The Committee will meet at 9.45 am in Committee Room 2

1. **Declaration of interests:** Marilyn Livingstone MSP will be invited to declare any relevant interests.

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

   Alison Reid, Principal Solicitor, and Katy Macfarlane, Solicitor, Policy and Education Officer, Scottish Child Law Centre;

   and then from—

   Brian Gorman, Manager, Disclosure Scotland;

   and, not before 11.30 am, from—

   Robert Brown MSP, Deputy Minister for Education and Young People

   Dr Claire Monaghan, Head of Children and Families Division; Andrew Mott, Bill Team Leader; Maggie Tierney, Head of Protection and Regulation Branch and Liz Sadler, Police Division, Justice Department, Scottish Executive.

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 2*
Submission from Scottish Child Law Centre  ED/S2/06/26/1
Submission from Disclosure Scotland  ED/S2/06/26/2
Finance Committee report  ED/S2/06/26/3
Subordinate Legislation Committee report  ED/S2/06/26/4
Summary of written evidence  ED/S2/06/26/5
SUBMISSION FROM THE SCOTTISH CHILD LAW CENTRE

1. GENERAL INTRODUCTION

The Scottish Child Law Centre ("SCLC") is an independent charitable organisation, based in Edinburgh, that provides services to the whole of Scotland. The aim of the centre is to promote knowledge and use of Scots law and children's rights for the benefit of children and young people in Scotland. SCLC provides free telephone, e-mail and text advice services on all aspects of Scots law relating to children and young people. In addition, SCLC produces up-to-date publications on a range of issues, as well as providing training and organising conferences and seminars. SCLC also has a consultative and advisory function for local and central government and, through this, constantly seeks to improve the content and practice of child law. SCLC employs qualified solicitors and an advocate to carry out its legal work.

2. OVERALL AIMS AND LIKELY IMPACT OF THE BILL

1. The expressed aims of the new Scheme are to ensure that unsuitable people do not gain access, through work, to children and vulnerable adults, and that those who become unsuitable are detected and prevented from continuing to work or seeking to work with children and adults. We support these aims. We also continue strongly to support the statement which appeared within the consultation paper, "that strong child protection systems do not need to be at the expense of children’s engagement in learning, sport and leisure activities, for example, which are so important in their development".

2. With specific reference to Part 3, SCLC's starting point is that children should learn to trust and confide in appropriate adults to obtain help and support. Children should also expect a measure of confidentiality in line with current common law principles and good practice guidance.

SCLC is of the overall view that the effect of Part 3 of the Bill will be to provide greater protection for adults (although they may potentially be more vulnerable to false allegations), but that children and young people will be discouraged from disclosing any information to an adult because the adult will not be able to offer confidentiality on any level, and, further, has a legal onus to pass on information to the council. SCLC has listed below areas for concern, along with proposals for amendment.

3. Children’s Rights Impact Assessment
It is essential that all new and proposed legislation has been the subject of a Children’s Rights Impact Assessment to determine how and to what extent children’s rights are affected and to ensure that those rights are promoted and protected. The Scottish Executive’s own Child Strategy Statement was
produced to ensure that the Scottish Executive “identified and took proper account of the interests of children when developing policy”. It is especially important that the views of children and young people are sought regarding Part 3 of the Bill – Sharing Child Protection Information – as this part seeks to replace the common law right of children and young people to confidentiality and privacy.

Further, in the Scottish Executive’s *Children’s Charter*, (developed in consultation with children and young people) it states, *inter alia*, that: “The clear message from children and young people is: ….. think carefully about how you use information about us”.

4. **Subordinate Legislation**
As a matter of general approach, it is inappropriate that so much detail is left to Ministers to enact in subordinate legislation. It follows that scrutiny of the Bill itself is compromised in many areas in which the primary proposed legislation remains imprecise. Examples of this include section 8(2), section 14(3), section 19(3), section 29(7), section 31(2), section 46(2), section 80, section 81 and section 97.

3. **LEGISLATIVE FRAMEWORK**

1. The Scotland Act 1998 is in the following terms:
   - Section 29(1) “An Act of the Scottish Parliament is not law so far as any provision of the Act is outside the legislative competence of the Parliament.
     (2) A provision is outside that competence so far as…
     … (d) it is incompatible with any of the Convention rights…”
   - Section 126 of the Scotland Act 1998 goes on to define “the Convention rights” as having the same meaning as in the Human Rights Act 1998.


3. Article 8 of ECHR is in the following terms:
   “Right to respect for private and family life
   (1) Everyone has the right to respect for his private and family life, his home and correspondence.
   (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.”

4. The Data Protection Act 1998 is in the following terms:
• Section 1 defines a “data subject” as “an individual who is the subject of personal data”.
• Section 7 relates to the rights of the data subject to access personal, section 7(1)(b) specifically relating to the right of the data subject to be informed by the data controller of “the recipients or classes of recipients to whom [the data] are or may be disclosed”.
• Section 66 states that, in Scotland, a child aged 12 and over is “presumed to be of sufficient age and maturity to have such understanding …. to exercise any right conferred by any provision of [the Data Protection Act 1998]”.

4. PROTECTION OF VULNERABLE GROUPS (S) BILL – PART 1 AND PART 2

1. Introduction

English Recommendations

The proposed vetting and barring scheme builds on the recommendations of The Bichard Inquiry, held following the murders in Soham and, in particular, recommendation 19. Sir Michael Bichard’s Inquiry was directed at events which took place in England and was directed at circumstances which arose under the prevailing English legislation and schemes.

As a matter of general approach, SCLC would urge caution in adopting any new scheme which has, effectively, come about by “cutting and pasting” from the English system. Such a method of enacting legislation in Scotland risks giving rise to loopholes at the seams where the “cut and paste” has occurred and problems in adjusting a scheme initially brought about by a different prevailing system. There is a real risk, therefore, that the stated aims of the legislation that results, are not fully met and that the independence of the Scottish legal system from its English neighbour is further eroded.

SCLC would prefer to see a strategic approach to the entire disclosure/vetting and barring regime in Scotland that does not simply add an extra layer to the existing scheme but, rather, looks at the prevailing Scottish system and improves it.

Protection of Children and Personal Management of Risk

There needs to be a balance struck between protection of the child and nurturing skills in personal management of risk. There is a real danger that, by making the child protection system over-protective, children do not develop the skills they need to mature into confident adults who are capable of managing risks. Introduction of a complex vetting and barring scheme brings with it the danger of over-reliance on the system, giving rise to false confidence in a child protection mechanism. Resources need to be directed
towards supporting parents and children in learning to assess risks and learning to protect themselves.

Complexity

A complex and onerous system will inevitably discourage well-intentioned and well-qualified people from undertaking the “regulated work”. Children will then be disadvantaged as the range of opportunities available to them diminish still further. The current system of disclosure checks, coupled with the difficulties in interpreting the provisions of the Protection of Children (Scotland) Act 2003, particularly the schedule 2 definition of “childcare” already act as a disincentive to many such adults. The proposed vetting and barring system is, in SCLC’s submission, only likely to exacerbate the problem. For this reason, SCLC would like to see the development of a simpler and more coherent system overall.

2. Definition of Harm and Risk of Harm (section 93)
Page 26 of the Policy Memorandum states that the definition of “harm” puts beyond doubt the inclusion of certain actions or behaviours that might otherwise be disputed. However:

• The use of examples is confusing and in fact does not assist with clarity of the terms.
• It appears that the test is subjective rather than objective. This is a concern as “B” or “D”, as used in the definitions, may feel or even be harmed by an action that a reasonable person may not think would cause harm.
• Adults may be less inclined to carry out work with children as they are very vulnerable to unsubstantiated allegations.

SCLC|Proposals

• Use, as the basis of the definition of “harm”, the definition contained within section 18 of Protection of Children (Scotland) Act 2003 and incorporate into that the unlawful conduct that appropriates or adversely affects property, rights or interests.

• Section 93 of the Bill could therefore read: "Harm includes harm which is not physical harm and unlawful conduct which appropriates or adversely affects property, rights or interests which results in theft, fraud, embezzlement or extortion".

The effect of using the POC(S)A 2003 definition with the addition wording, as suggested, will be to clarify the meaning of “harm”, whilst retaining its wide-ranging nature. (Specific examples can be included in the Code of Practice for further clarity.) Tightening the definition in line with SCLC proposals will have no effect on the policy goals sought by the definition currently in the Bill.

3. Link between Children’s List and Adults’ List
Although intended to be clear, section 12 gives rise to some confusion about how, if necessary, to effect inclusion of a name on both the children’s
and adults’ lists. It is not clear from the current wording in section 12, that a decision by Ministers to include a name on both lists can arise at any time, not just when initial consideration is being given to including a name on one or other list.

SCLC Proposal
• In sections 12(1) and (2), insert the words “at any time” after, “Ministers must consider listing an individual in the child [adults’] list if they are satisfied that …”

4. Reference by Certain other Persons – section 8(2)
Consideration should be given to including the following groups in section 8(2):
• Local Authority, Principal Reporter and Children’s Hearings. It may be the case that information comes to the attention of the local authority or to the reporter or children’s hearing that would not already be known to Ministers through other persons under section 8 or vetting information under section 44(2).
• Other disciplinary bodies such as doctors, nurses and lawyers.
• Clubs, associations and voluntary organisations as it may be that they are the first to notice a concern.

5. Fees for Obtaining Scheme Record

Section 67 allows Ministers to charge such fees as may be prescribed in relation to the administration of the scheme. It is imperative that any fees charged are minimal especially in relation to voluntary organisations. Otherwise, there remains a risk that services will no longer be provided, ultimately to the detriment of the development of children.

We welcome the reduction in bureaucracy and the beneficial effects in terms of overall costs that will result from an IT-based system developed to incorporate a memory feature that processes information on a cumulative basis.

6. Terminology

SCLC Proposals
• Amend section 18(1) and section 46(1)(c) by deleting the words “thinks might be relevant” and inserting “considers to be relevant”.
• Amend section 15 by deleting the word “information” and replacing it with the word “evidence”. The term information suggests that it is unsubstantiated which we would submit is too wide.
• Use a different term than “relevant person” in section 74 and section 75. “Relevant person” already has a specific definition both in Children (Scotland) Act 1995 and Antisocial Behaviour (Scotland) Act 2004.
• Consider why “child” is defined as “under 18” given that the Protection of Children and Prevention of Sexual Offences (Scotland) 2005 defines a “child” as “under 16 years”.

5
5. **PROTECTION OF VULNERABLE GROUPS (S) BILL**
   – **PART 3** (sections 73 – 81)

1. The common law of Scotland currently recognises that there are circumstances in which a person, including a child, has a right to expect confidentiality. Further, legislation and Convention (see Legislative Framework above) impose duties on the holder of personal data to seek consent from the data subject, before disclosure is made. Apart from the legal duties to report certain information imposed on some professionals, a breach of confidentiality may be justified in some cases using the defence of public interest. Confidence should only be breached where the child or young person is perceived to be in a dangerous or life threatening situation or is likely to be a serious danger to others. Reference should be made to the following documents:

   - Open Scotland Guidance Notes on Gold Standard Information Sharing Protocol;

   - Sharing Information about Children at Risk: A guide to Good Practice 2004 (www.scotland.gov.uk/library5/health/sicr.pdf);


2. It is extremely important in a child’s development to learn to seek advice and express concerns in the context of a confidential relationship with a professional, and this is particularly important in relation to sexual health. If children feel that their confidentiality will not be respected and are reluctant to seek such advice, it is inevitable that, for example, there will be a corresponding rise in teenage pregnancies and STDs among children and young people. That said, the duty to maintain confidentiality must be balanced by the need to share information in order to protect children. Failure to share information has been cited as a contributory factor into recent child deaths.

   It is the view of SCLC that removing the common law right of children to expect an appropriate degree of confidentiality and replacing it with a duty on professionals to disclose a wide range of information without first seeking consent at any level, is not a workable solution. The long-term effect of Part 3 will be to discourage children from disclosing any information to adults for fear of the repercussions that may result.

3. In light of the developed common law in relation to confidentiality, the wide range of good practice guidance on the sharing of information, the provisions of Article 8 of ECHR and the provisions of sections 7 and 66 of Data Protection Act 1998, SCLC is of the view that Part 3 does not improve the current situation. We would submit that inclusion of Part 3 shifts the balance too far away from respecting a child’s right to confidentiality. This issue has to be a matter of judgement for the professional and needs to be
addressed through policy documents and guidance. SCLC further submits that Part 3 is, therefore, not proportionate and so is not ECHR compliant.

SCLC Proposal

- Remove Part 3 of the Bill and produce a national, non-statutory guidance that consolidates current good practice relating to the sharing of “child protection information”. The effect of this will be that there will be national standardised procedures that apply to all professionals dealing with children. Further, children will continue to be active participants in issues directly affecting them.

6. WHERE PART 3 IS RETAINED

Should the decision be taken to retain Part 3, then the following comments should be considered.

It is the view of SCLC that information relating to children should not be shared unless the child’s consent has been sought or where there is an overriding public interest to share. Such a public interest arises in a child protection situation where the child, or someone else, is likely to be exposed to severe danger. Even if the information is to be shared without consent, the child must be informed what information is to be shared and with whom.

- **Distinguish between information and confidential information.** Confidential information is that which is sensitive and which is not in the public domain or available from a public source. It is given in a situation where the person giving the information understands that it will not be shared with others.

- **In relation to child protection confidential information, specification of situations where it would be appropriate to breach that confidentiality must take place.** The exceptions would have to be very similar criteria to the common law situation such as “the child or young person is perceived to be in a dangerous or life threatening situation or is likely to be a serious danger to others”.

- **Refer to the 5 well-recognised categories of abuse in relation to confidential child protection information.** Following a report by the Joint Steering Group on Child Protection in Scotland in March 2002, standard definitions of abuse and criteria for placing a child’s name on the Child Protection Register were adopted nationally. These categories are well known and frequently referred to in child protection policies. The categories are: physical injury, sexual abuse, non-organic failure to thrive, emotional abuse, and physical neglect.

- **Consideration of the child’s views.** Article 12 of the United Nations Convention on the Rights of the Child states that the views of the child concerned should be given due weight in all matters affecting the child. As these provisions clearly affect the child, specific provision should be
included in a similar way to section 11(7)(b) of Children (Scotland) Act 1995 which imposes a duty to consider a child’s views, taking into account the child’s age and maturity.

- **Code of Practice to be consulted on and published before enactment of the Bill.** The Code of Practice that will include substantial details as to how the Bill will work in practice has not been as yet published. Absence of a Code of Practice makes it extremely difficult to comment on Part 3 of the Bill. More importantly, it is impossible to predict the potential effect that will result from enactment of the Bill unless and until more information is available about specific detail relating to its terms. Further, even where the Bill includes a duty to make reference to the Code of Practice, the Code, itself, carries no legislative weight and is no more than a guidance.

- **Definition of harm in relation to part 3 should also include self-harm.**

- **Name a person within the Council where such information is sent, such as the Chief Social Work Officer.** Under section 74 a relevant person who holds “child protection information” must report the information to the Council for the area in which it considers the relevant child to be. This information will be sensitive information and therefore it is imperative that it is handled as such.

The Scottish Child Law Centre would like an opportunity to give oral evidence on the Protection of Vulnerable Groups (Scotland) Bill.
Introduction

1. Disclosure Scotland is a Public Private Partnership (PPP) between Scottish Ministers and BT plc to discharge Ministers’ function under Part 5 of the Police Act 1997. Part 5 allows Ministers to carry out criminal record checks for employment and other purposes and to issues certificates setting out the findings of these checks. Scottish Ministers’ work is carried out by civilian employees of Strathclyde Joint Police Board (SJPB), and involves carrying out the criminal record checks, gathering information from police forces and putting the information onto a certificate template. BT carries out application receipt, data entry, finance and printing functions. The PPP runs from 29 April 2002 to 28 April 2014. The partnership is based in the Scottish Criminal Record Office (SCRO), Pacific Quay, Glasgow.

2. The 1997 Act put on a statutory basis arrangements that had been consolidated in The Scottish Office Home and Health Department Police Circular 4/1989 with 3 supporting Scottish Office circulars from Social Work Services Group; Health and Education. These Circulars gave access through SCRO (mainly to public bodies such as local authorities and health boards) to conviction information about prospective employees. The Police Circular also put in place a scheme to notify subsequent convictions to employers. This scheme is still operated by SCRO though it is intended that from early next year police forces will carry out the work.

3. In March 1996 the Dunblane Primary School tragedy occurred. In June 1996, On the Record in Scotland was published. An equivalent paper had been published in England and Wales. The consultation was a response to Dunblane. It outlined HM Government’s and The Scottish Office’s intention to make criminal record checks more widely available for employment and other purposes (for example to cover people volunteering with children); to put the arrangements on a statutory footing; and that there should a charge to cover the cost of the checks. On the Record in Scotland also announced that from Autumn 1996 access to SCRO checks would be extended to voluntary child care organisations until such time as the statutory scheme was operational.

4. On 16 October 1996, Lord Cullen’s Inquiry Report into Dunblane was published and on 31 October a Police Bill was introduced in House of Lords which included the provision to issue certificates following criminal record checks. That Bill became the Police Act 1997 on 21 March 1997. There followed a lengthy period of consultation, tendering and negotiation which culminated with Disclosure Scotland starting operations in April 2002.

