and advice available to children and young people themselves about identifying risks, protecting themselves and taking action when they perceive themselves to be unsafe.

Improving the system – the limitations of vetting and barring

• A false sense of security for children, young people and families
• Diminished priority for child protection on the grounds that vetting and barring is the key governmental measure – and it now has been taken
• Discouragement of people (especially men) for accepting employment and volunteer opportunities dealing with children and young people because of fear of false accusations and other unwarranted negative consequences.

Children in Scotland broadly welcomes the move to improve the disclosure system, but also believes that it should not be viewed as a system that ever will be capable of preventing all harm to all children. Harm to children from strangers is devastating and shocking -- but, it often is arbitrary in nature, so as to be almost impossible to pre-empt. For example, even if the vetting and barring proposals had been the law of the land at the time of the Soham Murders, they would not have prevented the two girls in question from visiting the home of Ian Huntley.

There may have been a greater possibility of preventing the Soham Murders and the shootings at Dunblane (to cite just two examples) if the criminal justice system and police force were better able to share information and secure convictions. Children in Scotland would like to see more action taken in this area.

It will be important to stress that holding a vetting and barring disclosure does not mean that a person cannot or will not cause harm to children. It has little predictive value, let alone a guarantee about anyone’s future behaviour. Passing successfully through the vetting and barring system means only that a person has no known history of having harmed children in the past (or of having committed another related offence). Whilst it is right to prevent people with such histories from working with children, this is a more modest outcome than the public discussion of vetting and barring suggests.

This Bill should ensure that other more structural methods of checking someone’s background and behaviour are not overlooked or displaced

• Checking people from overseas
Scotland has an increasing number of service providers who come from outside of the UK, including nurses, teaching assistants, and doctors. The current proposal will not be able to ensure that these individuals have been properly or reliably vetted. **If ignored, this flaw will further undermine and incapacitate the disclosure system.**

The vetting system ultimately relies on *applicants* to fully disclose information about themselves, including their previous addresses. This information often cannot be cross-checked by any independently verifiable documentation and is open to possible manipulation. Should this information be disclosed, requesting relevant details from foreign police forces and foreign bureaucracies is not always possible or successful. Not all countries collect or maintain relevant information comparable to that held within the UK (for example, sex offender lists). Neither is there international harmonisation of criteria for being considered a ‘risk’.

Obtaining secondary information (such as references) also may be difficult for a variety of reasons, including the personal safety of the applicant. **This makes the additional employer-led checking system for verifying a person’s appropriateness for working with children less reliable.** Accepting that this is a *reserved* issue, Children in Scotland believes that a UK-wide solution needs to be found in relation to this aspect of the vetting and barring proposal.

**Possible adverse effects of vetting and barring proposals**

* • Disincentive to the voluntary sector (and male workers)*

Children in Scotland believes that the vetting and barring enhanced disclosure system, may put people (particularly men) off working or volunteering in the very sectors where they are needed the most. Children in Scotland rejects the suggestion that this is necessarily indicative of any wrongdoing. In addition to the complexity of the disclosure system, there are many unanswered questions about enhanced disclosures that would encourage fear and trepidation in possible applicants. For example, it is feared that wrong information and discredited accusation might be disclosed to every prospective employer. The Bill does not adequately account for how this potential negative consequence (albeit an unintended consequence) will be reduced or eliminated.

* • Duty to notify certain changes - Section 47*

The offences attached to this duty seem excessive in relation to the ‘crime’. Updating a change of address should be encouraged by employers as normal practice, but making the failure to do so within three months a criminal offence is excessive and may add to the negative perception of the disclosure system by potential workers. Children in Scotland recommends that this criminal penalty be removed.
The service sectors that deal with the most vulnerable young people and children are seriously stretched in relation to finance and funding. Given that well-documented reality, Children in Scotland recommends eliminating any new costs for vetting and barring that would decrease the amount of money available to actually help to meet the needs of children and young people.

