

Protecting Children

The Next Steps Towards Securing Their Safety

**PROTECTING CHILDREN:
THE NEXT STEPS TO SECURING
THEIR SAFETY**

A Policy Position Paper on the Establishment of an Index of
Adults Unsuitable to Work with Children

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Introduction

The consultation paper *Protecting Children: Securing Their Safety - A Pre-legislative Consultation Paper on Establishing an Index of Adults Unsuitable to Work with Children* was published in July 2000. It set out the Scottish Executive's intention to establish an Index of persons dismissed from employment (including as unpaid volunteers) with children in circumstances leading to the conclusion that they might pose a threat to children. It also set out an intention to make it an offence for those on the Index, and those convicted of certain serious offences against children, to work with children. A fuller summary of the consultation paper is at Annex A.

Seventy-four responses were received to the consultation paper. A list of those responding is at Annex B. There was universal support for the fundamental proposition to establish an Index of adults unsuitable to work with children and to create the associated offence. The Scottish Executive therefore intends in broad terms to go ahead with the system set out in the consultation paper. The consultation paper set out thirteen more detailed proposals on how to go about this. On almost all of these too there was general support and where there was disagreement, this was more often because it was thought that a proposal could be extended or modified in some way rather than because of more fundamental objections. In the light of the comments received, the Scottish Executive proposes to modify some of the proposals set out in the original consultation paper. The remainder of this policy position paper gives for each of the detailed proposals an indication of the level of support received, and specific comments, criticisms and modifications made or suggested. It also indicates the Scottish Executive's present position on these matters, particularly where this varies from that in the original consultation paper.

It is important to stress that the proposals in this paper should be seen as just one amongst a range of measures that have been or are being put in place to protect children, including greater access to criminal record information under the Police Act 1997, the publication of *Protecting Children: a shared responsibility – Guidance on Inter-Agency co-operation* in 1998 with supplementary guidance for health professionals in January 2000 and the multi-disciplinary review of child protection measures announced in March 2001.

Proposals

Proposal 1 - the checklist attached as Annex A will be published as a stand-alone document. Comments are invited on the usefulness of the document as are any suggestions aimed at improving the text.

There was universal support for the checklist, which was included as an Annex to the consultation paper. Its purpose is to identify questions parents should ask of providers of activities for children and young people which are not subject to regulation. A number of respondents noted that its distribution would be crucial and also that an easy to carry format would be useful. Some also suggested various detailed drafting amendments. The Scottish Executive will therefore be publishing this document, amended to take account of comments received.

Proposal 2 - the Index will be a list of people who have been dismissed or transferred from positions giving access to children as a result of misconduct which has caused harm to a child (or children) or put a child at risk of harm; or who have resigned or simply walked out in such circumstances.

There was general support for this proposal. A few respondents noted that an employment-based Index would not cover all those, particularly paedophiles, who might pose a risk to children. A few also noted that the Index would be made stronger if it was informed by foreign convictions and that occasionally evidence that might have justified dismissal only came to light after retirement. The Scottish Executive acknowledges that the Index will not cover all those who might pose a risk to children. It needs to be seen, however, as one of a range of initiatives being taken to protect children, as set out in the Introduction. It is not intended to make placements on the Index in the light of foreign convictions: the Index will more be founded on employment-related evidence. It is intended, however, to make placement on the Index a possibility when information comes to light after retirement or resignation that might have justified dismissal had it come to light earlier.

Proposal 3 - employers of those working with children will have a duty to notify the Executive of those people whom they judge to meet the criteria for inclusion on the Index.

There was general support for this proposal.

Proposal 4 - regulated organisations will have a duty to consult the Index when considering applicants for positions working with children, other organisations (mainly voluntary) involved in working with children will be able but not obliged to consult the Index.

There was general support for this proposal. Some respondents, however, thought that the lack of compulsion on non-regulated organisations left something of a gap. A number of these and other respondents noted, however, that parental pressure and, in particular, insurers' requirements would push non-regulated employers towards use of the Index. It would be difficult to define which organisations should be obliged to consult the Index other than by reference to existing statutory regulation in verifying whether non-regulated organisations do consult the Index. It is therefore intended to follow the original proposal.

Proposal 5 - working with children will include posts where normal duties involve caring for, training, supervising or being in sole charge of children; unsupervised contact with children; supervising working children aged under 16; positions likely to give access to children and positions involving the direct supervision and management of the above.

There was general support for this proposal. Some respondents pointed to the need for clarity in defining 'working with children'. It was suggested that this should not include infrequent supervised contact with children or 'bus and taxi drivers. In defining 'working with children' account will be taken of definitions used in the context of obtaining enhanced criminal record certificates under the Police Act 1997.

