

**Protection of Vulnerable Groups Act:  
consultation on draft guidance and secondary legislation**

**Response from the Scottish Council of Jewish Communities**

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**Modification of Regulated Work with Children Order 2010**

**Definition of "regulated work"**

We welcome the narrowing of the definition of regulated work with children. The new definition is, however, somewhat obscure, and we recommend that it is replaced with a variant of the new definition of regulated work with protected adults, so that:

*Work which would be regulated work with children by virtue of paragraph 1b is not, despite that provision, regulated work with children if –*

*(a) there is no opportunity to have contact with children within the context of the position concerned,*

*or*

*(b) contact with children is –*

*(i) incidental within the context of the position concerned, or*

*(ii) supervised by an individual doing regulated work within the establishment.*

**Host Parenting**

We are reassured that the intention to bring host parenting within the definition of regulated work "*excludes any arrangements made in the course of a family relationship or in the course of a personal relationship for no commercial consideration*". However, whilst we agree that host parenting should be considered as regulated work in the context of visits arranged by a local authority, charity, or other organisation when children will be staying with strangers, we are concerned that it should not be an obstacle to activities run by small communal organisations where the parents are all known to one another.

**Definition of "children's charity"**

We are concerned that the narrowing of the definition of a "children's charity" to include only those charities whose "*main purpose is to provide benefits for children*" will exclude charities with a wider remit that, nonetheless, provide very significant services to large numbers of children, in some cases on a one-to-one basis. One such example is *Cosgrove*<sup>1</sup>, which supports both adults and children with learning disabilities and other complex needs; another would be an organisation the objective of which is to provide benefit to adult carers through the provision of respite care to the children in their charge.

We therefore suggest that the definition of a children's charity should follow the example set by the Office of the Scottish Charity Regulator in taking account of activities as well as purposes, and should be amended to read "*a charity, one of whose purposes or activities includes the provision of benefits for children, whether explicitly stated or not*".

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<sup>1</sup> <http://www.cosgrove.co.uk>

### **Analogous organisations**

Moreover, as we have noted in response to an earlier consultation<sup>2</sup>, there are a large number of voluntary organisations that are not registered charities, but which are in every other respect analogous to those that are. We therefore recommend that Schedule 2 Part 4 should be expanded to include members of the Management Team of organisations that are not a children's charity, but that include the provision of benefits for children.

## **Modification of Regulated Work with Adults Order 2010**

### **Definition of "regulated work"**

We welcome the narrowing of the definition of regulated work with adults so that individuals working in the specified establishments are not engaged in regulated work if they have *"no opportunity to have contact with protected adults within the context of the position concerned"* or any contact is either incidental or *"supervised by an individual doing regulated work within the establishment"*.

### **Charity trustees**

We have been advised by the Office of the Scottish Charity Regulator that all trustees are equally responsible for all governance issues, and that it is not legally possible to restrict responsibility for any particular matter to a subgroup. The proposed narrowing of the definition of a "charity trustee" to include only a trustee *"who by virtue of this post has responsibility for the appointment, management and dismissal of individuals who carry out regulated work with adults"* is, therefore, legally incompetent, since, by virtue of their posts, all trustees share this responsibility, whether or not they play an active part in appointing, managing, or dismissing relevant staff.

The Executive Note to the Modification of Regulated Work with Children Order explains that the trustees of children's charities are deemed to be engaged in regulated work *"because of the trust and access to children within and beyond the work of the charity itself which that position confers or would be assumed to confer by a lay person."* We strongly support that opinion, and would add that this is no less true of trustees of charities *"whose workers normally include individuals doing regulated work with adults"*, and that, consequently, all trustees of such charities should, by analogy, also be treated as engaged in regulated work.

### **Analogous organisations**

As stated above, there are a large number of voluntary organisations that are not registered charities, but which are in every other respect analogous to those that are. We therefore recommend that Schedule 3 Part 4 should be expanded to include members of the Management Team of such organisations *"whose workers normally include individuals doing regulated work with adults"*, as well as trustees of relevant charities.