However, we support the changes to the disclosure system that would mean that the vetting and barring disclosure would remove the need for multiple applications. In this respect, we agree with the broad proposal for a more expensive initial disclosure, which also includes free subsequent checks and free disclosure for volunteers for a set period of time. We are concerned by the reference made to recurring fees and would seek reassurance from Ministers that the cost of this system will not adversely affect the voluntary sector's financial ability to provide services.

Criteria for barring - Section 14

The current proposals place a lot of discretionary power in the hands of the Minister. Children in Scotland believes that this is neither a transparent governmental process, nor is it practical. Individuals should be barred from working with children based on objective and transparent criteria, agreed by the relevant sectors. We do not believe that it is advisable for a Minister to make these decisions huis clos.

Ideally, the criteria upon which people are disqualified from working with children should be the result of consultations with service providers, as well as parents. The level of acceptable risk should not be determined from the top down, but should involve children, young people, parents and those professionals who work directly with children and young people.

Key Questions

1. Will the Minister be addressing the issue of overseas workers in the context of this Bill?
2. Will the Minister consult on and publish the criteria for barring an individual?
3. Will the Minister remove the offences attached to Section 47?
4. Will the Minister address the costs attached to this system for the voluntary sector?
5. What will the Minister do to address the possible negative impact of this Bill on potential employees wishing to work with children and young people?
6. Will the Minister be addressing other issues affecting the safety of children and young people such as the monitoring of ex-offenders and the conviction rates in child protection cases?

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**About Children in Scotland**

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The work of Children in Scotland encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It also services a number of groups such as: the Cross Party Group on Children and Young People; the National Children’s Voluntary Forum; the National Early Years Forum and the Additional Support Needs Network. Children in Scotland also hosts Enquire, the advice service for additional support for learning.
Section 3 – Information Sharing

Introduction

Children in Scotland welcomes the Scottish Executive’s focus on better information sharing for the protection of children and young people. However, we are so concerned about the specific proposals about information sharing contained in the Protection of Vulnerable Groups Bill that we recommend the removal of Section 3 in its entirety from this Bill.

This is not a recommendation that Children in Scotland makes lightly. We certainly do not oppose information sharing for child protection purposes. On the contrary, we know that getting information sharing right is profoundly important to the safety and well-being of children and young people – so important that it merits far more careful consideration, detailed analysis and widespread consultation (including with children and young people) than it has received thus far.

Children have a right to be safe. Children have the right to be protected from significant preventable harm by the government. Children have a right to privacy and to confidentiality in their communications with the adults holding positions of responsibility or authority in relation to children. And, children have the right to be heard and heeded in matters affecting their lives and well-being.

Accordingly, a children’s rights perspective informs Children in Scotland’s assessment of, and recommendation about, Section 3 of this Bill. By contrast, it should be noted that children’s rights were not explicitly referenced in Section 3 of this Bill.

Originally, these information sharing provisions were not part of this Bill. Whilst there was consultation about the vetting and barring provisions (Sections 1 and 2 of this Bill), there was no systematic, meaningful consultation process around information sharing (Section 3). The provisions were belatedly added to this Bill. This has limited the ability of the Scottish Executive to pursue its usual consultation practices and constrained its opportunity to fully investigate these complex issues. The Executive has done its best in these circumstances, but we think that the result is not what’s best for children.

Children in Scotland’s view is that the information sharing provisions should be removed from this Bill and – after a proper consultation process – be reinstated
within its original home (the Getting It Right for Every Child documents). It then could be considered by the next Scottish Parliament as a part of the anticipated GIRFEC Bill.

