



SCOTTISH EXECUTIVE

# Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme

## Analysis of the Consultation

Education



social  
research

# **PROTECTING VULNERABLE GROUPS: SCOTTISH VETTING AND BARRING SCHEME**

## **ANALYSIS OF THE CONSULTATION**

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Scottish Executive Social Research  
2006

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Both reports were published in August 2006.

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## **ACKNOWLEDGEMENTS**

Thanks to Children & Families Division and the Children, Young People and Social Care Analytical Services Unit within the Scottish Executive Education Department who provided input and offered advice as required, and to the individuals and organisations who responded to this consultation and participated in information events and focus groups.

Thanks also to other members of the project team at George Street Research and the Scottish Civic Forum for their professional handling of various aspects of the project.

## EXECUTIVE SUMMARY

### BACKGROUND OVERVIEW

A Scottish Executive consultation, “*Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme*” took place between 8 February 2006 and 2 May 2006. Over 200 responses were received to the consultation, although this report focuses on 186 received by 17 May and these have been included in the analysis. *The consultation document was also available on the Scottish Executive website.*

The consultation document sets out the background to the consultation, a description of a new vetting and barring scheme for those who work with vulnerable groups and asked for views on a range of issues. This report provides a robust analysis of all responses to the consultation using both quantitative and qualitative analytical approaches. A programme of information events was also conducted by the Scottish Civic Forum and a series of focus groups and in-depth interviews were undertaken by George Street Research. The findings from these additional elements have been incorporated into this report. The findings will feed into legislation and the development of the detailed operation and process in the new scheme.

### OVERVIEW OF RESPONDENTS

The protocol we have adopted in this report is to firstly state the themes emerging from individuals and organisations responding to the consultation paper, and these have been referred to as “consultees”. We then provide additional commentary from those attending information events, focus groups or in-depth interviews and these are referred to as “respondents”.

In total, 186 written responses have been analysed. The majority (92%) responded on behalf of organisations and only 6% responded as individuals; the remaining 2% were anonymous. The largest number of organisational responses was received from voluntary organisations (n = 44) and those categorising their organisation as operating within the education sector (n = 42).

Across those responding to the consultation paper and those attending focus groups and information events, **there was widespread approval of the introduction of a new vetting and barring scheme in Scotland as proposed within the consultation paper.** Overall, the proposed system is perceived to be more transparent, efficient and fairer than the present system.

A number of disadvantages were identified within the current system and these are as follows:

- Lack of protection for adults at risk
- The need for multiple disclosures
- “Point in time” nature of each disclosure (with no capacity to obtain updated information); thus, most query the true validity of disclosures

- Processing time – while most noted that there has been an improvement in processing times recently, there were still some comments that there can be delays in obtaining some disclosures and this can have a knock-on impact on recruitment of staff
- While most respondents accepted the current cost level (£20 per disclosure), the need for multiple disclosures serves to increase overall costs for many organisations or individuals
- Lack of capacity to cross-reference information with other sources and limitations on what information can be accessed, particularly on some overseas workers
- A degree of confusion over who needs to be disclosed (categories of workers) and potential loopholes for disclosure of self-employed individuals
- A lack of understanding on the part of employers as to how to interpret disclosure information.

Overall, there was widespread support for the recommendations contained within the proposals from those attending focus groups, in-depth interviews and information events and those responding to the consultation paper. In some instances the information provided raised further questions for respondents, although it was noted that the **new system as outlined would go some way towards counteracting disadvantages of the current system.** Key themes identified in the study are outlined in the following paragraphs:

### **Updating of Information**

The proposed ongoing updating of information removes the point in time nature of current disclosures as well as providing up-to-date information upon which employment can be offered. Of most importance, because each disclosure is portable across different roles relating to the same individual, the need for multiple disclosures is reduced.

While respondents were very favourable about the concept of ongoing updating of information, there were some concerns about who should be responsible for updating information. It was felt that primary responsibility for updating should lie centrally and then with regulatory bodies and organisations. While there was also an expectation that employers would provide updated information, there were some concerns over whether employers would in reality do so, particularly in instances where an employee was no longer in their employment.

### **Coverage of the Workforce**

There was general agreement from consultees and respondents on the need to extend the range of positions requiring disclosure to include occupations with indirect contact with children and adults at risk.

### **Information Sharing**

The concept of information sharing across different regulatory bodies and organisations was welcomed and would overcome a weakness of the current system in that certain groups are unable to obtain access to information, although some consultees and respondents assumed that information would be shared between all regulatory bodies. While there were some concerns about the infrastructure and operation of the new system (at least initially), a wide range of organisations were cited as potential providers of information to feed into the disclosure system. Furthermore, organisations participating in the consultation and who might be providing information for disclosures were generally positive about this concept.

Two key issues emerged in relation to information sharing. First, with the increased numbers



of overseas workers in Scotland – particularly within certain sectors such as health and education – there were acknowledgements that it is not possible to obtain full disclosures on all potential staff. There were requests for links to be set up with as many countries as possible so that disclosure information can be obtained. Second, while there was an acceptance of the need for parents and personal employers to be able to obtain disclosures for employees, there were concerns over the provision of what can be confidential and sensitive information. A need was defined for a new body that could adopt the role of intermediary on behalf of parents and personal employers obtaining disclosures. In this way, parents and personal employers would only have access to basic information as to whether or not someone is barred.

When information is updated on barred status, it is felt that this should be shared with all relevant employers and regulatory bodies and well as the applicant. While there was acceptance that there may be some instances where disclosure information could not be shared (ongoing police investigations were cited by most), this was felt to be the exception rather than the norm.

### **Non-conviction Information**

Although there was significant support for non-conviction information to be provided as part of the disclosure, there were concerns over how this information would be used and who this should be provided to. In particular, the capacity of many employers to interpret this information was highlighted as an issue that needs to be dealt with.

### **Two Separate Lists**

Views on whether there should be one or two separate lists were split. There were some individuals who perceived that inclusion on one list should lead to automatic barring on the other; while others felt it was acceptable for an individual to be barred from one list but not the other. That said, many consultees and respondents would expect to be given information as to whether or not an individual was on the other barred list. There were also some concerns that the maintaining of two separate lists could create further unnecessary expense. If there are two separate lists, it was felt that these should both be operated by the same central body.

### **Costs of Disclosure**

This was an issue that many respondents found difficult to discuss. While it was acknowledged that the costs of the new system were not known, there were concerns that the cost to implement the proposals as laid out could be significant. While there were some acknowledgments that removing the need for multiple disclosures could reduce long-term costs, it was felt that the cost of the initial disclosure could increase significantly. Of those who were able to specify what might be an acceptable cost, there were preferences for something in line with the current level of £20. While some respondents guessed that the cost of disclosure could increase to over £50, for most this level was too high. There was widespread agreement for volunteers working in voluntary organisations with children or adults at risk to receive a disclosure at no cost to themselves.

It is also important to note that some respondents further noted the indirect costs that could be attributed to the new system. Even among those organisations working in the voluntary sector that do not have to pay for disclosure, there were concerns about the increased cost of training and administration in order to ensure the new scheme could work effectively and efficiently. There was certainly an expectation on the part of a few respondents that an

increase in costs would also mean a speedy or speedier processing time.

### **Lifetime of Disclosure**

The proposed lifetime of 10 years for an individual disclosure was generally accepted by respondents. However, this was not a key issue for respondents, given that information will be continually updated under the new system.

### **Provisional Listing**

Views on provisional listing were mixed. For some respondents and consultees it was felt that individuals should not be able to continue to work during the determination process, either because of an immediate need to remove potential harm from vulnerable groups, or because of a lack of available staff to offer supervision.

There was a degree of confusion over the difference between provisional listing and provisional barring.

### **Need for Consistency across Legislation**

A number of issues were highlighted due to perceived inconsistencies between different legislation. For example, under current law, for the purposes of the Disqualified from Working with Children (DWCL) a child is any individual up to the age of 18, but for the purposes of some criminal activity, an individual is an adult from the age of 16.

There were also suggestions that any new legislation should meet with the requirements of current employment law and human rights law. At present, there are sometimes contradictions between guidelines laid down by regulatory bodies, recruitment practices, human rights legislation and disclosure requirements. There were also some concerns that there should be no discrepancies between the new legislation and the Data Protection Act.

### **Inclusion of Civil Orders**

There was broad agreement of the need to include civil orders as part of a new disclosure check, but there was a preference for this to be limited to those which are deemed relevant. A clearly defined, mandatory statutory list of civil orders was requested by some consultees and respondents.

### **Retrospective Checking**

While there was an acceptance of retrospective checking for all relevant employees, some respondents would like to be provided with guidance on the types of employee or volunteer that should be prioritised for retrospective checking. Additionally, some requested a timeframe for this.

### **The Structure of a New Body**

The most favoured option for the structure of a body to make decisions on barring was for a special panel. Key criteria for members of this panel would be to have expertise in relevant fields, be representative of a broad range of sectors and to have training to enable them to make decisions and interpret available information. In terms of the status and governance of a Central Barring Unit, there was a preference for this to be at arms length from Scottish Ministers.

### **The Future**

While in many instances respondents noted potential problems or issues with the proposed

new scheme, many made suggestions as to ways in which any problems could be overcome.

There were many calls for the provision of guidance and help in how to interpret information provided under disclosure and the Scottish Executive was perceived to have a key role to play. Within this guidance, there was a perceived need for employers to be made to understand the importance of a robust recruitment policy and not simply to rely upon disclosure information when making a decision over whether to employ someone. For example, there was support for information to be released as part of a disclosure when there is not sufficient cause for someone to be added to a barred list. However, the capacity of some employers to interpret this information was questioned.

There should also be guidance provided on priorities for retrospective checks and a timeframe for this. There were also some requests for guidance on how to identify level of risk in order to help prioritise retrospective checks. Some respondents cited a need for guidance similar to that provided alongside PoCSA (Protection of Children (Scotland) Act 2003).

There was also a suggestion for training to be provided to sit alongside guidance and help. While there were acknowledgements that many larger organisations will have robust recruitment policies, this was not perceived to be the case for many smaller organisations or those relying on volunteers. The role that can be played by umbrella bodies in dissemination of information should also not be underestimated.

There were also calls for a large-scale and sustained information and communications campaign to sit alongside any new legislation. This would have a number of key roles. First, to counteract any concerns from potential employees or volunteers about the disclosure process. Second, to provide information to employer organisations and the general public at large on the disclosure process and why it is important. Third, to explain key elements of the disclosure process. The Scottish Executive was seen as the obvious body to provide this information and communications campaign, perhaps backed up by more localised or tailored guidance from regulatory bodies.

Clear definitions need to be provided for who constitutes a “child” and “adult at risk” and, wherever possible, these should comply with other legislation such as PoCSA.

There was a preference from some for an online facility via which disclosures could be obtained and it was felt that this would help to eradicate any delays caused by the postal service. At a time when there has been a huge growth in Information and Communication Technologies (ICT) for a wide range of services, it was seen by some to be an essential element of a new service.

There is a need to set up an intermediary body that can deal with disclosure requests on behalf of parents and personal employers in order to retain confidence in the system and ensure confidentiality when information is provided.

There was broad agreement that parents and personal employers should be able to make their referrals via an intermediary body.

Finally, there were calls for a further scoping study and consultation exercise to be conducted between the draft and final legislation.

## CHAPTER 1 : BACKGROUND

### Introduction

Following the terrible events during the summer of 2002 when two school girls were murdered by Ian Huntley in Soham, the Home Secretary launched an independent inquiry which focussed on systematic failures that led to the tragedy. Sir Michael Bichard, Rector of the London Institute and a former Permanent Secretary at the Department for Education and Employment, was appointed as the chairman of the inquiry.

This inquiry was known simply as ‘The Bichard Inquiry’ and two years later the Inquiry report was published in June 2004<sup>1</sup>. Sir Michael Bichard highlighted that the inquiry was set up to *“Urgently enquire into child protection procedures in Humberside Police and Cambridgeshire Constabulary in the light of the recent trial and conviction of Ian Huntley for the murder of Jessica Chapman and Holly Wells. In particular to assess the effectiveness of the relevant intelligence-based record keeping, the vetting practices in those forces since 1995 and information sharing with other agencies, and to report to the Home Secretary on matters of local and national relevance and make recommendations as appropriate.”*

The inquiry led to a total of 31 recommendations being made in relation to systems and practice in the protection of vulnerable groups. These included the following key recommendations:

- Development of a national IT intelligence system
- New code on information management
- Police informed of offences against children
- Improved selection/recruitment training
- New registration/barring scheme

Sir Michael Bichard’s recommendations focused on the system in operation in England and Wales. However, Scottish Ministers made clear that they too would learn from the findings of the inquiry and would, where necessary, improve existing practice in line with the recommendations included in the report. There was also clear recognition of the need to streamline current systems throughout Scotland to ensure that there were no cross border loopholes within the UK that may be exploited by those who could potentially bring harm to vulnerable groups.

On 12 January 2006 the First Minister announced that the Scottish Executive would bring forward legislation in response to recommendation 19 of the Bichard report. The legislation would set the framework for a new vetting and barring scheme for people seeking work, (voluntary or paid) with children and/ or adults at risk.

### The Current System in Scotland

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<sup>1</sup> <http://www.bichardinquiry.org.uk/report/>

The current vetting system in place for people working with vulnerable groups within Scotland operates via an enhanced disclosure certificate being obtained by individuals through Disclosure Scotland. In order to obtain a certificate, an application for disclosure has to be completed by an applicant and subsequently countersigned by a body registered with Disclosure Scotland.

There are three types of disclosure - basic, standard and enhanced. A basic disclosure only provides information on convictions that are unspent under the Rehabilitation of Offenders Act 1974, while a standard disclosure provides details on both spent and unspent convictions and, in instances where an individual is applying for a job to work with children, whether this applicant is on the Scottish Disqualified from Working with Children List (DWCL) or similar lists held in other parts of the UK. In the case of an enhanced disclosure, the police have discretion to provide non-conviction information they consider to be relevant to the position being considered in addition to all of the information that would be provided as part of a standard check. Those individuals seeking employment in care/childcare positions are required to obtain either a standard or enhanced disclosure.

Good practice guidance encourages employers and organisations in the care/childcare sector to operate a “safe recruitment” policy whereby an applicant for a job may be required to provide further information such as the names of individuals who can act as referees for their suitability to work with vulnerable groups, or to self-certify that they have no convictions that would bar them from working with vulnerable groups.

While the Protection of Children (Scotland) Act commenced in January 2005, there is no list of those barred from working with vulnerable adults. It is the intention of the Scottish Executive to introduce such a list through legislation. Additionally, also under consideration is extending the provisions of the Rehabilitation of Offenders (Exceptions) Order to include those who have indirect contact with children or vulnerable adults (for example, via the telephone or internet or those with access to personal and sensitive information about vulnerable groups).

### **The need for change**

As part of the development of the legislation, a consultation paper was published on 8 February 2006 with the aim of introducing a Bill to the Scottish Parliament in autumn 2006. The consultation paper set out the framework for a Bill to build upon the current disclosure system and DWCL. It set out the broad framework for a scheme that will:

- Pro-actively check the unsuitability of all individuals entering the children's or adults at risk workforces;
- Introduce a new disclosure check (a vetting and barring disclosure) which will be applicable to all individuals seeking employment (whether paid or unpaid) with children or adults at risk;
- Register all those individuals who have been subject to a vetting and barring disclosure for continuous updating of information;
- Provide for a new central decision-making body (Central Barring Unit) which will consider all information disclosed in relation to those individuals applying for care/childcare posts and determine whether that individual is unsuitable to work in the relevant sector;

- Introduce a new function allowing employers mediated access to review an individual's barred status, reducing the need for repeat checks;
- Create a list of those who are disqualified from working with adults at risk;
- Enable the continuous updating of information to the Central Barring Unit to ensure that those who become unsuitable to work in the sector(s) are detected at the earliest possible stage and are prevented from continuing to work.

Similar legislation is to be introduced in England and Wales. However, while the Westminster framework will be comparable to that being developed in Scotland, it is likely that there will be some significant differences. Nevertheless, it will be vital that these systems are compatible with each other.

It is intended that this new legislation will serve to keep Scotland's children safe from those who pose a danger to them as well as offering appropriate care and protection to the adult population. The new vetting and barring system has two key aims, that:

- Those who are known to be unsuitable do not gain access to vulnerable groups through their work;
- Those who become unsuitable are detected at the earliest possible stage and are prevented from continuing to work, or seeking to work, with vulnerable groups.

There are four key objectives that support these aims:

- Reducing the bureaucracy around the disclosure process;
- Reducing the burden on employers by including an assessment on unsuitability to work in identified sectors as part of the disclosure process;
- Effective mechanisms for barring unsuitable individuals;
- Ensuring consistency, compatibility and connectivity across the UK, even though different approaches may be adopted in some of the detail.

The consultation exercise sought views on the overall framework and direction of policy as well as the detail elements of the proposals.

Details of the consultation process, the questions contained in the consultation paper and our approach to analysis are provided in Appendices 3,5 and 6.

## CHAPTER 2: COVERAGE OF THE WORKFORCE

### 2.1 WHO SHOULD BE INCLUDED?

#### **Proposal 1: individuals requiring Vetting and Barring Disclosure**

Any individual new to the children and vulnerable adult workforce or changing positions (whether paid or unpaid) will need to apply for a Vetting and Barring Disclosure from Disclosure Scotland. (A Vetting and Barring Disclosure is a new type of Disclosure for the children and vulnerable adult workforce.)

#### **Proposal 2: range of applicants**

Parents and personal employers, as well as organisations, will be able to ask individuals to apply for a Vetting and Barring Disclosure or check the barred status of somebody already in the system.

#### **Proposal 3: range of positions**

The range of positions for which a Vetting and Barring Disclosure can be obtained will be expanded beyond those for which disclosure can currently be obtained. It will include occupations with indirect contact with children and vulnerable adults.

In commenting on these proposals specifically, 45 consultees agreed with the intentions as stated.

#### **2.1.1 Individuals requiring vetting and barring disclosure**

With regard to proposal 1, most consultees and respondents felt that any individual new to the workforce should undergo vetting and barring, although this was not universal. One respondent representing an education body noted that the new system as proposed was “*using a sledgehammer to crack a nut.*”

Views on whether changes of post within an organisation should require a full disclosure varied, with 12 consultees stating that this should be the case and a further 6 suggesting that anyone taking up a new position should be disclosed, regardless of whether or not they already worked for the organisation.

#### **2.1.2 Range of Applicants**

Proposal 2 intends that parents and personal employers will be able to ask applicants to apply for disclosures and also to allow them to check on the barred status of applicants. Although 24 consultees commenting on proposals 1-3 specifically agreed that this should be the case, 32 others cautioned on the need for careful regulation to avoid malicious enquiries or other misuse of the system. One consultee from the voluntary sector remarked “*There should be safeguards on those allowed access to the list of barred individuals and what can happen to this information so that, for example, it is not possible for the press to make reference to this.*”

These views were echoed by respondents participating in the information events, focus groups and interviews. While it was acknowledged by some that parents should have a right to check on an individual working directly for them – perhaps in a caring role for an elderly relative or as a tutor of their child – there were concerns that unless properly set up and managed, this could offer wide potential to be abused.

Most of these respondents agreed with the proposal to set up a registered body through which parents and personal employers could obtain disclosures. That said, there was wide ranging comment that the amount of information made available to parents and personal employers should be very restricted. Most of these respondents felt that it was suitable for parents and personal employers only to be able to obtain a “yes” or “no” response on disclosure. Furthermore, most did not want conviction or non-conviction information to be available to these parents and personal employers seeking disclosure for an employee.

A couple of alternative suggestions were made by a number of respondents. Some suggested that an applicant should have their disclosure form on hand to show to parents and personal employers on request. Another was that perhaps an applicant and employer could have access to an online facility whereby a one-off pin number could be provided by the applicant and used by the employer to obtain information on whether the applicant was disclosed or not. This pin number could then be changed by the applicant to prevent further visits to the online facility by an employer.

Four consultees commenting at question 2 (comments on the recommendations) also noted the need to make disclosure information accessible to people employing personal carers or other similar personal employers.

### **2.1.3 Range of Positions**

The majority (162) of consultees commented in some way on proposals 1-3, with the main issue raised being that of a need for guidance on, or clarification of, the type of applicants or posts requiring disclosure. Sixty-four consultees felt that clear definitions were needed for various terms used in the consultation document including “child-care”, “regular contact” and “vulnerable adults”. However, a consultee from the education sector felt it important to “*err on the side of caution*” rather than “*get bogged down on the debate about what posts could be considered ‘child care’.*”

While twenty consultees felt the proposals should include anyone in contact with children or adults at risk, 25 mentioned specifically their view that posts with indirect contact should be included and 8 specified the need to include support staff. Ten consultees, however, felt indirect contact should not be included.

Eleven consultees agreed that there should be a non-job specific approach; “*Agree with not specifying job titles, thus leaving the definition for liable groups open - should ensure breadth for those requiring disclosure.*” (Education)

Consultees gave a variety of suggestions for posts or types of applicants which, they felt, required disclosures and these are listed below:

- Any educational establishment staff (5 consultees);
- NHS staff or other medical workers (7 consultees);



- Employees of regulated bodies or agencies (10 consultees);
- Care centre staff (8 consultees);
- Police (6 consultees);
- Self-employed or freelance (5 consultees);
- Drivers or escorts (2 consultees);
- Foster carers (1 consultee)
- Trades people (3 consultees);
- Sub-contractors' staff (3 consultees);
- Development workers (2 consultees);
- Co-ordinators (2 consultees);
- Ice-cream sellers or shop staff (2 consultees);
- Clergy (1 consultee);
- Trainers or work experience supervisors (1 consultee);
- Social workers (1 consultee);
- Immigration officers (1 consultee).

Some consultees also mentioned non-employed and unpaid positions which, they felt, should require disclosure. These included 9 mentions of guardians or those with power of attorney and 11 specified voluntary staff. Five consultees felt that disclosures should be required for anyone in a position of trust.

While 13 consultees welcomed the extended range of positions mentioned in proposal 3, there were a variety of suggestions for other specific or more general posts to be included. In addition to the wide range of posts mentioned where staff would be in physical proximity to children or adults at risk, other, more indirect posts were also mentioned. These were positions where applicants would have access to information about children or vulnerable adults and included:

- people with substantial access to information about vulnerable groups (15 consultees);
- telephone help-line operators or any other telephone contacts (12 consultees);
- chat-room monitors or other internet contacts (9 consultees);
- database operators (6 consultees).

The range and type of positions covered by disclosures were questioned by 11 consultees providing comments on the recommendations (at question 2) who felt that the current system does not distinguish between different levels of risk. A further 11 consultees also mentioned that adults at risk are not currently protected.

Respondents attending the focus groups and information events had varied views on how decisions should be taken as to whether or not an individual would need disclosure. Some organisations felt that it would be useful to have a list of posts that would require disclosure, and it was felt that this would particularly benefit smaller organisations that may need guidance on who needs to be disclosed. However, there was a greater level of support from respondents for setting out a wide ranging definition based on contact for those in working with children or adults at risk. This, it was noted, would ensure widest possible coverage of all individuals needing to go through the vetting and barring system. Some respondents who had experience of POCSA noted that something similar to the wide-ranging coverage would be required for the new vetting and barring scheme.

