

**Protection of Vulnerable Groups (Scotland) Act, statutory instruments for consultation
Response from Community Care Providers Scotland
February 2010**

Community Care Providers Scotland (CCPS) is the national association for voluntary organisations providing care and support services across Scotland. CCPS members work with both children and adults in a variety of settings, and have as a result been interested in the development of this legislation since its inception. CCPS is represented on the Voluntary Sector Issues Group which advises on the Act, and has responded to all previous consultations on the PVG scheme.

CCPS would like to comment on the following SSIs:

- Regulated work with adults order
- Regulated work with children order
- Fees regulations
- Contractors and disclosure order

Comments are also given on the guidance document.

Our particular concerns relate to the fees regulations, and the increased cost of scheme membership compared to the current Enhanced Disclosure, which voluntary sector providers will be expected to absorb. We would challenge some of the assumptions used in the Regulatory Impact Assessment to assess the costs of the change, and seek clarification on the definition of a voluntary organisation in the fees regulation.

In considering the consultation material, CCPS members have again raised questions around why there are two lists of those unsuitable to work with adults and children. While this is not directly covered in the statutory instruments it is certainly relevant to them, so before addressing the specific points from the SSIs we would like to comment briefly on this issue.

CCPS members find it hard to understand why those unsuitable to work with children would be suitable to work with adults, and vice versa. They are particularly concerned that information on an individual's barred status relating to one group will not be shown on a scheme record received in relation to work with the other group. The existence of two lists also makes it difficult for organisations to decide which of their staff should be checked against which list in situations where their organisations either work with both adults and children, or where they deal with young people aged 16-18. It is CCPS' contention that these complexities, plus the fact that those applying to join one scheme and subsequently needing to join the other will have to pay twice for scheme membership, could result in organisations seeking to check staff against both lists at the outset even where this is not immediately necessary.

Regulated work with adults order

In keeping with our support for a proportionate system of checking, we support the proposed changes in relation to care homes and residential establishments.

As noted above, CCPS members working with both children and adults are confused by the need for two lists, and many would seek to check staff against both lists. In addition, some CCPS members are not satisfied that, for example, admin staff, who may have considerable unsupervised contact with vulnerable people, will not be eligible to become scheme members.

In previous consultations, CCSP has not commented on the issue of charity trustees, as opinion is split among members as to whether or not trustees should be checked. We still refrain from commenting on the desirability of checking trustees, but would point out that the different regulations set for children's/adult charities will cause uncertainty for charities working with both children and adults, for whom it is not clear which trustees should be checked. We would also point out that the definition of a trustee involved in recruitment appears to be open to (mis)interpretation by organisations and effectively allows charities to choose whether to check all, some or none of their trustees.

Regulated work with children order

As above, we would note the difficulty for charities working with both adults and children in knowing which of their trustees should become scheme members where regulations for trustees of children's charities differ from those for charities working with vulnerable adults.

Fees regulations

Our main comments on the SSIs being consulted on relate to the fees regulations.

CCPS members are concerned that the increased cost (to £59) of checking staff will have a significant financial impact on their organisations – no member expects to have this price increase recognised in contract negotiations, and it will therefore fall to voluntary organisations to subsume this cost, most likely at the expense of either level or quality of service. If the figure of ten years for the higher initial costs of the scheme to be reimbursed quoted in the Regulatory Impact Assessment is assumed to be correct (which calculations by several CCPS members dispute), members do not have the short term disposable income to absorb the extra costs over the next ten years, particularly against the backdrop of rising HR costs around pensions and national insurance.

CCPS members have also indicated that the assumption in the RIA that employers will be happy to request a short scheme record where a potential employee is already a scheme member may not in all cases be correct. While some employers will be happy to accept a full scheme record presented by a potential employee, they highlight that employees will not always have their records for presentation; other employers have indicated that they would not trust the full scheme record given to them by a potential employee. This will likely lead to more full scheme records being applied for than the RIA expects. It is not clear to us why, when all of the information for a full scheme record is collected and logged at the time of joining the scheme, a subsequent request to view this information should cost the same as the initial joining fee.

Another issue raised by providers in this regard was that, at present, the Care Commission recommends that staff be rechecked every three years; it is not clear to members whether the new form of scheme membership will be acceptable to the Care Commission, or whether they will still ask providers to seek the information present on a full scheme record at that time; we would ask that the Scottish Government clarifies this with the Care Commission and, if necessary, makes amendments to the RIA to reflect this.

In relation to the 'upgrading' of a short scheme record to a full scheme record, we would note that 14 days may be too short for some organisations, and ask that this be extended to 30 days.

We would also note here, as above, the potential for employers to seek to reduce costs by applying for membership of both schemes for employees who may at some stage work with adults or children.

Finally in relation to fee levels, we would ask for assurance that, where fee levels are to rise in future, this issue will be consulted on (as is the case, for example, with Care Commission fees) and not simply imposed on already financially overburdened providers.

We would also seek clarification in relation to the definition of a voluntary organisation under this regulation. While we would prefer a definition of a voluntary organisation not to appear in legislation, where this is to be used we would ask for clarification on the wording of the definition in relation to 'services for the general public'. It would be of significant concern to CCPS members if the services they provide to particular client groups under contract to local authorities were not to be encompassed in this definition, and we would welcome clarification or discussion of this issue at the earliest possible opportunity.

Contractors and disclosure regulations

The issue of contractors and disclosure has been of considerable concern to CCPS and its members; as our concern has always been that social care providers should not fall within this part of the legislation, we are pleased that this amendment limits the opportunity for contractors to request access to disclosures to transport providers. We hope that this will make it clear to contracting authorities that they are not able in other circumstances to request sight of disclosure certificates, but would welcome this being made explicit in the accompanying guidance.

Draft guidance

We are disappointed with the decision to produce only one, very lengthy, set of guidance, and are doubtful as to how useful this resource will be to frontline staff or people who use services. We would prefer to have seen a series of targeted publications and, where it is not possible to produce such targeted guidance, would ask the Scottish Government to ensure that the guidance material is written clearly so that it can be adapted by other organisations for different audiences; we would further highlight the resource implications of this for, for example, intermediary voluntary organisations, and the potential for a 'Chinese whispers' effect as guidance is reinterpreted by different bodies in preparing targeted guidance for their constituent groups. We would also make a plea that sufficient training must be provided to ensure staff are aware of their rights and responsibilities.

Should you have any questions on this response, please do not hesitate to contact me.

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I am responding on behalf of an organisation. I am content for my response to be made public, and to be contacted in future regarding my response.