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<sup>2</sup> [http://www.scojec.org/consultations/2008/08ii\\_povg\(s\)a.doc](http://www.scojec.org/consultations/2008/08ii_povg(s)a.doc)

## **Prescribed Services (Protected Adults) Regulations 2010**

### **Definition of "welfare services"**

We are concerned that the proposed definition of "welfare services" may permit potentially abusive people access to vulnerable groups. We agree that the requirements of 5(a), (b), (d), (e), and (f) are appropriate, but are concerned that 5(c), which "**requires training to be undertaken by the person delivering the service**" will exclude many voluntary sector organisations that offer a "*service which provides support [or] assistance ... to individuals with particular needs*" but that do not routinely provide training for volunteers. These include many befriending services provided under the auspices of an organisation or body such as a faith community, and it is not improbable that they may also include the example of a welfare service included in the draft guidance (paragraph 118), of "*a lunch group ... targeted at adults with dementia*". The rather unfortunate use of language aside, in our experience volunteers who provide personal assistance to those attending such activities, including, for example, assisting them to eat, and accompanying them, unsupervised, to the toilet, may often not receive any formal training, but are, nonetheless, in a position to exploit their position should they so choose.

We do not in the least dispute the value of training in these roles, indeed, the contrary, since the provision of training will certainly reduce risk, but are anxious that the lack of it should not provide potentially abusive individuals with a haven from which to prey, unchecked (in all senses!) on the vulnerable.

We are also concerned that the mandatory requirement for training could lead unscrupulous organisations – or those that would simply prefer to avoid the time and administrative costs involved in requesting scheme records – to choose not to train volunteers in order not to meet the definition.

We therefore urge that a mandatory requirement for training should not be included in the definition of a "prescribed welfare service".

### **Automatic Listing (Specified Criteria) Order 2010**

We agree that anyone convicted of the offences listed in schedules 1-4 should be automatically listed on both the children's and adults' lists, whether or not they are working with vulnerable groups at the time of conviction, and whether or not they have any intention of doing so in the future.

### **Privacy issues**

We note that "*If an individual becomes listed while engaged in regulated work, the Scottish ministers will inform any relevant current employer and other interested parties, for example, a relevant regulatory body.*" (Executive Note, paragraph 16) However, as we have noted in response to an earlier consultation<sup>3</sup>, there is no requirement for Ministers to be kept informed of who is a current employer. Whilst scheme members are required to notify Scottish Ministers of a change in name, and if a full gender recognition certificate has been issued<sup>4</sup>, neither they nor their employer is required to give notice of whether the scheme member has left the employ of an organisation that requested a scheme record – nor indeed whether he

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<sup>3</sup> [http://www.scojec.org/consultations/2006/06xi\\_protection\\_of\\_vulnerable\\_groups.pdf](http://www.scojec.org/consultations/2006/06xi_protection_of_vulnerable_groups.pdf)

<sup>4</sup> Protection of Vulnerable Groups (Scotland) Act 2007, paragraph 50.

or she ever worked for that organisation. As a result the privacy of some scheme members will inevitably be violated by the provision of listing information to employers with whom they no longer have any connection. We therefore strongly urge that there be a requirement for the scheme member and the employer to give notice of the termination of an employment. Although the draft Guidance informs individuals (paragraph 37) that "*it would be helpful for a scheme member to notify Disclosure Scotland if they cease to work for a particular organisation*" we do not believe that this affords adequate protection. In general those who pose most risk are least likely to want to be "helpful". The regulations should therefore impose duties, and not rely on the good will of these least likely to be benevolent.

