

Barnardo's Scotland
Protection of Vulnerable Groups (Scotland) Act 2007

Response to Consultation on policy proposals for secondary legislation

Introduction

Barnardo's Scotland manages over 60 services employing over 900 staff and 1000 volunteers.

Barnardo's Scotland has a wide range of services. In terms of age this includes pre-natal, early years, primary school, secondary school, and into adulthood. In terms of work focus it provides child protection services, support to children's education, support to families where there are mental health and substance misuse issues, disability services, youth offending services, leaving care and accommodation services and a growing number of services assisting young people into employment.

General Comments

Barnardo's Scotland gave general support to the Act and welcomes the opportunity to comment on the secondary legislation proposals. We agree with the policy intention to 'ensure that people who are unsuitable do not gain access to children or protected adults through work, either paid or unpaid, and for those who do become unsuitable are detected early and prevented from continuing to work' (p3). In doing so, we are mindful of the often tenacious efforts of a small minority those who seek to conceal their unsuitability and how difficult it is to create a fail safe system of checks. This means that whatever framework is set through secondary legislation will have difficulty in appearing proportionate because the size of the workforce – around 800,000 (p4) – compared to, for instance, the best estimates of those likely to be automatically barred – 100-500 people (p35). For this reason we believe that a strong emphasis should continued to be placed on agencies to employ safe recruitment methods of which the measures in the Act are one element.

Q 1: Do you have any comments on content and structure of guidance on the scope of regulated work with children as discussed in section 2.2?

Barnardo's Scotland is generally content with content and structure.

It may be helpful to clarify the position of 16/17 year olds. The Act defines a 'protected adult' as an individual aged 16 or over, subject to conditions defined in Act, whereas a child is means an individual under 18. This is not consistent with other legislation, for instance, the Children (Scotland) Act 1995, defines a child as an individual aged under 16 years, except where they are on a statutory supervision order, in which case it is under 18 years.

Q 2a: Do you believe an individual should be a protected adult if they are in receipt of any health service (NHS or private)?

Yes.

The Act already defines 'regulated work' in the health sector and this will determine those who require to be part of the scheme.

Q 3a: Should the definition of welfare services be based upon:

- **The nature of service provided?**
- **An explicit list of prescribed services/**
- **The personal characteristics of the individual receiving care?**

Please explain the reasons for your preferred option.

Option 1 – The nature of the service provided

The consultation document acknowledges that it is difficult to prescribe all services that will be relevant, however, with children it is the nature of the service provided that defines the regulated workforce and it would be consistent to take a similar approach with protected adults.

Q 3b: 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?

The definition should include all services regardless of the nature of the organisation that provides them and this should include statutory, voluntary and private providers.

Q 4a: Do you believe that disclosure information should be shared with third parties?

No.

The responsibility for appropriate disclosure checks should be on the employing agency. It is acceptable for the contracting agency to seek assurances from the contractor that they have appropriate safe recruitment policies in place, although the responsibility for implementing them should rest with the contracted agency.

If the responsibility for safe recruitment policies rests with the contracted agency there is no need to prescribe the circumstances where the disclosure information should be shared. It should be left to the discretion of the contracting agency as to those circumstances where it seeks assurances from the contractor regarding their recruitment policies.

Q 5a: Should there be a minimum threshold number of applications per annum from a registered body as a condition of registration?

Yes

Q 5b: If so, should the threshold be:

- **50 per annum?**
- **100 per annum?**
- **200 per annum**
- **a higher or lower level (please specify)?**

It is not easy to comment on this without knowing the number of registered bodies and the disclosure traffic they generate. However, we suggest 50 per annum may be a reasonable threshold to strike a balance in terms of numbers registered and capacity to respond.

Q 5c: Approximately how many disclosure applications does your organisation make in a typical year (if applicable)?

Barnardo's Scotland processes over 200 disclosure applications per year with a similar number for volunteers being processed through CRBS.