These themes emerged at other points in the consultation. For example, when asked to comment on the interests of employers (Q4), the need for clarification on the sort of posts for which disclosures are necessary was mentioned by 21 consultees, with 17 requesting official guidance on this matter. One consultee from the justice sector commented “*Clear guidance on what posts are applicable together with education and training on the new process are essential.*”

Among individuals attending qualitative discussions and information events, the majority view was that the proposed vetting and barring system should err on the side of caution. As such, most respondents acknowledged the need to widen out those positions requiring disclosure. However, there were concerns about the cost implications this would have for many organisations who would have a large increase in the numbers of staff needing disclosure. Respondents pointed not simply to the direct financial cost but also the indirect cost in terms of recruitment practices, training of staff and so on. Some respondents suggested that, in the first instance, there would be a need to prioritise those posts requiring immediate disclosure. Additionally, some organisations had concerns that they might lose staff in that some staff who had previously not needed to be disclosed might leave their jobs rather than submit to going through the disclosure process.

Two consultees also noted the need for the system to allow adults at risk or adults with disabilities access to employment or voluntary posts.

Proposal 9 specifically asked about extending the definition of child care positions (see below) and consultees were asked to comment on *any further changes, other than those outlined, which they would like to see made to the DWCL.*

**Proposal 9: changes to the Disqualified from Working with Children List**

Schedule 2 of the Protection of Children (Scotland) Act 2003 will be amended to clarify and extend the definition of child care positions. (Other amendments will be required to this Act in relation to other proposals in this paper.)

Of the 120 consultees who commented on this specific proposal, 42 stated that no changes were necessary to the DWCL and 18 said they agreed with the amendments or made other general positive comments about the changes.

Twenty-three consultees desired more clarity on what defined childcare positions or contact positions with children, while 6 wanted to further extend the scope of the childcare position definition. Specific categories (mentioned by only 1 consultee each) were:

- Those registered on the Provisional List
- Third Party workers (e.g. Confectionery, Ice cream vans)
- NHS Staff
- Workers for unregulated providers (e.g. day care providers not registered with the Care Commission).

## 2.2 DEFINITIONS TO BE APPLIED

### **Proposal 8: definition of vulnerable adult**

The intention is to improve protection for those vulnerable adults aged 16 or over who are in receipt of care services and/or support from employees (including paid and unpaid volunteers) in regulated and NHS care settings. Therefore, the definition of “vulnerable adult” will primarily be a service-orientated definition.

The consultation document stated: *We are not looking for comments on the Disqualified from Working with Vulnerable Adults List (DWVAL), since this has been covered by previous consultation. However, we would like to know if this new context raises any new issues.*

Of the 115 consultees commenting on proposals 7-8 (DWVAL), 30 felt there were no new issues raised by the new context and 12 commented positively in general terms.

Eighteen consultees stated that the ‘vulnerable adult’ definition needed to be clarified, while 9 wanted to extend the scope of the definition beyond those receiving services in regulated and NHS care settings.

*“We need to make sure we have the highest standard of care, safety and protection for vulnerable groups.... ... urges the Executive to amend the proposed definition of vulnerable adults to cover a wide range of settings – including voluntary sector services – in order to ensure that as many vulnerable adults as possible are protected.”*

(Voluntary)

Twelve consultees raised a specific problem as to whether 16-18 year olds should be classified as adults or children. Some qualitative respondents noted that under current law, for the purposes of the DWCL a child is any individual up to the age of 18, but for the purposes of some criminal activity, an individual is an adult from the age of 16. There was a preference from some respondents for this lack of consistency in definitions to be resolved.

Of the consultees commenting on the interests of vulnerable groups at question 3, 22 also noted the need to ensure that any changes to rules and definitions used in the process did not have any adverse affect on opportunities for children and vulnerable adults.

*“The proposed scheme could also impose permanent restrictions on certain people who could provide valuable input to the education of young people e.g. reformed drug addicts. An opportunity and mechanism for appeal and review at a suitable time following offending should be considered.”*

(Education)

## 2.3 OVERSEAS WORKERS

The problem of obtaining accurate disclosure information for paid or unpaid workers from overseas was raised by a number of respondents, including 17 consultees commenting at question 2 (inviting general comments on the Bichard recommendations). It was noted that

in some instances it is not possible to obtain information and / or the degree of reliability that can be attributed to any available information is questionable.

One respondent from the health sector attending an information event also noted that obtaining disclosure information on overseas workers was an increasing problem and that this also raises the potential for discrimination. He felt that if a disclosure is not available or is potentially unreliable, should an individual then be offered employment? He noted that this was a particular issue within the health service where recruitment of workers from overseas countries is on the increase. Another respondent participating in an in-depth interview, within a care setting, noted that disclosures are currently obtained for all potential employees but acknowledged that any worker coming from abroad will in effect not be properly disclosed due to a lack of available information from their country of origin.

Five consultees (in response to question 5 of the consultation paper) noted an allied need to ensure forms are accessible and that links with information held in other countries are in place. While consultees responding to question 6 of the consultation paper were broadly supportive of the proposals to create a cross-borders system within the UK, 12 consultees also stressed the need for the system to include the ability to check workers, students or volunteers from overseas.

In summary,

There was broad agreement for widening out the range of individuals requiring vetting and barring disclosure. That said, there were some calls for clarification of who needs to be disclosed and preferences tended to be for a contact-based definition rather than simply a listing of different positions. There was agreement that the range of individuals for whom disclosure could be requested should be broadened out to include those with both direct and indirect contact with children and adults at risk.

While there was general agreement that parents and personal employers will be able to ask individuals to obtain disclosure, most respondents cautioned on the need for careful regulation to avoid misuse of the system. There was a preference from many for the set up of a registered body through which parents and personal employers could obtain disclosures. There was also a preference for any information made available to parents and personal employers to be restricted.

There were calls for a clarification of the definition of “adult”.

There was concern over disclosure for overseas workers primarily because the information, or quality of information, available from many countries cannot be relied upon as accurate. This is a particular issue in certain sectors (such as health or social work) where there are relatively high proportions of overseas workers employed.

## CHAPTER 3: VETTING AND BARRING DISCLOSURE

### 3.1 ONE LIST OR TWO?

The Scottish Executive is proposing that there will be a Disqualified from Working with Vulnerable Adults List (DWVAL) that will operate in a similar way to the Disqualified from Working with Children List. The consultation document asked for views on this.

#### **Proposal 7: Disqualified from Working with Vulnerable Adults List (DWVAL)**

There shall be a list of persons barred from working with vulnerable adults.

The issue of whether there should be one list or two was raised by consultees at various points in their response to the consultation paper and was also noted by other respondents during the course of information events, focus groups or interviews.

Of those responding specifically to proposal 7, 27 consultees felt that there was no need for 2 separate lists and that a combined list would suffice, or that inclusion in one of the lists should imply automatic inclusion in the other. This view emerged elsewhere in the consultation with a further 9 consultees (commenting on proposal 9 specifically - changes to the DWCL) noted that there was no need for 2 separate lists and that a combined list would suffice, or that inclusion in one of the lists should imply automatic inclusion in the other.

Eighteen consultees commenting specifically at proposal 7 felt there was a need to check applicants against both lists, or that inclusion on either list should preclude working with any vulnerable group. In the words of a consultee working within the social work sector,

*“We would feel there must be similar issues in being placed in DWVAL/DWCL and find it difficult to understand how someone on one of these lists could be considered suitable to work with any vulnerable group.”*

Five consultees intimated that such checks should be carried out with one application only and 3 felt the lists needed to be strongly linked in order to operate properly. Conversely, 2 consultees thought that 2 lists would be better than a combined list in some circumstances; 1 because it would be comparable to the system in England and Wales to allow for cross-border checks, and the other because separate lists fit better with human rights.

While most comments regarding the issue of one or two lists were made in relation to proposal 7, this issue was also noted by consultees commenting at other points in the consultation paper. For example, 7 consultees commenting on proposals 11-13 (which asked about the status and governance arrangements for the Central Barring Unit) stated that they would prefer one list rather than the two proposed and 1 felt that the separate lists must have separate criteria. A further 7 consultees commenting on Q2 (which asked for comments on the recommendations) felt there was no need for two lists and that one list of barred individuals would be preferable. Eight consultees responding to question 6 (which asked for any other comments) queried the need for two separate lists. They felt that combining both the DWVAL and the DWCL would increase the reliability of the system and also lead to savings in time and administration costs. Seven consultees commenting on proposals 1-3

(scope of new vetting and barring disclosure) questioned the need for two separate lists. Of those commenting on proposal 23 (cross-referencing with offender registers and other lists), 11 consultees again stated that one list would be their preferred option.

Views on having one or two lists were mixed among those attending information events, focus groups and in-depth interviews and many respondents found it difficult to provide possible examples as to why an individual might be barred from one list but not from another. One respondent did note though that automatic disclosure of inclusion on both lists would mean a lack of employment opportunities across a wide range of different jobs and might mean that some individuals become relatively unemployable. Most respondents attending qualitative discussions noted that if there are 2 lists introduced, when requesting disclosure on any employee, they would expect to be notified if that individual were on the other barred list.

There were also some concerns that automatic inclusion on both lists would open up opportunities for individuals to sue in respect of human rights or UK employment law. A few respondents commented that the new scheme must take account of human rights and UK and EU employment legislation.

## **3.2 COSTS OF DISCLOSURE**

Not surprisingly, the issue of costs of disclosure was commented on by significant numbers of those participating across all elements of this consultation exercise. This section of the report examines a number of issues raised by respondents in relation to costs.

### **3.2.1 Costs of obtaining disclosure under the Current System**

The fee for disclosure is currently £20, having risen from £13.60 in April 2006, although the cost of disclosures for unpaid posts within the voluntary sector in Scotland are covered by Scottish Ministers. Under the present system, 32 consultees viewed disclosure costs as a burden, both in terms of money and time, although 38 considered that the current cost of disclosure in Scotland was acceptable. Some individuals attending groups and interviews were aware that the equivalent cost of obtaining disclosure in England and Wales is at a higher level and some noted that an increase in fee in Scotland to the level of that currently charged in England and Wales would be significantly more expensive for individuals.

There were some consultees who noted that the current system is too bureaucratic and costly, and this issue was highlighted by 32 consultees providing comment to question 1 of the consultation paper specifically.

*“The current system for getting disclosures is too bureaucratic and costly. There is no simple way for small independent bodies that are caught up in the legislation to register and secure a disclosure without filling in endless complex forms; the overall cost of the system is running into millions of pounds - money that would be better spent on frontline services.”*

(Education)

Similarly, reference to the current costs was also made by those participating in groups and interviews. Many were unhappy about what was perceived to be a significant increase in

costs to the individual in April of this year, and one or two specifically noted that an increase of almost 50% this year was too high.

### 3.2.2 Costs of Disclosure under the New System

#### **Proposal 4: costs of Vetting and Barring Disclosure**

Scottish Ministers will have a power to set charges for Vetting and Barring Disclosure (as they do now for all Disclosures) and any other new processes. Detailed costs have still to be established but there will be additional costs in conducting a Vetting and Barring Disclosure which are likely to be met through the application fee. The current intention is that subsequent checks of barred status will be free, or at a lower cost. A fee would be charged for subsequent full disclosure.

#### **Proposal 5: free Vetting and Barring Disclosure for volunteers**

It is planned that volunteers working in voluntary organisations with children or vulnerable adults will receive the Vetting and Barring Disclosure at no cost to themselves.

At question 6 (general comments on the proposed new scheme), the issue of costs associated with the new scheme was the most frequently mentioned concern with 18 consultees commenting on a possible financial burden and the need for funding. Of those commenting at question 4 (interests of employers), 43 consultees referred to costs associated with the new system, and 13 mentioned the effect on the voluntary sector specifically.

In considering likely cost levels specifically, it was acknowledged that the cost of implementing the new system was not known, although there were concerns that the cost of implementing the proposals as laid out could be significant. While there were some acknowledgments that removing the need for multiple disclosures could reduce long term costs, it was felt that the cost of the initial disclosure could increase significantly, particularly if the new system is to be self funding. While many individuals attending information events, groups and interviews accepted that the cost of implementing and managing the new scheme would need to be covered by charges levied on users, many found it difficult to second guess a likely level of charge that would need to be imposed if the Scottish Executive introduce the system as outlined in the consultation document.

Eight consultees at Proposal 4 (cost of vetting and barring disclosure) asked that costs be kept at an “acceptable”, “balanced” or “reasonable” level (although they did not provide indications of what constituted an acceptable, balanced or reasonable level); *“Costs need to be calculated carefully which would maintain a balance between enabling the efficient and effective provision of the service without being a burden on smaller organisations.”* (Social work)

In response to question 5 (interests of applicants), the need for extra resources was mentioned by 5 consultees; either to help implement the system or to offset some or all costs to applicants.

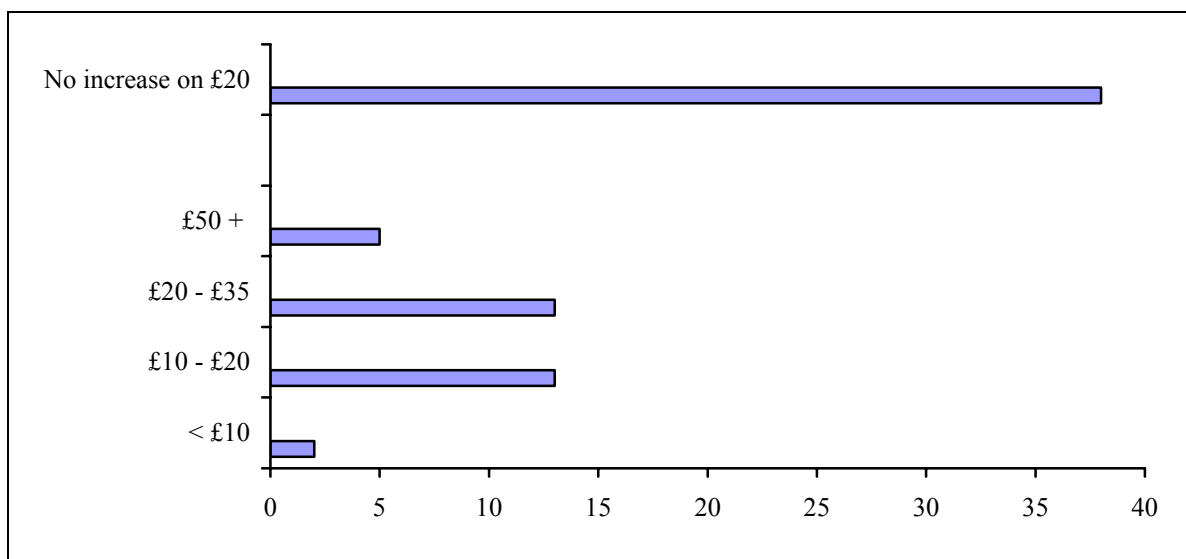
A number of key themes emerged in relation to the costs of the new system and these are commented on in the following paragraphs.

*i* **Costs of the New System**

Of those who were able to specify what might be an acceptable cost, there were preferences for something in line with the current level of £20. Some respondents were concerned that the cost of disclosure could increase to over £50 and for most this level was too high.

In response to Proposal 4 specifically, 71 consultees suggested a range of fees; including 38 who favoured no increase on the current charge of £20; 2 consultees suggested amounts of less than £10, and 13 felt amounts between £10 and £20 would be appropriate. Thirteen consultees suggested prices from between £20 and £35 and 5 consultees suggested fees of £50 or over (see chart 3.1).

**Chart 3.1**  
**Preferences for cost of new system**



(Base : all suggesting cost level at Proposal 4)

*ii* **Disclosures for Voluntary Organisations**

Disclosures for unpaid posts within the voluntary sector in Scotland are currently covered by Scottish Ministers and proposal 5 stated the intention to continue to provide this. There was widespread agreement across all audiences for volunteers working in voluntary organisations with children or adults at risk to receive a disclosure at no cost to themselves.

Fifty five consultees responding to the question relating to proposal 5 (free vetting and barring disclosure for volunteers), voiced broad support for the proposal overall, while 97 chose to comment on the need to ensure the system remains free for volunteers. Eleven commented specifically that this should include a free service to voluntary organisations as well as the applicants themselves. Nine consultees wanted to see a system of full cost recovery in place.

As the following quotation from a Local Authority shows, there were also requests from 16 consultees for those working in a voluntary capacity outwith voluntary organisations to also be offered free disclosure checks.



*“Proposed substantial higher cost for a Vetting and Barring check may prohibit organisations’ ability to deliver services. Keen to see an extension of free checks for individuals who act in a volunteering capacity outwith a voluntary organisation. There are many parent helpers who assist with school activities which are non paid and these valuable activities could be curtailed or ceased completely due to additional costs.”*

Consultees responding to the question on Proposal 5 specifically were also supportive of extending the range of individuals available to access free disclosure, regardless of the sector or organisation they work for. This was raised by 16 consultees, while a further 9 also referred to the need to provide free checks for the paid staff of voluntary organisations. Seven consultees mentioned the need for a reduced rate for paid staff in voluntary organisations.

### **iii Impact on Recruitment**

In response to Proposal 5 specifically, 17 consultees remarked that costs can act as a disincentive in a sector where recruitment is already a challenge and 3 noted that the checks should be free for all applicants. One consultee noted,

*“The new scheme could well be a barrier to volunteering, which in turn may adversely affect the opportunities for children and vulnerable adults to participate in the type of activities listed. Voluntary organisations provide via their staff- who largely work on a voluntary basis - a layer of "trusted" people in whom children and adults at risk can confide if they are being abused. The new scheme could prove counter-productive to the aim of securing the safety of children and vulnerable adults if it results in the removing or reduction of such staff. It will, therefore, be vital for confidence in the system to be built up so that potential volunteers are not deterred from entering the system.”*

(Voluntary)

Seventeen consultees commenting at question 5 (interests of applicants) were concerned that financial issues may act as a deterrent to applicants, although 4 consultees felt that this could be mitigated by setting fees at a level appropriate to the applicants’ ability to pay.

This was also of concern to some respondents attending qualitative discussions and particularly for those working within the social work and health sectors. Many individuals employed within these sectors are on minimum / low wage and / or work part-time. It was noted that any additional burden of costs could impact on the willingness of potential staff to apply for jobs requiring disclosure. That said, another employer within the care sector noted that they had not had a problem with losing potential staff because of the costs of disclosure and that some potential employees have an expectation that they will have to pay for a disclosure certificate. Once again, the withdrawal of a need for multiple disclosures was seen to help counteract this issue longer term.

#### **iv Indirect Costs of Disclosure**

The issue of indirect costs in relation to the administration and time taken to manage the disclosure process was raised by a number of those responding to the consultation paper. For example, 14 consultees commenting on Proposal 5 specifically, noted the burden placed by associated administrative costs.

It is also important to note that some individuals attending groups, interviews and information events, further noted the indirect costs that would be introduced alongside the new system. Even among those organisations working in the voluntary sector that do not have to pay for disclosure, there were concerns about the increased cost of training (on how the scheme would operate and how information would be interpreted) and administration in order to ensure the new scheme could work effectively and efficiently.

Thirty-five consultees responding to question 3 (interests of vulnerable groups) felt that the system might operate as a deterrent, barrier or disincentive to workers or volunteers who might apply for a post. The need to avoid this outcome was highlighted by Peter Peacock, Minister for Education and Young People in his statement introducing the consultation “*It is vital that, in securing protection as our first priority, we also create a climate in which people who can contribute so much and so significantly to enhancing the quality of life of children and adults at risk are not discouraged from doing so.*”<sup>2</sup> However, 40 consultees, of whom over a quarter were from the voluntary sector, felt the new system might lead to recruitment problems or to a reduction in volunteers. This was echoed by some respondents attending information events, focus groups and in-depth interviews and there were some concerns that some clubs or activities within the leisure sector might end as a result of changes to the disclosure system.

#### **v Additional Financial Burdens**

In response to Proposal 5 specifically, 35 consultees stated that any cost increase would be a financial burden on small or voluntary organisations, and 11 commented that extra disclosure costs would mean a reduction in the money available to spend on providing a service. Nineteen consultees mentioned the impact of the recent increase in cost of disclosure and 4 noted that higher costs might lead to a lower rate of compliance or inhibit recruitment for those working with children or adults at risk.

#### **vi Burden on Resources / Resource Implications**

Eight consultees responding to question 2 (comments on the Bichard recommendations) voiced concern over any increase in costs associated with the new system and a number of qualitative respondents were concerned about the potential increases that would be needed in order to implement the system as outlined. For example, one consultee from the Early Years sector felt that “*The Executive must make finances available to provide ongoing training to voluntary organisations or run the risk of an adverse affect on voluntary sector activity, capacity and ability to comply.*”

Eleven consultees at question 4 (interests of employers) required extra funding to alleviate any additional financial burden caused by the new system and 3 specifically referred to a

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<sup>2</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-06/sor0208-02.htm>

need to cap fee levels.

### **vii      *Responsibility to Pay***

The issue of costs was clearly important to audiences participating in all elements of the consultation exercise with some respondents querying who should have responsibility to cover the costs of the new system. One or two respondents attending focus groups suggested that the Scottish Executive should underwrite the cost of the new scheme and then recoup their initial expenditure at a later date. One consultee from the voluntary sector commented *“We believe that it should be fully funded by new money from the Executive and not by the threat of money coming out of other funds.”*

Six consultees commenting on Proposal 4 specifically felt that the cost of disclosure should be borne by the applicant, with 2 proposing that the disclosure fee be treated in a similar way to professional registrations. Some respondents attending groups felt this was acceptable to those qualifying to work within a profession and who had reasonable expectations for future salary levels, but that it would be unfair to expect employees on minimum or low wages to have to cover the costs of their own disclosure.

Conversely, 3 consultees stated that the employer should be responsible for meeting the cost of disclosures. One manager in a nursery participating in a qualitative discussion noted that her employer currently pays for disclosure checks for all staff. However, it was her view that her employer might not be prepared to pay above a maximum of £30.

The problems faced by those on low wages were also raised by 11 consultees in relation to Proposal 4, who felt there should be some kind of sliding scale related to ability to pay, and one or two of those participating in focus groups made a suggestion for some form of means testing for employees to determine their ability to pay for disclosure. It was however also acknowledged by some respondents that “means testing” would serve to make the process more complicated to administer and have the potential to cause delays in the timescales for disclosure. Means testing for employer organisations was also suggested by 26 consultees at Proposal 5 who felt that some sort of scale based on the type of organisation, staff turnover or number of employees would be merited.

The need for some kind of monetary assistance was mentioned by 30 consultees in relation to Proposal 5, who suggested that whole or part funding should be made available, perhaps after an impact assessment. Two consultees felt money should be ring-fenced to pay for disclosure checks in the public sector and another 2 consultees suggested that a one-off fee per organisation could be introduced.

### **viii      *Extending Coverage of the Workforce***

While there was broad support for the concept of extended coverage of the workforce needing disclosure, 3 consultees providing comment in relation to Proposal 9 (changes to the DWCL) specifically were concerned that voluntary organisations would incur cost or resource problems as a result of extending the scope of childcare positions needing disclosure.