5. The Protection of Children (Scotland) Act 2003 created a list which is held by Ministers on persons who have been disqualified from working with children. Since 10 January 2005, as part of Disclosure Scotland Enhanced and Standard disclosure procedure, where the post is classed as a child care position, then this list will be...
checked. To date (November 2006) 147 persons are listed either provisionally or fully.

6. In the first 4 years of operation, Disclosure Scotland carried out a total of 1,507,217 criminal record checks – 865,448 Enhanced; 92,175 Standard; and 549,594 Basic. In the 7½ months to 19 November this year, Disclosure Scotland has carried out 217,768 Enhanced; 2,599 Standard; and 162,485 Basic checks. The average processing time this year has been 2.6 days. A substantial number of the Enhanced Disclosures will potentially fall away as a result of the proposals in the Bill. People using that level of check for working with children and certain adults will join the Scheme that the Bill proposes. The Standard and Basic checks should remain at close to their current level and Disclosure Scotland will continue to deliver that service as effectively and efficiently.

Protection of Vulnerable Groups (Scotland) Bill

7. Disclosure Scotland will have a key role to play in the effective implementation of the Bill and we are working closely with colleagues in the Scottish Executive and the police service to ensure the implementation of the Bill is as effective and quick as possible.

Disclosure Scotland
22 November 2006
Finance Committee

Report on the Financial Memorandum of the Protection of Vulnerable Groups (Scotland) Bill

The Committee reports to the Education Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a Bill must consider and report on the Bill's financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the financial memorandum (FM) of the Protection of Vulnerable Groups (Scotland) Bill, for which the Education Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 3 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by it, then taking oral evidence from the Scottish Council for Voluntary Organisations (SCVO) and from the Executive Bill Team. The Committee took evidence from both groups on 7 November 2006.

4. The Committee received submissions from SCVO, COSLA and the Scottish Commission for the Regulation of Care (the Care Commission). All of this evidence is set out in the Annex to this report.

5. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

6. The Bill follows on from the Protection of Children (Scotland) Act 2003 and from the Bichard Inquiry Report 2004. It creates a vetting and barring scheme covering those working with children and protected adults and a list of individuals unsuitable for working with these groups will be maintained. The vetting functions will be carried out by Disclosure Scotland and the barring functions will be carried out by a Central Barring Unit. This Central Barring Unit will be combined with the relevant part of Disclosure Scotland into a new Executive Agency.
7. The total start-up costs associated with the Bill are estimated to be £5.65m with total net ongoing costs in years 1 - 3 of between £10.3m to £12m. These costs are broken down in the FM as follows:

<table>
<thead>
<tr>
<th>START-UP COSTS</th>
<th>COST £,000</th>
<th>Over period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Administration (total)</td>
<td>£4,790</td>
<td>Years 0-3</td>
</tr>
<tr>
<td>Scottish Administration (VBS)</td>
<td>£4,750</td>
<td>Years 0-3</td>
</tr>
<tr>
<td>VBS. Agency: staff recruitment and relocation</td>
<td>£400</td>
<td>Year 0</td>
</tr>
<tr>
<td>VBS. Agency: premises</td>
<td>£600</td>
<td>Year 0</td>
</tr>
<tr>
<td>VBS. Agency: office ICT costs</td>
<td>£350</td>
<td>Year 0</td>
</tr>
<tr>
<td>VBS. Training and guidance</td>
<td>£1,400</td>
<td>Years 0-3</td>
</tr>
<tr>
<td>VBS. IT infrastructure</td>
<td>£2,000</td>
<td>Year 0</td>
</tr>
<tr>
<td>IS. Preparation of code of practice</td>
<td>£40</td>
<td>Year 0</td>
</tr>
<tr>
<td>Local Authorities and other statutory bodies</td>
<td>£720</td>
<td></td>
</tr>
<tr>
<td>IS: Training of staff to prepare for information sharing</td>
<td>£720</td>
<td>Years 0 – 3</td>
</tr>
<tr>
<td>Other bodies, individuals and businesses</td>
<td>£140</td>
<td></td>
</tr>
<tr>
<td>IS: Training for staff in Voluntary Sector Organisations to prepare for information sharing</td>
<td>£140</td>
<td>Years 0 -3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£5,610</td>
<td>Years 0-3</td>
</tr>
</tbody>
</table>

Table 1. Start-up costs in 2006/07 prices. VBS means vetting and barring scheme. IS means information sharing provisions.

<table>
<thead>
<tr>
<th>NET ONGOING COSTS</th>
<th>COST YR 1-3</th>
<th>COST YR 4+</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Administration</td>
<td>£5.5m - £8.3m</td>
<td>£0m</td>
</tr>
<tr>
<td>VBS. Cost of subsidising free checks</td>
<td>£5.5m - £8.3m</td>
<td>£0.0m</td>
</tr>
<tr>
<td>Local Authority</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other bodies, individuals and businesses</td>
<td>£2.0m to £4.7m</td>
<td>(£1m)</td>
</tr>
<tr>
<td>Voluntary sector organisations</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other employers</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Regulatory Bodies</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Individuals</td>
<td>£2.0m to £4.7m</td>
<td>(£1m)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£10.2m to £12.0m</td>
<td>(£1m)</td>
</tr>
</tbody>
</table>

Table 2. Ongoing costs in 2006/07 prices. VBS means vetting and barring scheme. The running cost of the Central Barring Unit will be met through revenue from fees. The cost of subsidising free checks only materialises if they are not
cross-subsidised. Note that the gross ongoing cost to employers and individuals is greater during the first three years, but this is offset by later reductions. The net cost over 10 years is expected to be broadly neutral (with a lower cost per employee, offset by the larger number of employees covered by the scheme). Current turnover of Disclosure Scotland is around £10m per annum. The total cost of continuing Disclosure Scotland's activity and all new vetting and barring activity is expected to be around £100m over the 10 year period.¹

8. The level of fees are to be set at a level whereby the scheme can be self-financing. Three possible fee structures are detailed in the FM but the final structure has not yet been agreed. It is assumed that fees will cover the total cost of operating the scheme but will be set at a level that most accurately reflects the true cost of providing a check. The details of the level of fees for varying levels of checks and the overall fee structure will be provided within subordinate legislation.

Summary of evidence

Current situation

9. Wider access to criminal record checks was introduced through Part V of the Police Act 1997 and non-conviction information considered by a chief constable to be relevant to a position involving access to children can be included in the highest level certificates (“enhanced disclosure”) under Part V. The Protection of Children (Scotland) Act 2003 established a list onto which people would be placed who are deemed unsuitable to work with children and details of a person’s inclusion on the list must be included in standard and enhanced disclosures where the position involved is a childcare position.

10. People can be referred to the list, firstly, if they have been dismissed, transferred from or would have been dismissed from a position with access to children because they have harmed a child or put a child at risk of harm. Secondly, they can be referred to the list if they are convicted of an offence against a child.

11. This Bill establishes a separate list of individuals unsuitable to work with protected adults, replaces enhanced criminal record certificates with new disclosure records for those working with vulnerable groups and establishes a vetting and barring scheme which would apply to those working not only with children but also “protected adults”.

12. When someone applies for scheme membership, they will go through a full disclosure check which will include information on spent and unspent convictions, non-conviction information that a Chief Officer or Chief Constable deems relevant and information on any referral made by an organisation. A person’s scheme record will contain a statement of barred status and vetting information.

13. Once a person is in scheme membership, then their membership record will be updated when their circumstances change or when any new conviction or non-conviction information comes to light.

¹ Protection of Vulnerable Groups (Scotland) Bill: Financial Memorandum
14. Currently, a new disclosure check is required each time a person moves from one job to another (whether paid or unpaid). Under this Bill, once a person becomes a scheme member, then they will only require to go through a nominal check when moving jobs. Scheme membership would expire after a set period of time (the period has not been finalised yet, but it is assumed to be 10 years). Scheme membership will be for an individual person and not for individual posts.

**Number of people affected**

15. The SCVO raised serious concerns over the financial implications of the Bill. They estimate that the Bill could cost the voluntary sector £3m for accessing disclosure checks; £1m for training and £20m in administrative costs. In evidence, SCVO explained that they currently access around 7,500 paid disclosure checks, but that under this Bill, all staff would require to be brought into the system which would result in 106,000 paid checks and this is the basis upon which SCVO has estimated £3m.

16. In addition to the 106,000 staff who work for voluntary organisations, the SCVO also assumes that 850,000 volunteers would require to be checked. This would mean that 956,000 people in the voluntary sector alone would come under the auspices of this Bill. If staff employed by local authorities etc are added to this figure, then this represents a huge number of people. The Committee therefore attempted to seek clarification from Executive officials as to how many people are currently subject to checks and how many would be expected to be scheme members under this Bill.

17. Paragraph 200 of the FM states that the new vetting and barring scheme will cover up to 1 million individuals who come into contact with children and/or protected adults through work, either in paid employment or as volunteers. Paragraph 201 (i) then states that the proportion of volunteers whose posts require them to be checked is assumed to be 50%, thereby implying that the figure of 1 million incorporates only 50% of volunteers.

18. In evidence, officials stated that under the current disclosure regime there are around 450,000 checks\(^2\). In response to the SCVO’s assumption that 850,000 volunteers would be included in the new scheme, the Executive reiterated that they assumed that 50% of volunteers will require to be in the scheme but of that 50% (which they deemed to be 800,000) they estimated between 300,000 and 400,000 are already doing regulated work and therefore there would be a substantial overlap. They also stated that there was a need to distinguish between the number of volunteer posts and the number of individual volunteers, as some people will volunteer for more than one post.\(^3\)

19. As officials consistently talked about potentially vetting 1 million people, and as this figure is not caveated in the FM, it was assumed that 1 million would be the total number of people to be within the ambit of the scheme, across all sectors. However, in supplementary evidence, Executive officials further clarified the figures as follows:

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\(^2\) Monaghan, Official Report, 7 November 2006, Col 4116

\(^3\) Mott, Official Report, 7 November 2006, Col 4128
• 800,000 individuals undertake voluntary work in sectors affected by the scheme\(^4\). This does not necessarily mean they need to be scheme members;
• 580,000 individuals undertake paid (i.e. not voluntary) work which will be regulated work and, therefore, they will be required to be scheme members\(^5\);
• there is significant overlap between these two categories of people, we assumed 60% of the 580,000 individuals (= 350,000) undertaking paid work would also volunteer\(^6\);
• therefore, 450,000 volunteers would not be scheme members through any paid work they may do; and
• the financial memorandum further assumes that only 50% of these 450,000 volunteers (= 225,000) actually need to be scheme members\(^7\) (for example, a volunteer fundraiser for Barnardos is in the sector but not doing regulated work).

<table>
<thead>
<tr>
<th>Involvement with scheme</th>
<th>Number of individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals paid to do regulated work who don't volunteer</td>
<td>230,000</td>
</tr>
<tr>
<td>Individuals paid to do regulated work who also volunteer</td>
<td>350,000</td>
</tr>
<tr>
<td>Volunteers who don't do paid regulated work who need to be scheme members on basis of 50% assumption</td>
<td>225,000</td>
</tr>
<tr>
<td>Total</td>
<td>805,000</td>
</tr>
</tbody>
</table>

Table showing summary of workforce coverage.

The figure of up to one million individuals (paragraph 200) is attained if 100% of volunteers in the sector need to be covered (the total in the table above rises

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\(^4\) According to the Scottish Household Survey, there are 1 million volunteers in Scotland. From the Scottish Council of Voluntary Organisations, we know that 80% of all volunteers volunteer in sectors which would be covered by the Bill. Combining these two sources suggests 800,000 volunteers will be working in sectors affected by this scheme.

\(^5\) Assembled from official Government employment statistics in relevant sectors.

\(^6\) The Scottish Household Survey indicates that around 30% of adults in any employment also volunteer. We have assumed a much greater propensity to volunteer amongst individuals undertaking paid regulated work. We have assumed that 60% of this workforce will volunteer.

\(^7\) This 50% assumption was explained by officials at Col 4126 of the official report. For the sake of clarity, I will repeat the argument here. Data from Volunteer Development Scotland, while not directly supporting this assumption of 50% of volunteers requiring checking, provides crude upper and lower bounds for the proportion of 75% and 32% respectively. The bounds come from the (overlapping) breakdown of volunteering in Scotland by activity. Some 68% of volunteers spend at least part of their time raising money, which implies that the 32% who do not are likely to require to be checked as their volunteering is likely to involve contact with vulnerable groups. Adding up the 31%, 19% and 24% (= 74%) who are listed specifically as taking part in volunteering activities of one sort or another that involve contact with vulnerable groups gives the upper bound figure. Taking the mid-point of this range gives 53%, which is comfortably close enough to the assumed value to give a degree of confidence to the assertion.
to 1,030,000 individuals). The Financial Memorandum illustrates the effect of this on costs and fees in the final two rows of table 3.\(^8\)

20. While the Committee welcomes this clarification, it would have been more helpful if such explanations had been given in the FM as both the information in the FM and the oral evidence given by officials was confusing in the extreme. If the figure of 1 million individuals was predicated on the assumption that 100% of volunteers in the sector would need to be covered then that should have been set out in the appropriate paragraph.

21. However, although it has now been stated that the number of individuals likely to be affected is 805,000 there is no explanation given of the categories of employees who will need to become scheme members. COSLA raised concerns over the number of checks authorities would need to seek and pay for and there is no estimate given of the numbers of local authority employees who would be affected. Given that there could be disagreement over whether certain jobs should come within the scope of the Bill, then it seems almost impossible to determine the numbers of people to whom this Bill will apply.

22. Even allowing for this lower global figure of 805,000, if this is compared with the 450,000 disclosure checks that are currently carried out, this still represents a 79% increase in the numbers involved. The Committee therefore wished to ascertain why there would be such a substantial increase. The Executive explained that as a result of this Bill there would be two new categories of people – those who work with protected adults and also personal employers (such as piano and dance teachers). However, the Executive could not provide a breakdown of these figures. Added to this is the lack of clarity around the total figure as outlined above.

23. Therefore, although we now have a limited breakdown of the number of individuals anticipated to be covered by the scheme, the Committee believes it is still unclear as to the total number of people who would be affected by the Bill and recommends that the lead Committee investigates this further with the Minister.

24. Adding to the confusion over numbers is the Executive’s statement that local authorities and other organisations already do enhanced disclosure checks on people who work with vulnerable adults.\(^9\) Therefore, it could be assumed that such people will already be included in the figure of 450,000. The Committee believes therefore, that it is completely unclear as to why the vetting and barring scheme will apply to such a significant number of people.

25. The Executive, however, did imply that the figure of 1 million was an upper limit (although it would appear that, according to supplementary evidence from the Executive, this figure will be 805,000). They pointed out that although it will be an offence for someone to work with children or protected adults when disqualified and an offence for an employer to employ someone in those circumstances, it is not an offence for someone to undertake this work who is not a scheme member.

\(^8\) Supplementary evidence from the Scottish Executive
\(^9\) Mott, Official Report, 7 November 2006, Col 4125
However, the Executive stated that “[organisations] would be committing an offence if they had someone who was disqualified undertaking regulated work. The only way in which they will know that will be by scheme membership”.\(^\text{10}\) Therefore, it seems disingenuous to suggest that not everyone will be required to be members of the scheme, given that organisations will be committing an offence if they employ someone who is disqualified and, in the Executive’s own words, the only way they can find that out is through a person’s scheme membership.

26. The Committee appreciates the importance of having systems in place to protect vulnerable groups and supports the intention behind the Bill. However, given the significant numbers of people that will require to be checked and that there is no requirement on an individual to become a scheme member and scheme membership will be relatively easy to avoid if an individual chooses to, then questions need to be asked as to whether this Bill represents a proportionate response.

27. In supplementary evidence, the Executive stated that the current disclosure system costs £100m over ten years and “this scheme is estimated to be less expensive through increased efficiency.”\(^\text{11}\) However, as is shown in this report, there is confusion around the numbers involved, no clarity within the FM and concerns have been raised by organisations working in the field that costs could be significantly higher than estimated. Therefore, the committee is not convinced that this Bill represents value-for-money and also questions whether it has been properly costed. The Committee therefore recommends that the lead committee pursues these issues with the Minister and considers the value-for-money issue when making its recommendations on the Bill.

28. Quite apart from the proportionality and value-for-money debate, the Committee was also very concerned by the SCVO’s evidence on the potential impact of this Bill on the number of people who will choose to become volunteers in the future. While SCVO admit that there can be a number of reasons deterring volunteers, anecdotal evidence is that the current disclosure environment has had an impact. Given that the net will be cast much wider as a result of this Bill, then the Committee remains extremely concerned that the levels of volunteers will continue to decline and this could have a severe impact on the sector.