Paragraph 50(c) of the Act provides for Scottish Ministers to be notified of "*any other change in circumstance of a prescribed type*", and we suggest that this could be utilised to include "current employer(s)" among the required information. In addition to protecting the privacy of individual scheme members, this would ensure that any employer who relied only on a recent scheme record originally requested by another organisation, without requesting to view a subsequent short scheme record, would also be notified to Disclosure Scotland. Since Disclosure Scotland would not otherwise have been aware of this employment, the employer would not otherwise have been informed about new listing information, with the result that an abusive individual might continue to have access to vulnerable groups.

In addition, to avoid abuse, such information from the scheme member should be notified to the employer, who should be required to respond if he does not regard it as correct.

### **Relevant Offences (Modification Order) 2010**

We agree that anyone convicted of the listed offences should be automatically considered for listing on the children's' list, whether or not they are working with vulnerable groups at the time of conviction, and whether or not they have any intention of doing so in the future. We also support the suggestion (Executive Note paragraph 17) that when "*an individual who has done, or is likely to do regulated work with adults*" is under consideration for listing on the children's list, "*the individual could be formally considered for inclusion in the adults' list*".

### **Fees for Scheme Membership and Disclosure Requests Regulations 2010**

We welcome the decision to continue free checks for volunteers working for voluntary organisations. However, voluntary sector organisations provide a valuable service on very little income and many will find it difficult to pay an increased fee for scheme records for their paid staff. We therefore suggest that these should also be free for paid staff of voluntary sector organisations.

### **Timescale**

The period of 14 days following date of issue of a short scheme record during which a request for a full scheme record will only attract the differential fee of £41 is too short. Whilst the majority of businesses can provide continuous staff cover when employees are ill or on annual leave, this is not the case for the majority of small voluntary organisations. It is not uncommon for people to go on holiday for longer

than a fortnight, and, by the time the relevant person returns, this period could have expired, compelling the voluntary organisation to pay the full cost of a scheme record for a proposed new member of their paid staff. We suggest it is likely that many organisations in that position may instead request a second short scheme record for the same individual, in order to restart the clock. This would both be a waste of Disclosure Scotland time, and have a knock-on effect on processing times for other applicants. Since turnaround times are likely to be very variable (as currently for Disclosure applications) it will not be possible for small voluntary organisations to time the submission of short scheme record applications so as to be sure that it will not be issued at a time when the relevant person is away, and we therefore suggest that four weeks would be a more appropriate period.

### **Definition of "qualifying voluntary organisation"**

We are concerned by the definition of a "qualifying voluntary organisation" to access free scheme records as an organisation "*whose sole or primary objective is to provide services, facilities or activities for the benefit of the general public*", since this could exclude the majority of voluntary sector organisations whose objective is to provide services etc to a limited group of the general public, for example, a faith community, youth club, or people with a particular disability. The Charity and Trustee Investment (Scotland) Act 2005 recognises that benefit provided only to a section of the public may still be considered "public benefit", and we recommend that this should be explicitly acknowledged in the SSI.

### **Unlawful Requests for Scheme Records (Prescribed Circumstances) 2010**

Although in general we support these proposals, we are concerned that the conflicting rights of a relevant third party to ask to see an employee's scheme record, and of employees to refuse permission, may cause difficulties, particularly in the case of retrospective checks.

### **Protection of Vulnerable Groups Partial Regulatory Impact Assessment**

Retrospective checking is very important if abusers are not to retain access to vulnerable groups simply by remaining in a post entered prior to there having been any Disclosure requirement. We therefore agree with the proposal for retrospective checking to be phased in during a three year period commencing one year after the introduction of the scheme, so that, after four years, everyone engaged in regulated work with vulnerable groups will be scheme members.