**Specific Concerns**

Children in Scotland has a number of concerns about the information sharing provisions within this Bill, including:

- The lack of emphasis on information use, following information sharing
- The absence of children’s rights on the face of the Bill – and the absence of processes for safeguarding children’s rights within its provisions
- The number of potential unintended consequences associated with making information sharing a duty and with giving Ministers unspecified powers in relation to the people and groups that are seen as not fulfilling this duty.
- The Bill’s inadequate definition and use of such basic terms as “harm” and “risk”.
- The potential for over-sharing of unhelpful or irrelevant information
- The lack of attention given to the principles that will be applied in the holding, accessing and disposing of information
- The ambiguity about whether removing all sanctions for sharing information also removes sanctions for malicious information sharing.

**Information use**

Section 3 is predicated on the assumption that the failure to share crucial information in a timely manner with the right people/agencies can jeopardise the health, safety and well-being of children. This is a genuine problem that could, and should, be addressed. However, as the Executive itself acknowledges, the failure to share information is not a huge or widespread problem across Scotland.

What Section 3 fails to address is the other side of the information sharing coin – namely, the use that is made and the actions that are taken as result of information that already has been shared appropriately. Information sharing, in and of itself, does not protect children and young people. Indeed, a variety of case reviews and follow-up investigations in recent years reveal that the necessary information was at hand, but was not used adequately to make decisions and take actions that would have better protected the children and young people involved.
One notable example can be found in the excellent SWIA report on a now-infamous case of child abuse involving three girls in the Western Isles. The amount of information shared was voluminous, but it was not used well enough or quickly enough to remedy the girls' plight. As this SWIA report correctly notes: 'gathering together large amounts of information is not an assessment. Sharing it does not constitute a child protection plan.'

A properly considered, comprehensive bill dealing with information sharing also must give equal attention to the use of shared information in making decisions and taking actions that will benefit vulnerable children and young people. The duty to share information must be accompanied by the duty to use that information in ways that do improve the protection of children and young people. Section 3 of this Bill neither addresses this pressing problem, nor proposes any duty to use shared information effectively.

This is too important and public a matter to be treated as a technical issue that can be sorted out through the post-legislation development of a Code of Practice. Ultimately, dealing with information sharing in isolation from all the issues surrounding information use predictably will be of limited benefit.

**Children’s Rights**

Children and young people have rights that (in other circumstances) repeatedly have been recognized by the Scottish Parliament and the Scottish Executive. Children in Scotland is disappointed that Section 3 of this Bill does not recognise these rights, or deal adequately with the associated issues of consent and confidentiality. Invoking 'child protection' does not negate the rights of children. Getting the balance right between child protection and children’s rights is a complex matter, but not an impossible one. Pretending that no such tensions or complexities exist – by failing even to recognise the rights relevant to the information sharing provisions of this Bill – is not an acceptable stance for the Scottish Parliament or the Scottish Executive to take.

Children’s rights under the UN Convention on the Rights of the Child should be the framework upon which child-focused legislation is constructed. Experience from the Children’s Hearing System has shown that children and young people often do not have any objection to the sharing of information about them among professionals. They do, however, object to this happening without their knowledge and consent -- and without a clear understanding of why (and with whom) the information is being shared. Executive research found that young people’s comments on this matter included:

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1 SWIA, An inspection into the care and protection of children in Eilean Siar, August 2005
“I would feel like my private life had been invaded if they gave my information without my consent”,
“it would be good if they could ask you first and explain things”
“It would be good if you were told who is getting the information about you
“I would want to know who is sharing the information and what is being said”

There may be circumstances when it is necessary to overrule this ‘best practice’ and to accord certain kinds and instances of child protection precedence over certain rights. However, this should not be done automatically, lightly or without proper consideration and consultation. The omission of both a set of right-related principles to guide information sharing – and the lack of a transparent process and set of criteria upon which information sharing (and information use) decisions will be based -- are reason enough to remove Section 3 from this Bill.

The complexity and importance of getting the balance right between child protection and children’s rights at the level of national legislation argues powerfully for a further stage of analysis, consultation and consideration. Shifting information sharing back to the anticipated GIRFEC bill will allow the time and space to resolve these potentially contentious issues.