Proposal 6 - the procedure for placing a person on the index will be:-

- 1) receipt of letter by referring organisation;*
- 2) provisional listing (where appropriate);*
- 3) evidence/clarification sought from referring organisations;*
- 4) observations invited from subject of referral;*
- 5) decision; and*
- 6) notification of decision.*

There was general support for this proposal, although a few respondents expressed doubts related to European Convention of Human Rights concerns. In particular concern was expressed at the maximum length of time (6 months) proposed for provisional listing. The Scottish Executive intends to adjust the process as set out in the original consultation paper to meet these concerns. Provisional listing will only take place after full evidence has been received from the referring organisation, and will require the approval of a member of the Senior Civil Service. It will last for 3 months, although it will be possible to extend this for up to a maximum further 3 months by a decision by a member of the Senior Civil Service.

Proposal 7 - where a decision has been made to place a person on the Index they will be able to appeal against the decision:-

- On initial placement on the list;*
- At intervals of 10 years following inclusion on the list (those over 18)*
- At intervals of 5 years following inclusion on the list (those 18 and under).*

Views are welcomed on whether the best avenue of appeal would be to the Sheriff, or to an independent Tribunal of the type described above.

There was general support for this proposal but varying views on the best route of appeal.

The main argument cited in favour of appeal to a Sheriff was that the nature of the judgement involved would generally turn upon establishing the facts about and interpreting a particular incident or incidents, which was very much an area of shrieval expertise. A few respondents also pointed to the 'efficiency' of using an existing structure.

The arguments cited in favour of appeal to a tribunal were more disparate. The main one was perhaps that of having one or more people with experience of children's services involved. Others were that 'three heads are better than one', the opportunity to build up expertise and a consistent approach – depending upon the frequency of appeals – and possible lesser cost.

Speed of decision making was a factor argued by different respondents for both options, perhaps reflecting variable caseloads in different shrieval jurisdictions, and varying experiences with other tribunals.

In sum, it would be fair to say that there was a fairly even division of opinion between appeal to a tribunal and appeal to the Sheriff, but that while those, particularly from a legal background, that considered the matter in depth saw this as finely balanced, they tended to favour appeal to the Sheriff. Similarly, while acknowledging this is finely balanced, the Scottish Executive intends to provide for appeal to the Sheriff.

Some respondents questioned whether a review cycle of 10 years was too long, particularly where the original 'problem' related to a drugs or alcohol dependency that might have been overcome. Most such respondents suggested a 5 year review period for all. An alternative suggestion was that the Sheriff (assuming this appeal route were chosen) should have discretion to allow a review at an earlier date if he or she thought particular circumstances warranted this. The Scottish Executive sees some force in these arguments and while it still proposes a review cycle of 10 years for adults and 5 years for youths, it also proposes to give discretion for the Sheriff to allow a review at an earlier date.

Proposal 8 - registered bodies will be able to access the Index information through the Scottish Criminal Record Office.

There was general support for this proposal. Some respondents commented on the possible deterrent effects if high fees were charged and on the delays sometimes currently experienced with Scottish Criminal Record Office checks. It is not expected that additionally checking the Index will add markedly to the cost of Scottish Criminal Record Office checks.

Proposal 9 - provision will be made for a separate Index to be established containing the names of persons deemed unsuitable to work with vulnerable adults. This would require to be approved by the Scottish Parliament.

There was general support for this proposal. Some respondents thought that there might be a combined Index, arguing that those qualities which made someone unsuitable to work with children were also likely to make them unsuitable to work with vulnerable adults, and vice-versa. The Scottish Executive intends to consider this possibility further. Where, for example, neglect or carelessness in dealing with children lay behind someone being placed on the Index it might well be very likely that such traits would also manifest themselves while working with vulnerable adults. In other cases the link might be less clear.

Proposal 10 - any custodial sentence, imposed following offences against children of a serious kind should usually lead to disqualification. Views are sought on this proposal, or any other suggestions on what type of sentence (which might include taking into account the cumulative effect of repeated sentences individually of short length) should usually lead to disqualification.

There was general support for this proposal. A number of respondents thought that more emphasis should be placed on the offence rather than the type of sentence imposed. It was also noted that some sex offenders received sentences to specialist programmes that were non-custodial yet clearly intended as 'high tariff'. The Scottish Executive sees some force in

these arguments. While there should only be an expectation of disqualification if a custodial sentence is imposed, it is intended to allow some discretion for the Sheriff (or high court judge) to impose disqualification in other cases.

Proposal 11 - persons disqualified from working with children as part of a sentence imposed by a judge or through being on the Index will be liable to a criminal sentence should they ignore this disqualification.

There was general support for this proposal.

Proposal 12 - such persons found guilty of applying for work with children, offering services which include working with children, accepting an offer of work with children, or working with children will be liable to a maximum penalty of 5 years in prison, or unlimited fine, or both.

There was general support for this proposal.

Proposal 13 - it will be an offence to give or offer work with children to a disqualified individual, despite knowing that the individual in question is disqualified.

There was general support for this proposal. [As set out in the consultation paper it is intended that the same penalties will apply as in proposal 12.]

Conclusion

The Scottish Executive would welcome any further comments on its intentions to establish an Index of adults unsuitable to work with children, as set out in this policy position paper.

