

Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme

Consultation Paper

Response Booklet

Responding to this consultation paper

We are inviting written responses to this consultation exercise by **Tuesday 2 May 2006**.

We would be grateful if you would indicate clearly in your response to which questions or parts of the consultation paper you are responding. We recommend using this response booklet, if possible. Please complete the responsee information form contained within the booklet.

Please send your response to:

bichard.legislation@scotland.gsi.gov.uk

or

Scott Wood
Scottish Executive Education Department
Children and Families Division
Area 2B (North)
Victoria Quay
EDINBURGH
EH6 6QQ

If you have any queries or any comments on the consultation process, please contact Scott Wood at the address/email above or telephone 0131 244 7612

Consultation seminars

It is intended that a number of consultation seminars will be held, including one on 16 March in Glasgow and another on 20 March in Edinburgh. All seminars will cover the same material and will follow the same format. Spaces at the seminars will be limited: if you would like to attend one, please email bichard.legislation@scotland.gsi.gov.uk or call 0131 244 7612 to register your interest. You will be contacted in due course to confirm whether or not you have a place and to confirm the details of the venue and timings.

Information on the Bichard Inquiry can be found at www.bichardinquiry.org.uk.

Accessing this and other consultations

This consultation, and all other Scottish Executive (SE) consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. The Scottish Executive now also has an email alert system for [SE consultations](#). You can register to receive a weekly email containing details of all new SE consultations at <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

Access to consultation responses

We will make all responses available to the public in the SE Library by 1 June 2006 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

**Scottish Executive Education Department
Children and Families Division
February 2006**

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Your details

| | |
|--------------------------|--|
| Name | Tam Baillie |
| Address | Barnardos Scotland |
| | 235 Corstorphine Road |
| | Edinburgh |
| Postcode | EH12 7AR |
| Contact telephone number | 0131 334 9893 |
| E-mail | tam.baillie@barnardos.org.uk |

1. Are you responding as: (please tick one box)

- (a) an individual (go to 2a/b)
- (b) **on behalf of** a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on the SE website)?

Yes (go to 2b below)

No, not at all (We will treat your response as confidential.)

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes

No (We will treat your response as confidential.)

BACKGROUND

3. In analysing your response, it would help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with children and vulnerable adults and add any further comments you wish to make about this.

| | | | | | |
|-------------|--------------------------|-------------------|--------------------------|------------------------|-------------------------------------|
| Early Years | <input type="checkbox"/> | Education | <input type="checkbox"/> | Health | <input type="checkbox"/> |
| Justice | <input type="checkbox"/> | Parent/Carer | <input type="checkbox"/> | Police | <input type="checkbox"/> |
| Social Work | <input type="checkbox"/> | Sport and Leisure | <input type="checkbox"/> | Voluntary Organisation | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> | | | | |

Further comments:

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

| | |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No | <input type="checkbox"/> |

YOUR VIEWS

Part I. General

This part asks more general questions. Part II asks about the specific proposals contained in the consultation paper.

1. **Current system.** 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.
 1. There is a lack of portability of checks for employers and there is a need to take into account voluntary and sessional work as well as student placements. Currently many checks are re-done for an individual within just a few months of each other, leading to unnecessary delays for new starts and additional costs.
 2. Where an issue arises for an individual with: a local authority; the police; SSSC; Care Commission and other regulatory bodies; all current employers need to be notified as soon as possible – this includes those organisations where an individual is volunteering.
 3. Currently, self-employed people are not taken into account. They can experience difficulty in getting a check carried out as it needs to be signed off by an employer. (e.g. a music teacher who visits a child in their own home). There is a general lack of knowledge about disclosure checks and how they are carried for people in this situation and those using self-employed e.g. parents.

2. **Bichard recommendations.** Do you have any comments you would like to make on the recommendations, especially recommendation 19 in respect of vetting and barring?

We support the intentions behind the recommendation – in Scotland we have already introduced the Disqualified from Working with Children List (DWCL) in any case.

We welcome the intention to link conviction information with other soft information and with other information held by relevant bodies outside Scotland. There is also a requirement to link with overseas checks because of the numbers of foreign workers in Scotland.

3. **Interests of vulnerable groups.** 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?

There have been reports of adults being reluctant to engage in volunteering activities because of the new framework of checks involved. This has yet to be quantified and it remains to be seen whether this is a settling in period or a longer term difficulty. It would be worth considering a widespread publicity campaign around the issue of child protection that set the proposals in a context of ‘these are necessary measures within the workforce to protect children, but remember that most abuse takes place in familial settings’. This would require careful consideration of the balance of the message given.