The best way to begin this reconsideration process is through meaningful engagement and consultation with children and young people themselves. Article 12 of the UNCRC recognizes the right of all children and young people to be heard and heeded in matters that significantly affect their lives and well-being. That has not happened in relation to information sharing. Children in Scotland recommends that this process can, and should, be started now in relation to both the legislation itself and the development of any subsequent Code of Practice about information sharing/use.

Unintended Consequences

This Bill is purposefully ambiguous. Ambiguity can allow necessary flexibility for professionals, officials and agencies to react to individual circumstances. In relation to Section 3 of this Bill, our concern is that the amount of ambiguity may result in a number of unintended negative consequences.

The lack of consultation by the Executive has added to the lack of awareness of the possible unintended consequences of this Bill. As a membership organisation, we have found it impossible to fully consult with our more than 400 members on the potential impact of the information sharing section of this legislation.

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2 ‘Getting it Right For Every Child – Proposals for Action. Consultation with Children and Young People.’ The Scottish Executive 2006
We will cite two examples of unintended (and unwelcome) consequences that might result from the degree of ambiguity in Section 3. First, we are concerned that young people will refrain from seeking and/or refuse to accept needed services and assistance (e.g., around sexual health or family difficulties) because of their fears that this personal information will be shared with people/agencies, and in ways, that they find unacceptable. Ironically, the net effect could be less help and support actually received by vulnerable children and young people.

Second, we are concerned about the lack of transparency -- as well as the lack of legislatively established criteria for, and limits upon, Ministers -- in the provision covering Ministerial powers when Ministers perceive inadequate compliance by those with an information-sharing duty. We think it likely that those with this duty will react by flooding the system with information -- not because it will protect children, but rather because it will protect themselves and their organisation/agency from Ministerial sanctions. Ironically, the net effect could be that useful child protection information becomes less accessible as it is drowned under the flood of ‘self-protection’ information.

The other instance of a potentially counterproductive ambiguity – and unintended consequences in Section 3 concerns the lifting of all sanctions for sharing information around child protection. However, Section 3 is unclear as to whether sanctions also will be lifted in cases where the information shared is known to be inaccurate or misleading -- and is being sent with malicious (or other inappropriate, unprofessional intent) by the sharer. Children in Scotland would seek clarity on this point.

**Definitions of ‘harm’ and ‘risk’**

The definition of ‘harm’ and ‘risk’ is key to decisions about if and when children’s and young people’s information is shared. The way in which these terms are used in Section 3 of this Bill is likely to create problems. Specifically, the Bill’s use of the terms ‘harm’ and ‘risk’ – unmodified by the word ‘significant’ – easily could result in a flood of unnecessary and largely useless information being shared (again, in the interest of self-protection, rather than child protection).

Using the term ‘significant harm’ and significant risk would place this Bill in harmony with prior child protection legislation, such the Children (Scotland) Act 1995. However, without a uniform definition of all these fundamental terms, interpretations, judgments and behaviours could vary in unhelpful ways across both local authority and professional boundaries. Section 3 of this Bill has not included such a definition – and the consultation process that would result in a consensual, national definition has not taken place yet.
Children in Scotland believes that the baseline definition of these terms should not be decided by professionals and policy makers alone. Professionals, parents, children and young people should all be involved in deciding their meaning and application in the information-sharing arena. The work done to date by the Scottish Commissioner for Children and Young People around the concept of ‘proportionate protection’ also is a valuable contribution toward creating sensible baseline definitions of key terms.

**Information handling and the Code of Practice**

While these issues can be dealt with in detail through the anticipated Code of Practice, some broad principles need to be addressed on the face of the Bill. Given the lack of public consultation to date about Section 3 -- not least the lack of meaningful consultation with children and young people -- Children in Scotland is particularly concerned by the extent to which overarching principles are intended to be thought about and sorted out in the post-legislation Code of Practice. The duty to consult about the Code of Practice is not a duty to heed and act upon the advice received. The democratic and transparent scrutiny that goes into the passing of a Bill will be missed.

