

COMMUNITY CARE PROVIDERS SCOTLAND

Response to Protection of Vulnerable Groups (Scotland) Act 2007: Consultation on Secondary Legislation and partial Regulatory Impact Assessment February 2008

Community Care Providers Scotland (CCPS) is the association of voluntary sector organisations providing care and support services in Scottish communities. Our membership comprises over 60 of the leading national non-profit and charitable providers in Scotland. CCPS members provide a variety of services for children and adults, both in registered residential settings and in their own homes. The majority of these services are provided under contract on behalf of local authorities.

CCPS, as a representative body for service providers, is only able to comment on issues in the consultation as they affect voluntary organisations in their roles as service providers and employers, and we have therefore not offered comment on the wider issues addressed in the consultation. As CCPS' 60 member organisations currently implement a range of recruitment and checking processes, it has been difficult to provide detailed answers to the questions in the consultation about the effect of proposals on an organisation; we have, however, offered thoughts on the general principles which should be considered around these issues. CCPS members have been encouraged to respond to the consultation individually, both to provide more detailed information on the effect that proposals might have on their organisations, and to respond to the wider issues contained in the consultation.

The main issues for CCPS members in the consultation are contractors and disclosure, retrospective checking, and fees; we also offer comment on regulated work and cross-border arrangements, and refer to issues raised in the partial Regulatory Impact Assessment.

Contractors and disclosure

Q4a Do you believe that disclosure information should be shared with third parties?

During the passage of the Bill, CCPS campaigned strongly to have it recognised that scheme record information on staff employed by voluntary sector organisations providing care services under contract to local authorities should NOT be able to be made available to local authorities. We are extremely pleased that this has been recognised by the Scottish Government, in that the provision of social care services is not one of the circumstances mentioned in the consultation under which disclosure information could be shared with a third party.

While CCPS does not feel in a position to comment on the situation of other contractors, such as bus companies or maintenance contractors, we would reiterate our previous argument that, for providers of social care services, who are well-versed in issues of child and adult protection, the council's responsibility, as listed as an option in the consultation, is to ensure that the contractor has appropriate arrangements in place to ensure the protection of the children or adults it cares for; it would not be appropriate for councils to have a right to access disclosure information. As we stated during the passage of the Bill, our concern here is that local authorities with access to disclosure information may try to become involved in individual recruitment decisions, which are clearly the responsibility of the contractor; as this already happens on occasion under the Disclosure system, where local authorities do not have a particular right to see certificates, it is not unlikely that giving extra rights to view information to councils would increase this practice.

Retrospective checking

Q17a: Should scheme membership be phased in through natural turnover or a managed process of retrospective checking. Please explain your answer.

Q17b: If natural turnover was selected as the most appropriate option, would your organisation make arrangements to expediate scheme membership for your staff?

In previous consultations on the issue of retrospection, CCPS has emphasised the need to minimise administrative and financial burden on providers of any checking system. This continues to be our main concern.

In answering q17b, we would raise the issue that many voluntary organisations will be asked by contracting authorities, funders, insurers, local authorities letting premises, regulators and other third parties to ensure that all staff are checked. This happens under the current Disclosure system, so there is no reason to imagine that it would not continue, or even increase, under the new scheme. In an effort to minimise the number of organisations forced by these third parties to retrospectively check their entire regulated workforce, we propose the introduction of a managed process of retrospective checking, as discussed below. It is our hope that voluntary organisations could then use this legislation in contract negotiations with local authorities, for example, to change clauses specifying that all staff are checked to one where all staff will be checked in accordance with the managed process of retrospective checking as defined in the secondary legislation. In addition, we would welcome guidance from the Scottish Government to local authorities and others on the proper use of the system, in order to try to avoid this situation from arising in the first place.

Q18a: Should the period of retrospective checking be delayed until such a time as a proportion of the workforce have joined by natural turnover?

Q18b: If yes, how long should this delay last and why?

Q20a: If there is to be a period of retrospective registration of the regulated workforce onto the scheme, which of the following options would you prefer?

Q20b: What would be the impact of a quick programme of retrospective checking on your organisation?

Q20c: What difference would it make if the phasing-in period was significantly extended?

As the Scottish Government is aware, many voluntary organisations working under contract to local authorities operate within an extremely tight financial environment. A quick programme of retrospective checking would therefore be a difficult financial obligation for organisations to meet, and would result either in organisations failing to comply with the legislation or some kind of cut in service quality or volume – neither of which would be acceptable to providers, or to the local authorities with which they have contracts. CCPS is therefore in favour of a period of natural turnover, say of two to three years, followed by retrospection, also over a period of about three years. This would not only spread the financial and administrative burden of registration, but would allow a period for organisations to get used to the mechanics of the scheme before setting out on a programme of retrospective checking – it would also give Disclosure Scotland and the Central Barring Unit time to iron out any teething problems before the system is put under additional pressure by retrospective checks.

Q19: If retrospective checking is to be undertaken, which of the options for prioritising retrospective checking of individuals do you prefer?

CCPS is in favour of prioritising retrospective checking by date of last disclosure. This is not only important in terms of risk (checking first those who have never had a disclosure check, followed by those who have not been checked for several years) but for many organisations will see the cost of retrospective checking spread. Proposals to check by sector or by geographical area would result in organisations having to check all existing staff at the same time, which would put a huge administrative and financial pressure on the organisation. Checking by random personal characteristics would be extremely difficult to implement.

Fees

Q21a: Which of the charging regimes do you prefer?

Q21b: What do you feel the maximum acceptable fee level for the higher tier fee should be (to keep the lower tier as low as possible or free)?