Q 6a: Is the proposed list of prescribed referral information set out in 2.3 acceptable and proportionate?

Yes - if all information was available at the time of the referral.

Q 6b: Would providing any of this information (if you hold it) be problematic for your organisation?

No.

Q 6c: Should any further information be added to the list to help establish identify or background to the case?

No.

Q 7a: What offences listed in Annex 34 should lead to automatic listing?

- **None**
- **Group 1A on the children's list and group 2 on the adults' list only**
- **Groups 1A and 1B on the children's list and group 2 on the adults' list only: or,**
- **All three groups lead to automatic listing on both lists**

Option 2. Group 1A on the children's list and group 2 on the adults' list only

Barnardo's Scotland believes that in principle, we should seek to minimise the automatic barring on the basis of the lack of discretion and the finality of the decision. There is still the opportunity for automatic consideration of listing for the other offences proposed under 1B.

Q 7b: Are there offences which should be added to or removed from these groups?

No.

Q 8a: Should the list of relevant offences against children set out in schedule 1

- **Remain as set out in the Act?**
- **Be expanded to include those set out in annex A4 group 2?**
- **Be expanded to include those set out in annex A4 group 3?**
- **Be expanded to include those set out in annex A4 groups 2 and 3?**

Please give reasons for your choice.

Option 4 - Be expanded to include those set out in annex A4 groups 2 and 3?

On balance, Barnardos Scotland would support this option, but recognise it is a difficult area and will need to be carefully monitored by CBU.

There is a case for expanding the list of offences for automatic consideration on the basis that this spreads the scope of the CBU without removing the discretion on the decision to bar. It makes sense to have similar systems across the UK and Barnardos understands the difficulty in matching different systems, although to expand the offences for automatic consideration to those set out annex A4 groups 2 and 3 is consistent with this approach. However, there may be difficulties with this approach because of the wide scope of offences covered, particularly when they are committed by those under 16 years of age and we would seek assurances that this is given careful consideration.

Q 8b: Are there any offences identified in the Act which should not be relevant offences?

Please specify and give your reasons.

No – see 8a

Q 9: Do you have any comments on the approach to making listing decisions set out in 3.6?

No.

Q10: Should the age threshold for the shorter minimum no-review period be set at 18 or 25 years?

Barnardo's Scotland supports the proposal to increase the shorter minimum no-review period to 25 years. This is on the basis of development and maturation process for young people and achieving consistency across the UK.

Q11a: Should the minimum no-review period start:

- **Always from the date of listing?**

Or for historic offences should it start from

- **The date of the incident/offence or**
- **From the date of dismissal/conviction?**

On balance, Barnardo's Scotland supports the minimum no-review period commencing from the date of incident/offence with the proviso as suggested in the consultation document that there is minimum no-review period of two years.

Q11b: Do you have any other comments on the proposals for applications for removal from the lists?

No.

Q15a: Which civil orders should be disclosed on scheme records?

- **None**
- **Risk of Sexual Harm Order (and any interim order)**
- **Sexual Offences Prevention Order (and any interim order)**
- **Notification Order (and any interim order)**
- **Foreign Travel Orders**

It is difficult to comment on the notification of these orders as it is currently a matter for Police discretion and it is not possible to assess how this discretion is used.

Barnardo's Scotland suggests that all of the orders specified are relevant to appear on scheme records and should be considered as vetting information. As such, it would be appropriate that they appear on standard and enhanced disclosures.

Q15b: Which civil orders should be disclosed on standard and enhanced disclosures?

- **None**
- **Risk of Sexual Harm Order (and any interim order)**

- **Sexual Offences Prevention Order (and any interim order)**
- **Notification Order (and any interim order)**
- **Foreign Travel Orders**

See 15a

Q15c: Should any other civil orders be routinely included on:

- **Scheme record disclosures?**
- **Standard and enhanced disclosures?**

No.

If so, please specify.