Whatever system is introduced for those who are self employed or volunteers, it needs to be quick and easily communicated and understood – and parents also need to be aware of the new measures. Access to the system needs to be understood by parents and self employed people. As with staff there is always the issue of the length of time taken to process a check and this can adversely affect the level of services offered. If it was quick and easy it could be promoted in a positive way to promote volunteering.

- 4 **Interests of employers.** 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?

There are two areas of concern:

1. Where the additional costs were prohibitive to the employer and placed an unacceptable burden on existing budgets.
2. Where the process becomes so cumbersome that there were unacceptable delays in the relevant information being returned to the employer. The current 2 week turnaround is helpful.

We are aware of discussions around the possibility of having access to lists ‘on line’ where access is granted through a pin number. The individual can then provide the relevant organisation the pin number to allow access by the organisation to relevant information on the list – such as barring status and how to access further soft information. This would provide portability but would need to be kept strictly for

relevant parties only. This may provide the possibility for the individuals to have responsibility to pay for their own 10 year certificate and 'pin' number.

- 5 Interests of applicants.** 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?

There are three areas of concern:

1. Increased sharing of relevant information will lead to the sharing of 'soft information' on individuals. There needs to be strict limits on what can be shared and with whom.
2. If we do not get the balance of proportionate protection right, we could be in danger of dissuading an unknown number of people away from productive engagement with children and vulnerable adults.
3. There is a need to ensure we maintain quick turnaround times or we will lose staff and volunteers.

- 6 Other matters. Please make any other comments which are relevant to the Scottish Bichard Vetting and Barring Scheme.**

We already have DWCL in Scotland and there is an intention to create another separate list for working with vulnerable adults (DWVAL). It would seem to make sense to have the one list rather than separate lists.

Part II. Consultation Paper Proposals

This part asks about the specific proposals contained in the consultation paper. Part I asks more general questions.

Proposals 1-3 **Scope of new Vetting and Barring Disclosure.** Do you have any comments on the type of position for which the new scheme will apply?

Barnardos agrees that it is appropriate to build on the work already undertaken for the implementation of Protection of Children Scotland Act (POSCA). However, this has to be accompanied by clear guidance. On the experience of the introduction of POSCA, there is a need for a comprehensive training of the workforce to ensure that all relevant agencies understand the new framework.

The inclusion of parents and personal employers places an additional requirement to ensure that there is a common understanding of the legislation.

Barnardos agrees that it is appropriate for the range of positions to be widened, although this may lend itself to being part of the phased introduction.

New regulations state that is not mandatory for a list of specified positions or settings, although we will still be committing an offence if we offer a job to someone who is listed.

Proposal 4 **Costs of Vetting and Barring Disclosure.** 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.

See earlier comment at question 4. This would mean transferring the responsibility to the employee – similar to registration with relevant professional bodies

Proposals 5 **Funding the Vetting and Barring Scheme.** Do you agree with the broad proposals for: a more expensive initial disclosure, low-cost or free subsequent checks and free disclosure for volunteers?

Barnardos can support the broad proposal for shifting the burden of costs in the manner proposed, however we have serious concerns if there were significant additional costs on the organisation and reserve comment on this until the additional costs are known. As mentioned earlier, 'on line' checks could keep costs to a minimum

Proposal 6 **Retrospective Vetting and Barring Disclosure.** Do you agree with the proposals for phasing the vetting and barring of the existing workforce?

Yes, in principle, however, it does depend on the proposals to extend the scope of the coverage. Barnardos is a large organisation (900 staff and 1200 volunteers) and the combination of extended coverage and retrospective checking would place a considerable additional burden on the organisation.

Proposals 7-8 **Disqualified from Working with Vulnerable Adults List.** 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.*

See earlier comment at question 6 and consideration to one list rather than two separate lists.

Proposal 9 **Changes to the Disqualified from Working with Children List.** Are there any changes, other than those outlined, which you would like to see made to the DWCL?

There is an opportunity to clarify when there is a requirement to make reference to DWCL as we are aware that expectations by local authorities on some agencies (particularly smaller voluntary and volunteer-led agencies) has been an area of difficulty.

Proposal 10 **Decisions on barred lists by new Central Barring Unit.** Do you think decisions on barring should be made by a special panel, a case conference or administrators?