This was also cited as an issue by some respondents attending information events, groups and interviews, who noted that the costs of checking a wider range of staff had the potential for a

significant impact on many organisations. For example, including those in administrative posts who have not previously required disclosure checks and others with indirect contact with children and adults at risk.

Commenting on Proposal 4 (costs of vetting and barring disclosure) specifically, the issue of students, either on placement or entering the workplace for the first time, was raised by eight consultees who felt they should receive a free disclosure.

#### **ix Other Costing Issues**

We have already noted that cost is an issue concerning many who participated in this consultation exercise and a number of other issues in relation to increased costs were raised. These included:

- Costs associated with the IT systems that will be needed to ensure the new system operates effectively;
- Costs in relation to information sharing across a wide range of bodies and the allied need for ICT systems capable of cross-referencing huge amounts of information;
- Costs to organisations of implementing and administering the system were raised by 18 consultees commenting on Proposals 1-3 (scope of new vetting and barring disclosure), with a further 7 voicing concern that workloads would increase;
- Commenting on Proposals 11-13 (Central Barring Unit), 8 consultees were not convinced of the need for a new agency and reasons for this were based mainly on cost.

Conversely, 3 consultees commenting on question 4 noted the potential for cost savings because there would no longer be the need for multiple disclosures. One consultee from the justice sector commented *“The cost will also be of concern, although if the ‘life’ of the Certificate is elongated this cost could be recouped over time.”*

There were also a small number of comments that cost of disclosure cannot be considered in isolation but that consideration also has to be given to the cost of other checks that have to be made by employers or employees. As the following quotation notes, many professional organisations will also have costs associated with registration checks.

*“This is impossible to answer at this stage in the process. However, costs are important to small voluntary-run groups. It is not the cost of the check in isolation that needs to be considered but the potential full costs involved. For example, a playworker would require to be registered with the SSSC. At present this involves a fee and a fee for a Disclosure Check. If the Vetting and Barring Check can be brought into this process then costs may actually reduce but if not, there will also be a fee incurred at the point of re-registering with the Scottish Social Services Council (SSSC) which will also need to be taken into consideration. Playworkers are not financially well-rewarded and increased costs could act as a barrier to employment.*

(Voluntary)

### 3.2.3 Subsequent Disclosures

Proposal 4 states the intention to give Scottish Ministers powers to set charges for Vetting and Barring Disclosures and states that additional costs of conducting the disclosures will be met through the application fee. It is intended that subsequent checks will be free or cost less than the initial disclosure and that a fee would be charged for subsequent disclosures.

Twenty-five consultees felt that they did not have enough information to make judgements on fee levels at this stage and the need to keep any increase in cost at a nominal or minimum level was voiced by 27 consultees commenting on Proposal 4 specifically.

Commenting on the cost of the initial disclosures at Proposal 4, 22 consultees felt an initial higher fee would be acceptable if this meant subsequent disclosures were charged at a lower rate. In total, 36 consultees commented on the need for subsequent disclosures to be cheaper. Twenty-seven consultees also noted that they would accept a higher initial rate if the subsequent disclosures were free. Overall, 36 consultees were in favour of subsequent disclosures being free.

A small number of respondents participating in the information events, focus groups and in-depth interviews noted that the proposed higher levy on initial disclosure could be unfair on employers as many assumed that employers would be covering the cost of disclosure certificates. Respondents also found it difficult to suggest a specific fee to be levied for subsequent checks.

Four consultees commenting on Proposal 4 felt that a higher initial charge would be a disadvantage for the initial employer paying for disclosure and that there should be a standard charge for all types and levels of disclosure. Again, a small number of respondents attending focus groups agreed with this view. There were some suggestions for some form of economic cost analysis to be carried out in order to provide a guide to likely costs of disclosures under the new system.

The possibility of misuse of the system was raised by 7 consultees, 4 of whom suggested that applicants might apply as volunteers to obtain initial disclosure and then take up paid positions after completing the disclosure process.

*“However if there is a cost differential between Disclosure Scotland and the Criminal Records Bureau (CRB) (as there is at present), Registered Bodies in England and Wales may choose to register with Disclosure Scotland (if cheaper) and there may be no legislation to prevent this. This situation would cause an effect in Disclosure Scotland with volumes and the structured phased approach. It would also make it very difficult to project volumes for business resourcing.”*

(Justice)

One or two respondents attending focus groups also noted that some employers – to save on costs associated with disclosure – might delay offering work to potential employees until they had been vetted by another employer, although most noted that this would be detrimental to an employer needing staff in the short term.

### 3.2.4 The Cost of Retrospective Checking

Seventeen consultees commenting on Proposal 6 noted the financial or administrative impact that would be felt by voluntary organisations faced with the need to retrospectively vet their workers while 36 felt there would be resourcing issues to be faced.

*“There are financial implications for organisations such as ourselves who’ll be under more pressure to process more checks and support organisations in other ways such as training, general advice and support. We have already taken a 25% cut from Scottish Executive funding, limiting the capacity of our Disclosure Unit to support those small clubs and groups who need us most. Adequate funding would allow this proposal to be introduced over a shorter period of time than the 3 - 5 years suggested. The protection of children must be paramount over the relatively small economic factors involved.”*

(Other)

Many respondents attending information events and focus groups noted the need for employers to prioritise groups of employees needing to be disclosed in order to spread additional cost and administrative burden over a time period. In general, there was agreement that a period of between 3-5 years in which to carry out retrospective checking would be acceptable.

### 3.2.5 Perceived Impact of Increased Costs

A number of additional comments were made in relation to the likely impact of introduction of the new disclosure system and these included:

- Potential staff could be lost if the cost of obtaining disclosure is too high;
- There could be additional costs levied on a number of organisations such as regulatory bodies to enable information sharing to be brought about;
- The cost of running two separate lists would make the scheme more expensive;
- Some volunteers who have not previously needed to be disclosed might give up volunteering if they are required to be disclosed.

### 3.2.6 Expectations of the New System in relation to Costs

While there was broad support for the new system as outlined in the consultation document, there was an expectation on the part of some respondents that an increase in costs would also mean a speedy or speedier processing time.

At Proposal 4 specifically, 10 consultees expressed the opinion that they would expect any subsequent checks to be full disclosures. A further 5 consultees indicated that they would expect an increase in efficiency or accuracy in return for an increase in cost.

Certainly, a number of individuals attending group discussions noted that they would expect a fast turnaround on disclosure checks if costs were to increase significantly, although some doubted that this would actually happen, particularly for a while after introduction. A suggestion for an online system of conducting disclosure checks was mooted by a small number of respondents as offering potential to keep costs down.

### 3.3 LIFETIME OF DISCLOSURE

#### **Proposal 26: lifetime of Vetting and Barring Disclosure certificate**

The Vetting and Barring Disclosure certificate will be valid for a period of 10 years. The Scottish Ministers will be able to vary this time period, if necessary.

The consultation document asked whether *the vetting and barring disclosure certificate should have a finite lifetime, after which a new application for full disclosure needs to be made?*

Of the 165 consultees commenting on proposal 26, 95 agreed that the certificate should have a finite lifetime. A further 10 agreed but felt that this would depend on how robust the system was or how efficiently the checking and updating system worked. Six consultees felt that there should be a monitoring period to evaluate the system.

Twenty-one consultees disagreed with the proposal and 30 voiced the opinion that they were unsure why this would be necessary under the new system.

*“Why bother with a 10-year lifetime when it will be updated automatically anyway? Who is then to initiate this check, the individual or the organisation employing them? Is there really any need for re-checking?”*

(Sport and leisure)

Twenty-six consultees felt the proposed 10 year lifetime was too long and some of these consultees suggested alternative lifetimes. Eleven suggested that 5 years would be more appropriate; 2 suggested 3-5 years and 3 suggested a lifetime of 3 years.

Provided updated information will be available throughout the lifetime of a disclosure, the length of the disclosure took on a more secondary importance. One respondent also queried who would be responsible for notification that a new disclosure is required.

Other issues raised by smaller numbers of consultees included 3 who queried whether a new full disclosure would be needed if someone changed their employer and 2 felt that this would be the case. The cost or resource implications of this aspect of the system were raised by 10 consultees.

Three consultees asked whether the disclosure provided at the 10 year update would be the full, more expensive form of disclosure or the less expensive or free subsequent check disclosure.

Some regulatory bodies currently request updates at more frequent intervals, an example being the Scottish Social Services Council who require rechecking after 3 years. Four consultees felt there should be agreement between all relevant bodies over the timeframe to be used.

Three consultees asked how changes in employment would be documented; they were concerned that should relevant information come to light concerning an individual then there

should be some way of tracking who was employing them.

In summary,

Views on whether there should be one or two lists were split. Some consultees and respondents felt that anyone barred from working with children should automatically be barred from working with adults at risk and vice versa.

Regardless of whether there are one or two lists, there was a preference for cross-referencing between the two in any disclosure check.

There were also some concerns over unnecessary duplication of effort, increased bureaucracy and additional costs if two lists are maintained.

There were some concerns over the likely costs of disclosure under the new scheme and many individuals were unable to suggest likely cost levels. Some simply made reference to the need for costs to be reasonable, without actually defining what this meant. There were assumptions from some that a higher disclosure cost would mean an increase in efficiency of the service.

There was wide ranging agreement for the continuation of free disclosure checks for volunteers in voluntary sector organisations, although some respondents also noted that there would be an increase in indirect costs to all organisations.



## CHAPTER 4: INFORMATION

A key theme emerging across the consultation was that of sharing information on adults, the type of information that could be available and to whom this should be available. This chapter looks at this issue specifically.

### 4.1 INFORMATION SHARING

#### 4.1.1 Needs of the new scheme

As noted in the consultation paper in relation to proposal 17 (information released to applicant by Central Barring Unit), effective information sharing will be crucial for the scheme outlined to work. The purpose of sharing information is to determine the suitability or otherwise of those who work with vulnerable groups. The range of issues in relation to information sharing and the frequency with which this was mentioned, serves to highlight its importance to consultees and other respondents.

The need for changes to sources of information and information to be shared was noted by those commenting on the current system at question 1 of the consultation paper. Of these, 21 consultees felt there needed to be more robust procedures for communication between relevant bodies to share information. One consultee from the social work sector voiced the concern that,

*“At present, there is no robust mechanism for cross-referencing information - for example, individuals may give different names, dates of birth etc and this can lead to their history being lost to those seeking the information.”*

Three consultees responding to question 1 specifically also noted the need for legislation to require relevant information to be passed to interested parties. As one consultee in the education sector noted, *“There has been no requirement on regulatory bodies and others to pass on information they have on their members/ employees resulting in relevant information not being available to those who need it.”*

The accuracy of information sharing was also highlighted by 9 consultees providing general comments on the Bichard recommendations (Q2) who commented on the need to ensure accurate exchange of information between agencies. A further 10 consultees felt the system should ensure prompt updating of lists; *“I believe any system which can update information quickly when circumstances change is good.”* (Education)

Additionally, in response to Q2, 7 consultees commented on the issue of security and suggested that there needed to be protocols in place for accessing information. One individual commented *“Information to be shared must be subject to an appropriate level of security.”*

One further issue highlighted by 2 consultees commenting on Q6 (providing comments relevant to the new scheme) was that of accuracy and fraud. These consultees stressed the need to check the accuracy of any information held about an individual, with stringent procedures in place to eliminate the risk of human error. Two other consultees were concerned over the increase in identity fraud and felt steps should be taken to ensure the

security of the new system against similar acts of fraud. Two consultees were also concerned about the possibility of fraudulent disclosure certificates.

**Proposal 18: duty on public authorities to share information**

Legislation shall place a duty on the police and other agencies to share relevant information with the Central Barring Unit (effectively the Scottish Ministers). The Scottish Ministers shall have a power to specify what constitutes relevant information in regulations.

**Proposal 19: changes to arrangements for notifying employers of convictions**

Continuous updating of the barred lists will complement the current arrangements whereby the Scottish Criminal Records Office (SCRO) provide details of subsequent convictions to employers and regulatory bodies for a range of occupations. The notifiable occupation scheme will need to remain for those occupations to which it currently applies and which will not be included within the vetting and barring scheme. It also has a continuing role in ensuring that employers are made aware of *all* convictions even where these might not be relevant to the protection of vulnerable groups.

**Proposal 20: police powers to require details of occupation**

We plan to give the police a power to require an individual to give them details of their occupation in cases where the actions of the individual would be of concern if they worked in the vulnerable groups' workforce. This would be defined in such a way as to cover voluntary work as well as paid employment. This will enable the police to take appropriate action in terms of notifying third parties if the individual is a member of that workforce. Failure to give the required information, or giving false information, would be an offence.

Proposals 18-20 refer to information sharing between the Central Barring Unit, public authorities, employers, police, regulatory bodies and so on. The consultation paper asked for comments on who should be required to pass what information on to whom? The following three sub-sections of this chapter deal specifically with these questions.

Among responses from 142 consultees to this question, most were qualified. Four stated their agreement with the proposals, while 1 consultee stated that they did not agree.

**4.1.2 Sharing information – who**

Proposal 18 deals with legislation to require the police to share relevant information with the CBU and 13 consultees agreed that this should be the case. Other agencies would also have a duty to pass relevant information to the CBU and there were a variety of suggestions as to which agencies should be involved.

Eighteen consultees felt that all public bodies should share information with the CBU and 6 made the more general comment that public bodies should share information. Sixteen consultees were in favour of including any relevant agency, with 1 other consultee mentioning private companies. Two consultees asked for clarification on the definition of 'public authority' in relation to proposal 18.

The need for professional or regulatory bodies in the field of social work, along with social work services, to share information was mentioned by 16 consultees and employers were also mentioned by 16 others.

*“There was support for the sharing of information held within local authorities, especially Social Work services and COSLA, who may have a range of ‘soft’ information relevant to the work of the Vetting and Barring Unit.”*

(Social work)

Eleven consultees felt that the duty should also be placed on local authorities and 7 consultees highlighted the voluntary sector.

Professional or regulatory bodies in the field of health, along with health services and providers attracted 5 mentions and similar bodies in the education sector were mentioned by 4 consultees. Ten consultees made more general comments, mentioning “other” professional or regulatory bodies but not specifying which.

Other suggestions included:

- charities (3 consultees);
- that the CBU itself should share information (2 consultees);
- that the CBU should not have an obligation to share information (1 consultee)
- job candidates or employees (2 consultees);
- SCRO (1 consultee);
- The prison service (1 consultee).

In general, those attending focus groups – including some of the organisations that would be involved in sharing information – were positive about this concept and voiced support for a more “partnership working” based approach. However, there were also comments that the logistics of setting up systems capable of information sharing would be a huge task to take on. Furthermore, there were also concerns over how the sharing of information would fit with the Data Protection Act and human rights law. There were also queries over how regularly information would be updated by different organisations or regulatory bodies.

#### **4.1.3 Sharing information - what**

In terms of what sort of information should be shared, 29 consultees voiced the opinion that this should include **any** relevant information, while 6 consultees stated that this should be **only** relevant information. Thirteen consultees asked for clarification on what constituted relevant information and 4 thought that the CBU should define ‘relevant’ information. However, 3 consultees felt it should be up to the individual body to decide what information to share. The issue of how to define what is – and what is not – relevant information was also raised by some of those attending information events, focus groups and interviews.

The need to validate information was stressed by 13 consultees who felt unsubstantiated information should not be shared and 6 consultees requested guidance on sharing unsubstantiated allegations.

*“Only relevant information should be shared between any of the foregoing bodies and the Central Barring Unit, - and only once the body/agency has had the opportunity to verify its accuracy and provenance.”*

(Police)

Various comments were made on this specific issue in regards to what information should be shared and these included the need to share information on:

- Professional misconduct, including behaviour resulting in deregistration (8 consultees);
- People in non-notifiable occupations (2 consultees);
- Barred or listed individuals (5 consultees);
- Those on the provisional lists (4 consultees);
- Convictions (5 consultees);
- Details of charges should be shared (2 consultees).

Those participating in focus groups and interviews had concerns over what information would be provided in disclosure and this related primarily to information perceived to be irrelevant to a specific disclosure. An example cited by one respondent was a teacher who may have had a conviction for speeding which would have no impact on the ability to do their job and should not be disclosed.

While Proposal 21 focused primarily on the role of regulatory / professional bodies in the disclosure process, some consultees also commented on the type of information that should be shared. Twenty consultees specified information on all people with barred status and 24 other consultees felt that this should include any information relating to a change of status. One local authority commented *“Any body which regulates part of the child or vulnerable adult workforce should be informed if the barring status of an individual changes or an initial decision is made to bar that person.”* Ten consultees, however, felt that regulatory bodies should only receive information relevant to their organisation or about individuals on their own register and 2 others felt this should include individuals who had previously been registered.

Nine consultees felt that the information should be detailed while 3 others felt it should be restricted to status only. Eight consultees felt that regulatory bodies should receive the same information as employers and 2 felt the level of detail should depend on the level of disclosure requested.

Twenty-one consultees wanted information to be shared on anything which might be of relevance to an applicant’s suitability and 4 others mentioned the need for regulatory bodies to be informed of any investigation or provisional barring.

#### **4.1.4 Sharing information – with whom**

In response to the specific question raised in relation to proposals 18-20, a range of suggestions were made as to which organisations should be sharing information with others and these included:

- CBU (17 consultees);

- Employers (18 consultees) and a further 5 consultees who noted that employers needed to be informed of any updates or changes, although one consultee also noted that organisations should not be given information on individuals no longer in their employ;
- Any relevant body (15 consultees);
- Professional or regulatory bodies (8 consultees);
- Police (5 consultees) and 2 other consultees specifically noted that the police should be able to withhold information that might compromise an ongoing investigation;
- Individual concerned (2 consultees);
- Colleges / workplacement agencies (1 consultee);
- Children’s Panel Advisory Committee (1 consultee);
- Parental information via an intermediary (1 consultee).

A further 10 consultees commented on the need to share information freely, or as widely as possible but 3 felt that sharing information should not be mandatory. Seven consultees referred to the need for a designated person in each organisation with responsibility for sharing information.

Some respondents attending focus groups and interviews also had concerns over the role of employers and even applicants themselves in terms of information sharing. For example, will employers always update relevant regulatory bodies or the CBU if an individual leaves their employment after an allegation has been made? Will they appreciate the need to share ‘soft’ information? Certainly organisations were concerned about the extent to which the onus will be on employers and applicants to provide information and how this could be enforced.

#### **4.1.5 Cross Referencing Issues**

Proposal 9 referred to change to the DWCL and while not directly relevant to information sharing, a number of comments were made in response to this specific proposal in relation to information sharing. Seventeen consultees highlighted a need to address information cross-referencing problems with other pertinent systems or agencies or countries. Specific systems and agencies mentioned included:

- The Sex Offenders Register (2 consultees);
- The General Teaching Council Disqualification list (2 consultees);
- The Scottish Criminal Record System (1 consultee);
- SSSC (1 consultee);
- Care Commission (1 consultee).

*“The police have a role to play, which is critical to the protection of children (as well as vulnerable adults); it seems somewhat anomalous that the police have no access to these lists for operational policing purposes.”*

(Police)

#### **4.1.6 Police powers (proposal 20)**

This proposal deals with the issue of power for the police to require an individual to give them details of their occupation in cases where the actions of an individual would be of concern if they worked in the vulnerable groups’ workforce. Twenty-eight consultees agreed with the extension to police powers described in proposal 20 and only 1 disagreed. In

addition, 13 consultees felt that the police should have the power to request details of any voluntary or other unpaid work. Five consultees commented that these proposals would provide information at an earlier stage in an investigation, with 3 commenting that this would allow the relevant organisations to be informed.

However, there were some concerns over problems or loopholes in the implementation of this proposal and these were raised by 5 consultees. For example, 1 consultee noted that potential employees may choose not to reveal details to the police of any voluntary work they undertake; another noted that there are some posts (such as being a member of a Children's Panel) where there may be non-occupational contact.

While those attending focus groups were broadly supportive of proposal 20, there were comments from some that it could be difficult to enforce. Many respondents noted that if an individual chooses to withhold information from the police, there may be no other means of accessing this information.

## **4.2 UPDATING OF INFORMATION**

In general, for consultees and respondents, the updating of information was seen to bring a distinct advantage to the proposed scheme and to remove the "point in time" disadvantage of the current system.

For example, three consultees commenting on the scope of the new vetting and barring disclosure (proposals 1-3) mentioned a need for "portability" of disclosures and 3 others stressed the importance of updating information. Two consultees commenting on proposal 9 (changes to the DWCL) highlighted the importance of keeping the list updated with changes.

Consultees commenting on proposals 11-13 (Central Barring Unit) also noted the need for continuous updating of information. Eleven consultees welcomed the introduction of a system for continuously updating information, although 13 others felt they needed more information on the details of this part of the system; it was felt that this would be a complex system and that planning for it would need detailed consideration and perhaps further consultation. That said, there were concerns cited by more than one respondent as to how realistic this would be:

- whether a new system will be effective from day one;
- the staff levels that will be needed for continual updating of information will be very high and these will all need adequate training;
- how logistically viable it is to create an environment where information is shared across a number of different bodies and sources.

Finally, in this section, 10 consultees commenting on proposals 18-20 specifically (information sharing) stated their agreement to the continuous updating of barred lists and 2 others stressed the need to include information from abroad.

## **4.3 PROVISION OF CONVICTION AND NON-CONVICTION INFORMATION**

The extent of information to be provided through disclosure was raised by those participating across the various consultation exercises and a number of key issues emerged in relation to

“hard” and “soft” information specifically. Sixteen consultees responding to question 1 (which asked about the three greatest issues with the current system) noted the accuracy of information contained within disclosure certificates, and this was also highlighted by some individuals attending focus groups. One consultee within Social Work reported their *“experience of situations where incomplete/incorrect 'soft information' is provided through Enhanced Disclosure certificates. This has caused real difficulties in dealing with some cases. Where an individual disputes the 'soft information' there is no mechanism for dealing adequately with matters of dispute.”*

Twenty consultees (commenting at Q1) also felt that restricting disclosure forms to report only convictions was an issue, although it should be noted that enhanced disclosures may, in fact, also provide non-conviction information. These consultees felt, though, that information relating to potential risks should be included in all disclosures. One individual commented on *“The differences which emerge in the level of detail provided in the softer information across police forces”*.

Question 2 asked for comments on the Bichard recommendations and again there were concerns over the sort of information that would be provided. Ten consultees saw the need for information on potential risk as well as information on convictions. One voluntary organisation welcomed *“the intention to link conviction information with other soft information”*. That said, a number of respondents attending consultation events and focus groups commented on the current lack of training for employers to interpret soft information or for the potential for different employers to use different criteria to make appointments. A small number of respondents also noted that there may be instances when the police might not be able to release specific information, for example, in relation to an ongoing investigation.