**Overall costs**

29. The overwhelming message coming from SCVO’s evidence is that the cost of implementing the provisions of this Bill could have a detrimental impact on the voluntary sector. They stated that:

“If we take into account the cost in the phasing-in period – we will assume that it is three years – and calculate the savings made in the longer term when there is turnover of staff, we estimate that it would take 15 years or longer for a break-even point to be reached.”\(^\text{12}\)

\(^{10}\) Monaghan, Official Report, 7 November 2006, Col 4127

\(^{11}\) Supplementary evidence from the Scottish Executive

\(^{12}\) McTernan, Official Report, 7 November 2006, Col 4101
30. According to SCVO, what is crucial is a longer phasing-in period to help the sector cope with the additional costs. When asked how long this phasing-in period should be, SCVO indicated this was a matter for debate particularly because issues of resourcing had to be balanced with having a system which will protect children and adults and that “stretching the scheme as far as 10 years might not achieve anything, whereas a phasing-in period of three years, unless it is properly resourced and supported, will be very hard on the voluntary sector. We are looking at somewhere inbetween – perhaps a four, five or even six-year phasing-in period would make the administrative costs more bearable.”

31. Executive officials stated that although the FM has assumed that everyone will need to be checked within 3 years, it is not a legal obligation in terms of the scheme. The Committee believes, as with so much of the detail of this Bill, that these differences of interpretation need to be resolved as a matter of urgency and that the Executive must address the funding concerns and timescale for implementation raised by the SCVO. The Committee recommends that these issues be raised with the Minister.

Fees
32. While financial models are given in the FM for differing fee structures, the levels of fees will not be known until the relevant subordinate legislation is drafted. The Committee appreciates that the Executive has followed its own guidance in that it has given a range of costs where definitive costs are not known because the provisions are not in the primary legislation. However, it signals its discontent that once again, the Committee is being asked to scrutinise the costs of legislation when significant financial information will be contained in secondary legislation.

33. The fees are to be set at a level whereby the scheme will be largely self-financing as was the case with the Protection of Children (Act) 2003. However, experience of that Act has shown that fees have increased by 47% and the Committee is extremely concerned that fee levels under this Bill could similarly increase.

34. The Executive acknowledged that there had been flaws in the implementation of the 2003 Act and indicated that much more detailed work had been undertaken in relation to the implementation of this Bill. However, as the level of fees is one of the key determinants of the way in which the costings of the Bill have been arrived at, the Committee remains concerned that fees could be set at levels which are prohibitive.

35. This concern was shared by the SCVO who have proposed that the fees should be capped for the voluntary sector. The Committee notes that generally, fees for volunteers will be paid by the Executive and voluntary organisations will be responsible only for paid staff, although there was some confusion in the wording of the FM.

36. While the Committee appreciates the considerable financial burdens likely to be placed on the voluntary sector, it is concerned that if a cap were placed on the fees for one sector, that another sector might have to pay more to make up for the

13 McTernan, Official Report, 7 November 2006, Col 4102
The Committee believes that it is more important to have clarity around the operation of the scheme, a consensus over the cost to the voluntary sector and a thorough examination of the financial resources currently available.

37. Paragraph 224 of the FM states that “while it is expected that many local authorities will continue to pay the costs of the fees, no additional cost will be incurred by local authorities as a result of the introduction of the new vetting and barring scheme.” In written evidence, COSLA described this paragraph as “naïve” and that “it may well be that in the longer terms costs will equalise or indeed decrease, but that will not be the case in the short-term... in the most recent 6 months, around 46,000 [disclosures] have been processed. This represents a cost of £920,000 at current fee levels... given the higher fee level for initial checks and the projected increase in volume in the first 3 years of the scheme.”

38. In responding to this and to other matters raised by the Committee, Executive officials spoke of the need to consider the total costs over a 10 year period and the savings which they claim will arise from having a less bureaucratic system. However, these organisations are outlining significant financial implications in the first three years and it is simply not acceptable to say that costs will be neutralised over the longer-term. The Executive operates on a three-year spending review cycle and if organisations are claiming that there will be a financial impact within the first three years of the Bill’s implementation then this needs to be examined.

39. When pressed on why additional costs for local authorities resulting from the payment for fees were not shown in paragraph 224 of the FM, the Executive responded that:

“The costs are in the financial memorandum. We place the costs on individuals, because the legislative requirement for the payment of the disclosure fee falls on the individual.”

40. Although the Committee is well aware that, technically, payment requires to be made by the individual it is a matter of fact that local authorities pay the cost of these fees and given that the FM acknowledges this will continue to be the case, it is disingenuous at best and misleading at worst, for the Executive to list this as a cost to individuals.

41. The Committee is extremely dissatisfied with the responses it has received on disclosure fees. While it acknowledges that a range of costs have been given in the FM, it is deeply disappointing that yet again, the Committee is being asked to scrutinise the financial implications of a Bill when significant, relevant financial information will only come to light through subordinate legislation.

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14 Protection of Vulnerable Group (Scotland) Bill: Financial Memorandum
15 Submission from COSLA
16 Storrie, Official Report, 7 November 2006, Col 4124
Administrative costs
42. While the Scottish Executive pays the disclosure check fees of volunteers and will continue to do so under this Bill, the SCVO raised serious concerns over the administration costs which would be incurred by voluntary organisations which they estimated to be in the region of £20m. In supplementary evidence the SCVO explained that this figure was arrived at on the basis of administration costs of £21.50 per check multiplied by 956,000 (volunteers and paid staff). Even taking on board the Executive’s point that some volunteers are already in regulated employment (and therefore would be a scheme member through that employment), and the figures they have subsequently given for the number of volunteers, it is clear that there could be significant administrative costs.

43. The FM does not make any specific allowance for such administrative costs. When questioned on SCVO’s estimates, the Executive appeared to concentrate on the cost of fees and costs arising from a duty to refer. However, the SCVO’s evidence states that the administration costs which they quote refer to the work done from application to receipt of disclosure check. Although the Executive has highlighted that a number of volunteers are already in regulated work and therefore, will not require to be “processed” by the voluntary sector, there appears to be no recognition that there will be any additional administrative costs. The Committee appreciates that checks need to be undertaken at present, but given the significant increase in the numbers caught by this Bill, then it cannot be presumed that additional costs will not arise. The Committee recommends that the lead Committee pursues these issues with the Minister.

Definition of “protected adult”
44. The SCVO also expressed concern over the definition of a “protected adult” which is essentially a service-based definition. SCVO explained that for regulated organisations, most of their clients will be protected adults. However, their concern is for organisations outwith the regulated setting who will come into contact with adults who are “protected” at some times but not at others as this will depend on what services those adults are receiving.

45. The SCVO gave an example of the WRVS where the overwhelming majority of the client group will be vulnerable adults but a certain proportion are likely come into the category where their status will change. According to the SCVO:

“we fear that it will be an administrative treadmill for those organisations to keep up with who is and who is not a protected adult at a particular point and therefore, which of their staff can and cannot be a scheme member at a certain point in time”

46. The Committee recommends that the lead committee raise this issue with the Minister.

Training and awareness raising
47. The other area of concern to the SCVO was the amount of money allocated to training in the FM. The FM estimates that approximately £1.4m will be required

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17 Gunson, Official Report, 7 November 2006, Col 4102
to ensure that adequate training and guidance is developed and delivered in relation to the new vetting and barring scheme. Additionally, £140,000 is estimated as the cost of training for staff in the voluntary sector to prepare for information sharing.

48. However, £320,000 of the £1.4m is allocated to developing the systems of the Central Registered Body for Scotland which leaves £1.1m for developing training materials, delivering training events and operating a telephone helpline service. SCVO noted that in the first year of implementation of the Protection of Children (Scotland) Act that they had “managed quickly and effectively to use £360,000 in three months to get messages and resources out to voluntary organisations.”

49. On that basis, the Committee questioned whether the estimates were reliable. The Executive explained that:

“The thinking behind the figures in the financial memorandum is that the strategic people in the organisations will be trained as part of the roll-out of the scheme. There will not be a big bang on day one but a phased implementation, so the operational training can be embedded in the annual training, biannual training or whatever it is that organisations give their staff.”

50. In supplementary evidence, the Executive stated that a grant of £360,000 had been awarded to the voluntary sector for development of a support package to assist the sector in implementing the Protection of Children (Scotland) Act 2003 and that the Executive recognised the need for similar support mechanisms under this Bill and are therefore suggesting that on the basis of a like-for-like comparison, the equivalent figure for this Bill would be £800,000 (being the sum of the first two rows in the table in paragraph 215).

51. However, as the SCVO stated they spent £360,000 within 3 months under the previous legislation, they clearly do not believe that the money provided under this Bill will be sufficient. It is deeply worrying that there is such a level of disagreement over so many of the estimates in the FM.

**Awareness raising**

52. For this Bill to be successful, it appears that there will need to be significant awareness raising. This Bill, unlike previous legislation, will cover personal employers (eg, piano teachers). The Policy Memorandum cites an example where a new piano teacher arrives and because the parents do not know him or her, they log onto the Disclosure Scotland website and learn that the teacher’s disclosure statement is out-of-date. The Committee suggested that unless there was significant awareness raising, then many parents simply would not know about the legislation and how checks can be carried out.

53. The Executive responded that while it would be an offence for the piano teacher to undertake regulated work if listed, it was not an offence for a parent to

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18 McTernan, Official Report, 7 November 2006, Col 4104
19 Mott, Official Report, 7 November 2006, Col 4136
employ him or her (although it would be an offence if an organisation were to employ the teacher) and therefore, this Bill would provide an additional tool for parents in checking the reputation of an individual. When asked how parents would know about that additional tool, the Executive responded that “we will have to disseminate that.”\textsuperscript{20} However, while financial provision has been made for awareness raising among employers, the Executive confirmed that there is no provision for more general awareness raising. In supplementary evidence, the Executive stated that the general population would benefit from the development of the training and guidance pack principally through awareness raising methods rather than formal training\textsuperscript{21}.

54. Therefore, it would appear that some of the money allocated for training will be required for awareness raising. As outlined earlier, there is only £1.1m allocated for training and £200,000 of this total amount is set aside for developing training materials. The Committee believes therefore that further clarity is required as to how the £1.1m will be spent. In addition, given the concerns raised by the SCVO, the Committee questions whether the money will be sufficient and recommends that the lead Committee raise this issue with the Minister.

\textit{IT Costs}

55. Of the £1.4m allocated for training, £320,000 is for developing the systems of the Central Registered Body for Scotland. In addition, the FM states £2m will be required to set up the IT infrastructure to support the vetting and barring scheme. It would appear that significant IT will be required (eg, paragraph 89 of the Bill’s explanatory notes sets out various connections and triggers that will be required) and there is also an expectation that online disclosure requests can be made.

56. As has been shown in this report, it is still unclear as to the exact number of people who will be brought into the scheme but it will be a very large number. Within the period of scheme membership, there are also likely to be a number of changes which need to be recorded for each person (eg, job, address and further relevant information regarding suitability) and therefore, it can be assumed that an extremely large database will be required. Given this and the cost of other IT systems within the public sector, the Committee is not convinced that the estimated costs will be sufficient and the Committee recommends that the lead committee raise this issue with the Minister.

\textit{Creation of an Executive Agency}

57. As a result of this Bill, a new Executive agency will be created. This will comprise of staff transferred from Disclosure Scotland who are currently employed by the Strathclyde Joint Police Board to deal with vetting and a Central Barring Unit with 30 staff to maintain the list of disqualified people.

58. In its Accountability and Governance inquiry report, the Committee recommended that any legislation proposing a new body should be accompanied by a policy options paper detailing alternative structures which were explored, the cost of all such options and the reasons why any less expensive options were not

\textsuperscript{20} Mott, Official Report, 7 November 2006, Col 4138
\textsuperscript{21} Supplementary evidence from the Scottish Executive
selected. The Committee appreciates that consultation on this Bill was underway before the Committee published its report.

59. The Executive had consulted on options for the Central Barring Unit but officials were asked whether the costs of the options had also been sent out. In supplementary evidence, the Executive confirmed that costs had not been set out and that it would have been difficult to do so meaningfully mainly because the cost of a Non-Departmental Public Body (NDPB) would be very difficult to quantify. The Committee is surprised by this response given that fully costed options have been provided for NDPBs in the past (eg, the Scottish Civil Enforcement Commission) and the Executive has agreed in principle with the Committee’s recommendation in its Accountability report. The Committee recommends that the lead committee seek further clarification on this from the Minister.

60. The supplementary response from the Executive provides answers to various questions regarding the Executive agency which the Committee indicated it would raise through correspondence. The Committee asked whether the costs of transferring staff from Disclosure Scotland had been factored into the overall costs of setting up the new agency. The Executive replied that such costs had not been included because “a transfer of some sort would have happened regardless of the advent of this Bill. Disclosure Scotland staff are part of the Scottish Criminal Record Office and, as such, would have been due to transfer to the Scottish Police Services Authority in April 2007.”

61. However, the fact remains that these staff are being transferred into the main civil service and the presumption is that they will need to be transferred onto civil service terms and conditions and there could be a cost implication as a result of this. The Committee recommends that the lead committee pursues this issue with the Minister.

Conclusion

62. While the Committee recognises that this is a complex Bill, it is extremely dissatisfied with the information provided in the FM. Much of the information is confusing and assumptions are not clear.

63. The Committee is extremely concerned that there appears to be such a level of disagreement over the financial implications of the Bill between the SCVO and the Executive and believes this needs to be addressed as a matter of urgency.

64. Much of the disagreement is centred on the number of people who will need to be scheme members as a result of this Bill. As outlined earlier in this report, it has been extremely difficult to ascertain the number of people involved given the lack of detail in the FM and the lack of clarity in the evidence of officials. Although the Committee has now received a limited breakdown of the number of individuals involved, this information should have been set out clearly in the FM. The Committee believes it is still unclear

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22 Supplementary evidence from the Scottish Executive
23 Supplementary evidence from the Scottish Executive
as to the total number of people who would be affected by the Bill and recommends that the lead committee investigates this further with the Minister.

65. In supplementary evidence, it is stated that the current disclosure scheme will cost £100m over 10 years and that this Bill will cost less. However, there is confusion around the numbers involved, no clarity within the FM and concerns have been raised by organisations working in the field that costs could be significantly higher than estimated. Therefore, while the Committee appreciates the importance of having systems in place to protect vulnerable groups and supports the intention behind the Bill, it is not convinced that the Bill represents value-for-money and also questions whether it has been properly costed. The Committee therefore recommends that the lead committee pursues these issues with the Minister and considers the value-for-money issue when making its recommendations on the Bill.

66. While the FM provides a range of costs in relation to fees, the Committee wishes to signal its discontent that once again, the Committee is being asked to scrutinise the costs of legislation where significant financial information will be contained in secondary legislation. Under the system that has been proposed to the Subordinate Legislation committee, the Committee signals that it intends to scrutinise these pieces of subordinate legislation when they are laid.

67. The Committee has also questioned why administrative costs have not been factored into the FM, whether the funding earmarked for training and awareness raising and the funding for IT will be sufficient, why it is not deemed possible to cost the NDPB option and why the cost of transferring staff onto new terms and conditions is not mentioned in the FM and recommends that the lead committee pursue these issues with Ministers.
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 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 come within the scope of this proposed 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 (as yet incomplete) implementation of the Protection of Children (Scotland) Act 2003 (PoCSA) provisions. 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.

However on the basis of the explanatory notes and financial memorandum accompanying the bill as introduced we are far from convinced that sufficient consideration has been given to the realities of implementation. We are appreciative of the opportunity presented by the Finance Committee to identify some serious omissions in these documents. These points have been raised directly with Scottish Executive officials since the Bill’s introduction.

Key Points

Start up costs

- The new scheme will bring additional start-up costs to the voluntary sector of up to £3 million, deriving from disclosure costs for paid staff. Under the current system only new staff and staff moving position have been compelled to be checked. While volunteer checks are free (and will seemingly remain so), checks for paid staff are currently charged at £20 each. This has led the sector to spend around £150,000 per year, accessing 7500 paid disclosure checks. The proposed scheme will bring all staff (new and existing) into the system. Disclosure costs are likely to rise to £26 for each full check. (according to the Financial Memorandum of the Bill) Therefore, in accessing up to 106,000 paid checks, the new scheme will see new costs for the voluntary sector to up to £3 million over the phasing-in period, a period which the financial memorandum indicates will be three years. This is new cash which is not currently in the system.

Training Costs

- The Financial Memorandum makes £600,000 available to train the whole of the adult/childcare workforce. This is – we believe - insufficient to adequately provide suitable training. Under PoCSA, £360,000 was made available to the voluntary sector for one year only. With the addition of adults into the protection system for the first time, and the substantial changes to the children’s protection system proposed by the Bill, we believe that £1million will be required to train the voluntary sector alone. This resource should provide training in the lead up to the commencement of the legislation and over the phasing-in period.
**Administration Costs**

- We estimate that the administration costs from checking all paid staff and volunteers across the voluntary sector will be up to £20 million. Bringing up to 106,000 paid staff and 850,000 volunteers into the protection system will incur significant additional administrative costs over the phasing-in period. Under the current system only new staff or staff moving positions have been required to be checked, leading to the voluntary sector accessing around 60,000 checks a year (including 7500 paid staff checks). Based on figures supplied by organisations deploying significant numbers of volunteers of this is estimated to have cost already the equivalent of £2 million which would aggregate up to some £20 million to bring all affected staff and volunteers into the system. This is in addition to the £3m start-up costs, and £1 million training costs mentioned previously.

**i) Consultation – Questions 1 – 3**

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

3. Did you have sufficient time to contribute to the consultation exercise?

SCVO was disappointed overall with the consultation process for the Bill.