Copies of responses will be made available for public consultation in the Scottish Executive library at Saughton House, Broomhouse Drive, Edinburgh EH11 3XD (telephone 0131 244 4552). In addition, copies will be lodged with the Scottish Parliamentary Information Centre for the use of Members of the Scottish Parliament and their staff. We will assume that responses to this paper may be made available in these ways unless respondents request confidentiality.

Responses should be sent by 31 August 2001 to Peter Willman, Scottish Executive Education Department, Children & Young People's Group, Children & Families Division, Area 2-B(N), Victoria Quay, Edinburgh, EH6 6QQ, telephone: 0131 244 0977, fax: 0131 244 0978, e-mail: peter.willman@scotland.gsi.gov.uk

A limited supply of further copies of this document is available from the same address. The document is also available on the Scottish Executive Website – <http://www.scotland.gov.uk>.

SUMMARY OF *PROTECTING CHILDREN: SECURING THEIR SAFETY: A Pre-legislative Consultation Paper on Establishing an Index of Adults Unsuitable to Work with Children*

1. The Programme for Government included a commitment to establish an index of adults unsuitable to work with children. The publication in July of *Protecting Children: Securing Their Safety: A Pre-legislative Consultation Paper on Establishing an Index of Adults Unsuitable to Work with Children* set the Scottish Executive's proposals for setting up an Index. The intention is to identify, and make known to prospective employers, people considered unsuitable to work with children either as paid employees or unpaid volunteers. These people would be identified in two ways, the first being through inclusion on a central list or Index.
2. Names to be considered for inclusion on the Index would be those of persons who had been dismissed or transferred from positions giving access to children by reason of misconduct which had caused a child harm or had put a child at risk of harm. The names of persons who resigned in such circumstances to avoid dismissal would also be considered for inclusion.
3. Regulated employers in the fields of childcare, healthcare and education would be required to notify the Index of those falling into one of the categories above. These employers would also be required to check with the Index the names of those they propose to employ in posts involving regular contact with children; and they would be prohibited from appointing any person included in the Index to such a position. Other employers would be permitted to notify names and to consult the Index. (Voluntary sector employers would fall into both fields depending on the nature of their activities.)
4. Any person whose name is notified to the Index would be invited to submit observations and any such observations would be considered before a decision is taken (by the Scottish Executive) on whether or not to include that person's name on the Index.
5. It would also be possible thereafter to appeal against inclusion on the Index. Anyone whose name is included on the Index would be able to ask for their inclusion on the list to be reconsidered after a specified period.
6. The arrangements would provide for information from the Index to be made available in due course through the Scottish Criminal Record Office (SCRO) as part of the "one-stop shop" arrangements provided for in the Police Act 1997 and in the Protection of Children Act 1999. In other words Index information will be obtainable at the same time as criminal record information. The arrangements would also provide for the sharing of information with the Criminal Record Bureau for England and Wales, once established, and the relevant body in Northern Ireland.
7. The Index would be capable of being extended in due course to cover those who may be unsuitable to work with vulnerable adults.

8. The second category of people considered unsuitable to work with children would comprise those who have convictions for certain specified offences. Details of these people would be made available to eligible organisations by the SCRO as part of a criminal record check.

9. Persons whose names are on the Index and/or who have convictions, as described above, would be disqualified from working with children or from applying to work with children. Disqualified persons would commit an offence if they continued to work with children or if they applied to work with children.

List of organisations that responded to *Protecting Children: Securing Their Safety*:

COUNCILS

Aberdeen City Council
Angus Council
Clackmannanshire Council
Dumfries & Galloway Council
Dundee City Council
East Ayrshire Council
Edinburgh City Council
Fife Council
Glasgow City Council
Highland Council
Inverclyde Council
North Lanarkshire Council
Orkney Islands Council
Perth & Kinross Council
Shetlands Islands Council
Stirling Council
West Dunbartonshire Council
West Lothian Council

Note: in some instances more than one department of the Council responded.

OTHER ORGANISATIONS

Argyll & Clyde Health Board
Association of Chief Police Officers (Scotland)
Barnardo's
The Boy's Brigade in Scotland
British Medical Association
The British Psychology Society
Caledonian House
Castlemilk Consortium
Charity Law Research Unit (University of Dundee)
Children 1st
Children in Scotland
The Church of Scotland
Division of Sport, Health and Leisure
Faculty of Advocates
Fetterletter
Grampian Health Board
The Guide Association Scotland
HM Customs & Excise
Highland Child Protection Committee
The Law Society Of Scotland
LAYC
McDuff Parish Church
National Board for Nursing
National Commission for Social Care (the Roman Catholic Church)
National Foster Care Association
Orkney Pre-School & Play Association
Primary Care NHS Trust
Royal College of Nursing
St Mirins High School
Scottish Homes
Scottish Judo Federation
Scottish Out Of School Care Network (SOSCN)
Scottish Sports Association
Scottish Wildlife Trust
The Scout Association
Sense Scotland
Voluntary Service Aberdeen
Volunteer Development Scotland
YWCA of Great Britain
Youth Clubs Scotland
Youthlink Scotland