This is an issue for the setting up of the CBU, although a special panel would appear most appropriate. The key question will then be the make up of the panel.

Proposals 11-13 **Central Barring Unit.** 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?

The relationship between the CBU and Disclosure Scotland is a key issue. It is obvious that they need to be closely related and arguable that they are part of the same body – this would satisfy effective information sharing, accountability and cost effectiveness. The suggestion of CBU being incorporated into Disclosure Scotland is worth further consideration.

Proposal 14 **Provisional listing.** 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?

People do have an entitlement to work, rather than a right – the continuation of employment during provisional listing should be determined by the employers. Employers therefore need to be given enough information to make a safe decision for all parties concerned.

Proposal 15 **Appeals against listing.** Do you agree that the right of appeal should be to the sheriff court with a three-month time-limit?

Yes – and employers need to be notified that the person is appealing.

Proposal 16 **Access to barred status.** Who has a legitimate interest in the barred status of an individual and how should "fishing trips" be prevented?

Barnardos agrees with the suggestion that access to information to parents and personal employers should be mediated through a registered body. Further, there needs to be guidance on what and how information is communicated to parents and personal employers to ensure appropriate confidentiality. There is a need to ensure parents and personal employers don't share information inappropriately – it may be useful to consider an initial charge to deter 'fishing trips' and a penalty for inappropriate use of information.

Proposal 17 **Information released to applicant.** 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?

The current system seems to work well and so any proposed new system could be based on the same.

Proposals 18-20 Information sharing between the Central Barring Unit, public authorities, employers, police and regulatory bodies etc. Do you have any comments on who should be required to pass what information on to whom?

It is our assumption that the intention is for Disclosure Scotland to be the central point for information and therefore receive and distribute relevant information to CBU and then on to employers as required.

In terms of relevant information to be shared, the following is suggested:

- Police – hard and soft information as present
- Registration bodies – if registration removed, or individual under investigation
- Social Work – any relevant information involving the individual – could involve allegations/concerns about own or other children.
- Employers – investigations of a nature that may result in removal from registered status, placing on the barred list, or knowledge of criminal proceeding

If CBU are to only notify relevant organisations where a barred status changes this leaves a gap where there is significant information that may not bar someone but would be essential for organisations to know about to ensure ongoing safety in relevant positions.

There is still an issue of how do we find out about certain charges (child/sex related) for staff who fall into categories not covered by the barring scheme. We need to protect our reputation by not employing anyone with certain offences – and would suspend pending court case if this was known.

It would be helpful to add details of ‘employer’ to police powers as well as ‘occupation’.

Proposal 21 Role of regulatory bodies. Which regulatory bodies should receive information through disclosure? What information should they receive?

There needs to be central communication – between CBU/Disclosure Scotland and registered bodies. Relevant information would be standard notification of additions to lists and removal of registration (or pending investigations) along with a brief summary of reasons. This should then be forwarded to current employers to update their records. If further information is required, employers can contact CBU/DS to access what they need – through authorised individuals.

Relevant regulatory bodies include SSSC, Care Commission, and others involving professions covered in the definition of ‘child care’.

Proposal 22 **Disclosure of civil orders.** Which civil orders should be disclosed?

Any offences related to sex or violence against child or vulnerable adults.

Proposal 23 **Cross-referencing with offender registers and other lists.** 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?

Barnardos agrees with the proposal to include information for an individual who is on the Sex Offenders register in every case.

It would be helpful if there was harmony in the approach and systems for Scotland and elsewhere, but we recognise that this may be difficult to achieve.

Proposals 24-25 **Referrals.** Do you agree with the proposals for who can make a referral? Should parents and personal employers be able to make a referral?

Yes, as long as the proposals for parents and personal employers are mediated through regulatory bodies.

Further consideration needs to be given to how to deal with the issues of parents and personal employers. CRBS already mediates with Disclosure Scotland on behalf of voluntary organisations and volunteers and there may be a role to fulfil in terms of information and advice from parents and self employed people as this could generate numerous inquiries.

If a previous employer is aware that someone is employed elsewhere and there were serious incidents/concerns in the past, there needs to be strong emphasis on their retrospective duty to refer that individual.

Proposal 26 **Lifetime of certificates and checks.** 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?

Yes. If all the systems are in place and working well then 10 years would be about right, otherwise 5 years for the present.

Thank you for your time.