To cite just one example, Section 3 of this Bill indicates that all information will be shared with each Council. Presumably, this information will have to be stored in a person-specific file. The Council will hold these files. However, Section 3 does not detail who can request access to this information; what the recipients can/cannot do with this information, for how long what types of information must/should be kept before being destroyed; and, who makes the decisions about all of these matters (based upon what criteria). These are far from trivial issues and it is not sufficient to simply ignore them in the Bill.

**Key Recommendation**

Children in Scotland’s fundamental recommendation is that Section 3 of this Bill be removed in its entirety – and reconsidered in the context of the anticipated GIRFEC bill in the next session of Parliament.

We believe that this will allow the Executive and other relevant organisations to properly consult on the best way to achieve appropriate information sharing and information use, as well as to identify the possible unintended consequences of the specific provisions currently in Section 3 of this Bill.
**About Children in Scotland**

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The work of *Children in Scotland* encompasses extensive information, policy, research and practice development programmes. The agency works closely with MSPs, the Scottish Executive, local authorities and practitioners. It also services a number of groups such as: the Cross Party Group on Children and Young People; the National Children’s Voluntary Forum; the National Early Years Forum and the Additional Support Needs Network. *Children in Scotland* also hosts Enquire, the advice service for additional support for learning.
Summary of Main Points

Scottish Women’s Aid ("SWA") welcomes all attempts to improve the safety and well-being of children and protected adults. Women, children and young people experiencing domestic abuse will make up a significant proportion of this group and therefore any legislative change that will improve outcomes for this group is to be welcomed. SWA does however, have a number of concerns around the proposed legislative framework for a new vetting and barring scheme and believes that further work will be needed to ensure that these changes are not to be counterproductive. These views are reflected in the submission from SCVO on behalf of a number of voluntary sector groups.

Our main concerns centre around Part 3 of the Bill in relation to information sharing for child protection purposes. We believe that this part in particular has the potential to increase the vulnerability of women, children and young people experiencing domestic abuse rather than improve matters. We are not convinced that the balance has been met which will ensure the safety and well-being of
children as a result of improved information sharing while at the same time achieving a timely and proportionate response.

In light of these concerns, we strongly encourage the Committee to remove this section of the Bill and, after a proper and thorough consultation period, deal with these issues in the forthcoming Children’s Services Bill (or the GIRFEC Bill, from the “Getting It Right for Every Child” consultation, as it has been referred to.)

**Duty to share child protection information**

SWA agree that appropriate information sharing can lead to increased protection for children and should already be happening between public bodies and other organisations providing services to children and families. We take very seriously child protection procedures where we believe a child may be in need of protection and currently work closely with child protection agencies to achieve this end. We do not however, believe it is helpful to impose a legal duty which is based, as far as we can see, on an unclear definition of ‘harm’.

We cannot stress enough that we believe that where a child is at risk then information should be shared. Our concerns are that new duties will lead to greater information sharing which will have the unintended consequences of undermining the safety of women, children and young people experiencing domestic abuse and leaving them with nowhere else to go because of their fears that information will be shared routinely and without their consent by virtue of the fact that they are experiencing domestic abuse. Effectively, Women’s Aid would no longer be able to reassure women and children using their services that this is a confidential service as the new duties would mean we would be obliged
to shared information even where there are no concrete concerns and, in response from requests for councils should they deem it necessary to have information about families using our services.

Currently, there are already problems, particularly where domestic abuse is an issue in determining when a child is likely to be at risk. Recent reviews of child protection in Scotland have already demonstrated that there is a lack of clarity around the effects of domestic abuse and whether and to what extent children experiencing this are in need of child protection. This has been particularly noted in the number of referrals to the Children’s Reporter made by the police in relation to domestic abuse. The recent launch of the “Getting it Right for Every Child” domestic abuse pathfinder is an attempt to address this and to avoid ‘swamping’ an already overloaded system.

