

Protection of Vulnerable Groups (Scotland) Act 2007: Secondary Legislation

Partial Regulatory Impact Assessment for Consultation

General comments:

ADSW welcomes The Protection of Vulnerable Groups (Scotland) Act 2007: Secondary Legislation. The draft guidance and draft partial regulatory impact assessment provides an update on the modifications and insertions made to the previous completed consultations.

The process of undertaking the retrospective checking of the workforce requires additional information and advanced notice of the priority groups.

The fee for each scheme record application has increased significantly from the previous projected cost to the new fee of £59. This will result in an additional financial burden on local authorities.

Specific comments:

1. The Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010

Paragraph 36 specifically asks:

We are interested in whether the offences the Scottish Government proposes to add to Schedule 1 are acceptable and proportionate.

Response:

The 5 additional statutory offences the Scottish Government proposes to add to Schedule 1 look comprehensive. These appear to be acceptable and proportionate.

2. The Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010

Paragraph 29 specifically asks:

We are interested in your views on our approach to defining the fee waiver for volunteers working for voluntary organisations at regulation 6.

Response:

In principle, it is reasonable to waive the fees for volunteers doing unpaid regulated work for qualifying voluntary organisations.

The two tier-charging regime is explicit. Nevertheless, the fee for each scheme record application has increased significantly from the previous projected cost to the new fee of £59. This will result in an additional

financial burden on the local authorities. Additional funds will be required from the Scottish Government to meet these costs.

3. The Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010

Paragraph 33 specifically asks:

We are interested in whether:

- (a.) the principles underpinning the criteria set out in paragraph 13 which the Scottish Government proposes to adopt is acceptable and proportionate and
- (b.) the offences the Scottish Government propose to specify in Schedules 1-4 are acceptable and proportionate

Response:

The principles underpinning the criteria for serious offences would appear to be acceptable and proportionate. Likewise the offences specified in the Schedules 1 – 4 appear to be acceptable and proportionate.

It is our view that if a person commits a crime specified in Schedule 1 – 4 outside the UK, such crimes should be included as part of the automatic listing order for inclusion in the Children's list and Adult's list.

It is our view that the linkages across and between Schedules 1 and 2 and Schedules 3 and 4 for the listing of a scheme member will provide greater protection to children and protected adults.

It is beneficial to children and protected adults that a person convicted on indictment of an offence and / or convicted of a specified offence specified in the Automatic Listing Order will be automatically listed in the children's list and the adult's list.

The Automatic listing list does not appear to include Mental Health disposals for criminal cases. If not included in the Automatic listing list it would be our view that they these disposals should be considered within the "automatic consideration for listing".

4. The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed services) (Protected Adults) Regulations 2010

Paragraph 39 specifically asks:

We are therefore interested in whether the proposals to ensure that adults are only protected when in receipt of the specified services are considered to be proportionate:

Response:

For the purposes of section 94(1)(d) of the Act the prescribed "welfare service" (a) scopes the variety of service provision provided by the council to protected adults. This approach to ensuring that adults are

only protected when in receipt of the prescribed "welfare service" is proportionate.

The identification of a protected adult will be easier to identify in practice as a result of the "welfare service" definition rather than considering the individual characteristics of a person.

5. The Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010

Paragraph 23 specifically asks:

We are interested in whether you consider that the Contractors and Disclosure Regulations deliver the policy as intended and whether they should be adjusted.

Response:

The Contractors and Disclosure Regulations now only allow the sharing of disclosure information between contractors and commissioners for the provision of transport services to transport children and / or protected adults. This considerably narrows the original scope of when information might have been shared with third parties.

6. The Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010

Paragraph 45 specifically asks:

We are interested in whether the changes provide the right balance between the protection of children and ensuring people are not brought into the scope of regulated work unnecessarily or disproportionately. We are particularly interested in your views in respect of the new provision around host parenting and the changes to provision regarding charity trustees.

Response:

New Paragraph 1A logically excludes people who should not have originally been included in the scope of doing regulated work with children, especially when they will not have regular and or unsupervised contact with children.

The inclusion of host parenting as regulated work is important and proportionate. However, it seems illogical that other adults living in the same household as the host parent will not be covered by the same provision. By excluding other adults living in the same household as the host parent, this infers that they will never have unsupervised contact with the child whom the host parent is responsible for.

The changes to provision regarding Charity trustees will limit the protection provided to protected adults by excluding charities whose main purpose is to provide a service to adults. Many charitable

organisations do run community based groups for adults. Such "Adult service charity" trustees often have the same trust and access to adults *within and beyond the work of the charity itself* as that of children charity trustees. This is not proportionate and does not interface with the Adult Support and Protection (Scotland) Act 2007 definition of who might be considered as an adult at risk.

Paragraph 46 Specifically asks:

The Scottish Government is committed to restricting the scope of regulated work within the establishments broadly in terms set out above. We would be interested to receive any comment on potential unintended consequences and how these might be remedied.

Response:

It is important to limit the scope of regulated work in a logical way but not to the detriment of either vulnerable group. If the charitable trustees who work within adult service provision are excluded from the scope of regulated work, then many adults might be at risk of harm by those in a position of trust and authority *within and beyond the work of the charity itself*.

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