### **Administration costs**

We do not dispute that the suggested unit administration cost of £21.50 per scheme record may be "*an overestimate for larger statutory and private sector employers with dedicated HR staff and processes in place*" but we believe that it is likely to be an underestimate for small voluntary sector organisations, many of which will need to employ staff specifically to carry out the necessary administration, and will, therefore, require to find funds to cover salary, National Insurance, and training, as well as stationery, photocopying, postage etc. Moreover, given the need for accurate and easily-searchable records, and in order to take advantage of online applications for short scheme records, many such organisations may need to raise additional funds to purchase new computer hardware and/or software. The RIA also does not

consider the cost to cross-border organisations that will have to pay not only the fees and administration costs in connection with the Scottish scheme, but will also have to request disclosures from the English scheme for employees engaged in relevant activities south of the border. We understand that discussions are still ongoing as to whether this will be necessary even for very short visits (for example, in respect of a youth leader accompanying a group of children travelling from Scotland through England on their way abroad), and urge that decisions in this respect should be sensible and proportionate.

We regret that the impact of the failure to cost in Disaster Recovery or Business Continuity arrangements will fall heavily on many small voluntary sector organisations that have, quite properly, been planning their budgets around the considerably lower figures previously issued by the Scottish Government. However, we welcome the Scottish Government's honesty in explaining that the reason for higher than anticipated fees, was that "*the full implications [of implementing the scheme] were not properly understood ...*".

## **Protection of Vulnerable Groups (Scotland) Act 2007 – Draft Guidance**

### **Inducing rather than allaying anxiety**

We welcome the provision of comprehensive guidance about the operation of the PVG scheme. However, although we concur that "*interpretation of the law is ultimately a matter for the courts*", we are concerned that the advice (paragraph 2) that "*individuals may wish to take appropriate legal advice regarding matters covered by the guidance*" may unduly intimidate or worry some small voluntary organisations by its implication that the scheme is extremely complex, if not a minefield.

This impression is reinforced by some unfortunate use of language, for example in paragraph 12, which states that "*It is very important to remember that the 3 types of disclosure under the 1997 Act will still be used for positions not **caught** by the PVG Scheme.*" (our emphasis). This can only serve to give an impression of the scheme as a trap, set to ensnare the innocently unwitting alongside those who would abuse children or protected adults.

The use of "*targeted*" in the context of the lunch club primarily intended for people with dementia, to which we have referred above, is also inappropriate, and we recommend that much greater consideration is given to employing language that is not dismissive, derogatory, or intimidatory.

### **Readability**

We are concerned that the length of the guidance may discourage some people, particularly those with literacy problems, from detailed reading, and suggest that it should be accompanied by a much shorter document, written in a much more accessible style, and a list of concisely answered "frequently asked questions".

There is certainly a place for an explanatory document outlining the history, purpose, and administration of the scheme, but the "guidance" should be restricted to what a person who thinks he or she might be required to register under the scheme requires to know.

## **UK issues**

Paragraphs 49-56, which relate to the interaction between the PVG and SVG schemes, are not sufficiently clear. In particular, we are concerned that individuals and organisations may not understand the requirement not only not to be barred, but also to be a member of the SVG scheme, before undertaking relevant work in England or Wales, even if s/he is already a member of the PVG scheme.

## **Misinformation**

Whilst Flow Chart 3 is factually correct, it is misleading since it does not indicate that, by waiting until s/he has decided with which organisation to volunteer, the individual could join the scheme without payment of any fee rather than the higher level fee charged for a prospective application.

## **Host families**

Since host parents are specifically brought within the scope of PVG by the proposed secondary legislation, information about this should be included in the Guidance.

## **Summary**

We look forward to the introduction of the PVG scheme, which, we hope, will indeed be "*quick and easy to use*", and welcome the continual updating of records that will obviate the need for multiple Disclosure applications. We do, however, have some serious concerns in connection with the way in which the scheme will operate, and hope that these will be allayed by appropriate amendments to the proposed secondary legislation.

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Note: The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen, and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges. SCoJeC is Scottish Charity SC029438, and its aims are to advance public understanding about the Jewish religion, culture and community. It works with others to promote good relations and understanding among community groups and to promote equality, and represents the Jewish community in Scotland to government and other statutory and official bodies on matters affecting the Jewish community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.