On the plus side - we were happy that the Executive gave sufficient time for responses and we were happy that information events, focus groups, and interviews took place to supplement the written responses given by organisations. The voluntary sector took full part in all of these ways.

However, we were very disappointed that many of the Executive’s proposals to which organisations were asked to respond were less than fully worked up. We believe that the consultation 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 the summer did not materialise. We believe it would have been better to have focused on the financial implications more intently before now as this will have a significant bearing on the effectiveness of any scheme.

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, side by side with the Bill itself by both the Education and Finance Committee. We also believe that more certainty is required in the primary legislation regarding some of the details of the proposals, especially those with financial implications.

There were very few financial details given in the consultation paper. However SCVO’s own submission, and many of the voluntary organisations separately responding, commented on the financial implications of the proposals during the consultation process. We do not see that these have been addressed in the face of the Bill and accompanying explanatory notes and financial memorandum as introduced.

**ii) Costs – Questions 4 – 6**

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
**Financial Implications**

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 based on hard evidence but are ‘guestimates’. More worryingly, those with the necessary expertise or knowledge were not consulted on their derivation or basis.

**Funding**

It is unrealistic to expect the vetting and barring scheme to be self financing. The voluntary sector cannot write a blank cheque for these proposals. We believe a cap on disclosure costs for the voluntary sector should be placed in the face of the Bill. If the Executive are serious about protecting vulnerable groups then substantial additional resources will be required. These are not currently contained in the Financial Memorandum.

**Start up costs of the scheme**

The new scheme will bring additional start up costs of up to £3million for voluntary organisations.

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 significant additional 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 for voluntary organisations (overwhelmingly in practice organisations pay for checks rather than pass these on to individuals). This has amounted to a financial commitment from the voluntary sector of £100,000 2005/06 and £150,000 this year. However, with 106,000 paid staff in the sector, at the proposed fee level of £26, the new system will see additional start-up cost of around £3million 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.

**Disclosure Costs**

The proposed legislation is likely to see an initial rise in the cost of a disclosure check, from their current £20 to £26 (an increase of 30%). Due to inaccurate estimates of what the system requires to be ‘self-financing’ disclosure fees have already increased from £13.60 to £20 (an increase of 47%), only a year after commencement of PoCSA. While subsequent, nominal checks are likely to be charged at £10, the upfront costs of an increase in the cost of a disclosure could have a real impact across the sector. We believe the Executive must ensure disclosure fees from paid checks in the voluntary sector are capped at their current £20 level to avoid inhibiting frontline activity, benefiting vulnerable groups.

**Training costs**

We estimate that the voluntary sector will require up to £1million for training over the lead up to, and phasing in of, the new Scheme.

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 and over the phasing-in period to the new Scheme.

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 into the new system for the first time, and with the significant changes to the children system, we believe that the voluntary sector alone will need at
least £1million in training prior to and over the phasing-in period. Faith groups, public and private organisations will need equivalent funding for training.

**Administration costs**

**Organisations**  
We estimate that the administration costs across the sector from checking all paid staff and volunteers will amount to up to £20million.

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. 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 – an increase of over £18million on the sector’s current administrative burden from the PoCSA legislation.

This scale of additional bureaucratic burden, cost of staff and management committee time, paperwork and postage, 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 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.

We are very concerned that the service-led definition of a ‘protected adult’ could lead to unintended additional costs for some organisations. A ‘protected adult’ is defined, in summary, as someone over the age of 16 in receipt of certain services delivered by an organisation registered with the Care Commission, an organisation delivering NHS or other clinic/hospital-based services or finally a community care service provided by a council or body acting on behalf of a council. This definition will mean a protected adult could be a fairly fluid and transient term.

For organisations delivering non-regulated services to adults this definition could have very serious costs. For these organisations it will be an administrative treadmill to keep up with which clients are and which are not protected adults, and therefore which staff members can and cannot be scheme members.

**Individuals**  
The Bill as introduced will also increase the administrative burden on individuals volunteering or in paid employment. For example, 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 individuals, and could also mark a 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 would suggest one solution could be to ask, and compel, scheme members to update their address each time they request a full scheme, short scheme, or statement of barred status rather than 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.

**Uncertainty**  
Despite the Bill’s length we believe that inappropriate levels of detail have been left for secondary legislation. The Bill enables 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 likely costs 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 costs of the new system.
In the absence of reassurances of this kind the following uncertainties exist:

1. Calculations the Financial Memorandum is based on.
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.

For example, the Financial Memorandum states that the workforce covered by the proposed Scheme will be up to 1million individuals across all sectors. We are unsure from where the Executive obtained these figures. SCVO estimate that in the voluntary sector alone, up to 106k paid staff, and up to 850k volunteers, will be included in the Scheme. We’d assume significant numbers of additional staff exist in the faith, public and private sector.

There is some allowance in the Financial Memorandum for new costs for the voluntary sector’s Disclosure agency – the CRBS – but it is unclear how this figure was arrived at, whether it includes all relevant system and capital costs, and therefore whether future costs are likely.

2. Ongoing disclosure costs
If the Scottish Executive has incorrectly estimated the numbers of checks going through the new scheme, the projected fee levels will be inaccurate and could rise substantially from their likely initial £26. Under PoCSA we have seen a 47% increase in disclosure fees, due to inaccurate estimates, after only 12 months of the system being operational.

3. Cost of reduction in volunteering
The Executive assumes rates of volunteering will remain constant following the introduction of this proposed legislation however we believe that the Bill could seriously inhibit voluntary activity. Volunteering contributes £2.52billion to Scotland. Even a small decrease in volunteering could therefore have serious financial implications for Scotland’s economy, disregarding the harm to vulnerable groups in Scotland.

4. Turnover rates
We are unsure what calculations the Executive has made to determine the turnover rates of staff. Staff turnover rates – i.e. the rate at which individuals would, under the current system, be brought into the scheme by virtue of moving posts, will be very important in determining additional costs to the voluntary sector when setting the length of the phasing-in period. Through figures obtained from Disclosure Scotland/CRBS turnover of paid staff in this part of the voluntary sector can be calculated at around 7%, which is understood be less than the Executive’s estimates of the wider affected workforce.

5. Employers will not ask for a full check if a nominal check is all that is required
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 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 to individuals and organisations from Executive estimates.

iii) Wider Issues – Question 7 and 8
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
Wider Policy Initiative

Funding for vulnerable groups’ services
A vetting and barring scheme will form only one part of a fully functioning protection system. With funding for children’s services reported to be in shortfall at the local level by up to £160 million, with the children’s hearing system in shortfall by a reported £20 million, we query whether the financial implications of this Bill have been thought through properly. It is an open question as to the logic of spending many millions of pounds on a vetting and barring scheme when other services that do so much to protect vulnerable groups, and to benefit vulnerable groups, are under-funded.

Volunteering
There is a growing body of evidence that the Disclosure system is proving a barrier to volunteering. The exact value of which to organisations, to the individuals themselves, and to wider society is hard to quantify, yet undisputedly significant. One formula places the value of current rates of volunteering at £2.52 billion. The Executive’s National Volunteering Strategy and policy of promoting volunteering, which is widely supported in the sector and wider public, is jeopardised by this legislation if implementation is not seriously considered and resourced.

Future costs

1. Fee structure
The Bill provides powers for Ministers to charge a fee to join the Scheme, an annual subscription fee for remaining in the scheme, and even a fee to be removed from the scheme, in addition to fees for disclosure requests. Whether Ministers will use these powers and if so at what fee level is a clear outstanding uncertainty.

2. Phasing-in period
If the phasing-in period is too short it could create unmanageable front-loaded costs for voluntary organisations. With administration costs estimated to be up to £20 million over the phasing-in period, we believe the voluntary sector will need longer than the three years indicated in the financial memorandum in order to absorb these costs without threatening a great deal of voluntary activity. Equally, if the phasing-in period creates too big a spike in numbers of disclosure checks (and associated direct and indirect costs), then costs will be repeated at the expiration of scheme membership.

3. Scheme membership expiration
The Executive are proposing that membership of the Scheme would expire after a period of time. The length of this ‘lifetime’ will impact on the costs faced by individuals and organisation in the voluntary sector. The longer the lifetime the lower the costs will be (assuming the new system reduces administration costs in the long term).

4. Tracking ‘current’ organisations
In giving notice of listing an individual, Ministers will need to know which organisations an individual is currently working for. We understand regulations will set out the system by which Ministers will keep track of ‘active’ organisations on a scheme record. If Ministers opt for an administratively burdensome method, such as an annual return for organisations, then this could bring further additional administrative costs to voluntary organisations. We would recommend consideration be given to strategic data-sharing between the sector itself and associated regulators.

5. Costs from the ‘duty to refer’
Regulations will determine what information an employer will need to hold in order to satisfy the duty to refer relevant staff behaviour to the Scheme. This duty could bring large administrative costs for voluntary organisations, particularly the smallest.

6. Sharing Child Protection Information
The Bill assigns duties and powers to employers in order that they share ‘child protection information’. A code of practice will be outlined in secondary legislation. Until regulations are set outlining the code, what ‘child protection information’ is, and what duties are placed on employers and employees, it will be impossible to quantify the costs of this part of the Bill. However it is clear that this part of the Bill will bring additional costs to a number of voluntary organisations.
Further to your request for evidence, I am happy to enclose COSLA’s written evidence on the Financial Memorandum for the Protecting Vulnerable Groups Bill.

As you will see, the main thrust of our evidence is that it is impossible to assess the financial impact of the bill at this stage as there are too many elements which remain to be determined. Given that the oral evidence session is intended to allow the Committee to further explore the costs and other financial matters associated with the Bill, there seems little benefit in attending when we have nothing to add to our written submission. I therefore confirm that we will not be attending Committee on Tuesday, 7 November.

We would, of course, be very happy to provide the Committee with information which might be relevant when there is greater clarity around those aspects of the bill which are likely to have financial implications.

I will be happy to hear from you at any time in the future to discuss this matter.

Yours sincerely

Anna Fowlie
Team Leader – Children & Young People

Background

The Convention of Scottish Local Authorities (COSLA) is the umbrella body representing 31 of Scotland’s 32 councils. We welcome the opportunity to give evidence to the Finance Committee on the Protection of Vulnerable Groups (Scotland) Bill from a strategic perspective in relation to local government’s role as the key delivery agent of services to children and vulnerable adults, and as the Employer’s Organisation for local government. Individual local authorities will, of course, have their own distinct views. We would, however, question the timing of consideration of the financial memorandum as there are many aspects of this Bill and its implementation which are still very much in development and therefore it is difficult to determine what costs will result.

Detail

Much of the financial memorandum relates to the establishment of the new Vetting and Barring Unit. We will not comment on those costs as that is a matter for the Scottish Executive. Our comments therefore relate to those aspects which directly impact on local authorities, or points of general principle.

Summary of Costs

- In relation to the third bullet point, it is too early to make an assumption that costs will decrease and certainly too early to give a specific figure.
- Our views on the fifth bullet point will be covered later in relation to the fuller paragraph within the memorandum – it is naïve to say categorically at this stage that there will be no additional ongoing costs.

Basics of the Vetting and Barring Scheme

201 (b) we agree that there should be two fee levels
(c) we agree with a flat fee regardless of which part of the workforce is being checked
(d) while we acknowledge that the operating costs should be covered, we do not believe that it is possible to assess what those will be at this stage.
(e) we agree that the Scottish Executive should continue to meet the costs of volunteers working in the voluntary sector. However we believe that this should also apply to volunteers working in the statutory sector particularly in the instances where a statutory agency vets volunteers to benefit its community rather than direct services – for example a local authority handling vetting on behalf of Parent Teacher Associations or School Boards. We believe that all checks for volunteers ought to be free regardless of where they work. This would represent a relatively small number but would
be significant to councils and would send a more consistent message regarding the Scottish Executive’s support for volunteering.

207 The term “personal employers” will include carers employed under Direct Payments. This is an area of activity which will only increase but the level of increase is impossible to assess at present. We do not believe that this has been taken into account. In addition, we understand that there are a variety of views on who should be responsible for meeting the costs of vetting relating to Direct Payments and if it is to be local authorities then that must be addressed within the financial memorandum.

219 We would opt for the first element of Model 2 as that gives the minimum disruption/fluctuation in costs.

223 This paragraph should stop at the first sentence – it is dangerous, and unnecessary, to try to project volume ten years hence. After all, who would have predicted 10 years ago that the current activity would be at the level it is? We should avoid creating hostages to fortune, but should build in a review after, for example, five years.

Costs on Local Authorities

224 This paragraph is naïve. Local authorities do pay for Disclosures and there is an expectation amongst the public and indeed within the Executive (see paras 229 and 231 below) that this will continue to be the case. It may well be that in the longer term costs will equalise or indeed decrease, but that will not be the case in the short-term. Local authorities are responsible for three quarters of the disclosures processed by Disclosure Scotland. In the most recent 6 months around 46,000 have been processed. This represents a cost of £920,000 at current fee levels, includes very little retrospective checking of existing staff. Given the higher fee level for initial checks and the projected increase in volume in the first 3 years of the scheme, which is likely to coincide with the next Local Government Settlement, councils would require transitional funding to ensure that the entire childcare and social care workforce is brought into the scheme.

225 As mentioned briefly above, the work has hardly commenced to determine what exactly will be involved for local authorities or indeed other bodies who will have a new duty to provide information to the Vetting and Barring Unit. On that basis, it is impossible to quantify any associated costs and it is naïve of the Scottish Executive to assume that it will not result in significant additional costs.

Costs on Employers

226 This paragraph merely duplicates paragraph 224 but covering the wider range of employers rather than only local authorities. The same comments as above (224 and 225) therefore apply.

Costs on professional regulatory bodies

227 Regulatory bodies will also incur costs from fee increases as they carry out checks on all new registrants. That does not appear to have been taken into account. As the duty to provide information to the Vetting and Barring Unit is new for these bodies too, the comments on para 225 (above) will also apply.

229 The purpose of this paragraph is unclear – employers in the adult sector will have no different an experience than employers in the children’s sector and there are just as many regulatory bodies covering the children’s workforce. In cross-reference to the comments made at 224 above, this paragraph actually states that employers carrying out checks is a “matter of good recruitment practice.”

Costs on Individuals

231 This paragraph states that there is an expectation that employers will continue to meet the costs of checks, therefore there will be no additional costs to individuals. The Scottish Executive cannot have it all ways; the Financial Memorandum creates an illogical circle of responsibility for the costs – the employer won’t incur additional costs because the individual is required to pay, but the individual won’t incur additional costs because the employers generally pay. The facts are that there will be additional costs, at least in the short-term, and someone will have to meet them. If
current practice continues then that someone will be the employer and in 75% of cases that is a local authority.

Sharing Child Protection Information

234 – 239 This part of the bill is so new and the potential impact of its implementation so unclear that it is impossible to assess what costs will be involved. It is correct that there will be training costs and the figures given seem a little light, considering the extent of the workforce covered. The financial memorandum is right to state that information sharing should be part of all professionals' work in any event, but at this early stage it is not possible to assess whether the specifics of the legal duty will have an impact on resources. For example, it is likely that parallel policy developments such as Getting It Right For Every Child which facilitate information sharing for child protection reasons will require significant investment in IT. We would expect these developments to dovetail.

Costs on the voluntary sector

243 We would expect there to be an opportunity to revisit this paragraph if anything should change in relation to the expectations on the voluntary sector.

Conclusion

It is too early in the process to be able to cost the impact of this Bill, however, there will be transitional costs for all employers, most significantly for local authorities. The duty to provide information to the Vetting and Barring Unit in particular is impossible to cost as we have no clear idea about what it will involve. Any additional costs to local authorities should, in accordance with COSLA policy, be funded in full by the Scottish Executive.

SUBMISSION FROM THE CARE COMMISSION

Dear Ms Duffy

I refer to your letter of 18 October in relation to the above and would respond as set out below on behalf of the Care Commission.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Care Commission was invited to take part in the consultation exercise for the Bill. A formal response was submitted as requested on 27 March 2006.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Care Commission commented in relation to ensuring that costs of vetting and barring disclosures are kept at reasonable levels. In particular we were keen to ensure that disclosures for volunteers should be free. We are pleased to note that the current proposals are in tune with the Care Commission’s view. We also welcome the passportability of checks as a means of reducing cost whilst maintaining protection for vulnerable people. We also agree with the proposed phasing.

3. Did you have sufficient time to contribute to the consultation exercise?

We were satisfied that there was sufficient time to respond to the original consultation.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
The Bill has no specific financial implications for the Care Commission in regard to vetting and disclosure. Paragraphs 224-249 contain proposals in relation to School Care Accommodation Services which if agreed, would potentially have financial impact on the Care Commission.

It is proposed that some school guardians, currently classified as Childminders and charged heavily subsidised fees would be included with the School Care Accommodation service definition, which bear full cost recovery level fees. The Care Commission fully supports this recommendation.

It has been pointed out, however, that some guardians, due to the nature of their service, will still be classified and registered as Childminders. We are currently carrying out a scoping exercise to estimate numbers which fall into this category. For these guardians it will still be necessary to separately regulate them, charge Childminder fees, and received the appropriate early years subsidy via the Sponsor Department.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, as long as the issues outlined in 4 above are satisfactorily funded by our Sponsor.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

It is obvious that significant work has gone into compiling the various cost estimates provided. The Care Commission is not able to comment on the detail of the figures provided, however, in general terms they would seem to provide a reasonable overall cost projection. We would point out that there seems to be an arithmetical error in table 2, the totals in the column ‘Cost YR 1-3’ would appear to be incorrect.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

We have no reason to believe otherwise.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We are not able to comment.