While the interests of the children and adults at risk were a priority for all respondents, 11 consultees commenting on question 5 (interests of applicants) felt that applicants might experience concern, fear or embarrassment over the sort of information that might be disclosed. Eighteen consultees were concerned that there was not enough information on the type(s) of “soft” information that might be disclosed, and 5 felt that applicants would worry that irrelevant information or unproven allegations might be disclosed. The potential for damage which could be caused by incorrect information being disclosed was also of concern to 8 consultees and 7 others felt that applicants might be concerned over who had access to their information.

In order to alleviate concerns felt by applicants, 18 consultees (again, commenting at Q5) noted that there should be penalties for the misuse or mishandling of disclosed information. This, it was felt, would safeguard the rights of applicants by ensuring confidentiality. In addition, 4 consultees saw the need for intermediaries to provide independent advice or to assess the relevance of disclosed information.

The issue of non-conviction was also raised by 14 consultees in relation to proposal 17 specifically, who were concerned over the problems of verification, the inconsistency of use across police forces, the lack of procedures to enable individuals to check or appeal against its use and the fact that it could be irrelevant or out of date. A further 2 consultees commenting on proposal 9 (changes to the DWCL) also had concerns about information being retained on spurious complaints.

## 4.4 INTERPRETATION OF INFORMATION

Some respondents attending focus groups and interviews had concerns over how some organisations (often smaller employers) might assess and interpret the relevance of information provided to them. One respondent from a voluntary organisation cited an example where two very different offences (“bottom flashing” in a drunken moment or sexually molesting a minor) could both lead to an individual being placed on a sex offender register. It was felt that the former should not lead to an individual being barred from working with children or adults at risk, while the latter most certainly should. An ability (or inability) to interpret information provided was a reason provided as to why parents or personal employers should only be provided with very basic disclosure information.

## 4.5 CROSS BORDER INFORMATION

### 4.5.1 Outwith the UK

The current position is that convictions from other countries are only included on disclosures if the authorities in the convicting country notify a UK Police Force. Four consultees commenting at question 2 on the Bichard recommendations mentioned the need for the new system to ensure accurate information on overseas workers or volunteers. One individual commented on the need “*to make the inter-country (including EU & non-EU countries) interfaces work*”. That said, many respondents attending focus groups noted that it may be impossible to set up cross-country border information with certain countries and that information provided by some others could be questionable.

Twenty consultees commenting specifically on proposal 23 (cross-referencing with offender registers and other lists) also noted the need to ensure access to information from lists held in other countries, although 2 highlighted the need to ensure that this did not lead to racial discrimination in employment practices.

### 4.5.2 Within the UK

Five consultees commenting at question 2 also highlighted the need for the system to be UK-wide. As one Voluntary Organisation noted, “*We believe that the Scottish lists must be linked to those in England and Wales, and Northern Ireland.*” There was an assumption from some respondents attending information events and focus groups that while there might be some teething problems in setting up systems that are UK-wide, that these would be short lived.

## 4.6 ACCESS TO INFORMATION

### **Proposal 16: access to barred status**

All “employers” with a legitimate interest shall have access to the applicant’s barred status.

Access to this information could be via the internet or, in the case of individuals, via a registered body. The consultation document asked for views on *who has a legitimate interest*



*in the barred status of an individual and how should "fishing trips" be prevented?*

The proposal that potential or current employers, including parents and personal employers, should be able to access information about the barred status of a potential employee was supported by 62 individuals responding to the consultation paper. Fifty consultees agreed that parents or personal employers should access the information via a registered body or other suitable intermediary. A further 3 consultees felt this information should be accessed via local authorities, possibly involving the local authority producing a list of barred individuals. Only 1 consultee felt an intermediary was not necessary.

The right of any legitimate stakeholder to access the information was supported by 18 consultees and 11 consultees specifically mentioned access for vulnerable adults or their representatives.

Two consultees felt that only the applicant should have access; that they should apply and then provide a certificate to potential employers.

A number of other suggestions were made as to who could access the information:

- Professional or regulatory bodies (13 consultees);
- Voluntary or charitable organisations (8 consultees);
- The applicants themselves (5 consultees);
- Public or governmental bodies (3 consultees);
- Agencies representing foster carers (1 consultee);
- Colleges – in order to check students (1 consultee);
- Employers – to check staff of any sub-contractor (1 consultee).

Most respondents attending information events, focus groups and in-depth interviews had concerns over the need to maintain confidentiality for those being disclosed. As such, there was widespread support for parents and personal employers to access information via a third party and a need to avoid "fishing trips". Thirty-eight consultees stressed the need for robust systems and guidelines to ensure only those with a legitimate interest accessed the information in order to protect confidential information.

The main safeguard, mentioned by 43 consultees, was the need for the applicant to give permission for any check, perhaps using written permission or the provision of a PIN number. The current system of counter-signatories was thought, by 17 consultants, to be an effective control and 3 felt there should continue to be levels of disclosure information available. PIN numbers for employers, passwords, or some other safeguard provided via a registration scheme for employers would be welcomed by 27 consultants.

Twelve consultees pointed out that attention would have to be paid to the internal systems and security of the employers receiving information and this would include the security of their IT and internet systems. In total, 32 consultees voiced concern over security issues relating to information available in the internet; as one consultee from the education sector noted "*Watertight security on any internet accessible information is essential.*"

Various accessibility issues were raised, including:

- that access to information should be speedy or direct (twelve consultees);
- the need for a simple system (6 consultees);

- the need for the information to be accessible online (4 consultees).

Two consultees doubted whether “fishing trips” could, in fact, be prevented. Most respondents attending focus groups noted that it would be difficult to prevent fishing trips and reinforced this with the suggestion that any disclosures should be with the permission of the applicant and provide only very limited information.

Other issues noted by consultees included:

- Concern over resource implications for registered bodies if they were to act as intermediaries for parents or personal employers (4 consultees);
- Access would need to be regularly audited or have the ability for requests to be tracked (8 consultees);
- Penalties for misuse of the system or information were seen as an essential measure (11 consultees);

**Proposal 17: Information released to applicant by Central Barring Unit**

Where a Vetting and Barring Disclosure has revealed information about the applicant, but there is not sufficient cause for that person to be added to one or other barred list, the information will normally be released as part of the disclosure. This gives the employer and professional body some discretion as to whether to offer the applicant the intended post.

The consultation document asked respondents *how much information passed on to the Central Barring Unit should be released to the applicant and employer? What criteria should there be for not releasing information?*

Thirty-two consultees agreed with the proposals to continue with current arrangements while 28 chose not to comment on proposal 17.

The release of all relevant information necessary for an employer to either appoint or continue to employ an individual was favoured by 61 consultees and 5 others felt employers needed all available data.

Views on the amount of information to be made available varied, with 16 consultees noting in the case of a barred individual it was sufficient for an employer to know the barred status without the details behind the decision. A further 5 consultees felt that a recommendation on whether to employ would be appropriate, although 1 felt that as much information as possible should be shared.

*“Employer does not need to know why they are barred - only that they are.”*  
(Individual)

Five consultees felt that there should be the opportunity for the employer to request further information, perhaps similar to current levels of disclosure. Two consultees queried whether the proposals were in addition to current disclosure procedures.

#### 4.6.1 Withholding Information

Proposal 17 allows for information to be withheld by the police, usually because it would compromise an ongoing police operation or would put the source of the information at immediate risk of harm.

Forty-five consultees commenting on proposal 17 felt information should not be released if it pertained to an on-going criminal investigation and this included 12 of those who felt applicants should receive all information. The need to withhold information that had the potential to cause harm to other parties was agreed by a further 27 consultees and this included 9 of those who felt applicants should receive all information. Nine consultees felt that the CBU, or perhaps a specialist panel, should make the decision on whether to withhold certain information.

*“Any decision not to release information to the applicant should be based on risk assessment - would releasing this information to him/her have the potential to put other(s) at risk of physical or mental harm?”*

(Voluntary)

Twenty-two consultees considered that the withholding of information should be justifiable and closely monitored but only used in exceptional cases, while 2 felt that it should never happen.

In cases where information has been withheld, 9 consultees felt that the applicant should have the right to know that information had not been released and to be given an indication of when it would become available. Three consultees voiced their concern that applicants would be unable to check or contest this information. Five consultees also noted that in instances where information is withheld from employers, they should be informed of this fact, while 1 consultee felt the employers should be advised if the withheld information contained cause for concern in relation to the post in question.

However, a small number of respondents participating in focus groups noted that if, for example, information was being withheld by the police as part of an ongoing investigation, to tell an employer that information was being withheld would be tantamount to notifying an employer that this individual should not be offered a job. This could lead to confidential information being made available, compromise a police investigation and cause greater danger to children or adults at risk. That said, there was a view that only in a few very specific circumstances would it be suitable for the police to withhold information.

In terms of information held by regulatory bodies and information providers other than the police, most respondents did not consider there to be benefit to withholding information, unless it was part of a police investigation. For example if a GP has been provisionally listed in relation to working with children or adults at risk and is being investigated, the majority view was that this GP should not be allowed to continue as a GP until allegations have been disproved.

Twelve consultees felt that the employer and the applicant should both receive the same information. As one consultee within the education sector noted,

*“The information provided by a vetting and barring disclosure should be*

*made available to the applicant and employer. An applicant who is listed has legal remedy. However, an applicant has no obvious legal remedy against information which appears on disclosures. Where such information relates to intelligence provided by the Chief Constable it seems to be against natural justice to deny the applicant legal rights to challenge that intelligence.”*

With regard to applicants specifically, 38 consultees were of the opinion that applicants should be entitled to access all information held about them in order that they can verify its accuracy.

In the case of barred individuals specifically, 15 consultees felt that they should be entitled to all information that had led to the barring decision and that failure to provide this information could be seen as a breach of their rights.

Twelve consultees felt that applicants should have the right to all information they would need to lodge an appeal against a barring decision and that they should be able to challenge any ‘soft’ information contained in their record.

At information events, focus groups and in-depth interviews, the overall view was that the applicant should be provided with the same information as an employer, so that they have a chance to query anything they do not understand or to have opportunities to rectify any inaccuracies in information held on them. One respondent within the judiciary pointed to the need for the system to be fair to all and to allow applicants the chance to raise queries over any allegations that had been made against them. One example given was an instance where an ex-partner or colleague of an applicant might make malicious allegations against an applicant and that the applicant should have the right to be able to defend themselves against these allegations.

While most comments in relation to the withholding of information were made in relation to the police, some respondents attending focus groups noted that it is also possible for applicants to withhold information. *“If someone is determined not to disclose information, it is easy to do so by lying.”* There were some concerns that the new system would not serve to address this issue.

## **4.7 CIVIL ORDERS**

### **Proposal 22: disclosure of civil orders**

There shall be a requirement to include civil orders specified in regulations as part of a new Vetting and Barring systems disclosure check, for example Risk of Sexual Harm Orders should be disclosed. Some civil orders may not be relevant and there will be a discretion to disclose them.

#### **4.7.1 Discretionary disclosure**

Twenty-nine consultees commenting on this proposal agreed that some civil orders (specified in the regulations as part of the new Vetting and Barring system) should be disclosed *where*

*relevant*, but that not *all* civil orders should be disclosed. Five consultees stated that there should be a clearly defined, mandatory statutory list of civil orders to be specified for the disclosure check, with a separate list provided for more discretionary disclosures.

Eight consultees suggested the need for clear guidelines on which civil orders would be included in the disclosures and how these would affect employers, small and not-for-profit organisations.

#### **4.7.2 Range of civil orders for disclosure**

Consultees provided a variety of suggestions relating to the types of civil order which should be disclosed. A majority of those who responded agree that civil orders pertaining to children (29), adults at risk (32) and vulnerable groups in general (16) should be disclosed.

Other areas which consultees felt civil orders should be disclosed included those pertaining to:

- Sexual offence or harm (29);
- Physical violence, harm or abuse (14);
- Antisocial Behaviour Orders (ASBOs) (11);
- Criminal offences (4);
- Drugs and alcohol (3);
- General harassment and abuse (3).

A consultee from the police services remarked *“Only those impacting on the assessment of risk to the child or vulnerable adult which may include civil orders pertaining to sexual matters and any civil order that identifies/includes a risk of abuse regarding children and vulnerable adults. The identification of those non-sexual orders and their relevance might be more difficult to determine.”*

Two consultees suggested that the final decision for which civil orders should be disclosed, ultimately lay with the decision-making body for the new system.

Other, single comments included:

- Where civil orders pertain to children, the Scottish Children’s Reporter Administration should be involved;
- Civil orders pertaining to gambling addiction;
- Civil orders pertaining to those banned from keeping animals (animal welfare);
- Civil orders pertaining to financial situations;
- Mental Health Act orders should not be disclosed;
- If a civil order results in the barring of an individual then this should be disclosed;
- Only appropriate civil orders which can assist in determining an applicants status should be included;
- Disclosures should only be made if granted in the ten years prior to the date of the application for a disclosure check.

While respondents attending information events, focus groups and interviews were broadly in agreement with this proposal, there were some concerns that this could cause problems within

some voluntary organisations in particular. While there was agreement that some civil orders should be disclosed, some respondents commented that there are individuals – often in a voluntary capacity – who are involved in working with children or adults at risk who will have had a civil order imposed on them in the past. For example, ex addicts involved in helping others on rehabilitation programmes.

#### 4.7.3 Cross-referencing Information

##### **Proposal 23: cross-referencing with offender registers and other lists**

As part of the new vetting and barring procedure, if an individual is on the Sex Offenders Register or other list (e.g. the English and Welsh Protection of Children Act List), Disclosure Scotland will be required to pass that information to the Central Barring Unit. The Unit can then consider that information as part of their assessment of the individual.

The consultation asked for views on how *the DWCL and DWVAL should relate to other registers and lists, e.g. the Sex Offenders Register.*

The majority of responses relating to proposal 23 were short answers simply agreeing to the need for cross-checking. Of the 145 consultees commenting at this proposal, 116 felt some form of “joined-up” system for cross border checking was necessary or essential. In addition, 21 consultees felt this should be extended to all relevant lists or registers, including professional registers.

*“If the proposals are to be effective, links with the wider body of lists, registers etc need to be considered. This will reduce the risk of relevant information being held by one body not being shared because this is subject to a different set of regulations or is part of a different structure, organisation etc.”*

(Other)

The need for interaction of databases containing information, with the automatic transfer of data, was highlighted by 12 consultees. As one consultee from the education sector commented *“We should be looking towards the development of a system whereby registers and lists are able to “talk” to each other to avoid weaknesses between the two.”*

Nine consultees felt that these measures were important to close any loopholes and ensure that no-one “slipped through the net” and 6 felt that any and all relevant information should be available for cross checking.

#### 4.8 REGULATORY BODIES

##### **Proposal 21: role of the regulatory/professional bodies in disclosure process**

Regulatory bodies should be notified of a change in the barred status of an individual. Regulatory bodies should be under a duty to consider making a referral to the Central Barring Unit if they have concerns about any individual. The Central Barring Unit should be able to access professional registers.

Respondents were asked *which regulatory bodies should receive information through disclosure? What information should they receive?*

While some consultees mentioned specific regulatory bodies which should receive information, others gave more general answers. Forty-four consultees did not comment on proposal 21. Regulatory bodies mentioned included:

- Scottish Social Services Council (35 consultees);
- General Teaching Council / General Teaching Council Scotland (32 consultees);
- Care Commission (17 consultees);
- General Medical Council / British Medical Association (11 consultees);
- Royal College of Nursing / Nursing & Midwifery Council (11 consultees);
- Commission for Racial Equality (1 consultee);
- Central Government (1 consultee);
- Scottish Criminal Records Office (1 consultee).

Fifty-eight consultees felt that any regulatory or professional body in a relevant field should receive disclosure information and professional or regulatory bodies associated specifically with care, community or social services were mentioned by 10 consultees. Ten others included those concerned with charities or the voluntary sector.

*“Regulatory bodies that have a role in deciding an individual’s competence to continue in their profession: The General Teaching Council or the General Medical Council (if as we have proposed in comments on proposal 9, health care professionals are included) should be made aware of an individual’s barred status.”*

(Voluntary)

Regulatory or professional bodies in the field of health specifically were mentioned by 18 consultees and a further 5 consultees felt that those responsible for the regulation of protective services such as police or the prison service should be included.

Sixteen consultees voiced their agreement with the need for regulatory bodies and the CBU to share information, with 3 others stating the need for the CBU to have access to the registers held by regulatory bodies. Four consultees felt regulatory bodies should also share information amongst themselves.

As well as sharing information with other regulatory bodies, the need to share information with employers was also commented on in relation to proposal 21. Four consultees felt that regulatory bodies should share the information with employers or associated organisations and 3 felt that as the employer takes the decision whether or not to employ, the information should be shared with them rather than with regulatory bodies. A further 3 consultees also felt it was important to communicate any information to the individuals concerned.

In summary,

The need for a system that allows for information sharing was recognised by many participating in this consultation, although some questioned the effective implementation of a system that would allow for information sharing across a wide range of organisations. A capacity to update information was also perceived to be a key advantage to the proposed new

scheme.

The amount of information to be shared between different organisations and individuals varied, although some noted the need for any information provided to be relevant. There were concerns from some over the sharing of non-conviction information, primarily due to a perceived lack of ability on the part of some employers to interpret information provided to them. For parents and personal employers specifically, there was a preference for information to be provided via a registered body.

There was broad support for the police and other agencies to share relevant information with a wide range of regulatory bodies, although there were some queries over the logistics of setting up and managing information systems capable of storing information in a consistent way. There were also some concerns expressed over the likelihood of employers providing updated information, particularly if an employee leaves their employment.

There was broad agreement that civil orders should be included in the disclosure. However, guidance was requested on which civil orders would be pertinent.



## CHAPTER 5: THE CENTRAL BARRING UNIT

### 5.1 STRUCTURE / PREFERENCES FOR GOVERNANCE

#### **Proposal 11: status and governance of the Central Barring Unit**

The status and governance arrangements for the new Central Barring Unit are to be determined, as is its precise relationship with Disclosure Scotland. The status and governance arrangements for Disclosure Scotland itself may also need to be adjusted.

#### **Proposal 12: responsibility for maintaining barred lists**

As well as making decisions, the Central Barring Unit shall maintain the Disqualified from Working with Children List and the Disqualified from Working with Vulnerable Adults List on behalf of the Scottish Ministers.

#### **Proposal 13: continuous updating of barred lists**

Any new information on an individual who has previously been the subject of a Vetting and Barring Disclosure will be passed to the Central Barring Unit to enable the barred status of the individual to be reviewed.

The consultation document asked specifically about proposal 11; whether respondents “*have any comments on the status and governance arrangements for the Central Barring Unit? and What degree of separation is needed from the Scottish Ministers?*” However, some consultees also commented on proposals 12 and 13. One hundred and forty consultees commented on this aspect of the consultation.

Of the consultees responding to this specific consultation question, the most popular option, albeit by a narrow margin, was for the CBU to become part of Disclosure Scotland, with ministers accountable for listing decisions (this option was preferred by 36 consultees).

*“We also would suggest that the function of the CBU should be incorporated as part of Disclosure Scotland or the function of Disclosure Scotland should be incorporated into the CBU. We would not like to see another bureaucratic system created, rather the synergy of new ways of working further developing an existing system.”*

(Social work)

Current proposals for Disclosure Scotland involve becoming part of the Scottish Police Services Authority (SPSA) in a new Non-Departmental Public Body (NDPB). However, 7 consultees felt that the police services should not be involved in decision making.

If this option went forward it was felt, by 7 consultees, that while these two agencies should be closely linked, there would need to be clear lines of communication, responsibility and accountability between them. One other consultee commented on the need for a clearly defined structure of decision making and accountability.

Three consultees also felt that the relationship between the Central Registered Body for Scotland (CRBS), Disclosure Scotland and the CBU needed to be considered.

Seven consultees felt that Disclosure Scotland and the CBU should remain separate as they felt the investigating body should be totally separate from the decision-making body. This option was the favourite, or joint favourite, option chosen by 7 of the 12 consultee sub-groups: individuals; education; local authorities; justice; health; police and social work.

Twenty-nine consultees voiced support for the creation of a totally new NDPB with responsibility resting with a panel of experts. This was the preferred option among both “other” and voluntary organisations.

*“We would welcome the establishment of an NDPB accountable to the Scottish Parliament and subject to legal principles enshrined under Human Rights legislation.”*

(Voluntary)

Six consultees also felt that a special panel should have responsibility for decision-making. The need for the decision-making body to include, or have access to, a wide range of experts was seen as important by 20 consultees with a further 2 consultees calling for the inclusion of external representation.

The option that the CBU becomes a core civil service function, as is the case with the current DWCL, was supported by 19 consultees; in this case Ministers would have direct responsibility.

Nine consultees felt that an Executive Agency would be the best model.

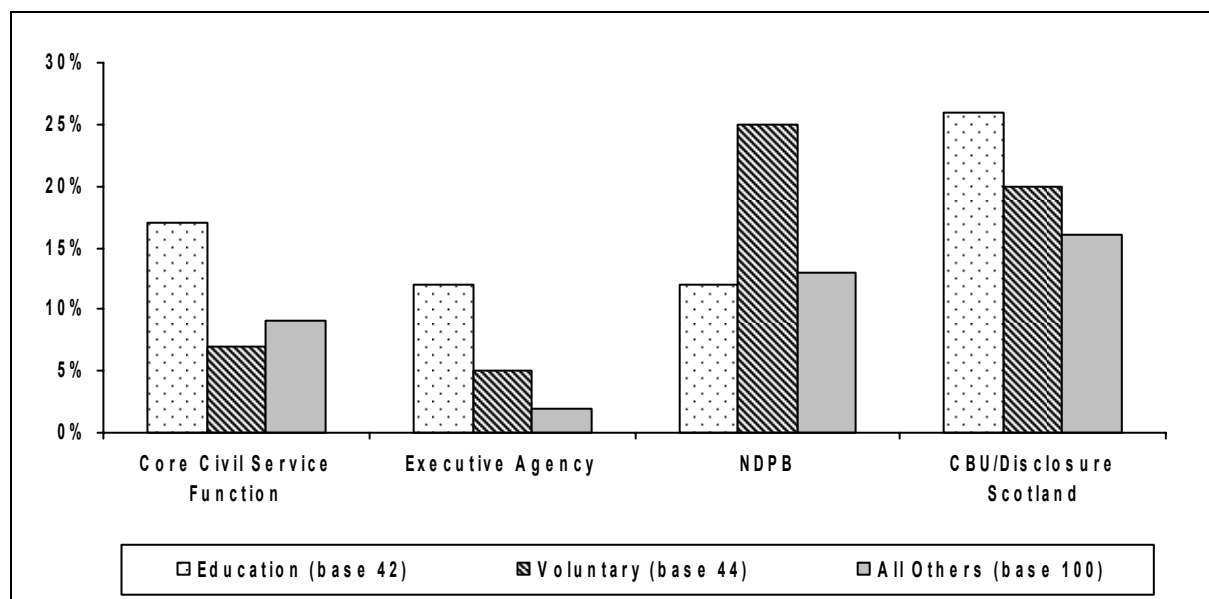
Regardless of the option taken forward, the need for objectivity and independence was voiced by 21 consultees with 10 highlighting the need for credibility and public confidence in the body. Four consultees commented that it should be seen to be open and fair. Four consultees made a general comment on the need for an independent body.