Q16a: Should the fact of previous competent referrals be included on scheme record disclosures?

Please give reasons for your response

Yes.

This would only be a matter for the discretion of CBU, subject to specific criteria, such as, where there is a pattern of competent referrals which did not result in listing, but because of the frequency, could constitute a risk.

Q17a: Should scheme membership be phased in through:

- **Natural turnover?**
- **A managed process of retrospective checking?**

Please explain your preference

Option 2 - A managed process of retrospective checking

Barnardo's Scotland suggests a managed process would be preferred as the organisation would have a better picture of when the process will begin and how retrospective checking should be carried out. Within Barnardo's Scotland, it would make the management easier and on a national basis it would cut out the uncertainty of the natural turnover option. It does however require additional resources and this would need to be considered by central government – see 21a.

The estimates of natural turnover seems high, for instance Barnardo's Scotland turnover is 18%.

Q17b: If natural turnover was selected as the most appropriate option, would your organisation:

- **Make arrangements to expedite scheme membership for your staff?**
- **Allow turnover to complete this process over time?**

Barnardo's Scotland is considering arrangements to expedite scheme membership for our staff, however this will be dependent whatever scheme is agreed, costs and capacity to expedite scheme membership.

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

See 17a. Barnardo's Scotland recognises that this will not be possible for all voluntary sector agencies because of capacity issues within the agencies.

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

See 17a

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

- **By date of last disclosure**
- **By sector**
- **By random personal characteristic**
- **Other (please explain)**

Please explain your preference.

Option 1 - By date of last disclosure

This is easy to implement and will capture those seeking to avoid checks. This appears to be the most straight forward option and there is less scope for gaps.

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:

- **Retrospective checking over three years**
- **Retrospective checking over four years**
- **Retrospective checking over five years**
- **Retrospective checking over six years**
- **Three years delay followed by three years retrospective checking**
- **Four years delay followed by two years retrospective checking**

Please explain your preference.

Option 1 – Retrospective checking over three years.

While Barnardo's Scotland believes this is desirable, we acknowledge there may be capacity issues for other organisations in the voluntary sector and consideration should be given an assessment of the gaps in capacity and additional resource implications.

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

This would be dependent on costs and how these additional costs were covered.

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

It would spread the costs, but the key issue is where the additional costs will be found.

Q21a: Which of the charging regimes do you prefer?

- **Two Tier**
- **All subsequent checks at lower tier**
- **Annual Subscription**
- **Other (please specify)**

Please explain your preference.

Option 1 - Two-tier.

Barnardos Scotland agrees that this should be a more cost effective approach, enabling online checking for those who are already scheme members. However, this relies on total confidence in the system and it therefore important that it is seem to operate effectively; otherwise there is risk that employers will opt for full scheme disclosure records, undermining the intention of the short scheme system.

As the policy objective is to have all relevant staff part of the scheme in a reasonable period, it would be useful for the government to consider how to provide an incentive without encouraging excessive use of the scheme.

Barnardo's Scotland suggests that the higher initial fee is paid by the government for retrospective checks only (for say, an agreed transitional period) then subsequent checks paid by the employer, or in the case of SSSC registration, the employee. This would assist with maximising scheme membership in the early introductory phase before reverting to payment for all checks (barring those for volunteers) through employers. It would also ease the financial burden in the period of transition.

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

Barnardo's Scotland proposes that ideally, the same fees which are paid now should be adopted – subject to the suggestion at 21a. However, if there is to be an increase this should be minimal to avoid significant additional costs being borne by the organisation.

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?

Yes. If not, then there may be the opportunity to avoid payment by volunteering for a short period and then be taken on as staff and not have to pay.

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

It is helpful to keep to the principle of maximising compatibility across all UK jurisdictions.

Consideration needs to be given to difficulties in accessing reliable information from countries outside the UK as there is now a substantial and growing migrant labour force from countries which may not have information systems compatible with the requirements of the scheme.