Yours sincerely
Mr Thomas Waters
Director of Finance and Administration

Mr Ronnie Hill
Director of Children’s Services Regulation

SUPPLEMENTARY SUBMISSION FROM SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS

Following our evidence session to the Finance Committee on the Protection of Vulnerable Groups (Scotland) Bill, SCVO would like to submit further information on the calculation used for our estimates of £20million administration costs. We have also provided further information on disclosure checks as a barrier to volunteering together with an idea of the potential costs to Scotland through lost volunteering.
Admin costs calculations

SCVO estimates that from application to receipt of disclosure check the administration costs faced by voluntary organisations are £21.50 per check. This includes time spent by the employee, by administration staff, and by management staff in filling out the application, ID checking, countersigning applications etc as well as postage, stationery, phone and office overheads.

At £21.50 per disclosure check, this amounts to over £20million (£20,554,000) for the up to 956,000 paid and unpaid staff in the voluntary sector within the scope of the proposed legislation.

Our estimate does not include travel costs/time. However it should be noted that some organisations are spread over a large geographical area. For these organisations this will be a significant further cost over and above our estimates here.

These estimates correspond with a number of our members’ own estimates including the example quoted in verbal evidence of WRVS £250,000 for 12,000 volunteers (around £20.80 a check).

Volunteering statistics

We have received a great deal of anecdotal evidence that disclosure is a major barrier to volunteering, particularly volunteering to work on management committees. This is confirmed by research conducted by Youth Scotland and VDS.

• Disclosures, red tape and compliance consistently cited as barriers to youth volunteering in recent Youth Scotland research
• Those unwilling to work with vulnerable groups increased from 6% in 2004 to 9% in 2005 (VDS)

Youth Scotland

As part of the National Youth Work Strategy consultation: “Youth work – Opportunities for All” the Scottish Executive invited Youth Scotland to consult volunteers in the youth work sector and to gather their views.

Disclosures were consistently cited by respondees as a barrier to volunteering and as an area where support is required. Paper-work, red tape and compliance issues were separate but related issues also highlighted as barriers throughout the research document.

One respondent stated:
“Paperwork takes up too much time. Legislation is difficult to navigate. Difficult to get volunteers as it is. Disclosure and fear of litigation is enough to deter people who need some persuading in the first place”.

VDS

The Annual Digest of Statistics on Volunteering in Scotland 2006 brought together by VDS is the most recent research into volunteering. The Digest shows that the number of adults unwilling to undertake a disclosure check to volunteer with children, young people or vulnerable adults has increased from 6% in 2004 to 9% in 2005. Based on 2001 Census figures this represents a further 122699 potential volunteers now stating that they are unwilling to work with these client groups, and a total of 368095.

Financial worth of lost volunteering

A financial equivalent to the additional 122699 people now unwilling to volunteer with vulnerable groups is very difficult to accurately and realistically calculate.

VDS estimate the notional worth of volunteering to be £2.52 billion which would equate the financial ‘value’ of these 122699 people as volunteers to just under £200 million (£198,947,839) for all sectors and just over £150 million (£151,200,047) for those volunteering in the voluntary sector. If
38% (current rate of volunteering) of these people volunteered it would equate to a financial ‘value’ of volunteering in Scotland of around £75 million (£75,600,178) and just over £57 million (£57,456,017) for volunteering in the voluntary sector.

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<tr>
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<th>Volunteering across all sectors</th>
<th>Volunteering in voluntary sector</th>
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<tr>
<td>Cost of lost volunteers – 100% volunteer</td>
<td>£200 million</td>
<td>£150 million</td>
</tr>
<tr>
<td>Cost of lost volunteers – 38% volunteer</td>
<td>£75 million</td>
<td>£57 million</td>
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It is impossible to say how many of the 122699 people would actually volunteer but for the barrier of the disclosure system, however these calculations show the potential scale of the damage being caused by the current system and the further damage that could be caused by the proposed Scheme.

I trust you will find this further information useful.

For further enquiries:

Russell Gunson
Policy & Communications Officer
SCVO

SUPPLEMENTARY SUBMISSION FROM SCOTTISH EXECUTIVE

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL: FOLLOW-UP POINTS FROM FINANCE COMMITTEE EVIDENCE SESSION ON 7 NOVEMBER 2006

Thank you for your e-mail of 8 November seeking clarification of a number of points following the oral evidence session on 7 November 2006.

I attach a response to the points you raised in your e-mail. I hope this is helpful to the Committee. Please do not hesitate to be in touch if there is any further clarification which we can provide to you or if the Committee requires any further briefing.

Yours sincerely,

Andrew Mott
Bill manager, Protection of Vulnerable Groups (Scotland) Bill

Annex A

Protection Of Vulnerable Groups (Scotland) Bill: Additional Information On Costs

Clarification of the costs for training the workforce

1. In recognising the concerns surrounding the burden that the Protection of Children (Scotland) Act 2003 would place on certain voluntary organisations, the Executive awarded a grant of £360,000 to a voluntary sector consortium for the development of a support package to assist the sector in implementing the legislation. This grant was to be used to support the achievement of a number of objectives:

   • development of a training and guidance pack;
   • support mechanisms for the raising of awareness in relation to the legislation and its implications; and
   • the delivery of a number of training seminars.
2. It is clear that training was merely one component of the intended support package. When considering the new scheme, the Executive recognised the need for similar support mechanisms to those identified above and reflected this in the Financial Memorandum. On the basis of a like-for-like comparison, we would suggest that the equivalent figure for this Bill would be £800,000, being the sum of the first two rows of the table at paragraph 215 of the Financial Memorandum.

3. Broadly speaking, both children's and adults' workforces are already familiar with the enhanced disclosure regime and the children's workforce is familiar with the requirements of the Protection of Children (Scotland) Act 2003. The new scheme builds on these structures whilst reducing some of the bureaucracy with the result that it should be easier for users. Therefore, it is not anticipated that scheme members would require formal training and the resources have been allocated on a pro rata basis on the assumption that only managers and practitioners would be required to understand all the scheme details.

4. It was acknowledged in the Committee session that awareness-raising for non-practitioners had not been separately identified in the Financial Memorandum. Parents and non-practitioner members of the scheme would benefit from the development of the training and guidance pack principally through awareness raising mechanisms rather than formal training.

When consulting on the options for the Central Barring Unit, were the costs of each option provided so that consultees could consider value for money as well as the principle of each option?

5. The consultation specifically sought views around appropriate governance arrangements for the Central Barring Unit. In particular, it sought to explore the extent to which those arrangements should separate Ministers from the decision making process around individuals. No information was provided on the costs of each option but value for money for the scheme as a whole was explored through seeking consultees' views on an acceptable level of fee. Consultees welcomed the proposals for streamlined vetting and barring but only if the additional cost was modest: the Bill should not increase the overall cost to all users at all.

6. The paper highlighted three possible options for the Central Barring Unit – an executive agency; a core civil service; or a Non Departmental Public Body. It also identified a possible single organisation encompassing Disclosure Scotland and the Central Barring Unit. George Street Research's Analysis of the Consultation identifies a single organisation as the most popular choice (page 46). This model has the benefit of ensuring that Ministers are distanced from decision making, while the organisation is held directly accountable for the delivery of services to a specified standard. It meets the three tests set out in the consultation: it ensures effective flow of information with an end to end process managed by a single organisation; it has a clear and appropriate line accountability; and it is transparently more cost effective than having two separate organisations and associated overheads. This was the option ultimately favoured by Ministers and reflected in the Financial Memorandum.

7. The likely costs of the three options were not set out in the consultation paper. Indeed, it would have been difficult to do so meaningfully. The costs for an executive agency and for core civil service would be essentially the same since staff would be on the same terms and conditions and make use of the same core SE functions. The costs for an NDPB would be very difficult to quantify as they would be dependent on terms and conditions of employment, which would need to be established by the NDPB itself.

If the decision-making structure is likely to be similar to that which is in place now, why has it been determined that the Central Barring Unit will require 30 staff?

8. The financial memorandum identified that the costs of operating the current DWCL are £240,000 per annum to process around 75-80 organisational referrals per annum (paragraph 209). Under current arrangements, it is the organisational referrals which require the effort: court referrals are automatically included on the list. We estimate that the total manpower dedicated to this task is around 4.5 members of staff (including IT support and admin
services). We estimated some 2200 to 2500 cases will be referred each year to the Central Barring Unit (paragraph 210), the increase being due to the creation of the adults’ list and the continuous vetting of the workforce. Allowing for some modest economies of scale in scaling up operations, 30 staff was the best estimate for the number of staff required.

What is the breakdown of the £1.5 million required for total running costs?

9. The £1.5 million (paragraph 212 of the Financial Memorandum) is the anticipated additional running costs for the barring functions to be added onto the existing functions of Disclosure Scotland. The £240,000 per annum costs of the current DWCL cover approximately 4.5 members of staff (including IT support and admin services). Scaling this up to around 30 staff takes the cost up to around £1.5 million.

10. The figure is equivalent to a cost of £50,000 per head per annum for each of the 30 posts. The £50,000 figure is consistent with experience of previous organisations and includes all overheads such as accommodation, equipment, stationery etc as well as salary and employment costs. Recognising that there will be a range of grades covered, from the chief executive to junior administrative grades, we are satisfied that it represents a reasonable working estimate.

11. The total running costs for the Central Barring Unit, were it being established as a separate entity, would be likely to be significantly higher.

The start-up costs are estimated to be £3.35 million including £400,000 for recruitment and relocation and £600,000 for premises. Where will the agency will be located and how have these figures being arrived at?

12. As a new agency, location will need to be reviewed as part of the Executive’s relocation policy. Any such review will need to take account of:
   • business continuity and the need not to disrupt unduly Disclosure Scotland’s ongoing business;
   • the terms of the Public Private Partnership with BT plc;
   • the overcrowding of current accommodation for Disclosure Scotland;
   • the need for additional staff during the transition onto the new scheme and a reduced requirement thereafter; and
   • the establishment of the Scottish Police Services Authority (into which the rest of the Scottish Criminal Record Office will go) and their own review of their accommodation requirements.

13. The figure of £400,000 for recruitment and relocation was intended to cover the costs associated with recruitment of new staff, relocation of civil servants moving to the agency and the cost of employing staff in the months prior to the scheme going live, in order to provide training for their new roles. The estimate was based on the 30 staff required for the Central Barring Unit, not currently part of Disclosure Scotland, some of whom would need to be recruited externally with the remainder being recruited from the civil service.

14. The figure of £600,000 is based on estimates of £400,000 +VAT to fit out any new accommodation and £125,000 to furnish it. These are based on the total staff of the new agency to furnish and equip any new premises that the agency ultimately occupy. In the short term, it is proposed to use the existing Disclosure Scotland office space as well as temporary additional accommodation. This would allow space to undertake the increased activity required for the first three years of operation.

Staff currently working for Disclosure Scotland will be transferred into the main civil service. What will this cost (assuming employees will be transferred onto civil service terms and conditions) and has this been factored into the overall costs of setting up the new agency?

15. The cost of staff transfer onto civil service terms and conditions have not been included in the Financial Memorandum because a transfer of some sort would have happened regardless of the advent of this Bill. Disclosure Scotland staff are part of the Scottish
Criminal Record Office and, as such, would have been due to transfer to the Scottish Police Services Authority in April 2007.

16. There will be one-off costs associated with pension transfers. This includes Government Actuary costs to effect the transfer, estimated to be in the region of £50,000 to £100,000. There is also the cost of making up any pension shortfall at the point of transfer, which depends on the financial health of the Strathclyde Pension Scheme on the day of transfer. The Executive will be required to make good any shortfall. Preliminary estimates suggest that this will not be significant, as the Strathclyde scheme is very buoyant and Disclosure Scotland staff have relatively few years of contributions to the scheme.

**Numbers of individuals in the scheme**

17. There was some confusion at the Committee hearing as to the number of individuals who would require to be scheme members. The Financial Memorandum is predicated upon the following numbers and assumptions:

- 800,000 individuals undertake voluntary work in sectors affected by the scheme
  - This does not necessarily mean they need to be scheme members;
- 580,000 individuals undertake paid (i.e. not voluntary) work which will be regulated work and, therefore, they will be required to be scheme members;
- there is significant overlap between these two categories of people, we assumed 60% of the 580,000 individuals (= 350,000) undertaking paid work would also volunteer;
- therefore, 450,000 volunteers would not be scheme members through any paid work they may do; and
- the financial memorandum further assumes that only 50% of these 450,000 volunteers (= 225,000) actually need to be scheme members (for example, a volunteer fundraiser for Barnados is in the sector but not doing regulated work).

<table>
<thead>
<tr>
<th>Involvement with scheme</th>
<th>Number of individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals paid to do regulated work who don’t volunteer</td>
<td>230,000</td>
</tr>
<tr>
<td>Individuals paid to do regulated work who also volunteer</td>
<td>350,000</td>
</tr>
<tr>
<td>Volunteers who don’t do paid regulated work who need to be scheme members on basis of 50% assumption</td>
<td>225,000</td>
</tr>
<tr>
<td>Total</td>
<td>805,000</td>
</tr>
</tbody>
</table>

Table showing summary of workforce coverage.

18. The figure of up to one million individuals (paragraph 200) is attained if 100% of volunteers in the sector need to be covered (the total in the table above rises to 1,030,000 individuals).

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24 According to the Scottish Household Survey, there are 1 million volunteers in Scotland. From the Scottish Council of Voluntary Organisations, we know that 80% of all volunteers volunteer in sectors which would be covered by the Bill. Combining these two sources suggests 800,000 volunteers will be working in sectors affected by this scheme.

25 Assembled from official Government employment statistics in relevant sectors.

26 The Scottish Household Survey indicates that around 30% of adults in any employment also volunteer. We have assumed a much greater propensity to volunteer amongst individuals undertaking paid regulated work. We have assumed that 60% of this workforce will volunteer.

27 This 50% assumption was explained by officials at Col 4126 of the official report. For the sake of clarity, the argument is repeated here. Data from Volunteer Development Scotland, while not directly supporting this assumption of 50% of volunteers requiring checking, provides crude upper and lower bounds for the proportion of 75% and 32% respectively. The bounds come from the (overlapping) breakdown of volunteering in Scotland by activity. Some 68% of volunteers spend at least part of their time raising money, which implies that the 32% who do not are likely to require to be checked as their volunteering is likely to involve contact with vulnerable groups. Adding up the 31%, 19% and 24% (= 74%) who are listed specifically as taking part in volunteering activities of one sort or another that involve contact with vulnerable groups gives the upper bound figure. Taking the mid-point of this range gives 53%, which is comfortably close enough to the assumed value to give a degree of confidence to the assertion.
The Financial Memorandum illustrates the effect of this on costs and fees in the final two rows of table 3.

19. The modelling to calculate the number of full and nominal checks required by sector is complicated but the table above shows that we believe the number of volunteers needing to join the scheme only because of their volunteering activity is very much less than the 800,000 total volunteers in the sector. When natural volunteer turnover is factored into an extended transition period, the number of "retrospective checks " required rapidly diminishes.

Other points

47% rise in disclosure fees
20. On more than one occasion, it was suggested in the Committee session, and recorded in the official report, that the recent 47% increase in disclosure fees was a consequence of the Protection of Children (Scotland) Act 2003. For the record, the fee increase in April 2006 was a reflection of fewer than expected disclosure applications in the first four years of operation of the system, therefore yielding a much lower revenue than anticipated. We now have a much better understanding of the volume of requests for disclosure checks which has informed the development of this Financial Memorandum. The fee increase was not connected to the commencement of the 2003 Act on 10 January 2005.

£100m additional costs
21. In Column 4138 of the official report, Wendy Alexander MSP asks whether there was a cheaper way of obtaining the same policy effect rather than spend £100 million over ten years. Paragraph 193 of the financial memorandum is clear that the current disclosure system costs £100m over ten years and this scheme is estimated to be less expensive through increased efficiency. It is therefore important to note that there is no £100 million additional expenditure but rather a slight reduction on planned expenditure of £100 million over 10 years. The overall effect of the scheme should be to reduce the total amount of disclosure fee revenue collected.

Protection of Vulnerable Groups (Scotland) Bill Team
16 November 2006
Subordinate Legislation Committee

Report on Protection of Vulnerable Groups (Scotland) Bill at stage 1

1. The Committee reports to the lead Committee as follows—

Introduction

2. At its meetings on 24 October and 7 November, the Subordinate Legislation Committee considered the delegated powers provisions in the Protection of Vulnerable Groups (Scotland) Bill at stage 1. The Committee submits this report to the Education Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

3. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill.

4. The Committee’s correspondence with the Executive is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

5. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections: 30, 37, 39, 47, 61, 65, 67, 69, 82, 84, 85, 86, 88, 92 and 100.