In addition to these concerns, attempts to share information inappropriately can lead to a response that is dangerous, insensitive and can ultimately put women and their children at further risk. Often women’s protective action and help-seeking is ignored, women protection is not seen as child protection and women feel undermined and held responsible for protecting their child from their partner or ex-partner’s abuse. Refusal by some agencies to recognise the gender specific nature of domestic abuse\(^1\) and referring to it as ‘family violence’ or holding the woman accountable for ‘failing to protect’ while neglecting to hold perpetrator accountable are ongoing problems.

The new contact sections in the Family Law (Scotland) Act 2006 recognise that the welfare of the child can, in turn, be determined by, and revolve around, the welfare of their parent or carer. Consequently, since the sections of that Act seek

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\(^1\) See the Scottish Executive definition of domestic abuse as set out in *The National Strategy to Address Domestic Abuse* (2000)
to protect third parties in this way, this Bill should also have some provision for recognising that the safety and welfare of the non-abusing person having Parental Rights and Responsibilities, or caring for the child, is relevant to the child’s welfare and safety from harm and that this must be considered when sharing information which involves that person.

There is no reassurance on the face of the Bill that while placing a duty on organisations to share based on lower ‘thresholds’ that this information will be shared appropriately and safely and will respect where possible, the confidentiality and privacy of families looking for support.

Maintaining the confidence of women and children accessing our services is crucial. Some of the recent excellent work by the Executive to encourage women who are experiencing domestic abuse to seek help via advertising campaigns and awareness raising work could be greatly undermined if women feel unable to access a confidential service.

SWA is extremely concerned that by lowering the ‘thresholds’ for passing on information women and children experiencing domestic abuse may feel unable to access Women’s Aid services and may only do so when the risk has become so great that this outweighs their fear of inappropriate intervention.

**Duty to Cooperate**

This section defines child protection information in relation to the holder of information but no mention is made of for example Local Authorities requesting information as stated in section 75. Who decides how information is defined under section 73? While we agree that early access to information can be vital to build up an accurate picture of a child’s needs and lead to timely and helpful
intervention we are extremely concerned at what is a hugely significant shift in the powers that will be made available to councils, particularly in light of some of the concerns already outlined above.

While the duty to share information at least allows for relevant persons to decide when it is appropriate to do so, the introduction of a duty to co-operate leaves this decisions with councils. There are significant training issues that need to be addressed before imposing such duties if we are to avoid the current lack of consistency of approach towards child protection.

**Code of Practice about child protection information**

SWA believe that further information and guidance complementing legislative change is absolutely crucial, particularly in an area where there is already uncertainty and a lack of clarity around thresholds. Again, however, we are disappointed that this will be introduced after the legislation has been passed and there is no opportunity to comment on how this might look. This highlights again the importance of consulting further on this area and developing the proposed Code of Practice simultaneously alongside the legislation. This should be developed in accordance with existing policy including the Children’s Charter, recent guidance for Children’s Services Planners on domestic abuse and the GIRFEC framework.

In light of some of the problems already outlined, it will be absolutely crucial to have a comprehensive section in any Code of Practice that reflects the distinct nature of domestic abuse, the risk factors encountered when information is shared between agencies and how best to keep women and children safe within this context.
Relevant persons
As stated above, SWA have grave concerns about their status as a voluntary organisation committed to supporting some of the most vulnerable women and children. We believe the unique relationship we have with families fleeing domestic abuse will be seriously undermined as a result of imposing these new duties and would welcome a definition of ‘relevant persons’ that would not include Women’s Aid.

Further Comments
SWA found the Policy Memorandum, Financial Memorandum and Explanatory Notes very helpful and relevant in interpreting the Bill’s provisions and providing complementary information on the background and policy.