The need for the decision to be based on efficiency and effectiveness was supported by 10 consultees.

Six consultees felt that they did not have sufficient information or knowledge on which to base their choice.

Chart 5.1 illustrates the preferences of the two main consultee categories alongside responses from the other sub-groups combined.

**Chart 5.1**  
**Preferred governance**



Base: all consultees

### Degree of separation

The need for Ministers to be ultimately accountable or responsible for the new agency was supported by 38 consultees, although 2 stated that there was no need for separation. Conversely, 21 consultees felt there should be total separation.

At present, Ministers have overall responsibility for listing decisions, but are not involved in decision-making for individuals cases. Sixteen consultees felt that they should not be involved in decision-making, although 2 consultees felt that they should be involved in any appeals.

The need for some degree of separation, and in particular political independence, was mentioned by 29 consultees. One organisation representing parents and carers suggested *“In the interests of compliance with European Convention for Human Rights (ECHR), the respondent would suggest that a degree of separation from the Scottish Ministers is advisable.”*

Across the consultee sub-groups, 5 groups (education, health, local authorities, social work and voluntary organisations) showed a preference for ministers to have responsibility. The other 7 sub-groups either did not state a preference or chose total separation and ministerial responsibility in equal numbers.

Across the respondents participating in qualitative discussions, there was greatest support for a body at arm’s length from Scottish Ministers. Some respondents noted the importance of containing the Central Barring Unit within Disclosure Scotland, partly on the basis that Disclosure Scotland staff are trained for this role.

More critical to these respondents was the need to ensure that whatever the model of governance adopted, staff are properly trained and that staff have access to the necessary information upon which they base decisions. Most of these respondents also noted that it was

sensible for one agency to have responsibility for maintenance of both lists and that this would help to ensure effective information sharing.

## 5.2 DECISION-MAKING PROCESS

### **Proposal 10: decisions on barred lists to be taken by a new Central Barring Unit**

There shall be a new Central Barring Unit which will make decisions about which individuals should be placed on either list. Disclosure Scotland will continue to gather information and this will be passed to the Central Barring Unit for decision.

Consultees were asked whether they thought *decisions on barring should be made by a special panel, a case conference or administrators.*

One hundred and fifty nine consultees commented on the decision-making process for barring, a large majority favouring the special panel option as the decision-making entity. Preferences for each of these options were as follows:

- Special Panel (82 consultees);
- Case Conference (4 consultees);
- Administrators (7 consultees);
- Special Panel or Case Conference (14 consultees);
- Administrators for straightforward cases or court referrals, Special Panel for more complex decisions (4 consultees);
- Depends on difficulty of decision (7 consultees);
- Depends on costs (6 consultees);
- Not sure (1 consultee).

In the words of one consultee within the education sector, “...*would favour a panel approach as opposed to that of an administrator. A panel which is properly trained and supported would introduce the key element of expertise into the decision-making process.*”

In addition 26 consultees emphasised that decisions on barring should not be taken by Administrators, while 12 consultees commented that they did not have enough information to decide or were unsure of the meaning of Special Panels or Case Conferences or Administrators.

Respondents participating in the qualitative discussions also largely favoured decisions being taken by a special panel but again emphasised the importance of proper training for the panel and wanted representation on the panel across a range of sectors.

## 5.3 QUALITIES NEEDED BY DECISION-MAKERS

A large number of consultees took the opportunity to comment on the qualities and abilities required by those undertaking decisions as to barred listings:

- Expertise / knowledgeable / experience in relevant fields (72 consultees)
- Risk assessment or risk management expertise (6 consultees)

- Ability to interpret information (3 consultees)
- Knowledgeability of volunteering sector (2 consultees)

Nine consultees commented that decision-makers would need training or special training, and 11 suggested that decision-makers would need support generally.

#### 5.4 STRUCTURE OF DECISION-MAKING BODY

In terms of the structure of the decision-making body, a range of suggestions were made by consultees:

- Multi-disciplinary group / mix of backgrounds (19 consultees).  
Backgrounds mentioned were:
  - Social Work (8 consultees);
  - Law (8 consultees);
  - Health (6 consultees);
  - Teaching / Education (6 consultees);
  - Lay Persons (3 consultees);
  - Professionals (3 consultees);
  - Voluntary (2 consultees);
  - Child Protection (2 consultees);
  - Protection of Vulnerable Adults (1 consultee);
  - Police (1 consultee);
  - Human Rights (1 consultee);
  - Private (1 consultee) and;
  - Administrators (1 consultee);
- Independent body (5 consultees).

In addition 6 consultees stressed that decision-making should not be taken by one individual alone.

A large number of consultees also gave their views as to which elements should be ingrained within the framework of the decision-making process:

- Consistency of criteria / consistency of decision-making (31 consultees);
- Accountability / transparency (19 consultees);
- Soundness of decision-making process (11 consultees);
- Fairness / impartiality (9 consultees);
- Inclusion of Appeals Procedure (8 consultees);
- Need to get public confidence or confidence of a specified body (7 consultees).

*“The transparency of the process would best be served by creating distance between administrators and decision-makers. In these circumstances, the decision should be made by a special panel, which is at arm’s length from the administration of the CBU.”*

(Local authority)

One consultee commented on the need for the model of governance to be UK-wide.

## 5.5 PROVISIONAL LISTING

### **Proposal 14: provisional listing**

Where it will take time to determine whether an individual should or should not be added to one or other list, the individual shall be provisionally listed and entitled to continue to work whilst the determination is made. This will particularly apply when the determination is based on a referral from an organisation.

Provisional listing is proposed for instances where it might take time to determine whether or not an individual should be added to a barred list. This is a separate mechanism from provisional barring in that under provisional listing the individual would continue to work, whereas under provisional barring they would not. Consultees were asked *what should the criteria be for provisional listing?* and whether they *agree that the individual should be able to continue to work during the determination process?*

Among the 159 consultees commenting on this proposal there were slightly more in favour of individuals continuing to work. Thirty six consultees agreed and 31 disagreed that an individual should be able to continue to work. One local authority raised the following query:

*“The Council is unclear as to precisely what is being proposed. In the case of a prospective new employee, the person should not start in post until the determination is made. In the case of an existing employee, the criteria for referral under the Protection of Children (Scotland) Act 2003 require that a person is no longer working in the post. Therefore, why are we being asked to respond to a question about whether a person should be able to continue to work during the determination process? Unless it is proposed to change the criteria, then the question does not arise.”*

One voluntary organisation felt that this would “*avoid the type of situation .... where someone can be the victim of a false complaint or allegation. The principle of innocent until proven guilty should be the norm, with a requirement to justify any alternative action.*”

Redeployment until a decision had been reached, or suspension if redeployment proved problematic due to the particular nature, size or circumstance of the employer, was favoured by 20 consultees. In a case of suspension from duty, 4 consultees felt that the individual should continue to be paid.

The largest support, although at a marginal level of 39 consultees, was for each instance to be judged on a case-by-case basis. Two consultees felt that the decision should be made by the CBU.

Twenty-three consultees felt it should be a decision for the employer to make and 26 felt that employment could continue as long as safeguards or supervision were in place. However, 21 consultees asked for clear guidelines, advice or training for employers to help them reach decisions or manage the situation.

Eight consultees worried that employers could fall foul of employment legislation; one felt that a change to employment law to protect employers in these situations would be merited. It was seen as essential, by 13 consultees, for employers to be given all relevant information about any individual who had been provisionally listed. Four consultees felt that, while current employees should be allowed to continue in employment, new employees should not be taken on until their situation had been clarified.

A third (33) of consultees responding to this specific question stressed the need for a quick decision on the status of the individual, for the sake of both the employer and the individual concerned. One consultee from the voluntary sector *“considers it imperative that decisions regarding the listing of individuals should be made as quickly as possible so as to reduce instances where provisional listing is necessary.”*

Two consultees mentioned the need for a right of appeal while 8 highlighted the need to protect individuals from malicious referrals. Seven consultees however, felt that the balance of risk must always be in favour of vulnerable groups. Four consultees asked whether a record of a prior provisional listing would be included in disclosure information.

Nine consultees saw no need for provisional listing and some felt this would pose risks to vulnerable groups. One noted that, if the system aimed to be consistent across the UK, only provisional barring should be used; as is the case in England and Wales.

A number of consultees commented on the criteria for provisional listing and 12 referred to the criteria already in place under PoCSA for the DWCL and felt that these were appropriate. Five consultees commented on the need for a risk assessment prior to the provisional listing decision and 3 felt that more consultation would be needed before setting criteria in order to explore the issues raised by compliance with human rights and employment law. Seven consultees felt they could not comment without further information or examples.

Any instance which might, if proven, lead to an individual being placed on either list was seen by 9 consultees as meriting a provisional listing and a further 8 consultees thought that any information which might lead to doubt over an individual would be sufficient.

Harm (perhaps as defined in PoCSA), or allegation of harm were cited by 4 consultees; 3 felt that inappropriate conduct, or allegations, should lead to a provisional listing. Two consultees mentioned serious offences or misconduct and 1 felt provisional listing should occur where an individual was under investigation or pending prosecution.

Eleven consultees felt they needed clarification on the distinction between provisional barring and provisional listing while 9 consultees asked that there be clear, robust criteria and guidelines in place for provisionally listing an individual.

While there was general support for the recommendations as laid out in the consultation paper, consultees and respondents alike cited a number of logistical issues in relation to the implementation of systems and procedures.

The need for standardisation and a robust system in relation to referrals to the provisional list was raised by 10 consultees. One consultee from the education sector commented that their organisation *“have concerns regarding consistency of practice across the courts in referring names to the central body.”*

Nine consultees commenting on proposal 9 (changes to DWCL) specifically highlighted their concerns about the potential for unsuitable persons to work with vulnerable groups because of loopholes (e.g. listing only being made in the most serious referral cases).

*“... the picture seems to be that only in the most serious cases are people listed and this seems to be borne out by the fact that it is understood that, to date, only about 70 persons have been listed. It would, therefore, appear to the Committee that there is a complete mismatch between the criteria for referral and the criteria necessary to be listed. If this, is indeed, the case, employers are being put to considerable effort in gathering the evidence and making the referral to no purpose. The Committee is also not clear whether, and to what extent, information is retained from ‘unsuccessful’ referrals so that a person may eventually be listed where there is a pattern of behaviour which emerges over time. Although in themselves individual incidents may not appear serious, cumulatively they may be indicative of something extremely serious.”*

(Voluntary)

#### **Proposal 15: appeals against listing**

Appeals against listing in respect of either the DWCL or DWVAL, in any case other than a court disposal, shall be made to the sheriff court. Legislation shall provide for the appeals to be heard and determined in private. The subject shall have three months to appeal.

The consultation document asked whether respondents *agree that the right of appeal should be to the sheriff court with a three-month time-limit?*

This proposal was supported by 117 consultees; 32 consultees did not comment and 2 were unsure. Only 4 consultees voiced disagreement with the proposal. Another 6 commented that the proposed system seemed in line with other similar appeals processes.

*“Agree that the appeal should be through the sheriff court which is in line with some other Registration procedures (e.g. SSSC).”*

(Local authority)

A wide variety of points were raised in relation to this proposal, with the main concern being that the process should be quick with no undue delays. Three consultees stressed that individuals must be able to clear their names. Five consultees queried whether sheriff courts have the capacity to deal with these appeals. A further 3 consultees asked for clarification on the process in general.

The impact on the recruitment process, from an employer’s point of view, was raised by 4 consultees and 5 asked for guidelines for employers. One from the education sector commented *“However, for the duration of the appeal and hearing, the employer may not be willing to continue to employ or suspend pending the outcome. What guidelines will there be for employers?”* One consultee felt that individuals should not be employed while the appeal was pending.



The administrative burden to employers of providing supporting information was raised by two consultees.

There was some disagreement over the proposed 3-month limit on appeals with 6 consultees in favour of an unspecified shorter period and 10 specifying a period of around 1 month. Three consultees asked from what stage the 3 months would apply; from the point that the individual was notified or from the date of the barring decision.

A further 10 consultees felt that 3 months might not be long enough and 1 felt there should be no limit. Five consultees commented that individuals must have sufficient time to prepare their case and 4 felt that any information held should be passed to all concerned as quickly as possible; although it was pointed out that this might cause problems for the police in the case of an active investigation.

Two consultees felt that information should not be disclosed to third parties until the appeal had been heard and 2 asked for clarification over any police involvement or role in the appeals process.

Three consultees queried whether the sheriff court was the correct forum for appeals. Eight consultees felt that there should be an internal review mechanism for straightforward cases, while 10 thought it more appropriate if appeals were to be heard by an independent panel. One suggested that appeals should be heard at ministerial level.

Concerns over the cost of appeals at the sheriff court were raised by 9 consultees and this also included queries over whether legal aid would be available. Two consultees asked whether the appeal would be classed as civil or criminal as this would have an effect on the provision of legal aid and 2 asked who would represent the individual concerned. One issue noted by a respondent participating in qualitative discussions was that whatever system is adopted, it must be fair on the individual concerned.

Four consultees asked for clarification on the process for appealing the outcome of an initial appeal. One consultee felt that all information should be removed from an individual's record after a successful appeal, although 4 felt this should remain as in the case of spent convictions. This, they felt, was especially necessary in relation to a 10-year review. The 10 year review was also commented on by 3 consultees who felt that there were some reasons for barring that should incur a lifetime ban.

It was suggested by 2 consultees that individuals could be intimidated by the court process and therefore it must be made accessible; one consultee felt that the process seemed too complex. Three commented that the process must be simple while 2 stressed the need for the appeal to be heard in private. The need for an effective, efficient system was highlighted by 3 consultees.

## **5.6 BARRED LISTS**

Twenty-three consultees commenting at question 4 (interests of employers) felt barring lists would be preferable to a registration scheme, although 2 consultees commenting at question 5 (interests of applicants) noted that a registration scheme would be preferable to barred lists.

*“The Bichard recommendations represent a very comprehensive and realistic approach to safeguarding children through safe recruitment. We fully agree with the proposal to implement recommendation 19 via a positive barring process for unsuitable individuals, rather than a registration scheme for suitable individuals.”*

(Local authority)

On the issue of automatic barring, 4 consultees commenting on proposal 23 agreed that inclusion on another list should not automatically lead to barring on the DWCL or DWVAL, although 10 disagreed with this. One consultee from the education sector commented *“Listening to the way that employers are using the information provided through Disclosure in making appointments, we cannot imagine that, in the real world, anyone would appoint someone who was on the Sex Offenders Register to a childcare position.”* One consultee commenting at question 5 (interests of applicants) asked that applicants barred from working with children are not automatically barred from working with adults (and vice versa).

Inconsistency between procedures in Scotland and the rest of the UK was highlighted by 3 consultees commenting on proposal 23. One individual from the voluntary sector was *“concerned that the Executive proposes to ‘make sure that the approach both sides of the border is consistent’ while the Safeguarding Vulnerable Groups Bill, introduced to the Westminster Parliament in February 2006, seems to make the provision for those listed in Scotland to be barred in England and Wales.”*

Seven consultees felt barring decisions should be taken on a case-by-case basis, although 2 others queried who would be responsible for carrying out these risk assessments.

In summary,

The most favoured structure for a decision-making body was for it to take the form of a special panel. Key criteria for individuals on this panel were for proper training, expertise in relevant fields and representative of a broad range of sectors.

The status and governance of the Central Barring Unit provoked two key preferences; either for the CBU to become part of Disclosure Scotland or for a new body to be created with responsibility lying with a panel of experts. From information events and focus groups specifically, there was greatest support for Scottish Ministers to remain at arm’s length.

On the issue of provisional listing, some organisations noted that this contradicts current employment contracts and that particularly for smaller organisations, suspension or redeployment rather than supervision, is an easier option to manage.

There were some queries on the distinction between provisional listing and provisional barring and some requests for clear, robust criteria and guidelines in place for provisionally listing an individual.

A majority of consultees showed support for an applicant to have 3 months to appeal against listing.

## CHAPTER 6: REFERRALS FROM COURTS AND ORGANISATIONS

### 6.1 REFERRALS

#### **Proposal 24: referrals of new incidents**

As now, employers, regulatory bodies and courts will be able to make referrals to the Central Barring Unit in respect of those posing a risk to children. The legislation will extend this regime to those posing a risk to vulnerable adults.

#### **Proposal 25: retrospective referrals of incidents**

Any employer may make a referral about an incident which occurred before commencement of the new scheme to the Central Barring Unit at any time, subject to the appropriate tests being met. There will be no obligation to do so.

The consultation document asked whether respondents *agree with the proposals for who can make a referral?* and *Should parents and personal employers be able to make a referral?*

Responses to these questions were, on the whole, fairly short comments relating to proposal 24. Of the 152 consultees commenting here, 98 voiced their agreement with proposal 24 on the referral of new incidents, while 120 agreed that parents and personal employers should be able to make a referral. Three consultees felt this could be extended to include family, carers and friends and 1 consultee asked that voluntary organisations be included.

Thirty-one consultees felt that parents or personal employers should make referrals through a registered body or other intermediary. Fourteen consultees felt that these bodies should investigate, or present for investigation, any information provided by parents or personal employers before making a referral.

*“Referrals should have to come from registered bodies and parents and other individuals should make referrals through an umbrella body which is registered. This will allow professionals in the field to first look at any allegations and ensure that no individual is making an allegation and attempting to refer someone for malicious purposes.”*

(Education)

Only 4 consultees felt referrals should be restricted to employers or registered bodies. Three consultees commented that parents or personal employers should have direct access to make referrals. Seven consultees felt that anyone with relevant information should be able to make a referral and 4 asked that the general public be made aware of how to make a referral.

However, the possibility of malicious referrals, and the need to safeguard against these, was commented on by 28 consultees. Twenty consultees felt referrals should only be accepted from parents or personal employers where there was factual evidence and asked for guidelines on what sort of information should be produced in support of referrals.

## 6.2 RETROSPECTIVE REFERRALS

While 13 consultees agreed with proposal 25 that retrospective referrals should be possible but not obligatory, 11 felt that any relevant incidents must be referred in the interests of safety.

Seven consultees felt that retrospective referrals should only be allowed where there was supporting information or where the individual was available to answer any allegations.

*“We would be very concerned at the possibility of an employer - whether large or individual - making a retrospective referral about an 'incident' where there is no concrete, independent evidence to confirm the 'incident' and where the individual concerned is not allowed to put his/her case.”*

(Education)

Some respondents participating in the focus groups also noted concerns over retrospective checking and that systems for recording information in recent years have improved but that some information sources might be inaccurate.

In summary,

There was broad agreement for a wide range of employers, regulatory bodies and courts to make referrals to the Central Barring Unit for those individuals posing a risk to both children and/or adults at risk. There was also agreement that parents and personal employers should be able to make referrals, although it was felt this should be through an intermediary body that could investigate the referral.

Where there was any comment on retrospective referrals, this was largely in favour of supporting information being provided.

## CHAPTER 7: THE LEGISLATIVE CONTEXT

While there was not a specific question on the legislative context of the proposals outlined in the consultation document, a number of individuals participating in the various strands of the consultation commented on the need for any new legislation to fit with existing employment legislation and human rights legislation. This chapter outlines the issues raised.

### 7.1 EMPLOYMENT LEGISLATION

Many respondents attending focus groups and information events commented on the ever increasing complexity of existing employment legislation and the impact that the Bichard recommendations may have on this. For example, 9 consultees commenting at question 3 of the consultation (interests of vulnerable groups), noted simply that employment policies and rights of employees were a concern, another 16 noted legal issues and 5 were concerned about insurance matters.

*“There is concern that the employers may face new legal challenges - for example, if they decline, on the basis of the vetting and barring disclosure - to employ someone who has been “passed” by the Central Barring Unit. There may also be insurance implications around such decisions for employers.”*

(Voluntary)

Twelve consultees commenting on proposal 17 (information released to applicant by Central Barring Unit) specifically, voiced concern over employers basing decisions on information withheld from applicants. They questioned whether this could lead to the applicant taking legal action and felt that employers should be advised on what information has been withheld from the applicant. Six consultees at proposal 15 (appeals against listing) mentioned other legislation including employment law.

Commenting on proposals 24-25 (referrals of new incidents and retrospective referrals of incidents), 2 consultees were concerned that employers might avoid making referrals through fear of this leading to an employment tribunal.

Similarly, respondents attending focus groups and information events also noted that there is sometimes a contradiction between what is being suggested by the proposals and current recruitment practices and employment regulations. Some respondents working within the social care sector referred specifically to regulations imposed by regulatory bodies such as the Care Commission.

For example, the consultation proposes that *“provisional listing means that the individual can continue to work whilst the determination is made (proposal 14)”*. However, some respondents noted that an employee would automatically be suspended in given circumstances and others noted that provisional listing would not be possible in instances where supervision or safeguards were not available for an employee who was provisionally listed. Many of these respondents, while disliking the concept of *“guilty until proven innocent”*, felt that the priority should be the child or adult at risk and that any allegation should result in suspension while provisionally listed.

In line with this, there were concerns that some employers would have difficulties in implementation of recommendations because of such constraints.

As such, a number of those attending focus groups and information events called for any new legislation on a vetting and barring scheme to take into account current employment law and to ensure there are no contradictions between disclosure and other legislation.

Some respondents attending focus groups also commented that while all employers should have robust recruitment policies in place that can sit alongside any other legislation, some (and often smaller) employer organisations do not fully understand current employment or have sensible recruitment policies in place. Many noted that it is foolish to place too much importance on disclosure at the expense of other necessary recruitment practices.

## **7.2 HUMAN RIGHTS LEGISLATION**

Commenting at question 2 (Bichard recommendations), 5 consultees noted the need to work within Human Rights legislation and one also commented “*As specific criteria have not been identified it is difficult to comment on potential for this legislation to come up against ECHR.*” (Individual) Seven consultees commenting on proposals 11-13 (Central Barring Unit), cited the need for any new agency to comply with any human rights legislation. Three consultees commenting on proposal 15 (appeals against listing) mentioned human rights legislation specifically.

## **7.3 THE LEGISLATIVE IMPACT**

Having noted the importance of any new legislation sitting within the framework of other UK employment and / or human rights legislation, some consultees (commenting at question 3 – interests of vulnerable groups), specifically mentioned discrimination, or the fear of discrimination, due to information contained in disclosures. However, 17 consultees mentioned the need for fair treatment or procedures which should mitigate the possibility of any discrimination. As one Voluntary Organisation commented “*Put another way - child protection checks should be slick, timeous and seen to be utterly without fault.*”

At question 5 (interests of applicants), concerns over civil liberties, human rights or personal privacy of individuals was voiced by 15 consultees, with 12 commenting that applicants must be told what information is being held about them and whether they are included on any barring lists.

Five consultees at question 4 (interests of employers) worried about over-reliance on the checks or on the accuracy of checks. While some qualitative respondents noted that this could be mitigated by consistent, robust HR practices, there were concerns that some employers do not have these in place and fail to recognise the importance of having robust recruitment policies. Twelve consultees also felt these should be in place; “*We would like to see the emphasis placed on organisations having robust recruitment policies and procedures in order to get the best person for the job as opposed to anyone without a conviction or someone who just hasn’t been caught yet!*” (Other). In addition, 11 consultees welcomed the introduction of a system that could provide up to date information.