Delegated Powers Memorandum

6. The Committee notes that, in its response to the Committee on points raised, the Executive has accepted that there are a number of inaccuracies in the Delegated Powers Memorandum (DPM). A comprehensive DPM is vital to allow the Committee to aid consideration and scrutiny of a Bill. Consequently, where a DPM is inaccurate, incomplete or fails adequately to explain the delegated powers in a Bill, this adds greatly to the work of the Committee and the Executive itself.

7. Matters covering sections 17, 19 and 80 in the DPM contained inaccuracies which necessitated the Committee seeking clarification. Relevant correspondence is reproduced in the Annexes to this report. Any points on these sections, over and above those concerning the DPM, are detailed below.

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1 Delegated Powers Memorandum
Prescribed information and prescribed type

Sections 3, 4, 5, 6, 7, 8(1), 10(1)(a), 11(1) and 54

8. The Committee questioned the drafting of these sections, in particular the references to "prescribed information". The Committee was unclear whether the reference was a descriptive noun or a distinct power to make regulations. The Executive was therefore asked to clarify the drafting of the relevant provisions.

9. The Executive referred to the definition of "prescribed" in section 96(1) and confirms that the references to "prescribed information" in these sections are, therefore, distinct regulation-making powers. The Executive stated that using "prescribed" in this way is a standard plain language drafting technique which is adopted regularly throughout the statute book. Consequently, it does not consider that any amendment is necessary to these provisions.

10. The Committee considered that it was not always clear that the term is in every case a distinct regulation-making power and not a reference to information prescribed, but on balance the Committee simply notes the Executive’s response in relation to these references.

11. Separately, in relation to section 8, the use of the term "prescribed information" was not referred to in the DPM as a delegated power. In its response the Executive confirmed that it intended to confer a separate power and that this was omitted in error from the DPM.

12. Any further points on these sections, other than those on prescribed information, are detailed below.

Other specific powers in the Bill

Section 6 – Reference relating to matters occurring before provisions come into force

13. The Committee had some difficulty in understanding the purpose of this provision and why it should be necessary for Ministers to prescribe the information that organisations may provide, unless there were some legal prohibition on an organisation disclosing that information.

14. The Executive explained that this section makes it explicit that employers and employment organisations have a specific statutory power to make referrals in respect of matters which took place prior to the Bill being commenced. The Executive consider that this provision is necessary to enable organisations to make referrals about historic incidents, but it would be impossible to enforce any duty on them to do so. The purpose of prescribing information which the organisation may provide is to clarify what constitutes a competent referral.

15. The Committee accepts and notes the Executive’s response and draws it to the attention of the lead committee.
Section 8 – Reference by certain other persons

16. The Committee asked the Executive if the power in subsection (2) is sufficient for the stated purpose and to clarify the drafting of this provision.

17. The Executive agreed that the power is not broad enough to remove or make alterations to references to bodies listed. It can only be used to add new bodies. However, the Executive considers that such a power is not necessary because any name changes can be made only by primary legislation, which could consequently amend this Bill and all other relevant enactments.

18. The Committee notes the Executive’s response and draws it to the attention of the lead committee.

Section 14 - Automatic Listing

19. The Committee was concerned that this section allowed Ministers a considerable degree of discretion when specifying criteria for automatic inclusion on either the adult or children’s lists. It asked the Executive for further information on how it intends to exercise this power.

20. The Executive explained that it would intend to use this power to, for example, respond to amendments or innovations in criminal offences, including offences outwith the law of Scotland; or specify criteria, such as being subject to the requirement to register as a sex offender, which would lead to automatic inclusion on one or both lists. The Executive acknowledged that this power does give significant discretion to Ministers and explained that this is why affirmative procedure is provided for.

21. The Committee is content with the Executive’s explanation.

22. The Committee also asked the Executive for clarification of the term “specified description” in subsection (4).

23. The Executive considered that this does no more than give an example of criteria which may be specified by order under subsection (3) and it cannot therefore be referring to anything else.

24. Although the Committee does not consider the drafting of subsection (4) to be entirely clear, it does reflect similar drafting in the UK and the Committee notes the Executive’s response and draws this to the attention of the lead committee.

Section 17 – Information relevant to listing decisions

25. The Committee asked the Executive if the power in subsection (5)(f) is sufficient for the stated purpose and to clarify the drafting of this provision.

26. The Executive agreed that the power is not broad enough to remove or make alterations to references to bodies listed. It can only be used to add new bodies.
However, the Executive took the view that no power is needed because any name changes can be made only by primary legislation.

27. The Committee is not entirely clear that a finding in fact would be strictly construed and would not be extended to cover more informal “findings” than those outlined in the Bill and DPM. Despite these concerns, the Committee is content with the power and agrees that negative procedure is appropriate.

Section 25 – Application for removal from list

28. This section gives the listed individual the power to apply to the sheriff for a review of their listing but an application is only competent if the individual has not made an application within a prescribed time period. Subsection 3(a) allows Ministers to identify the period for which an individual must have been listed prior to them applying for removal from the list.

29. The Committee asked the Executive to explain its rationale for proposing that the power here should be subject to negative procedure, rather than affirmative procedure.

30. The Executive considered the power to be appropriate as it relates to the setting of minimum time periods for an application for removal from the list to be competent. The power is limited to that specification of minimum periods, and follows on from the principle of enabling individuals to apply for removal from the list. Furthermore, the more likely grounds for an application for removal are a change of circumstances under subsection (3)(b), to which no time constraints apply.

31. The Committee is content with the Executive’s response and with the power as drafted.

Section 29 – Notice of listing etc.

32. The Committee noted that subsections (4) and (5) authorise Ministers to publish guidance. It further notes that there is no statutory obligation on an organisation to follow or have regard to the guidance. As the guidance will not be made as an SSI, it will not be published.

33. The Executive stated that the guidance will be issued to the relevant organisations and that it will be publicly available. It is therefore satisfied that the guidance will be available to those who need it, or may be interested in it, despite the fact that it will not be published as an S.S.I.

34. The Committee is content with the Executive’s response and draws this to the attention of the lead committee.

Section 31 – Offences against children and protected adults

35. This section defines "relevant offence", "offence against a child" and "offence against a protected adult"; and provides Scottish Ministers with an order-making power to amend these definitions.
36. The Committee were concerned about the width of this power and asked the Executive to clarify its intentions on how this power will be used.

37. The Executive accepted that this is a broad power but considers that it is necessary to “future proof” the Bill in case offences in other legislation or in the common law change, or if new offences are introduced or if existing offences are removed. The Executive stated that to reflect the broad power affirmative procedure is provided for.

38. The Committee draws the attention of the lead Committee to this power on the grounds that clarification was requested from and provided by the Executive.

Section 32 – Duty to notify certain changes

39. The Committee considered that the DPM does not give any indication of how the power here might be used.

40. The Executive points to paragraph 50 of the DPM which refers to the flexibility to respond to future developments in methods of confirming identity or location as the reason for taking this power. The Executive suggested that a hypothetical example might be making connections with any UK-wide ID card scheme, for example the re-issuing of an ID card with a different number following theft or fraud.

41. The Committee draws the attention of the lead Committee to this power on the grounds that clarification was requested from and provided by the Executive.

Section 46 – Vetting information

42. The Committee asked the Executive to explain what is meant by the term “prescribed details” in subsection (1)(a).

43. The Executive drew the Committee’s attention to the definition of "prescribed" in section 96(1) which excludes section 46(1)(a) from that definition. “Prescribed details” in subsection (1)(a) refers to the usage of that term in section 113A(3)(a) of the Police Act 1997. Consequently, there is no distinct power to make regulations under subsection (1)(a).

44. The Committee considers that the meaning of the term is still unclear, particularly as to whether the words modify “central records” or “prescribed details”. However, it notes the Executive’s response and draws this to the attention of the lead committee.

45. The Committee also noted that failure to comply with an obligation imposed by regulations under subsection (2) does not appear to carry any sanction and asked the Executive if this was its intention.
46. The Executive explained that the prescribed information will be limited to that held by public bodies that are subject to remedies under administrative law.

47. The Committee notes the Executive's response and draws this to the attention of the lead committee.

Section 60 – Power to use fingerprints to check applicant's identity

48. The Committee asked the Executive why, if, as stated in the DPM, it is the intention that fingerprints should be taken at a police station, it is necessary for this to be prescribed by subordinate legislation rather than simply set out in the Bill.

49. The Executive indicated that although its intention is for fingerprints to be taken at a police station, it is considered more appropriate to specify detailed arrangements, such as exact locations, in secondary, rather than primary, legislation. The Executive believes that future technological developments will also mean that attendance at places other than a police station may be possible, and the power ensures that future arrangements could be detailed without the need for further primary legislation.

50. The Committee notes the further information requested from and provided by the Executive and is content with the power as drafted.

Section 76 – Code of practice about child protection information

51. The Committee noted that this section obliges Ministers to publish a code of practice on which they must consult before publication. It was concerned that such a publication does not need to be laid before Parliament.

52. The Executive concurred that the Code of Practice is of sufficient importance to lay before Parliament and a Stage 2 amendment to that effect will be laid.

53. The Committee welcomes the fact that the code is to be laid before Parliament and draws the attention of the lead committee to the proposed amendment.

Section 81 – Enforcement

54. The Committee noted that section 97 contains the customary provision allowing Ministers by order to make supplemental etc provisions. The Executive is asked what additional purpose is served by section 81(1)(b).

55. The Executive agreed that sections 81(1)(b) and 97(1)(a) confer duplicate powers and will bring forward Stage 2 amendments to remove the duplication.

56. The Committee welcomes this intention and draws the attention of the lead committee to the proposed amendments.

57. The Committee asked the Executive for further information in relation to a provision to ensure that relevant persons comply with their duties under part 3.
58. The Executive stated that most of the relevant persons are subject at present to regulation and the power is intended to allow Ministers to add to the regulatory regimes if necessary, in order to ensure that relevant regulators can take action in the event of breach of any of the new duties.

59. The Committee notes and is content with the information provided by the Executive and accepts the power as drafted.

60. The Committee asked the Executive to clarify whether the reference in subsection (2) to “any enactment” covered the Bill itself.

61. The Executive confirmed that the word "enactment" includes the Bill itself when read in the context of these provisions, including section 99(4). It goes on to explain that in its view the best way to exercise powers of this type may often be to insert text into the relevant Bill provision. Doing so can help make the law clearer for persons operating the resultant legislation. Allowing a power to be used to amend other enactments, including the Bill itself, does not affect the breadth of the power.

62. The Committee is content with the Executive’s response.

Section 87 – Transfer of Disclosure Scotland staff etc.

63. The Committee noted that there is no provision requiring prior consultation with staff before making an order under this power and asked the Executive to clarify why there is no such provision.

64. The Executive explained that as this is a relatively small transfer of staff working in a discrete area for one employer and there is already consultation with the staff. Adding a statutory duty to consult would add yet another consultation which is felt unnecessary.

65. The Committee is content with the Executive’s response and draws the attention of the lead committee to the clarification provided by the Executive.

66. The Committee raised a further point in relation to subsection (2) which confers power to make an order specifying particular persons. It felt it was inappropriate to include names of individuals in Scottish statutory instruments as they are published on the web. The Committee considered that individuals should be specified by some form of definition or classification rather than by name and draws this to the attention of the lead committee.

Section 94 – Meaning of protected adult

67. This section defines “protected adult” and confers power on Ministers to amend the definition as they see fit. The Committee noted that the power goes beyond simply updating the lists in the Bill and asked the Executive to clarify how it is envisaged that the power will be used.
68. The Executive commented that the intention behind this power is to retain as much flexibility as possible, as health and community care services, and how they are provided, are constantly changing. It did not consider the power to modify subsection (1) is a blanket power allowing Ministers to make whatever provision they wish. The section requires “protected adults” to be defined by reference to the provision of a service, and so the power does not allow Ministers to depart radically from the definition already contained in section 94, even if Ministers intended to use it that way.

69. However, the Committee considered that if the power is intended to be restricted as the Executive suggested in its response, then the drafting of subsection (2) should be adjusted to reflect this policy intention.

70. **The Committee draws the attention of the lead committee to this section on the grounds that the drafting of subsection (2) should be amended at stage 2.**

**Section 96 – General interpretation**

71. The Committee asked the Executive why the term “care service provider” is left entirely to delegated legislation, and why there is no indication in the Bill of the type of provider envisaged, or a list of providers with a power to amend by order.

72. The Executive indicated that “care service provider” refers to a person providing a care service as defined in the Regulation of Care (Scotland) Act 2001 Act. The power is intended to allow Ministers to narrow down the organisations defined in the 2001 Act to those most relevant to the protection of children. For this purpose the Executive considered that a negative procedure is most appropriate as it would be reducing, not increasing, the list of relevant organisations.

73. **In the light of the explanation supplied by the Executive, the Committee is content with the power and agrees that negative procedure is appropriate.**

**Section 97 – Ancillary provisions**

74. The Committee noted that somewhat unusually, the power in this section extends to amending the provisions of the Bill itself. The Executive was asked to explain its rationale for this.

75. The Executive considered that the ability to use the ancillary power to amend the Bill does not extend the limited scope of that power and, in particular, does not allow the power to be used to reverse or subvert a substantive Bill provision.

76. Secondly, the Committee noted that the power is subject to affirmative procedure but only when it amends the text of an Act. It asked the Executive to comment on the fact that an instrument could be made under the power that has a substantial effect on primary legislation, without actually making textual amendment to that legislation. In such circumstances, the instrument would be subject only to negative procedure.
77. The Executive agreed that the choice of how to exercise the ancillary power will affect the procedure. The status of primary legislation means that changes to it are, as in this case, commonly made subject to the greater level of scrutiny which the affirmative procedure provides.

78. The Committee notes the Executive’s response and accepts the power as drafted.

Schedule 2, Part 3, paragraph 14 - further education institutions

79. The Committee asked the Executive to provide further clarification of the drafting in relation to the phrase “and any other body added to that schedule as Ministers may by order specify”. It was not entirely clear whether the phrase was an order-making power or a reference to an order under the 2005 Act adding to the list in schedule 2 to that Act, given that section 7 of the 2005 Act confers a power to modify that list by order.

80. The Executive explained that the words “and any other body added to that schedule as Ministers may by order specify” are intended to create a discrete order-making power and are not a reference to an order under section 7 of the Further and Higher Education (Scotland) Act 2005. However, it accepted that there may be some ambiguity in relation to modifications to the schedule and will therefore bring forward an amendment at Stage 2 to clarify matters.

81. The Committee welcomed the Executive’s response and draws the proposed Executive amendment to the attention of the lead committee.

Schedule 2, Part 5, paragraph 26 - power to amend schedule

82. The Committee noted that this is one of the most significant powers in the Bill. The power given to Ministers is unlimited and its exercise could affect the way in which the Bill operates and the protection provided to children under it. It would allow Ministers not only to extend the scope of regulated work but also to restrict it. The Executive was asked to clarify its intentions in relation to the exercise of this power.

83. The Executive concurred with the Committee that the power is wide and could affect the extent of protection provided to children under it. However, they did not consider the power to be unlimited because modifications made using it must have sufficient similarity with the existing contents of schedule 2. Nevertheless, because of the significance of this power, affirmative procedure was considered appropriate. While they have no current intention to use it, without such a power the only way to modernise regulated work with children would be through primary legislation.

84. The Committee is concerned at both the width of the power and the lack of legal argument from the Executive. It draws the attention of the lead committee to this power on the grounds that the extent of the power is unclear.
Schedule 3, Part 5, paragraph 15 - power to amend schedule

85. The same points arise with this power as in Schedule 2, Part 5, paragraph 26. The Executive was asked to clarify its intentions in relation to the exercise of this power.

86. The Executive gave the same response as with the previous power. In addition, it considered it to be a pragmatic and sensible power.

87. The Committee is again concerned with both the width of the power and lack of legal argument from the Executive. It draws the attention of the lead committee to this power on the grounds that the extent of the power is unclear.
ANNEX 1

Correspondence between the Subordinate Legislation Committee and the Scottish Executive

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 24 October and seeks an explanation of the following matters.

Sections 3, 4 and 5 – References by Organisations, Agencies and Businesses

2. The Committee considered that the drafting of sections 3, 4 and 5 is ambiguous. It was unclear to the Committee whether the reference to “prescribed information” in these sections is a noun or a regulation-making power. The Executive is asked to clarify the drafting of these provisions.

Section 6 – Reference relating to matters occurring before provisions come into force

3. The Committee had some difficulty in understanding the purpose of this provision and why it should be necessary for Ministers to prescribe the information that organisations may provide (or indeed why subsection (2) is necessary at all), unless there is some legal prohibition on an organisation disclosing that information. The Executive is asked to explain its rationale for this provision.

4. The Committee also notes the use of the term “prescribed information” in this Section. It is not clear whether this is a reference to information prescribed under other sections or a separate regulation making power. The Executive is asked to clarify the drafting of this provision.

Section 7 – Reference by court

5. The Committee noted that this section also uses the term “prescribed information.” It is not clear whether the phrase is a descriptive term or a regulation-making power. The Executive is asked to clarify the drafting of this provision.

Section 8 – Reference by certain other persons

6. The Committee questioned whether the power in subsection (2) is sufficient for the stated purpose. The Committee doubts whether, even if read with section 99(2), the power would be wide enough to remove or make alterations to references to bodies listed in the Bill. (The same problem arises in relation to sections 17 and 19 below.) The Executive is asked to clarify the drafting of this provision.