Q21c: To what extent does the level of fee affect your answer?

CCPS understands that the level of fees will be based on the costs of running the new scheme, and that as such no detail on what fees might amount to can be given. However, without this information, it is extremely difficult to assess different charging regimes, as it is not possible to work out what effect the different regimes might have on budgets. We look forward to the

opportunity to comment on the draft statutory instrument, which we understand will contain more detail on fee levels, in due course.

As a general principle, providers would not wish to see fees increase substantially above the costs of current disclosure. It is accepted that the ongoing checking provided by the scheme provides 'added value' over and above the disclosure system, and that some rise in costs is therefore likely, however if this rise is substantial it is likely to have a serious impact on providers' budgets, which, as noted above, is likely to have a knock-on effect on service provision. The figures used in the regulatory impact assessment of £26/£10 are broadly in line with what providers would be willing to pay.

We would, however, issue a note of caution around the assumption made in calculating fee levels that short scheme records will regularly be used by employers as part of their recruitment process. We have raised this issue in previous consultations, and are pleased to have it acknowledged in this consultation that employers will access a short scheme record "providing that the employer has access to a previous scheme record disclosure." We feel, however, that the issue of having access to a previous scheme record disclosure raises complicated issues about employers retaining copies of scheme record disclosures, which have come up under the present disclosure system. In addition, we would urge that individuals in receipt of full scheme records be informed, perhaps through a note on the scheme record itself, that they are expected to keep the scheme record for presentation to future employers. Otherwise it is our concern that the scheme will not operate as smoothly as planned.

Q22: Should individuals who become scheme members through volunteering be required to pay a fee for joining the scheme if and when they join the paid workforce?

It seems to us that it would be entirely reasonable for a short scheme record to be paid for when volunteers enter the workforce. However, to ask for a full joining scheme to be paid seems to us to be unreasonable, given that the fee has been paid to recognise their efforts as a volunteer – to subsequently charge would be to undermine this recognition.

Regulated work

Q1: Do you have any comments on the content and structure of guidance on the scope of regulated work with children as discussed in section 2.2?

As a member of the cross-sectoral working group established to help the Scottish Government to write this guidance, CCPS does not have any detailed comments on this issue at present.

A general point raised by a number of members, however, is the need for guidance to clearly explain why there is an overlap in the Act between children (up to 18) and adults (16 and over), and guidance given as to how organisations dealing with 16 and 17 year olds should approach this potentially confusing situation.

We would also make the point that it is just as important that guidance be produced on the scope of regulated work with adults. Although for most CCPS members it will be clear that staff are undertaking regulated work as it takes place in a service registered with the Care Commission, there may be some confusion around which posts within a service do or do not need to be checked. To avoid organisations blanket checking all staff in order to 'cover their backs', guidance should be produced early on in the process to help organisations assess which staff should be checked under the Act.

Q3b: Should the definition of welfare services be expanded to include commercial (i.e. for profit) organisations who provide services similar to those provided by the statutory and voluntary sector?

As voluntary organisations, CCPS members would expect to be under the same obligations as statutory providers providing a similar service. We cannot see any reason why the same should not apply to private sector service providers.

Cross-border arrangements

Q23: Do you have any comments about proposed cross-border arrangements with the rest of the UK as set out in chapter 6?

While this questions asks specifically about cross-border arrangements within the UK, we would like to take the opportunity to raise the issue of wider cross-border arrangements within the EU and beyond. The issue of overseas workers, for whom criminal record histories are often not available, is not addressed within the consultation, but is one which is posing very real difficulties for providers on the ground. While we acknowledge the complexity of this area, and are aware of work being done within the Scottish Government and elsewhere in the UK to try to tackle some of these issues, we feel that providers would benefit from a steer from Government as to how to deal with this tricky situation when it arises.

Regulatory Impact Assessment

Paragraph 95

We are pleased to see the issue of competition between service providers raised in the RIA. As well as considering costs faced by organisations, however, we would urge the Scottish Government to take into account the effect on competitive tendering situations of having one organisation with all staff checked while another is not. Local authorities, for example, who are traditionally risk-averse, may favour a provider which has retrospectively checked all staff over one which has not in a tendering exercise. While this cannot be mitigated against in terms of organisations voluntarily retrospectively checking all staff, it is important that any managed system of retrospection does not exacerbate the situation.

Assumptions in the RIA

As noted under Q21 above, we have some concerns around the assumption made in the RIA about the level of use of short scheme records. It is our belief that in practice, many more full scheme records will be requested than envisaged in the 'ideal type' model presented.

In relation to staff turnover rates, it may be of interest to the Scottish Government to note that a recent survey carried out by ekogen on behalf of the Voluntary Sector Social Services Workforce Unit found turnover in the sector to be around 17% over the period of the study¹.

The Regulatory Impact Assessment gives a figure on page 13 of 805,000 individuals who would fall within the scope of the scheme. Using the government's own population statistics, 805,000 people represent somewhere in the region of one in six of the entire population (including children) or around one in five adults. This does not seem to us to fit with the schemes stated aim of proportionality.

Other comments

We are disappointed not to have the opportunity to comment at this stage on the implementation plan referred to in paragraph 104 of the RIA, and would hope to have the opportunity to comment on this in the context of the final RIA.

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¹ <http://www.ccpscotland.org/workforceunit/info/documents/StaffTurnover-Final.pdf>

Respondent information

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I am responding on behalf of an organisation and am content for this submission to be made public and for the Scottish Government to contact me in future regarding this response.