In summary,

There were calls for employment law and human rights law to be taken into account by this new legislation. There were also preferences for this to sit alongside recruitment practices.

## CHAPTER 8: IMPLEMENTATION

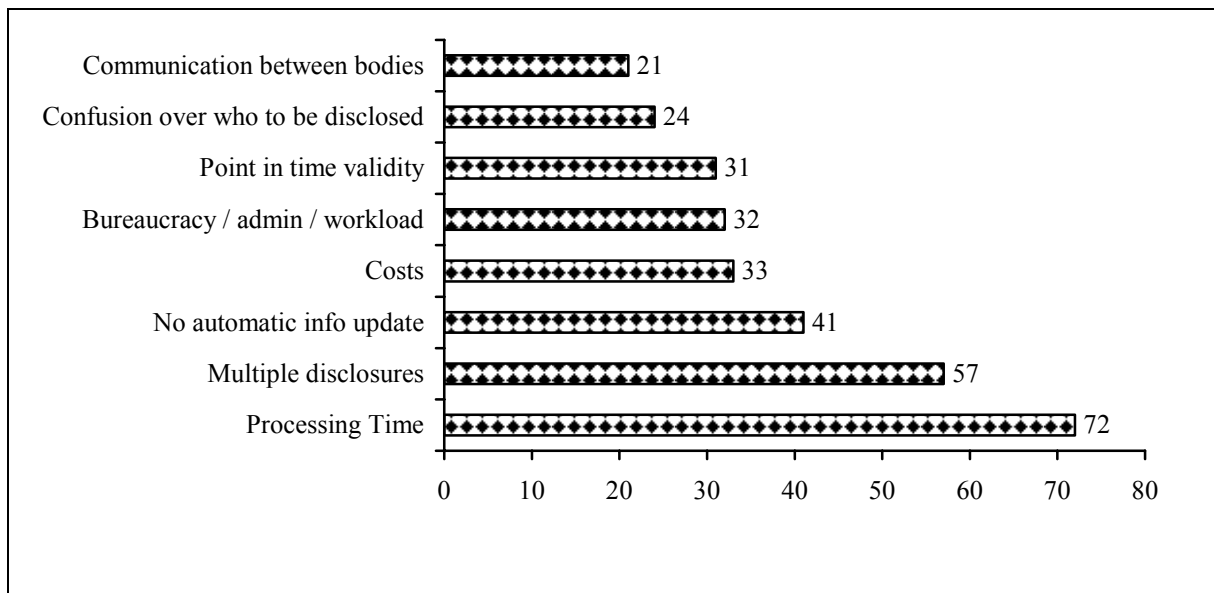
This chapter of the report identifies issues in relation to implementation of the proposed new vetting and barring scheme. However, in the first instance, it is useful to understand any issues or problems with the current system and whether or not the proposed new system will counteract these issues. Prior to asking for views on the specific proposals contained within the consultation document, the Scottish Executive posed a question on the current disclosure system in operation in Scotland and asked consultees to identify what they considered to be the three greatest issues with the current system.

### 8.1 THE CURRENT SYSTEM

A wide range of issues were cited by consultees. Chart 8.1 shows those being mentioned by the greatest number of consultees and the key issues identified were:

- Processing time;
- The need for multiple disclosures;
- No automatic updating of information;
- Costs;
- Point in time validity of disclosure;
- Bureaucracy / administration / workload.
- Confusion over who needs to be disclosed;
- Communication between different bodies.

**Chart 8.1**  
**Key issues with current system**



Base: all consultees answering



The following paragraphs deal with these issues.

### **8.1.1 Processing time**

The current service target level for Disclosure Scotland is to process 90% of applications within 14 calendar days. However, where there are omissions or mistakes on forms or where there is the need to refer to other police agencies for information, the application is dealt with by the Exceptions Handling Unit (EHU). Disclosure Scotland's performance report shows that 98.4% of cases that are not referred to the EHU are processed within the 14 day target, with an average processing time for March 2006 of 5 days.<sup>3</sup>

Almost half of the individuals or organisations (72) responding to the consultation paper identified the time taken to complete disclosure checks under the present system as a key issue; with consultees reporting delays of up to 3 months in some cases. One specific problem was reported by a consultee from the education sector who commented that *"Delays in processing, particularly at the start of the academic year can affect student placements."*

The problems caused by delays in obtaining disclosures were seen as a particular issue for those wishing to employ staff, especially at short notice. One education organisation commented that,

*"The time-lag between application for Disclosure and certification remains problematic in operational sectors where employment flexibility is a significant concern; in brief, it remains difficult for an FE College, for example, to engage part-time staff to fill vacancies at short notice when the disclosure process may require four weeks or more to process."*

Respondents participating in the focus groups and information events also noted issues around processing times for disclosure certificates, although a number noted that processing times have improved in recent months. For example, a manager of a nursing home who participated in an in-depth interview noted that she often has a requirement to take on staff at short notice and the wait for disclosures to be returned can sometimes mean that she loses potential staff because they have obtained work elsewhere in the meantime.

### **8.1.2 Multiple disclosures**

Associated with costs, direct and indirect, is the issue of multiple disclosures; whereby an individual working or volunteering in several capacities will need to apply for multiple disclosures. This issue was raised by 57 consultees. The need for multiple disclosures, alongside the complexity of the forms was seen as a disincentive to some volunteers; 17 consultees commented that the process was seen as "off-putting".

*"Moreover, a disclosure certificate is not portable, thus requiring an individual to apply for several disclosure checks. I am aware of some people in receipt of four or five disclosure certificates because of the range of voluntary work which they undertake. The current system is unduly burdensome and puts people off"*

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<sup>3</sup> <http://www.disclosurescotland.co.uk> "Managing Disclosure Scotland Performance" March 2006

*applying for positions working with children and young people - often the very people who can contribute so much.”*

(Other)

A manager within a care setting responsible for overseeing disclosure checks also noted that the complexity of the disclosure application forms can be a disincentive to some potential employees. She cited many instances where the initial disclosure form had to be returned to the potential employee because of mistakes in the documentation.

### **8.1.3 Accuracy & validity**

Currently, disclosures are certified as accurate as of the date on the disclosure and Disclosure Scotland has no legal obligation to track individuals in receipt of a disclosure, or to provide any information on subsequent convictions. A number of comments were made regarding various issues surrounding the accuracy of information. Thirty-one consultees responding to the consultation paper specifically mentioned the length of validity of the disclosure certificate as being a problem with the current system. For example, a comment made by one consultee from the education sector noted that, *“The system as it stands only gives a 'snapshot' which could be out of date the following day.”*

Forty-one consultees also commented on a need for a system that automatically updates disclosure information to employers, and 16 consultees felt that there should be a system in place to enable conviction, dismissal or other relevant changes to status to be reported to the relevant registering body. One police organisation commented that *“there is presently no update without re-applying by means of the full disclosure process.”*

Respondents participating in the qualitative discussions noted that the credibility of disclosures is limited because of the “point in time” nature of each. There were some suggestions from those attending information events or focus groups for a system that would negate the need for multiple disclosures.

### **8.1.4 The Need for Training / Guidance**

A number of consultees (28) responding to the consultation paper and some of those attending focus groups also noted the need for guidance to be provided to employers on assessing risk from disclosure information. There were comments that there is no consistency in the way disclosure information is interpreted by employers.

*“When an adverse disclosure for a potential member of staff is received, the responsibility of making the decision about the individual is a concern. The risk assessment on the individual rests on the personal judgement of the employer, as there is no official guidance.”*

(Education)

Allied to this point, there were also concerns raised by those attending information events and qualitative discussions and those responding to the consultation paper (18 consultees cited this) over inconsistencies in interpretation of information provided in disclosure certificates. One consultee from within a social work setting noted that *“There is no consistent decision-making process about the relevance of information provided by a disclosure check.”*

Similarly, 17 consultees and some respondents noted difficulties in how to interpret information provided in disclosure certificates. One consultee from the education sector commented that they had experienced “*Difficulty in getting further information on what convictions actually mean*”.

### **8.1.5 Disclosure procedures**

Twenty-four consultees reported confusion over who needs to be disclosed while 9 voiced concerns that people who had been in post long-term might never have been through the disclosure process. These views were also mirrored by individuals attending qualitative discussions and information events. Loopholes whereby some categories of workers including private contractors and the self-employed are not disclosed were seen as an issue by 12 consultees. For example, one consultee from the police commented “*The present system does not provide for self-employed people to be checked through the disclosure process, and it is a step forward for the new system to make provision for this.*”

### **8.1.6 Other issues**

Other comments raised by smaller numbers of consultees included:

- A need to ensure employers understand current legislation in relation to disclosures and the need to update them on developments (4 consultees);
- The fact that there is not at present a single central body with overall responsibility for overseeing the disclosure system (4 consultees);
- The need for clear guidance on procedures to control access to the information provided (3 consultees);
- That the current forms are not suitable for those with disabilities (2 consultees).

Twenty-six consultees responding to the consultation paper did not provide any comments to question 1.

## **8.2 THE PROPOSED NEW SCHEME**

The consultation paper focused on Recommendation 19 of the Bichard Recommendations, which called for the introduction of a register of those wishing to work with children or adults at risk. It is envisaged that this register would be administered by a central body and continuously updated. The Scottish Executive, following discussions with key stakeholders and after consideration of a study by the Department for Education and Skills in England, proposed the development of a barring scheme and this approach has been endorsed by Sir Michael Bichard.

The consultation asked respondents to comment on the recommendations, “*especially recommendation 19 in respect of vetting and barring.*”

Seventy one consultees commented at question 2 and 51 consultees offered no comment to this question. Of those who did respond, many supported the proposals or commented that the proposed system would be an improvement. Seven consultees commented that the new system would be fairer, more transparent and efficient.

*“We wholeheartedly support Bichard recommendation 19 and we recognise the considerable efforts made by everyone in all departments of the Government charged with responsibility for implementing the necessary legislation. The attraction of the registration scheme to us is that it would be an efficient safeguarding mechanism, also fair and transparent.”*

(Education)

From those responding to question 2 on the consultation paper specifically, 22 commented that information would be more accurate or up-to-date and 10 consultees foresaw a decrease in bureaucracy and in the need for multiple disclosures. One consultee from the social work sector welcomed *“The provision of a system which will provide updates to employers, if any additional information is received, is a strength.”*

Five consultees specifically supported the move to ensure security and protection for adults at risk and most respondents attending information events and qualitative discussions also noted the importance of this.

*“It is a positive step forward to develop a registration scheme that not only covers all those who work with children, but to also include all those who work with vulnerable adults.”*

(Other)

The move away from multiple disclosures was seen as a positive step by 12 consultees commenting on question 5 (interests of applicants) who felt this would prove beneficial.

There were suggestions from a number of respondents attending qualitative discussions that there should be an option to carry out disclosures via an online system. This was perceived to be one means by which timescales could be reduced and efficiency within the system could be improved. Similarly, another respondent noted that perhaps the Post Office could be involved in processing disclosure applications in the same way that they offer for passports at present. One respondent from within the care sector noted that the postal system is one way by which delays can be caused in obtaining disclosures.

Overall, there was widespread support from those attending focus groups, in-depth interviews and information events for the recommendations contained within the proposals. While the proposals often raised further questions in the minds of many respondents, it was noted that the new system as proposed would go some way towards counteracting the disadvantages of the current system.

While views were largely positive regarding the Bichard recommendations, there were some concerns over procedures and these included:

- Concerns over possible increases in time or resources needed to implement the new system – cited by 7 consultees at question 2;
- 7 consultees at question 2 worried about possible delays which might be caused by the system changes;
- 4 voicing the concern that implementing the proposals so close to the implementation of PoCSA will cause problems;

*“Voluntary organisations have already had to ‘grapple’ with the introduction*

*of new procedures in terms of the Protection of Children (Scotland) Act (PoCSA). The Committee has concern that yet another change is being introduced. Informing volunteers and re-training them to deal with further legislation change will be difficult, time-consuming and financially burdensome for the voluntary sector.”*

(Voluntary)

- A need to ensure easy / quick access to information for employers (cited by 5 consultees at Q2)
- A need to ensure that the new system closes any loopholes over disclosure for the self-employed or similar workers (mentioned by 4 consultees at Q2)
- Tighter timescales to be put in place for retrospective checking of existing employees or volunteers (cited by 4 consultees at Q2)
- A need to standardise the definition of an adult as there is some confusion over when this should be 16 years and when 18 years is applicable (mentioned by 2 consultees at Q2)
- An expansion in the list of posts where disclosures are needed to include anyone with access to vulnerable groups or who has access to information about individuals (cited by 3 consultees at Q2).
- 35 consultees at question 3 (interests of vulnerable groups) felt that the system might operate as a deterrent, barrier or disincentive to workers or volunteers who might apply for a post and 40 consultees (of whom over a quarter were from the voluntary sector) felt the new system might lead to recruitment problems or to a reduction in volunteers; At question 4 (interests of employers), 6 consultees were concerned that the system would act as a deterrent to applicants for employee positions while 11 worried that volunteers might be put off.;
- At question 5 (interests of applicants) 47 consultees felt that the system could be off-putting, possibly due to its perceived “intrusive” nature and concern that applicants might be deterred by bureaucracy, its complicated nature, the formality or legality of the process was raised by 21 consultees. Only 4 mentioned that applicants would realise the importance of the vetting procedure or expect to be vetted.
- A need for a quick process with no delays – cited by 20 consultees at question 4 (interests of employers), while a further 7 felt that clear, prompt notification of outcomes or other communication would be beneficial.
- Processing time was also identified as a potential problem by 24 consultees responding to question 5 (interests of applicants) and a further 6 felt that any delay might cause potential applicants to seek work elsewhere, possibly in other sectors and one respondent participating in a qualitative discussion noted that on occasions they lost potential employees because of the time taken for disclosures to be conducted. Four consultees simply commented that recruiting staff or volunteers is difficult enough without an extra disincentive.
- At question 5, 7 consultees mentioned the need for consistent and safe recruitment policies, with one local authority hoping “*that this scheme will go alongside the implementation of the Scottish Executive’s Safer Selection Toolkit for Recruitment which would provide an accredited basis for safer selection for all posts which have direct access to children across Scotland.*”.
- The need to minimise any extra bureaucracy was stressed by 9 consultees (Q5) as was the need to guard against the new system causing any delays to appointments; this was mentioned by 6 consultees.
- Four consultees (Q5) highlighted the need to ensure ICT systems were compatible across all participating agencies.

- At question 2 (comments on Bichard recommendations), 9 consultees made comments in relation to the need for a UK-wide system to ensure accurate information on workers or volunteers from England and Wales; *“Information held by a variety of bodies within (and outwith) the UK may not be shared as effectively as it could be. Inconsistencies between the criteria, legislation and procedures for the different relevant lists across and within the countries of the UK.”* (Health)

### 8.3 PHASING / RETROSPECTIVE CHECKING

#### **Proposal 6: Vetting and Barring Disclosure of existing workforce (retrospective checking)**

Retrospective Vetting and Barring Disclosures will not be an immediate requirement when the new scheme first becomes operational. The Scottish Ministers will have a power to set a time by which the entire relevant workforce should have been through the new procedures. This may be phased by occupation/sector. Such a time is likely to be in the range of within 3-5 years of operation of the new scheme.

The consultation document asked *“do you agree with the proposals for phasing the vetting and barring of the existing workforce?”*

Phasing was seen as essential by 7 consultees. However, 12 consultees asked for more details on how the phasing in will be managed. Sixty-six consultees voiced general agreement for the proposals with only 4 disagreeing, two of whom felt it an unnecessary task as their staff had already completed the current disclosure. A further 6 consultees also voiced concern over what they perceived to be unnecessary duplication of effort. Fifty-two consultees did not comment on proposal 6.

Consultees responding to this question had some concerns over operational issues, with 15 wanting to see a shorter timeframe imposed and 21 asking for further consultation on, or clarification of, timings. Only 3 consultees thought the phasing should have a longer timeframe and 6 consultees felt that there should be no delays and that checks should be carried out immediately.

Two consultees voiced the opinion that retrospective checking should be mandatory and not left to the discretion of the employers, although 1 voiced the opposite view. One consultee felt there should be penalties imposed on any employer not carrying out the checks.

There was some concern that registered bodies might impose different timeframes; 4 consultees wanted to see all relevant bodies working to the same targets and 2 consultees asked for clarification over the role registered bodies will play in the new system.

In general, respondents attending information events, focus groups and in-depth interviews agreed with a need for some form of timeframe to allow for implementation of retrospective checks on all relevant employees. However, there were concerns over the additional cost burden that would be placed on some employers. Two respondents attending an information event working within the sports and leisure sector were also concerned that valuable volunteers – who have not previously been disclosed – might be lost.

Many respondents attending qualitative discussions noted the need for employers to prioritise groups of employees needing to be disclosed in order to spread additional cost and administrative burden over a time period. In general, there was agreement that a period of between 3-5 years in which to carry out retrospective checking would be acceptable.

However, many of these respondents also had concerns over whether the timescale for the setting up of the new scheme was realistic. Additionally, there were some concerns over the capacity of the new scheme to be able to deal with the immediate and potentially large numbers of individuals needing to be disclosed. Expectations were that there would be initial teething problems that would impact negatively on timescales, efficiency and information sharing.

For example, 6 consultees commenting on proposals 11-13 (Central Barring Unit) mentioned concerns over IT issues including cost and compatibility. Similarly, 7 consultees commenting on question 6 (other comments in relation to the scheme) noted that although proposal 6 does not make retrospective checking of the existing workforce an immediate requirement, even over the 3-5 years timeframe proposed in the consultation, vetting existing employees will put an enormous burden on some companies or organisations both in terms of cost and administration.

## **8.4 THE NEED FOR GUIDANCE**

A key theme emerging across this consultation was the need for guidance to be provided in order that individuals and organisations have a clear picture of how the new system will work, the impact it will have on the individual and / or their organisation and how to implement this within their own procedures and processes.

A need for guidance was outlined in relation to most of the proposals and 20 consultees commenting at question 4 (interests of employers) felt that more information about all aspects of the disclosure process should be available, including via the internet, while 11 consultees requested some form of accessible assistance, including helplines. Furthermore, 15 consultees responding to question 4 (interests of employers) felt they did not have easy access to information while 2 others had concerns about the way information would be interpreted.

### **8.4.1 Fit with Recruitment and Retention Systems**

At question 2 (comments on the Bichard recommendations), 11 consultees saw the need for guidance on interpreting disclosure information in order to standardise recruitment and retention systems and this view was echoed by many qualitative respondents. Four consultees felt employers would require guidance on decision-making once disclosure information had been provided. One individual felt *“Decisions about what may be relevant information must be understandable to employers and others.”*

Some consultees also suggested that the Scottish Executive should make available guidance on safe recruitment practices.

## 8.4.2 Interpreting Information

Across all strands of the consultation, concern was raised over whether employers would have sufficient knowledge or experience to interpret information provided to them and 7 consultees responding to proposal 17 (information released to applicant) felt there should be clear guidance or training on interpretation and use of information for employers. This was also a concern of participants at information events and focus groups and some felt that the amount of information provided to an employer should vary according to that employer's ability to interpret the information in a just and reasoned manner. That said, there were also comments that it would not be possible to justify providing more or less information to different employers. Again, respondents and consultees pointed to the need for a concerted communications and information campaign to help employers understand the need, not only to be able to understand information provided for disclosure, but also to understand how this should fit with robust recruitment policies.

Other consultees at Proposal 17 felt that guidance or guidelines were needed on what information could be withheld and for what reasons. The need to establish clear, robust protocols for dealing with these situations, which must be consistent with all current legislation, was seen as essential by 14 consultees. This view was echoed by those attending information events and focus groups.

## 8.4.3 Understanding Non-conviction Information

At proposals 18-20 (information sharing between the Central Barring Unit, public authorities, employers, police and regulatory bodies etc), the need for guidance was raised by 7 consultees who asked for guidance over the sharing of 'soft' information.

At question 5 (interests of applicants), 16 consultees felt that guidance or information should be made available on what sort of non-conviction information should be held and disclosed; irrelevant convictions, spent convictions and minor offences were seen as "grey areas" which needed clarification. Those attending information events and focus groups also referred to a need to ensure that any "soft" information provided is relevant to the job being applied for and that employers know how to interpret this information and use it sensibly.

At Proposal 17 (information released to applicant), guidance or clarification on the information sharing process was requested by 25 consultees while 2 felt the role of the CBU needed clarification.

*"There needs to be guidance in what circumstances information should be shared. If a foster carer is de-registered as a result of an allegation but is not referred to the barred list, should this information be passed on as "soft" information. There needs to be consideration of the individual's rights under ECHR."*

(Voluntary)

## 8.4.4 Obligations Under Richard

At question 4 (interests of employers), a number of consultees cited a need for clearer understanding of obligations and requirements (raised by 6 consultees); *"There will be a very large ongoing need to train and update staff, at all levels, on their responsibilities and*



*obligations under the new legislation.*” (Voluntary). Some respondents attending groups also noted that it would be very difficult to create a full understanding among volunteers, particularly those who may be volunteering on a very infrequent basis. One respondent participating in an in-depth interview noted that understanding of the current system is not universal among employers and organisations and they suggested that guidance would be needed in order to ensure a full understanding of the proposed new system by all relevant individuals and organisation. This respondent also noted that guidance will need to be available to umbrella organisations responsible for processing disclosures on behalf of members.

Allied to this, 13 consultees worried that, in some cases, there was a lack of understanding about how to administer the system. In addition, the rules and procedures governing the process were seen as unclear by 22 consultees.

At proposal 14 (provisional listing), 21 consultees asked for clear guidelines, advice or training for employers to help them reach decisions or manage the situation.

Some respondents attending information events and focus groups noted that employers need to be made to realise what their responsibilities are in terms of notifying relevant bodies about information in relation to vetting and barring. Two consultees responding to question 5 (interests of applicants) felt that guidance was needed on how to refer people onto barred lists. In response to proposals 24-25 (referrals) 13 consultees requested clear guidelines or clarification on referral criteria for employers or regulatory bodies.

At proposal 23 (cross-referencing with offender registers and other lists), 7 consultees asked that there be clear guidance or protocols on how the lists or registers relate to one and other.

In response to proposal 6 (retrospective vetting and barring) guidance on how to manage the process of retrospective checking was requested by 8 consultees, while a further 8 commented that guidance was needed on the overall system. Guidance was also requested on how to identify level of risk in order to prioritise staff to be vetted, and 4 consultees commented that guidance should be available for employers receiving negative disclosures on existing workers.

In relation to proposal 9 (changes to the DWCL), some consultees (8 in total) made reference to the need for clear and comprehensive guidance or training for employers or agencies.

At Proposal 21 (role of regulatory bodies), the need for guidance or clarification on the implementation was mentioned by 9 consultees.

In relation to Proposal 9 specifically, 9 consultees wanted clarity on which factors or criteria would lead to an individual being placed on the DWCL. Thirteen consultees desired clarity on the referrals process, including defining the criteria for making a referral, the process itself and the restrictions on which organisations can make a referral.