7. The Committee noted the references in subsection (1) to the term “prescribed information”. The DPM does not comment on this as a power therefore it appears to the Committee that in this context the Executive is treating the term as a descriptive noun. The Executive is asked to clarify the drafting of this provision.
8. This same issue arises in relation to sections 10(1)(a) and 11(1). In each case the term “prescribed information” appears to be a descriptive noun rather than a power to prescribe information. The Executive is asked to clarify the drafting of these provisions.

Section 14 - Automatic Listing

9. The Committee noted that this section allows Ministers to specify criteria (and indeed further criteria) for automatic inclusion on either list. It considers that these powers leave a considerable degree of discretion to Ministers. The Executive is asked to provide further information on how it intends to exercise these powers.

10. It is not clear to the Committee that references in subsection (4) to the term “specified description”, mean of a description specified in an order under subsection (3). The Executive is asked to clarify the drafting of this provision.

Section 17 – Information relevant to listing decisions

11. The Committee noted that Ministers intend to use the power to extend “a relevant finding of fact” to those made by the professional regulatory bodies identified in relation to section 8. It observed that although the Executive states that one reason for the power is to take account of changes in the name of any of the bodies listed, the power in subsection (5)(f) alone would not be sufficient for this purpose. Furthermore, it is not entirely clear that the general power in section 97(1) to make consequential provisions would be sufficient, as it is doubtful whether the power as expressed in the Bill would extend to amending the text of the Bill itself.

12. The Executive is asked whether it is satisfied that the power in subsection (5)(f) is sufficient for all the purposes outlined in the DPM, in particular the possible need to alter the list to take account of changes in the any of the bodies listed in the Bill.

13. The Committee also observed that although the DPM states that the power is intended to be exercised in relation to regulatory bodies, it is not so limited in the Bill. It might be possible for Ministers to extend the ambit of subsection (5) to any other person or in any other circumstances. The Executive is asked to clarify the drafting of this provision.

Section 19 – Information held by public bodies etc.

14. The Committee noted that the power here is similar to the power in section 17 referred to above, and raises the same issues. The Executive is asked to clarify the drafting of the provision.
Section 25 – Application for removal from list

15. The Executive is asked to explain its rationale for proposing that the power here should be subject to negative procedure, and not affirmative procedure.

Section 29 – Notice of listing etc.

16. The Committee noted that the power here is required for purposes similar to the powers in sections 8, 17, 19 and 25, and raises the same technical issues identified on these. The Executive is asked to respond to these issues as they relate to this section.

17. The Committee also noted that subsections (4) and (5) authorise Ministers to publish guidance. It further notes that there is no statutory obligation on an organisation to follow or have regard to the guidance. As the guidance will not made as an SSI, it will not be published. The Executive is asked to explain why the guidance is not to be made as an SSI, and to comment on how this is intended to be publicised.

Section 31 – Offences against children and protected adults

18. The Committee is concerned about the width of this power which allows the modification of the list of offences, and could radically alter the effect of the Bill. The Executive is asked to clarify its intentions with regard to how this power will be used.

Section 32 – Duty to notify certain changes

19. The Committee noted that the DPM does not give any indication of how the power here might be used. It is noted that failure to comply with a requirement under the section renders an individual liable to criminal prosecution and a substantial fine or imprisonment. The Executive is asked for further clarification on how it envisages using this power.

Section 46 – Vetting information

20. The Committee noted that the term “prescribed details” is used in subsection (1)(a). It notes also that under subsection (2), the regulations under subsection 1(d) may place an obligation on persons holding information of the type prescribed to disclose it to Ministers for the purpose of the Bill. If the reference to “prescribed details” is a delegated power, it is not clear that subsection (2) would apply to that power. The Executive is asked to clarify the drafting and intended use of this power.

21. The Committee also noted that unlike other requirements to be imposed under the Bill, failure to comply with an obligation imposed by regulations under subsection (2) does not appear to carry any sanction. The Executive is asked if this is its intention.
Section 54 - Disclosure restrictions

22. There is a reference to the term “prescribed type” in paragraphs (a) and (b) of subsection (1). The Executive is asked to clarify the drafting in both instances.

Section 60 – Power to use fingerprints to check applicant’s identity

23. The Committee questioned why, if it is the intention that fingerprints should be taken at a police station, as stated in the DPM, it is necessary for this to be prescribed by subordinate legislation rather than simply set out in the Bill. In this respect, the Committee also questioned whether it is intended that fingerprints can only be taken at a police station. The Executive is asked to provide further information.

Section 76 – Code of practice about child protection information

24. The Committee noted that this section obliges Ministers to publish a code of practice on which they must consult before publication. However, it noted that such a publication does not need to be laid before Parliament. The Committee is of the view that the code of practice may be of sufficient importance to be laid before Parliament. The Executive is asked to explain its rationale here.

Section 80 – Relevant persons

25. The Committee noted that this section gives Ministers the power to extend the definition of “relevant persons”. It was noted that Ministers cannot remove from the list, nor can they take into account changes to the names of the bodies listed; they can only add to the list. The Committee considers that this does not appear to meet the policy objective in the DPM. The Executive is asked to comment.

Section 81 – Enforcement

26. The Committee noted that section 97 contains the customary provision allowing Ministers by order to make supplemental etc provisions. The Executive is asked what additional purpose is served by section 81(1)(b).

27. The Executive has stated in the DPM that it may need to make provision to ensure that relevant persons comply with their duties under part 3, but it gives no indication of what this provision might be. The Executive is asked to provide further information.

28. The Committee noted the reference in subsection (2) to “any enactment”. It has discussed previously whether a reference to an enactment in a Bill includes the terms of the Bill itself. The view that the Committee has taken in the past is that a power to amend the terms of the Bill must be expressly conferred. Although there is no such direct provision in the Bill, the wording of section 99(4) in relation to sections 81(1), 88(1) or 97(1) suggests that in those provisions at least, the term is intended to cover the Bill itself. The Executive is asked to clarify the position.
Section 87 – Transfer of Disclosure Scotland staff etc.

29. The Committee noted that there is no provision requiring prior consultation with staff before making an order under this power. The Executive is asked to clarify why there is no such provision.

Section 94 – Meaning of protected adult

30. The Committee noted that there will be a need to amend the list of services from time to time to reflect changes in how those services are organised. However, the Committee noted that this power goes beyond simply updating the lists. The Executive is asked to clarify how it is envisaged that this power is to be exercised.

Section 96 – General interpretation

31. The Committee questioned why the term “care service provider” is left entirely to delegated legislation, unlike any other term used in the Bill. This means that the operation of Part 3 as it applies to such persons or bodies is left entirely to Ministerial discretion. The Committee also considered that it could not comment on the use of the negative procedure until clarification on this issue was received. The Executive is asked why the definition of the term is left to delegated legislation, and why there is no indication in the Bill, for example, of the type of provider envisaged, or a list of providers with a power to amend by order.

Section 97 – Ancillary provisions

32. The Committee noted that somewhat unusually, by virtue of section 99(4), the power here extends to amending the provisions of the Bill itself. The Executive is asked to explain its rationale for this.

33. The Committee also observed that the power is subject to affirmative procedure but only when it amends the text of an Act. It was apparent to the Committee therefore that it would be possible to make an instrument under the power that has a substantial effect on primary legislation without actually making textual amendment to that legislation. In these circumstances, the instrument would be subject only to negative procedure. The Executive is asked to comment.

Schedule 2, Part 3, paragraph 14 - further education institutions

34. The Committee noted that it is not entirely clear whether as drafted the words “and any other body added to that schedule as Ministers may by order specify” is an order-making power or a reference to an order under the 2005 Act adding to the list in schedule 2 to that Act. Section 7 of the 2005 Act empowers Ministers to modify that list by order. That power extends to adding to, removing from or varying an item in that list.

35. If the policy intention of the Bill is, as stated in the DPM, to reflect changes made to the list in schedule 2, then the Committee does not think that it is
necessary to confer a power to that effect in the Bill. All that is necessary would be to add the words “from time to time” after the word “body” in the definition of “further education” in paragraph 14 of schedule 2 to this Bill and delete the words mentioned above. This would give the definition ambulatory effect.

36. Even if the Executive intends the words to confer an order making power, the Committee does not think that it achieves the policy intention since the power is only to add to the list not to reflect other modifications to the list. The suggested wording in the immediately preceding paragraph on the other hand would ensure that all modifications to the list would be reflected (if that is the policy intention).

37. The Executive is asked to comment and to provide further clarification of the drafting of this provision.

Schedule 2, Part 5, paragraph 26 - power to amend schedule

38. The Committee noted that this is one of the most significant powers in the Bill. The power given to Ministers is unlimited and its exercise could affect the way in which the Bill operates and the protection provided to children under it. It would allow Ministers not only to extend the scope of regulated work but also to restrict it. The Executive is asked to clarify its intentions in relation to the exercise of this power.

Schedule 3, Part 5, paragraph 15 - power to amend schedule

39. The same points arise here in schedule 2, discussed above. The Executive is asked to comment.

40. Please email your response to the shared e-mail address above by 5.00pm on Wednesday 1 November 2006.

24 October 2006
ANNEX 2

Response from the Scottish Executive

1. Thank you for your letter of 24 Oct 2006 concerning the Protection of Vulnerable Groups (Scotland) Bill at Stage 1. The Committee's points will be answered in turn.

Sections 3, 4 and 5

2. The Executive would highlight the definition of "prescribed" in section 96(1) and confirm that the reference to "prescribed information" in these sections is, therefore, a regulation-making power. This also applies to sections 7(2), 8(1), 10(1)(a) and 11(1). Using “prescribed” in this way is a standard plain language drafting technique which is adopted regularly throughout the statute book. Consequently, we do not consider that any amendment is necessary to these provisions.

Section 6

3. This section makes it explicit that employers and employment organisations have a specific statutory power to make referrals in respect of matters which took place prior to the Bill being commenced. This provision is necessary to enable organisations to make referrals about historic incidents, but it would be impossible to enforce any duty on them to do so. The purpose of prescribing information which the organisation may provide is to clarify what constitutes a competent referral. A similar argument applies here as for sections 3, 4 and 5 in paragraph 2 above. Paragraphs 12 to 14 of the Delegated Powers Memorandum are also relevant here.

4. The term "prescribed information" in subsection (2) is a distinct regulation-making power and could be used separately from powers in other sections. In practice, the "prescribed information" is likely to be very similar in all instances that it occurs because it serves the same purpose: to ensure all necessary information is included in a referral to expedite the processing of the case and minimise the need to correspond with employers for clarification.

Section 7

5. Our response is the same as in paragraph 2 above for sections 3, 4 and 5.

Section 8

6. In response to paragraph 6 of your letter, we concur with the Committee that the power is not broad enough to remove or make alterations to references to bodies listed. The power can be used to add new bodies only. However, no such power is needed because all the listed bodies are statutory creations established by legislation so any name changes can be made only by primary legislation. That legislation could consequentially amend this Bill and all other enactments which refer to the body by its old name.
7. In response to your paragraph 7, "prescribed information" is a regulation-making power which will be exercised in a very similar way to the power in sections 3, 4 and 5. We apologise for not drawing the Committee’s attention to this in the Delegated Powers Memorandum.

Sections 10 and 11
8. In response to your paragraph 8, our response is the same as in paragraph 2 above.

Section 14
9. In response to your paragraph 9, the Executive would intend to use this power to, for example: respond to amendments or innovations in criminal offences, including offences outwith the law of Scotland; or specify criteria, such as being subject to the requirement to register as a sex offender, which would lead to automatic inclusion on one or both lists. This power does give significant discretion to Ministers which is why affirmative procedure is provided for.

10. In response to your paragraph 10, subsection (4) does no more than give an example of criteria which may be specified by order under subsection (3) and it cannot therefore be referring to anything other than something which may be contained in the order under subsection (3). Further background information re automatic listing can be found at paragraphs 42 to 46 of the Explanatory Notes.

Section 17
11. In response to your paragraphs 11 and 12, we concur with the Committee that the power at section 17(5)(f) is not sufficient to modify or remove any of the bodies listed in paragraphs (c), (d) and (e). The final sentences in paragraphs 29 and 30 of the Delegated Powers Memorandum are incorrect, for which the Executive apologises. Our comments in paragraph 6 above apply here also and we are satisfied that the power is sufficient for its intended purposes.

12. In response to your paragraph 13, we concur with the Committee that the power at subsection (5)(f) is not limited to regulatory bodies, which were mentioned as an example in paragraph 29 of the Delegated Powers Memorandum. Although the primary intention is to use this power for regulatory bodies, the power could be used, in the course of time, to apply to other findings of fact made by, for example, the civil courts, tribunals or children’s hearings.

Section 19
13. In response to your paragraph 14, our answer is the same as in paragraphs 6 and 11 above. The final sentence in paragraph 32 of the Delegated Powers Memorandum is incorrect, for which the Executive apologises. Any person added to the list in subsection (3) can only be required to provide information held by them “which Ministers think might be relevant".
Section 25

14. In response to your paragraph 15 the Executive considers negative procedure to be appropriate for the power at subsection (3)(a). This power relates to the setting of minimum time periods for an application for removal from the list to be competent. The power is limited to that specification of minimum periods, and follows on from the principle of enabling individuals to apply for removal from the list. Furthermore, the more likely grounds for an application for removal are a change of circumstances under subsection (3)(b), to which no time constraints apply. This is because there are only limited circumstances where the passing of time alone makes an individual no longer unsuitable to undertake regulated work. An example of application for removal on the basis of change of circumstances is where a workplace incident took place because of a mental disorder which is now under proper medical supervision. An example of application for removal on the basis of time having elapsed is where an individual forms a sexual relationship with a 15 year old which becomes permanent and, 10 years later, they have married and there are no other instances of other inappropriate relationships.

Section 29

15. In response to your paragraph 16, our answer is the same as in paragraphs 6 and 11 above. The power in subsection (7) is to add other persons as being relevant regulatory bodies rather than to change those already specified so, as previously, the final sentence of paragraph 40 of the Delegated Powers Memorandum is incorrect.

16. In response to your paragraph 17, the power for the Scottish Ministers to publish guidance is intended to be used to provide guidance to those organisations employing individuals under consideration for listing. The Scottish Ministers will know who these organisations are because their details will be taken as part of any application for disclosure in respect of a scheme member. The Scottish Ministers will send a copy of any guidance to the organisation at the time of notifying that organisation that one of their employees is under consideration for listing. The guidance will also be made publicly available. Therefore, we are satisfied that the guidance will be available to those who need it, or may be interested in it, despite the fact that it will not be published as an S.S.I.

Section 31

17. In response to your paragraph 18, the Executive accepts that this is a broad power which is why affirmative procedure is provided for. This power is necessary to “future proof” the Bill in case offences in other legislation or in the common law change, or if new offences are introduced or if existing offences are removed. There is no immediate intention to use this power because such provision as is considered necessary has been included in the primary legislation.

Section 32

18. In response to your paragraph 19, paragraph 50 of the Delegated Powers Memorandum refers to the flexibility to respond to future developments in methods
of confirming identity or location as the reason for taking this power. Any further elaboration is essentially speculative, but a hypothetical example might be making connections with any UK-wide ID card scheme, for example the re-issuing of an ID card with a different number following theft or fraud.

**Section 46**

19. In response to your paragraph 20, the Committee's attention is drawn to the definition of "prescribed" in section 96(1) which excludes section 46(1)(a) from that definition. “Prescribed details” in subsection (1)(a) refers to the usage of that term in section 113A(3)(a) of the Police Act 1997. Consequently, there is no distinct power to make regulations under subsection (1)(a) which is why no reference was made to this provision in the Delegated Powers Memorandum. The reference to “prescribed details” in subsection (1)(a) is not a delegated power so subsection (2) does not apply to it. Subsection (2) applies only to subsection (1)(d).

20. In response to your paragraph 21, the Committee notes that there is no sanction for failure to provide information prescribed under subsections (1)(d) and (2). This is because the prescribed information will be limited to that held by public bodies (such as regulatory bodies and councils) that are subject to remedies under administrative law.

**Section 54**

21. In response to your paragraph 22, our comments in paragraph 2 above, re the use of “prescribed”, are relevant here. The powers in subsection (1) can be used to protect individuals so that sensitive information, of a prescribed type, which is contained in scheme records, will not be disclosed to employers.

**Section 60**

22. In response to your paragraph 23, the wording of subsection (1) reflects that of section 118(2)(a) of the Police Act 1997. Although it is the Executive's clear intention that fingerprints should be taken at a police station, it is considered more appropriate to specify detailed arrangements, such as exact locations, in secondary, rather than primary, legislation. This is the practice currently adopted in regulation 16 of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (S.S.I 2006/96) and it is intended that similar regulations will be made to cover detailed provisions for the taking and destroying of fingerprints under this Bill. It is possible that future technological developments will mean that attendance at places other than a police station will be possible, for the taking of fingerprints, and this power ensures that future arrangements could be detailed without the need for further primary legislation.

**Section 76**

23. In response to your paragraph 24, the Executive concurs that the Code of Practice is of sufficient importance to lay before Parliament and a Stage 2 amendment to that effect will be laid.
Section 80

24. In response to your paragraph 25, our answer is the same as in paragraphs 6 and 11 above. The final sentence in paragraph 90 and the latter half of paragraph 89, of the Delegated Powers Memorandum is incorrect, for which the Executive apologises.