*“In terms of the DWCL we would like to see any person being entitled to make a referral to the DWCL. We cannot see a justification for persons entitled to refer being limited to certain categories only. However, because of the potential for the system to become swamped if complaints from individuals are accepted, it should be provided that where a complaint from*

*an individual is about a person who is registered with a specified regulatory body, the CBU will be entitled in appropriate cases to refer the complaint to the regulatory body in the first instance.”*

(Social work)

## **8.5 A NEED FOR TRAINING**

Alongside many requests for guidance to be provided, a number of consultees and respondents noted a need for training to be provided. For example, 15 consultees responding to question 3 (interests of vulnerable groups) noted that provision of training, support and guidance would be a way to mitigate possible problems for employers and 3 consultees specifically mentioned the need for a telephone helpline. This sentiment was echoed by a large number of individuals participating in information events, focus groups and in-depth interviews and some perceived a need for the Scottish Executive to play a pivotal role in provision of training, support and guidance.

Of those responding to question 5 (interests of applicants) specifically, information for employers was also seen as necessary with 18 consultees mentioning training or guidance on which level of disclosures should be requested for which posts, as well as how to interpret disclosed information and how to comply with legislation.

Of those responding to question 3 (interests of vulnerable groups), the need for training for employers was mentioned by 26 consultees with 15 commenting on the need for a clear, simple system; 10 consultees commented on the need to ensure consistency in interpreting the information provided on disclosures; *“Employers may now have access to new types of information (or would they? Perhaps that would only be seen by the Barring Unit) and some guidance on how to use that information both from a legal perspective but also in terms of interpreting it will be essential.”* (Other)

A further 9 consultees (at question 5) saw the need for a code of practice; this, it was felt, would ensure the system operated consistently in a fair but strict manner.

## **8.6 A NEED FOR AN INFORMATION / COMMUNICATIONS CAMPAIGN**

To sit alongside guidance and training, a number of consultees and respondents cited a need for a concerted information and communications campaign.

At question 3 (interests of vulnerable groups), while a number of consultees and respondents had concerns with barriers to recruitment, some also made suggestions on how these could be avoided and these related primarily to a need for increased awareness of the benefits of the new system, and communication as to how to work within the new legislation. Fifteen consultees noted that an increase in positive publicity would be a way to avoid these problems. One consultee from the Education sector commented *“If the broader disclosure process can be promoted to all those involved as adding value and therefore gains broad acceptance, the process need not restrict either children or vulnerable adults.”* The need to reinforce confidence in the system was raised by 13 consultees.

The need for a concerted communications campaign was highlighted by some respondents

attending focus groups and interviews as well as information events and the ready availability of information was seen by 16 consultees (at question 3) as a way to mitigate some of these potential problems. One consultee from the police commented *“Although Registered Organisations are likely to see this as the “positive vetting” of a candidate - applicants may deem the process to be a negative one, unless they are made aware that any minor convictions they may hold are likely to be irrelevant and will not bar them from such positions. An advertising campaign and Information Booklet similar to that provided at the time of the Disclosure Scotland launch, may be beneficial to Registered Bodies and members of the Public”*.

In response to question 5 (interests of applicants), 17 consultees also noted that in order to counter any negative perceptions, positive publicity aimed at increasing knowledge of, and confidence in, the system would be required. The need for clear, concise information to be made available to applicants was also raised by 23 consultees and 9 commented on the need for a simple, non-threatening process.

One respondent participating in an in-depth interview noted that large employers such as local authorities should have minimal problems with the introduction of a new vetting and barring system but that smaller employers (many of whom may lack an understanding of employment law in general) would have real problems with implementation and understanding of the new proposals. Again, this respondent pointed to the need for a concerted and co-ordinated information and communications campaign.

In most instances, the Scottish Executive was perceived (by those attending focus groups, information events and interviews) to be the key organisation to deliver an information and communications campaign. As the introducers of the new legislation, it was felt that the Executive is in an ideal position to provide further guidance and information on how the new system would operate. Three key roles were required of the Executive:

- to make guidance and support available at a general level;
- to communicate with umbrella bodies to ensure that all are aware of their role within the disclosure process;
- to help ensure that the general public are aware of the disclosure system.

That said, some respondents attending information events, focus groups or interviews also noted the importance of umbrella organisations and the key role they should play in helping to raise awareness of the new scheme. This was felt to be particularly relevant within the sports and leisure sector where many individuals may be involved in co-ordinating, managing or coaching for events, sometimes on a relatively infrequent basis.

In summary,

The proposed new scheme is perceived to go some way to counteracting some of the disadvantages of the current system, although it is not seen to provide a universal panacea.

There were some concerns about a lack of understanding of the new system, particularly among smaller employer organisations or voluntary organisations. In line with this, consultees and respondents alike perceived that key to the effective introduction of this system will be guidance, training and an information / communications campaign. While umbrella organisations and other regulatory bodies are perceived to have a role to play in the

dissemination of information about the new scheme, the Scottish Executive is seen to play a pivotal role in this.

## CHAPTER 9: CONCLUSIONS

This consultation analysis has demonstrated the significance of the consultation in stimulating and enabling a huge breadth of views to be aired on a new Vetting and Barring Scheme for Scotland. No obvious gaps in respondent type were identified and a wide range of stakeholders was represented among the respondents, across each strand of the consultation. A wide range of individuals (many responding on behalf of organisations) participated in this either by responding to the consultation paper or by attending information events, focus groups and interviews.

Those invited to attend the information events, focus groups and interviews were pleased to be invited to participate in this consultation and to provide their views. Across the different strands of the consultation exercise, the same themes emerged, albeit that consultees provided views from their own perspective.

Submissions from consultees tended to be detailed and drew heavily on the significant experience in working with children and adults at risk. In general, consultees and respondents welcomed the extension of protection to adults.

The pattern of response suggests not only the complexity of the issues under discussion, but also showed respondents' desire to see change develop in an informed and sensible manner. For example, throughout the consultation one key theme emerging was that the **consultation process is too fast** and that more time needs to be allowed to develop effective legislation. One consultee – a voluntary organisation, commented that, while they welcome the proposals so far, they:

*“await future work by the Executive to give greater detail to the shape of the new scheme and we look forward to giving our views on this detail. We are disappointed that the Executive has felt able to consult on proposals that, in part, seem less than fully worked up. These proposals offer a great opportunity to create a successful protection system for vulnerable groups and so they must not be rushed. Instead, time should be taken to learn the lessons from the legislative and implementation processes of PoCSA. We would therefore welcome a comprehensive review of the strengths and weaknesses in the implementation of the PoCSA legislation. We have concerns that without further consultation on more detailed proposals and the forthcoming draft Bill, the new Vetting and Barring scheme will be a missed opportunity, ultimately risking greater harm to vulnerable groups.”*

It was also of importance to witness among the huge diversity of views, a general consensus on the central principles of a new scheme for Scotland. That said, many consultees and respondents had a desire for more information on the new scheme and, as such, often qualified the comments they made or were unwilling to provide detailed comment on specific issues. One such issue was that of costs where – until the cost of disclosure under the new system is provided – many were unwilling to “second guess” likely cost levels. A consultee organisation noted that,

*“However, we urge the Scottish Executive to slow down the whole process of consultation, legislation and implementation of any new Scottish Vetting and Barring Scheme. ‘The devil is in the detail’ - without in-depth consideration,*

*the Scheme will be highly problematic.”*

(Voluntary)

Key advantages to the proposed scheme are:

- Reduction in the need for multiple disclosures
- Ongoing updating of disclosure information and removal of the “point in time” nature of current disclosures
- Capacity to share relevant information across a wide range of regulatory bodies, police forces and employers.

Key disadvantages to the proposed scheme are:

- Potential for increased costs, both directly and indirectly (general perception that these could increase significantly)
- A continued lack of capacity to check applicants from many countries outwith the UK
- A perceived contradiction between employment law, human rights law and requirements of the disclosure system
- Initial logistical issues with implementation (e.g. New IT systems, information collated and shared)
- Possible loss of potential employees due to complexity / fear of system.

Suggestions for ways in which to overcome disadvantages are:

- Capacity to offer disclosure checks via an online facility
- A large-scale and sustained information and communications campaign offering information both to organisations and the general public
- Robust recruitment practices to be adopted by all organisations (and encouraged by the Scottish Executive)
- Clear definitions of “adult at risk”, “child” and who should be disclosed.
- Definitions to be in line with other legislation such as PoCSA
- Help to employers in interpreting disclosure information.

There are also some assumptions that there will be initial teething problems with introduction of the new scheme. Some consultees and respondents would like to see a further scoping study and consultation exercise conducted before new legislation is introduced.

**In summary, the new system as outlined is seen to go some way towards counteracting disadvantages of the current system and improving protection for vulnerable groups.**

## **APPENDICES**

## APPENDIX 1: SCENARIOS

### DISCUSSION 1: 12:00-12:45

#### **Theme: coverage of the workforce**

***Issue: who should be within the scope of the scheme and who is responsible for requiring the check?***

Scenario: Mrs Smith is a self-employed dancing teacher and rents out a local authority-owned hall to give lessons to children in groups of 10-20. One of the parents wants to make sure that she is not barred from working with children.

Consider:

Who can require the check?

Is there a role for the Local Authority and/or the parent?

What information should be disclosed and who should have access to the information subsequently provided by the Central Barring Unit?

Should this vary depending on whether it is a personal employer (i.e. parent) or local authority?

#### **Theme: costs and lifetime of disclosure**

***Issue: a finite lifetime enables identity information to be updated. What arrangements need to be made to cover significant changes in an applicants' identity (marital status, address, sex change operation etc)?***

Scenario: Mrs Jones' full vetting and barring disclosure check was undertaken when she started working as a teacher in Edinburgh in 1997. In 2001 she left the UK, working abroad in various posts until her return to the country in 2005 where she applies for a teaching post in London. She has since got married and has changed her surname.

Consider:

What mechanisms should exist so that Mrs Jones details are kept up to date?

Should there be a requirement on an individual to notify the scheme if they remove themselves from the UK workforce for any reason or change their identity information?

What happens if she has lost her unique registration number and original disclosure check?



**Theme: information sharing**

***Issue: how to ensure that information goes to all current employers and no previous (expired) employers?***

Scenario: Mr Simpson works part-time as a teaching assistant in a primary school. In addition to this work he is involved with a number of voluntary organisations, frequently becoming involved in new groups. He had a full vetting and barring disclosure check done when he took up the post as a teaching assistant and has subsequently been able to let the voluntary organisations he works for access the system to confirm he is not barred from working with children.

Consider:

What would Mr Simpson's new employers wish to see / should see when they access the system to check?

If his barred status alters, who should be notified – Mr Simpson, current organisations he is involved with, relevant regulatory bodies?

If his barred status doesn't alter but there is new information about him, should this be notified to anyone?

Who should be responsible for letting the Central Barring Unit know when Mr Simpson left a post & so that organisation has no legitimate right/interest in any information about him?

What checks should be done if some of the voluntary work involves working with adults at risk rather than children?

## DISCUSSION 2: 14:00-14:45

### **Theme: Central barring unit**

***Issue: what should the criteria be for putting someone on the barred list -- for children -- for adults at risk? Should there be one list or two?***

Scenario: An individual working in an adult care home misleads a resident conning them out of a large sum of money. They are subsequently placed on the list of people disqualified from working with adults at risk after the central barring unit has considered the information provided by the referring organisation.

Consider:

Are there different tests that should be applied when considering whether someone is unsuitable to work with children and whether unsuitable to work with adults at risk?

Should the individual also be able to be considered for placing on the disqualified from working with children's list?

Where the incident pre-dates the new scheme and led to a conviction, what thresholds for barring on conviction and non-conviction information should be applied by the Central Barring Unit (i.e. high threshold whereby serious conviction is trigger, or low level where a wide range of 'soft' information or culmination of concern might trigger a bar)?

What are the implications for individuals, organisations, workforce and users of services of the thresholds and what are the issues to consider?

### **Theme: barred lists**

***Issue: what action should an organisation be expected to take when notified that one of their workers, or someone they are recruiting, is provisionally listed?***

Scenario: An organisation is informed that one of its staff has been provisionally listed pending the Central Barring Unit making its final determination. The individual is entitled to continue to work whilst the determination is made.

Consider:

What steps would you take on notification of the individual's provisional listing where he is an existing employee/or where he is a potential new recruit?

Are there risk assessment tools and processes you could apply?

How would the length of time taken to conclude the determination impact on what you might do?

A week later the provisionally listed individual leaves the organisation. Should you be required to take any action. If so, what should that be?

**Theme: implementation issues**

***Issue: what are the resourcing, training and information needs of users, employers and regulatory bodies in using the new scheme?***

Scenario: it's a few days after the new scheme has come into effect. You are considering making: an application; a referral; ..... what do you need to carry this out?

Consider:

With whom would you discuss your considerations?

What guidance would you like to be available if you were considering making an application/referral?

If there was an element of phasing of introduction of the new scheme, what would you suggest would be the priority posts/sectors?

## APPENDIX 2: CIVIC FORUM BRIEFING PAPER

### SCOTTISH VETTING AND BARRING SCHEME FOR THE CHILDREN AND ADULTS AT RISK WORKFORCES

#### Introduction

This consultation is about new measures to protect Scotland's vulnerable groups from those who pose a danger to them whilst reducing bureaucracy for those who provide services to them. The main aims are that:

- \* People known to be unsuitable do not gain access to children or adults at risk through their work; and
- \* People who become unsuitable are detected as early as possible, and prevented from continuing to work, or seek to work with children or adults at risk.

***The Scottish Executive proposes to legislate to create an improved vetting and barring scheme for those working or applying to work with children and/or adults at risk<sup>1</sup>. The scheme takes forward the main recommendation made by Sir Michael Bichard following his inquiry into the failures that were highlighted by the murder of two schoolgirls in Soham in 2003. It will build on existing child protection measures (e.g. the Disqualified from Working with Children List -- DWCL) as well as creating new protections for adults at risk, including a list of those barred from working with them.***

The consultation exercise runs from 8 February until 2 May 2006 with a view to preparing legislation for the Scottish Parliament to consider in autumn 2006. A programme of implementation of the new vetting and barring scheme will begin in 2007. Similar preparations are being made in England, Wales and Northern Ireland.

A full list of the questions in the consultation is given at Annex A and copies of the consultation paper are available from the Scottish Executive website:

<http://www.scotland.gov.uk/Publications/2006/02/07134454/0>

#### Current System

The current vetting system works through individuals obtaining a disclosure from Disclosure Scotland. Depending on the level of disclosure, employers are informed of criminal convictions or relevant non-conviction information. This helps employers to screen out the tiny minority of people who are regarded as unsuitable to work with children or adults at risk.

#### Coverage of the workforce

Any person wanting to work (whether paid or unpaid) with children or adults at risk, or changing positions, will have to apply for a new Vetting and Barring Disclosure from Disclosure Scotland.

<sup>1</sup>Adults at risk in this context means: those receiving accommodation and nursing or personal care in a care home; those receiving care at home; or those receiving certain services in health care settings.

As well as covering those who work directly with vulnerable groups, the new scheme will be available to people:

- \* Whose work brings them regularly into contact with vulnerable groups, e.g. telephone helpline staff and internet chat room moderators
- \* Whose position puts them in a position of trust with vulnerable groups, e.g. police officers
- \* People who have substantial access to personal and sensitive information about vulnerable groups, e.g. database operators

#### Retrospective checks for existing workers

The existing workforce will not have to go through the new system of checks immediately, although employers will be able to request it. It is likely that the existing workforce will be required to have obtained the new Vetting and Barring Disclosure within 3-5 years of the new law coming into effect.

#### **Costs / Lifetime of Vetting and Barring Disclosure**

Under the new system, there are likely to be different fees for the initial disclosure procedure and subsequent checks. As now, the applicant will be responsible for paying the fee, although presently many employers cover the cost. The income from the fees will have to cover the cost of the new system.

It is proposed that volunteers working in voluntary organisations requiring a disclosure check will not have to cover the costs themselves.

It is proposed that the Vetting and Barring Disclosure certificate will be valid for ten years after which time a new check will be necessary. Employers and regulatory bodies could require a more regular check if they wish.

#### **Information sharing for disclosure and from which sources**

The police and other agencies will share relevant information with the Central Barring Unit.

#### Police/criminal history

Police information ranges from allegations to criminal investigation. There is also semi-public information, such as convictions which are public at the time but for which there is no public archive. A balance needs to be struck between exchanging useful, relevant information and individuals' rights under the European Convention for Human Rights. Police also need to be able to exercise some discretion to withhold information, for example, to protect sources.

#### Local authorities

Bichard proposed that other public agencies (e.g. social services) should be under a duty to share information about individuals unsuitable to work with vulnerable groups. It is proposed to place such a duty on local authorities, the details of which will be worked out later following further consultation.

## Regulatory bodies

The Central Barring Unit should know if an individual has been struck off a professional register, because the reason for striking them off could be relevant to positions other than those covered by the professional body. For example, it might be relevant that someone going through Vetting and Barring Disclosure to become a Scout leader had been struck off the General Teaching Council for Scotland's register of teachers years earlier.

## Barred lists across the UK

It will be essential for the system to mesh with those in other parts of the UK. The Central Barring Unit should be aware if anyone is barred in other parts of the UK and the reasons behind it.

## **Central Barring Unit: structure and operations**

As now, an application to Disclosure Scotland would be the entry point to the system. Where relevant information is discovered through a search it will be passed to an expert team – the Central Barring Unit. The Unit will consider the relevance and seriousness of the information and make a decision as to whether or not someone should be barred from working with children or adults at risk.

The Executive needs to decide whether the decision should be made by a special panel, a “case conference” or by an administrator. Although the detail will be worked out later, the legislation needs to say something about how decisions will be made.

## Structure

Whatever structure is adopted, Scottish Ministers will ultimately be responsible for the Unit's decisions. But the structure might affect who is immediately responsible for taking decisions. Three possible options have been identified:

- \* Non-Departmental Public Body (NDPB) which would need to be set up through legislation and where decisions would be made by a panel of experts or administrators
- \* Executive Agency which would be linked to Ministers but one step removed – responsibility would ultimately rest with Ministers
- \* Core Civil Service Department – this would mean that, as with the current DWCL, the Unit would be part of the Scottish Executive and Ministers would be more directly responsible.

Another option would be for the Unit to be part of Disclosure Scotland which, under current arrangements, would mean that Ministers were responsible for listing decisions.

## Maintaining and updating lists

The Unit will maintain a list of those barred from working with children, based on the current DWCL and the separate Disqualified from Working with Adults at Risk List which is being introduced through this legislation. Some people may be barred under both sets of criteria and be present on both lists.

Any new information received on an individual who has previously been subject to a Vetting and Barring Disclosure will be passed to the Central Barring Unit to enable the barred status of an individual to be reviewed. If a decision is taken to bar the individual on the basis of new information, the applicant and any relevant organisations will be notified.

## **Barred Lists**

### Provisional listing

Where a determination will take time to complete, an individual may be provisionally listed. Individuals will be able to continue working and employers notified so they can take steps to minimise risk.

### Referrals

As now, referrals will be made by employers when an individual's employment is terminated as a result of harm or risk of harm to children or if the individual has been moved away from working with children or left the organisation before either of these things could happen. Regulatory bodies will be able to highlight concerns about an individual and courts will be able to put individuals on either or both lists. The proposed legislation would introduce a broadly similar arrangement for those working with adults at risk.

### Access

All employers with a legitimate interest will be able to get access to a person's barred status, including personal employers such as parents and those employing carers for adults at risk. Access may be made available through the internet with suitable security systems in place to limit access to the applicant's current or potential employer. In the case of small-scale and personal employers and parents, access may need to be through a registered body whose main function would be identity checking. Whatever the access system adopted the intention is to make it as quick and simple as possible for those who have a legitimate interest while ensuring an individual's privacy and rights are protected.

## APPENDIX 3: THE CONSULTATION PROCESS

### AIMS OF THE OVERALL CONSULTATION

There were two key elements to this study:

1. **A programme of information events and focus groups.** These provided different groups of individuals and organisations with information on the proposals set out in the consultation document, and gave them an opportunity to give their views. These ran alongside the consultation process. This ensured that all relevant parties throughout Scotland were given an opportunity to explore the issues covered by the consultation.
2. **Public consultation.** Intended to produce an analysis and summary of written responses to the consultation document, alongside a database of responses.

**It was intended that the results of these two elements will feed into the final form of the legislation.**

George Street Research was commissioned to conduct an analysis of the consultation responses, the information events, the focus groups and the in-depth interviews.

Where respondents to the consultation have agreed to have their response made public, these responses have been made available in the Scottish Executive Library as well as on the Scottish Executive web site, alongside a copy of this report which provides an analysis of all responses.

#### *Specific Objectives of the Information Events*

Information events included a broad range of individuals and others with an interest, across a range of different locations and from a range of different backgrounds. The Scottish Civic Forum produced a briefing paper (see Appendix 2).

Each event was “participant friendly” and focused on the information provided in the consultation document and the briefing paper. The main element of each event was discussion groups to encourage maximum participation.

#### *Specific objectives of the qualitative discussions*

The aim of the qualitative discussions was to capture the views of specific groups involved in any way in the disclosure process and / or working with children and adults at risk. They explored particular concerns or issues for people in those particular groups and provided a less public environment than the discussion groups at the Scottish Civic Forum events.

#### *Specific objectives of the consultation component:*

- Provide an analysis of responses (written and electronic) to the consultation grouped under the consultation themes, questions and respondent group
- Produce a database of responses that enable analysis by question or group



- Identify the main interest groups responding to the consultation and their views about the consultation themes
- Present an overview of the full range of views emerging
- Identify the full range of views on each specific proposal, together with any comments or suggestions on how these proposals could be implemented, along with any other related comments
- Identify any barriers to implementation and how to overcome these barriers
- Identify queries raised, potential problems that were highlighted and suggested recommendations
- Identify and highlight contradictions and anomalies that emerged in the analysis
- Identify variations in responses of different groups
- Identify groups where the response rate was poor and indicate which voices remained silent in the consultation.

## COMPONENTS OF THE CONSULTATION

### *The Consultation Document*

**As part of the legislative process, the Executive was keen to obtain views from individuals and organisations to comment in a structured way on aspects of the proposed new Vetting and Barring System.** A consultation document – *Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme* – was issued by the Children, Young People and Social Care Analytical Services Unit within the Education Department at the Scottish Executive. This set out the policy background and was structured around a series of key recommendations and asked for views on the recommendations made in the consultation document.

The consultation was distributed to a wide range of individuals and organisations. The consultation was available on the Scottish Executive website.

A series of 24 questions were posed in the consultation in relation to the suggested proposals, although respondents were also welcome to provide views on any related issues if they wished. The list of questions was not intended to restrict responses, rather to stimulate responses across a number of specific areas.

### *Public Consultation Events*

A programme of information meetings were organised by the Scottish Civic Forum during the consultation period to support the consultation process, with the aim of bringing the issue to the public eye and encouraging a wider range of individuals and members of the general public to respond to the consultation.