Section 81

25. In response to your paragraph 26, we agree that sections 81(1)(b) and 97(1)(a) confer duplicate powers. The Executive will bring forward Stage 2 amendments to remove the duplication.

26. In response to your paragraph 27, most of the relevant persons are subject at present to regulation, and the power is intended to allow Ministers to add to the regulatory regimes if necessary in order to ensure that relevant regulators can take action in the event of breach of any of the new duties.

27. In response to your paragraph 28, we agree that the word "enactment" includes the Bill itself when read in the context of these provisions, including section 99(4). The best way to exercise powers of this type may often be to insert text into the relevant Bill provision. Doing so can help make the law clearer for persons operating the resultant legislation. For example, if the power were to be used to add a minor supplementary procedure, placing the new procedure beside the substantive provision in the Bill to which it relates would save readers and users of the legislation from having to look at more than one instrument to obtain the complete picture. Allowing a power to be used to amend other enactments (including the Bill itself) does not affect the breadth of the power. Section 99(4) is drafted to ensure that the intention is that orders under sections 81(1), 88(1) and 97(1) can amend the Bill itself. It does so by providing explicitly that any amendments to the Bill are to be subject to affirmative procedure. That provision would be meaningless in the absence of intent to allow such an amendment to be made and is therefore considered sufficient to put the matter beyond doubt.

Section 87

28. In response to your paragraph 29, this is a relatively small transfer of staff working in a discrete area for one employer. It is therefore difficult to see what useful purpose a formal consultation on the powers to transfer staff would offer. Instead, staff of Disclosure Scotland, their representatives and their current employer, Strathclyde Joint Police Board, are already involved in consultation about the transfer and the implications for them collectively and as individuals. A staff consultative group is being formed to allow their active participation in planning for the transfer. Adding a statutory duty to consult would require another consultation after enactment of the Bill and this seems unnecessary given that a consultation is already ongoing.
Section 94

29. In response to your paragraph 30, we note that the Committee has observed that there will be a need from time to time to amend the list of services in subsection (1) to reflect changes in how those services are organised. The intention behind this power is to retain as much flexibility as possible in doing that, as health and community care services, and how they are provided, are constantly changing. As the scheme evolves, it may be necessary to modify the existing definitions of service to address changes in the way services are provided, and to add new services. We do not consider that the power to modify subsection (1) is a blanket power allowing Ministers to make whatever provision they wish. The section requires “protected adults” to be defined by reference to the provision of a service, and so the power does not allow Ministers to depart radically from the definition already contained in section 94, even if Ministers intended to use it that way. Given that the power is limited in this way, and given the need for flexibility, we consider it is appropriate to be able to amend the definition by order.

Section 96

30. In response to your paragraph 31, section 96 defines “care service” as having the same meaning as in the Regulation of Care (Scotland) Act 2001. “Care service provider” consequently refers to a person providing a care service as defined in the 2001 Act. The power is intended to allow Ministers to narrow down the organisations defined in the 2001 Act to those most relevant to the protection of children. For this purpose, we consider that a negative procedure is most appropriate as it would be reducing, not increasing, the list of relevant organisations.

Section 97

31. In response to your paragraph 32, we agree that this power can be used to amend the Bill itself. This is particularly apt in the case of powers which can be used to make provision which is ancillary to a substantive Bill provision. As explained in paragraph 27 above, placing a minor ancillary provision next to the Bill provision to which it relates may be of great assistance to the users of the legislation. The ability to use the ancillary power to amend the Bill does not extend the limited scope of that power and, in particular, does not allow the power to be used to reverse or subvert a substantive Bill provision.

32. In response to your paragraph 33, we agree that the choice of how to exercise the ancillary power will affect the applicable parliamentary procedure. The status of primary legislation means that changes to it are, as in this case, commonly made subject to the greater level of scrutiny which the affirmative procedure provides.

Schedule 2, Part 3, paragraph 14

33. In response to your paragraphs 34-37. The words “and any other body added to that schedule as Ministers may by order specify” is a discrete order-making power and is not a reference to an order under section 7 of the Further and Higher Education (Scotland) Act 2005. A separate order-making power is necessary to
allow Ministers to select which of the bodies added to the schedule (by virtue of an order under section 7) are to be treated as further education institutions for the purposes of the Bill. Such bodies may be added under a heading other than “institutions formerly eligible for funding by the Scottish Further Education Funding Council”. However, we accept that there may be some ambiguity in relation to modifications to the schedule and will therefore bring forward an amendment at Stage 2 to clarify matters.

Schedule 2, Part 5, paragraph 26

34. In response to your paragraph 38, we concur with the Committee that the power in paragraph 26 is wide and could affect the extent of protection provided to children under it. The Committee correctly notes that the power could be used to extend or limit the scope of regulated work. We do not consider the power to be unlimited because modifications made using it must have sufficient similarity with the existing contents of schedule 2. However, because of the significance of this power affirmative procedure is considered appropriate. The Executive has no current intention to use this power but its existence is essential to ensure that developments, in the way in which services are provided to children, can be regulated under this Bill. For example, paragraph 7 of schedule 2 brings interactive communication services within the scope of regulated work while such activities were not child care positions under schedule 2 to the 2003 Act because internet chatrooms etc were not as prevalent in 2002 as they are now. One potential reason for the power in paragraph 26 is to ensure that regulated work with children is able to keep pace with technological developments. Without such a power the only way to modernise regulated work with children would be through primary legislation.

Schedule 3, Part 5, paragraph 15

35. In response to your paragraph 39, our reasoning in paragraph 34 above also applies. In addition, the Executive considers this to be a pragmatic and sensible power. While care has been taken to devise as comprehensive a list of activities and positions as possible to afford protection for those who will receive care, we recognise that the categories of person requiring the protection of the Bill, and services provided to them, will be constantly changing. As with the power in section 94(2) to amend the definition of “protected adult”, paragraph 15 of schedule 3 allows Ministers to respond more speedily and flexibly than primary legislation would permit in addressing such developments. The main purpose envisaged for the power will be to widen the scope of “regulated work with adults” where gaps emerge through experience. Ministers recognise however that a measure of proportionality within the Bill is also required. While care has been taken to balance the competing interests of those requiring protection against the burden on providers expected to carry out the relevant checks, only experience will determine whether this has been achieved. Should experience highlight unintended consequences for individuals or employers, it is considered prudent to have power also to restrict the scope of the schedule speedily and flexibly. We consider amendment by S.S.I. is appropriate to do that.

1 November 2006
Scottish Executive Education Department
Summary of written evidence on the Protection of Vulnerable Groups (Scotland) Bill

1. The Education Committee received 45 written submissions in response to the call for evidence on the Protection of Vulnerable Groups (Scotland) Bill. (These submissions have been previously circulated to members and are available on the Parliament’s website\(^1\)).

2. Most submissions expressed support for the aims of the Bill which was seen as laudable. However most of those making submissions also had reservations with specific parts of it.

3. The main benefits of the Bill perceived by respondents were:

- **New provisions for the protection of vulnerable adults**
- **The creation of two lists** - should allow focus on the differing needs of both groups
- **Access to ongoing live records**
- **The inclusion of self-employed people**
- **Will consolidate existing child protection law**
- **Should reduce bureaucracy** - a ‘workforce passport’ will remove the ‘tremendous bureaucratic burden’ of the current duplication of disclosure checks. It should hopefully encourage volunteers.
- **Reporting of incidents that occur prior to the commencement of the Bill**
- **No delays pending appeal**
- **Phasing in of retrospective checks** – this should minimise the administrative burden
- **General duty to share information** – should get rid of the ambiguity amongst professionals over the circumstances in which they can and cannot share information for the purposes of child protection
- **Dovetailing with provisions in England and Wales**
- **Automatic court referrals of people convicted of certain types of offences**
- **Will apply uniformly to all higher education institutions**
- **Discontinuation of ‘provisional listings’ used in the Protection of Children (Scotland) Act 2003**

Concerns Regarding the Bill

4. The most common concerns raised in relation to the Bill are set out below. This is not intended to be a comprehensive account of all issues raised but rather an overview of the key themes that have emerged.

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Proportionality

5. A number of submissions raised the question of whether the provisions of the Bill are proportionate to the risks. Some of the organisations representing children and young people (e.g. Barnardo’s Scotland) cautioned that excessive avoidance of risk may act against the interests of children by minimising their opportunities in life. This may occur if the system becomes so onerous that it acts as a deterrent for those providing community projects and those volunteering.

6. Other submissions questioned the use of legislation to ‘assuage public opinion’ and whether the Bill’s provisions—which arose as a response to recommendation 19 of the Bichard inquiry into events surrounding the Soham murders—would have prevented the murders. (Fairbridge). It was also pointed out that most abuse takes place within families and some submissions claimed the Bill would do nothing to affect this.

7. Some felt that specific provisions within the Bill are not proportionate to the risk and may contravene articles in the European Convention of Human Rights (e.g. the duty to share child protection information). While the memorandum states the Bill is proportionate, LGBT Youth Scotland felt that the Executive has merely assumed this is the case without demonstrating it to be so.

Many provisions implemented via secondary legislation

8. A significant number of submissions expressed concern that key provisions are to be determined by Ministers in secondary legislation or in guidance or codes of practice. As a result many did not feel they could make a definitive judgement as to whether the Bill would be effective, or whether the cost estimates are accurate. Some called for specific parts to be clarified on the face of the Bill (e.g. criteria for listing decisions, the duty to share child protection information) while others were happy for any regulations to be subject to further consultation with stakeholders. The Faculty of Advocates wrote:

“The Parliament is the appropriate body to take decisions about the way in which this legislation is to work. It is a matter of concern that such a wide range of matters are to be left to the Ministers to determine” (The Faculty of Advocates)

Complexity of Provisions and Potential Problems with Compliance

9. Many felt that the Bill is complex, and that in order for it to be effective people must be clear on how it works, especially as non-compliance may lead to criminal sanctions. Many respondents called for clarification on various parts of the Bill, for example:

- What are appropriate grounds for referral to the CBU?
- Who is a protected adult?
- Which posts are considered to be regulated work?
- What exactly is ‘child protection information’?
- What constitutes harm?
- What constitutes ‘vetting information’?
- The definition of ‘other relevant civil orders’

10. Some suggested that implementation may benefit from a public awareness campaign, especially given that it will apply to personal employers. It was also felt that it will require appropriate guidance and training. It was suggested that the lack of clarity in
respects of actions or inactions which may constitute a criminal offence may contravene article 7 of the ECHR (no punishment without law).

Definitions of ‘Protected Adults’ and ‘Regulated Work’

11. A number of submissions raised concerns surrounding the definition of ‘regulated work’ and who is considered to be a ‘protected adult’. These concerns centred mainly on gaps in cover and a lack of clarity over who would need to undergo checks.

12. It was felt that the definitions of ‘protected adults’ and ‘regulated work’ will exclude a significant number of voluntary sector projects from having to check volunteers, despite being in frequent contact with vulnerable adults. For example, the WRVS and its volunteers would be excluded from the Bill's provisions because they provide services, such as good neighbour schemes, that do not fall within the definition of regulated work. The WRVS suggested that the definition should be linked to the individual rather than the services they receive.

13. In addition, there seemed to be some confusion as to whether those not carrying out regulated work would still have to be vetted because they are working with people designated a ‘protected adult’ by virtue of services they receive elsewhere. If this is the case, it was pointed out that organisations may not necessarily know if the person is ‘protected’.

14. It was felt such gaps could allow people wishing to abuse vulnerable adults to seek out work with organisations that fall outwith the provisions of the Bill.

The use of private information

Privacy of information regarding children – Part 3: Duty to share child protection information

15. One of the most common concerns raised concerned Part 3 of the Bill, which sets out duties to share child protection information. A substantial number of respondents expressed grave concerns over how this would work in practice.

16. Detailed guidance on the duty would be contained within a code of practice. However, many wished greater clarity on this duty to be contained within the primary legislation. The Faculty of Advocates claim that a code of practice cannot be used to expand a statutory definition.

17. Key concerns include the fear that the duty may be used flippantly and may compromise the confidentiality of children and young people. It was feared that this could deter children and young people from confiding in adults in the fear that private information will be divulged to others. It was also argued that this provision may also lead to a reduction in the use of certain services by children.

18. Many pointed out a child’s right to privacy is set out within article 8 of the ECHR. They expressed concern that the legislation could override a child’s right to privacy and that a balance needs to be struck between respecting the child’s right and ensuring information is shared where necessary.

Privacy of information regarding employees
19. The Information Commissioner stated that the Bill weakens current provisions contained within the Protection of Children (Scotland) Act 2003, regarding the disclosure of relevant information on candidates for employment. This is because the Bill considers information to be relevant if it is related to the *type of work* the individual wishes to undertake (i.e. with children or vulnerable adults) whereas the 2003 Act considers relevance against the *type of post* being applied for. The Commissioner claims that this change could lead to employers receiving information that is irrelevant to the post being applied. He therefore urges that further consideration is given to this part of the Bill to ensure compliance with the requirements of the Data Protection Act that information should be relevant and not excessive.

20. The Commissioner also noted that, as an employer does not have to inform the scheme when a person leaves their employment, updated information on an individual’s list status may be disclosed to organisations which no longer employ the individual.

**Operation of two lists**

21. Opinion on the proposal for two lists was divided. Although some viewed this as helpful, because it would allow the needs of the two groups to be met, others felt strongly that grounds for being considered unsuitable to work with one group, should apply to the other. For example, Community Care Providers Scotland state:

   “We find it hard to accept the Executive’s policy that there may be occasions in which someone unsuitable to work with one group would be suitable to work with the other, and would be interested to see examples of such cases to illustrate the Executive’s thinking” (Community Care Providers Scotland)

22. Some also felt that having one list would improve efficiency in the system.

**Scheme not compulsory**

23. A number of submissions argued that it would be more straightforward to make it a direct requirement for employers to use the scheme as opposed to the current provision which makes it an indirect requirement (by virtue of it being the only means by which employers can ensure they avoid committing the offence of employing a listed person).

24. Others also pointed out that as the scheme is not compulsory, those wishing to abuse children and vulnerable adults may still have access to such groups by being self-employed for example by becoming private tutors or offering services in an unpaid capacity.

**Practical issues and implementation**

**Continuing change**

25. A number of submissions highlighted that the Bill represents the third major review of child protection legislation in the last 6 years. This point was raised by voluntary sector organisations and was of issue mainly because of the difficulty they costs associated with recent reforms. They express concern at further cost implications of the proposed
changes and call for a longer implementation period. Others claimed it would be desirable to review the current system before introducing a new one (Free Church of Scotland).

26. A number of those who submitted evidence felt that the implementation of the Bill is key to its success. Many thought its effectiveness would be dependent on the regulations and guidance, and whether adequate resources are available.

**Cost**

27. A considerable number of submissions raised the issue of cost. Many voluntary sector organisations were sceptical that the new scheme would not impose an additional cost and noted that it would come at a time of significant additional financial burdens in the voluntary sector. It was also thought likely that the employer would be likely to pay for checks and therefore this cost should be factored in.

28. There are also worries that the retrospective checks may have major cost implications in terms of re-training staff.

**Effect on voluntary sector recruitment**

29. Many voluntary organisations expressed concern that the Bill may exacerbate the difficulties experienced in recruiting volunteers. This may be due to a fear minor offences being revealed through the check.

**Retrospective barring and vetting**

30. Serious concerns were expressed, in light of past experiences with Disclosure Scotland, about how realistic the timescale is for retrospective checks on the whole workforce within 3 years of the Bill passing.

**Other specific issues raised**

**Automatic referrals by courts**

31. Some felt that the Bill would be likely to be more effective if it enabled automatic referrals from courts in additional circumstances other than convictions, for example, referrals from children’s hearings (Scottish Children’s Reporter Administration, The Faculty of Advocates).

**Offence of failure to refer**

32. According to the Faculty of Advocates, in circumstances where a person is charged with the offence of not providing relevant information, the legal technicality of establishing when the offence took place is raised. As the duties do not come with a time limit, the offending organisation could simply provide the relevant information when a criminal complaint is received.

**Limited extent of the duty to share child protection information**

33. The duty to share child protection information falls only on ‘relevant persons’. Some submissions contained specific suggestions of others that could be included who would
be useful for the purposes of child protection. These include, for example, the Scottish Society for the Prevention of Cruelty to Animals, whose inspectors may uncover child abuse in the course of investigating animal abuse. Others also questioned why the duty to share information does not extend to adults at risk.

**Overlap in ages of children and adults**

34. Some submissions pointed out that the Bill defines a child as anyone under 18, and an adult as someone over 16. It was felt this overlap may lead to ambiguity and duplication of checks. The Faculty of Advocates highlighted that this is also inconsistent with Scots law under which children are generally considered to become adults at age 16.

**Consistency with England and Wales**

35. Some submissions highlighted a lack of compatibility with the English and Welsh Bill. For example, in England and Wales organisations not automatically included can opt-in to the vetting and barring scheme. Moreover, the Westminster Bill has defined ‘regulated work’ as that which is “carried out frequently by the same person”. It was questioned whether the inconsistency may cause confusion in cross-border cases.

Kathleen Robson  
Senior Research Specialist  
SPICe