The information events<sup>4</sup> consisted of a series of four public meetings<sup>5</sup> in different parts of Scotland which were run by the Scottish Civic Forum and convened by representatives of the Scottish Civic Forum. The information meetings were intended to allow people to find out

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<sup>4</sup> Two separate consultation seminars were also conducted by the Scottish Executive but are not reported on here

<sup>5</sup> These were held in Glasgow, Aberdeen, Edinburgh and Stirling

more about the system and have an opportunity to discuss the proposals, clarify issues and highlight concerns or potential problems.

At each meeting personnel from the Scottish Executive gave a presentation introducing the issues at stake, and outlining the key questions of concern within the consultation. Two series of break out group discussions were then run by Scottish Civic Forum representatives, each followed by plenary feedback, and question and answer sessions.

Each discussion group was given the same set of three scenarios for each of the discussion sessions. These were produced by the Scottish Executive and were based on points raised at two earlier meetings held by the Executive in Edinburgh and Glasgow in March. The scenarios focused on specific themes and copies of these are appended to this report (see appendix 1). The facilitator or chair in each group was asked to hand in an annotated template, from which they had fed back two main agreed points in the plenary sessions. Other participants were also asked to leave their sheets recording their comments. Most participants left their comments, but some wanted to retain them as an *aide memoire* for themselves. In Aberdeen, the only sheets returned were those of the facilitators. Participants were invited to either look in detail at one scenario, look at all three or focus on other concerns as they felt appropriate. The themes for the first table discussion in the morning were: Coverage of the workforce; Costs and lifetime of disclosure; and Information sharing. The second table discussion after lunch focused on the themes: Central Barring Unit; Barred lists; and Implementation.

The principal findings from the discussion sessions were summarised in reports produced by the Scottish Civic Forum and these are available from the Scottish Executive.

The public consultation events aimed to:

- target a broad range of individuals who have an interest, or have had any form of involvement, in the disclosure process in Scotland
- be “participant friendly” and focus on the information provided in the consultation document
- obtain informal soundings of the main themes arising in relation to the proposals contained in the consultation document.

The events were attended by a range of different individuals, including professionals, individuals from within the voluntary sector and others with an interest in the proposals.

A copy of the briefing paper prepared by the Scottish Civic Forum and presented at each event is provided in Appendix 2. A summary report detailing the main findings from these events written by the Scottish Civic Forum who facilitated the discussions and recorded the key points emerging at each is available from the Scottish Executive.

The key issues raised at the events reflected the main points that emerged during the consultation and have been taken into account during the larger analysis. The pertinent findings from the information events have been identified throughout the analysis in the relevant sections.

### *Focus Groups and In-depth Interviews*

The information events were intended to ensure broad access to the consultation process, while the qualitative discussions were intended to be more deliberative in nature and concentrated on accessing the views of particular groups of interest, including

- Voluntary organisations
- Regulatory bodies
- Local authorities
- Carer groups involved in dealing with children and adults at risk
- Rehabilitation of offenders
- The police and judiciary
- Employers and employees in education, care and leisure settings

A total of 39 respondents participated in the qualitative discussions and their profile is provided in the table below.

#### **Respondent Profile**

(Base: All respondents participating in focus groups & in-depth interviews)

<b>Respondent Type</b>	<b>Number of Respondents</b>
Voluntary organisations (group discussion)	7
Regulatory bodies (group discussion)	8
Local authorities (group discussion)	6
Carer groups involved in dealing with children and adults at risk (group discussion)	5
Rehabilitation of offenders (group discussion)	4
Police, judiciary, employers & employees, Disclosure Scotland & Central Registered Body of Scotland (individual face-to-face in-depth interviews)	9
<b>Total</b>	<b>39</b>

#### **TIMING OF THE CONSULTATION**

The consultation ran from 8 February 2005 to 2 May 2006. In total, 189 responses were received by 8 May and were included in the analysis. These provided a wide range of views and information for consideration. Three of these responses were letters indicating that the organisations concerned would not be submitting a response. Therefore the total number of responses included in the analysis is 186.

#### **DISTRIBUTION OF CONSULTATION DOCUMENT**

A key concern was to develop a consultation document that encouraged a wide range of individuals, groups and organisations to submit their views. The consultation paper was also

on the Scottish Executive website for any interested individuals.

Consultation papers were distributed to a wide range of organisations and bodies with a professional interest.

These included:

- Association of Chief Police Officers in Scotland (ACPOS)
- Care service providers
- Chief Constables
- Convention of Scottish Local Authorities (COSLA)
- Crown Office
- Disability Rights Commission
- Disclosure Scotland
- Faith groups
- Housing Associations
- Law Society of Scotland
- Local Authority Chief Executives
- Local Authority Directors of Education / Social Work / Finance / Children's Services
- Lord President and Lord Justice General
- Minority ethnic groups
- NHS Board Chief Executives
- Parent, carer and volunteer groups
- Political parties
- Professional regulatory and representative bodies
- Scottish Court Service
- Scotland's Commissioner for Children and Young People
- Scottish Further Education Colleges
- Scottish Higher Education Institutes
- School and teacher representative bodies
- Sheriffs, Sheriff Principals and Sheriff's Association
- Unions
- Voluntary organisations.

In order to stimulate greater awareness of the consultation, the Scottish Civic Forum was commissioned to organise a series of four events across Scotland on behalf of the Scottish Executive.

## **RESPONSES AND RESPONDENTS**

**A total of 186 completed responses to the consultation were analysed.** The consultation documentation included a structured response form and the majority of respondents chose to present their comments using this format.

Responses to specific consultation questions were analysed using an Access database, which enabled comments on each question to be grouped together, compared and, where possible, quantified.

In total there were 172 responses from professionals/ organisations and these respondents were able to base their views on their professional and/or personal experience and insight into the issues. Only 12 responses were submitted by individuals and 2 responses were submitted by individuals who chose not to identify themselves.

The consultation documentation included a list of sectors and respondees were invited to tick those that applied to their organisation.

While many responses from Local Authorities were from specific departments including Social Work and Education, a significant number had classed themselves as “Other” and could not be assigned to a more specific grouping. These have been analysed under an extra heading of “Local Authority”.

Some respondents did not include category information with their responses. Where possible these have been assigned to the most suitable respondent type.

The numbers and percentage of the total responding to the consultation within each of these groups are shown in table 2.2. As the table shows, the largest number of organisational responses was received from Voluntary Organisations – 44 responses were received in this category. These constituted 26% of the total number of organisations and 24% of the total number of responses to the consultation. A proportionately large number of organisational responses (42) were received from those categorising their organisation as “Education”.

### ***Gaps in Respondent Type***

A scan of the respondent list along with a review of the respondent organisations revealed no obvious gaps, although the two types of organisation least well represented were those describing themselves as representing Parent or Carers, and those representing the Early Years sector.

**Total number of Respondents by Category**  
(Base: All Consultees)

<b>Respondent Type</b>	<b>Number of respondents</b>	<b>Percentage of respondents (%)</b>
Early Years	2	1
Education (3 from local authorities)	42	23
Health (0 from local authorities)	16	9
Individuals	12	6
Justice	6	3
Local Authority	13	7
Parent/ Carers	2	1
Police	4	2
Social Work (11 from local authorities)	18	10
Sport & Leisure	5	3
Unknown	2	1
Voluntary Organisation	44	24
Other*	20	11
		figures are rounded
<b>TOTAL</b>	<b>186</b>	<b>101</b>

\* Organisations describing themselves as “Other” include professional bodies, trade unions, private companies and associations.

## APPENDIX 4: LIST OF RESPONDENTS

Organisation
Aberdeen College
Aberdeen Volunteer Centre
Aberdeenshire Council
Aberlour Child Care Trust
Adam Smith College
ADES Personnel Network
After School Club
AHDS
Alzheimer Scotland
Angus College
Anniesland College
APEX Scotland
Argyll and Bute Council
Ayr College
Barnardos Scotland
BMA Scotland
British Dental Association
BT plc
Camphill Scotland
Capability Scotland
Care Commission
Central Baptist Church
Central Scotland Police
Child Protection Committee, North Lanarkshire Council
CHILDREN 1st
Children's Hospice Association Scotland
Children's Panel Chairmen's Group
City of Edinburgh Council
Clackmannanshire Council
Clifton Hall School
Clydebank College
Community Care Providers Scotland
COSLA
Council Offices, Dumbarton
Craigholme School
Crossreach
Cultural & Leisure Service
CVS Fife
Donaldson's College
Dumfries & Galloway Child Protection Committee
Dundee City Council
East Ayrshire Childcare Partnership
East Ayrshire Council
East Dunbartonshire Council, Community Directorate
East Lothian Council

East Lothian Council
East Renfrewshire Council
Edinburgh's Telford College
Educational Institute of Scotland
Elmwood College
Enable Scotland
Erskine Stewart's Melville Schools
Fairbridge in Scotland
Falkirk Council
Fife Children's Panel Advisory Committee
Fife Council Social Work Service
Forth Valley College
Fostering Network
General Medical Council
General Teaching Council for Scotland
Glasgow City Council, Chief Executive Department
Health Professions Council
Highland Child Protection Committee
Hillcrest Group
HR Service, Aberdeen City Council
Inverclyde Council
Jewel & Esk Valley College
Johnstone Technical Education Centre
Joint Children's Panel Advisory Committee
Joint Strategic Support Unit, St Margaret's House
Key Housing Association
Kibble Education and Care Centre
Kirkcaldy & Levenmouth CHP, NHS Fife
Lead Scotland, Queen Margaret University College
Leonard Cheshire
Levendale Primary School Board, Alexandria
Linvale Primary School Board
Lothian Association of Youth Club
Lothian Centre for Integrated Living
Margaret Blackwood Housing Association
Mental Welfare Commission for Scotland
Midlothian Council
Motherwell College
National Autistic Society
National Schizophrenia Fellowship (Scotland)
National Services Scotland - NHS
NESCPC
NHS Ayrshire & Arran
NHS Ayrshire & Arran
NHS Lothian
NHS Quality Improvement Scotland
NHS Tayside
North Ayrshire Child Protection Committee



North Lanarkshire Council
North Lanarkshire Council Education Dept
Nursing and Midwifery Council
Office of the Public Guardian
Partners in Advocacy
Perth & Kinross Council, Education & Children
Police Headquarters (Inverness)
Professional Association of Teachers
Quarriers
Reid Kerr College
Renfrewshire Council
Respond, Voice UK, Ann Craft Trust
Royal Infirmary of Edinburgh
SAMH (Scottish Association for Mental Health)
School Board
Scotland's Commissioner for Children & Young People
Scottish Child Law Centre
Scottish Children's Reporter Administration
Scottish Churches Committee
Scottish Council of Jewish Communities
Scottish Criminal Records Office
Scottish Governing Bodies of Sport Lead Child Protection Officers Group
Scottish Legal Aid Board
Scottish Marriage Care
Scottish Out of School Care Network
Scottish Parent Teacher Council
Scottish Personal Assistant Employers Network
Scottish Police Federation
Scottish Pre-School Play Association
Scottish Refugee Council
Scottish School Board Association
Scottish Secondary Teachers' Association
Scottish Social Services Council
Scottish Youth Dance
SCRE Centre
Scripture Union Scotland
SCVO
Sense Scotland
SGU
Shetland Islands Council
SkillsActive Scotland
Social Care Association
Society of Personnel Directors Scotland
South Ayrshire Council
South Lanarkshire Council
St John's Hospital
St Margaret's School
St Martin's Primary School

St Mary's Duntocher School Board
St Mary's Music School
Stevenson College
Stirling Council
Stow College
Telephones Helplines Association
The Association of Chief Police Officers in Scotland
The Association of Scotland's Colleges
The Boys' Brigade
The Church of Scotland
The Edinburgh Academy
The Harmony Employment Agency
The Information Commissioner's Office
The Prince's Trust Scotland
The Richmond Fellowship Scotland
The Royal Caledonian Curling Club
The Royal College of Psychiatrists
Transport and General Workers Union
Tullyvanus
United Kingdom Homecare Assoc
Universities of Scotland
Vetting Advisory Group, Highland Council
Victim Support Scotland
Voluntary Arts Scotland
Volunteer Centre East Ayrshire
Volunteer Centre Midlothian
Volunteer Development Scotland
West Lothian Council
Westerton Playgroup
WRVS
Youth Scotland

The following responses were received after the consultation deadline and, although these are not reflected in any of the figures contained in this report, the views they presented have been taken into account in our reporting.

<b>Organisation</b>
ACPOS
Children in Scotland
Dumfries & Galloway Constabulary
Falkirk Council
Law Society of Scotland
NCH Scotland
NHS Borders
NHS Forth Valley
Orkney Islands Council
Perth College
Scottish Council of Independent Schools
Scout Assoc Scottish Council

## APPENDIX 5: THE CONSULTATION QUESTIONS

The consultation document set out the background to the consultation, highlighted the key points for consideration and posed a series of questions around the proposals contained within the consultation to which respondents were invited to respond.

There were 24 questions posed in the consultation paper and these focused around a number of broad topic areas. The questions were intended to focus on the key issues which were raised in the consultation paper. The list of questions was not intended to restrict responses and all comments and views, whether or not they related directly to a specific question, have been taken into consideration.

**Table 2.1**  
**Questions Contained in the Consultation Document: response booklet**

Part 1	<b>General</b>
Consultation questions	<p>Question 1: <b>Current System</b> – Please identify what you consider to be the three greatest issues with the current system for checking those who work with children and vulnerable adults.</p> <p>Question 2: <b>Bichard Recommendations</b> – Do you have any comments you would like to make on the recommendations, especially recommendation 19 in respect of vetting and barring?</p> <p>Question 3: <b>Interests of Vulnerable Groups</b> – Do you have any concerns about the way the proposed system might adversely affect the opportunities for children and vulnerable adults to participate in education, employment, sport and leisure activities? What could be done to mitigate this?</p> <p>Question 4: <b>Interests of Employers</b> – Do you have any concerns on the impact of the proposals on the recruitment and selection of individuals to work with children and vulnerable adults? What could be done to mitigate this?</p> <p>Question 5: <b>Interests of Applicants</b> – Do you have any concerns on the impact of the proposals on those who might apply for disclosure to work with children and vulnerable adults? What could be done to mitigate this?</p> <p>Question 6: <b>Other matters.</b> Please make any other comments which are relevant to the Scottish Bichard Vetting and Barring Scheme.</p>
Part 2	<b>Consultation Paper Proposals</b>
Consultation questions	<p>Proposals 1-3: <b>Scope of new Vetting and Barring Disclosure</b> – Do you have any comments on the type of position for which the new scheme will apply?</p> <p>Proposal 4: <b>Costs of Vetting and Barring Disclosure</b> – How much more would you be willing to pay upfront for the new Vetting and Barring Disclosure? Please be as specific as you can e.g. £10.</p> <p>Proposals 4-5: <b>Funding the Vetting and Barring Scheme</b> – Do you agree with the broad proposals for: a more expensive initial disclosure, low-cost or free subsequent checks and free disclosure for volunteers?</p>

	<p>Proposal 6: <b>Retrospective Vetting and Barring Disclosure</b> - Do you agree with the proposals for phasing the vetting and barring of the existing workforce?</p> <p>Proposals 7-8: <b>Disqualified from Working with Vulnerable Adults List.</b> We are not looking for comments on the DWVAL, since this has been covered by previous consultation. However, we would like to know if this new context raises any new issues.</p> <p>Proposal 9: <b>Changes to the Disqualified from Working with Children List.</b> Are there any changes, other than those outlined, which you would like to see made to the DWCL?</p> <p>Proposal 10: <b>Decisions on barred lists by new Central Barring Unit.</b> Do you think decisions on barring should be made by a special panel, a case conference or administrators?</p> <p>Proposals 11-13: <b>Central Barring Unit.</b> Do you have any comments on the status and governance arrangements for the Central Barring Unit? What degree of separation is needed from the Scottish Ministers?</p> <p>Proposal 14: <b>Provisional listing.</b> What should the criteria be for provisional listing? Do you agree that the individual should be able to continue to work during the determination process?</p> <p>Proposal 15: <b>Appeals against listing.</b> Do you agree that the right of appeal should be to the sheriff court with a three-month time-limit?</p> <p>Proposal 16: <b>Access to barred status.</b> Who has a legitimate interest in the barred status of an individual and how should "fishing trips" be prevented?</p> <p>Proposal 17: <b>Information released to applicant.</b> How much information passed on to the Central Barring Unit should be released to the applicant and employer? What criteria should there be for not releasing information?</p> <p>Proposals 18-20: <b>Information sharing between the Central Barring Unit, public authorities, employers, police and regulatory bodies etc.</b> Do you have any comments on <u>who</u> should be required to pass <u>what</u> information on to <u>whom</u>?</p> <p>Proposal 21: <b>Role of regulatory bodies.</b> Which regulatory bodies should receive information through disclosure? What information should they receive?</p> <p>Proposal 22: <b>Disclosure of civil orders.</b> Which civil orders should be disclosed?</p> <p>Proposal 23: <b>Cross-referencing with offender registers and other lists.</b> How do you think the DWCL and DWVAL should relate to other registers and lists, e.g. the Sex Offenders Register or Protection of Children Act List in England and Wales?</p> <p>Proposals 24-25: <b>Referrals.</b> Do you agree with the proposals for who can make a referral? Should parents and personal employers be able to make a referral?</p> <p>Proposal 26: <b>Lifetime of certificates and checks.</b> Do you agree that the vetting and barring disclosure certificate should have a finite lifetime, after which a new application for full disclosure needs to be made?</p>
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Respondents were invited to respond freely to each question in the consultation document. Some respondents answered each question while others chose to comment on a limited number of questions. Most chose to follow the question structure, although a few preferred to provide comments in a free-flowing format.

## **APPENDIX 6: APPROACH TO ANALYSIS OF CONSULTATION RESPONSES**

In addition to deploying an organised and robust framework for identifying and collating relevant comments from respondents, the exercise also required a number of ground-rules to be set to ensure responses to the consultation were prepared for analysis in a consistent and sensible fashion.

### **ANALYTICAL FRAMEWORK**

The analytical framework used in our analysis of the consultation responses was an electronic ACCESS database specifically written for this consultation. This enabled a combination of quantitative and qualitative analysis to be undertaken.

The electronic ACCESS database was used to store and assist analysis of all responses, including those that were lengthier or free flowing and which did not follow the structured questionnaire format. This database enabled the storage of free text in a systematic manner. The method of data entry could also be controlled via careful design of data entry forms to minimise the likelihood of any erroneous entries.

The fields used to record the material in the Access database were based on the questions set out in the consultation document.

The text from free flowing responses was, where possible, assigned to a specific question and stored in the relevant field.

A copy of the database has been provided to the Scottish Executive under separate cover.

### **PUBLICATION OF WRITTEN RESPONSES**

Where respondents have agreed to publication, these responses are available in the Scottish Executive library. After discussion with the consultation team, the convention adopted for this consultation has been to preserve the anonymity of individual respondents and organisations, but to attribute their comments and quotes to the grouped respondent category to which they fit. In this way, a further depth is added to the analysis by providing some contextual information about the respondent type.

### **GROUND RULES**

#### ***Separate Responses from the Same Individual/Organisation***

On occasions, a respondent may send in more than one response. The consultation team at the Scottish Executive were primarily responsible for identifying and removing any such duplicates. The research team at George Street Research were also prepared for the possibility of double entries and ensured that any identical or duplicate responses that had been missed were picked up and removed from the exercise. This was done by hand searching or electronic screening.

### ***Quality Control***

In order to minimise any inconsistencies in approach, the research team at George Street Research was kept to a minimum size with all working to a well tested set of rules for data examination and entry. In accordance with our standard practice, members of the research team verified 10% of coding and data entry and highlighted areas where a second opinion was required.

### ***Factual Accuracy***

The views presented in this analysis have not been vetted in any way for factual accuracy. The opinions and comments submitted to the consultation may be based on fact or may, indeed, be based on what respondents perceive to be accurate, but which others may interpret differently. It is important for the analysis to represent views from all perspectives. The report may, therefore, contain analysis of responses which may be factually inaccurate or based on misunderstanding or misinformation on the actual proposals but nevertheless reflect strongly held views. In some instances, such inaccuracies and misunderstandings will be relevant findings in themselves.

### ***Interpretation of Findings***

Those participating in the consultation exercise were self-selecting and each had their particular motivation to take part. The exercise was not intended to gain views that were representative of the Scottish population, but was intended to give all those who wished to comment an opportunity to do so. This has to be borne in mind in interpreting the findings presented here in this report.

**Given the self-selecting nature of any consultation exercise, it should be noted that any statistics quoted here cannot be extrapolated to a wider population outwith the consultation population.**

### ***Consultee Types***

The views of all those responding to the different strands of this consultation have been taken into account. While all views are relevant and have been incorporated into our reporting, it needs to be borne in mind that many of the organisations participating in this consultation were responding on behalf of their membership and / or those they represent. As such, while their views are not considered to be any more important than those responding on an individual basis, greater emphasis may be placed on the weight of balance of their views.

## **A QUALITATIVE APPROACH**

Given the depth and breadth of comments and responses to the consultation, they were entered into a bespoke database designed specifically for this element of the public consultation paper to enable qualitative analysis. Where possible, a degree of quantitative analysis has been undertaken to sit alongside the qualitative analysis.

## **THE REPORT**

The focus or perspective of those responding to the consultation, attending information events, focus groups or in-depth interviews often varied. Similarly the importance attached to different aspects of the consultation exercise often varied. However, the same themes emerged across all individuals and types of organisation participating in this exercise.

The protocol we have adopted in our reporting is to firstly state the themes emerging from individuals and organisations responding to the consultation paper, and these have been referred to as “consultees”. We then provide additional commentary from those attending information events, focus groups or in-depth interviews and these are referred to as “respondents”.

Given that the same themes generally emerged across all types of organisation and individual, we have only commented on differences in opinion. Where we do not make distinctions by organisation type, it should be assumed that this is because there are no significant differences in views emerging. So, where there are significant omissions or differences of opinion across different types of organisation, these have been highlighted in our commentary.

The report documents the substance of our analysis, presenting the main issues, arguments and views expressed by those responding to the consultation and those participating in information events, focus groups and in-depth interviews. These follow broadly the ordering of issues raised in the consultation document. Verbatim quotations have been included for illustrative purposes.

Since the commencement of this consultation, within Scotland the term “vulnerable adults” has been replaced by the term “adults at risk”. However, the original consultation documentation and many consultation responses refer to “vulnerable adults”, and so both terms are used in this report. Since the start of the consultation, the term “adults in need” has superseded the terms “vulnerable adults” and “adults at risk”, although we have not used this in our reporting. In our report, where we are providing a direct quotation we use the term provided by the consultee, so there are some instances where the term “vulnerable adult” is in the body of this report.

In responding to the consultation paper specifically, a number of consultees raised the same issue(s) in response to a number of questions posed. For example, reference to the costs or potential costs of the new scheme was made throughout responses to the consultation paper. Our protocol in this report is to provide commentary in relation to each relevant question posed.

### ***Report Structure***

Our analysis along with this report has been structured to follow the sections as laid out in the consultation document. The findings are presented for each of these questions in chapters 2 to 8 and chapter 9 provides some brief conclusions on this consultation exercise.

ISSN 0950 2254  
ISBN 0-7559-6211-7  
Price £5.00

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

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