

Protection of Vulnerable Groups Implementation:
Consultation on Significant Draft Secondary Legislation,
Guidance and Regulatory Impact Assessment

Protecting
Vulnerable Groups
Scheme

CHECK TO PROTECT

Responding to the consultation

Your response must be received by **2 February 2010**.

- You can e-mail your response to: pvg.enquiries@scotland.gsi.gov.uk
- Alternatively, please send it to:

**SSI Consultation
PVG Implementation Team
The Scottish Government
2-B North, Victoria Quay
Edinburgh EH6 6QQ**

You do not have to use the response form below but please make sure you include the same information as this will help us to process your response.

RESPONSE FORM

My comments relate to (please **name the specific SSI** or put "**RIA**" or "**Guidance**"):

Draft Fees Regulation

<http://www.scotland.gov.uk/Resource/Doc/290797/0089364.pdf>

Regulated Work with Children

<http://www.scotland.gov.uk/Resource/Doc/290809/0089366.pdf>

Draft Guidance

<http://www.scotland.gov.uk/Resource/Doc/290841/0089369.pdf>

My involvement with vulnerable groups is as (role):

Policy and Training Manager with Scottish Pre-school Play Association (SPPA), the voluntary sector intermediary agency for pre-school education and childcare providers in Scotland.

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Your Response

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

- (a) as an individual (go to Q2a/b and then Q4)
- √ (b) **on behalf of** a group/organisation (go to Q3 and then Q4)

Individuals

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government 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

On behalf of groups or organisations

3. The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

- √ Yes
- No We will treat your response as confidential

Sharing responses / future engagement

4. We may share your response internally with other Scottish Government 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 Government to contact you again in the future in relation to this consultation response?

- √ Yes
- No

SPPA comments

5. Please record your comments in the space below (*take as much space as you need*):

Draft Fees Regulation:

SPPA welcomes the introduction of a two-tiered system but is concerned that the proposed level of fees will be too high for the small voluntary sector providers of daycare services for children and for the relatively low paid workforce these services employ.

A basic fee of £59 for initial scheme membership is considered too high. At the best of times, the financial sustainability of many voluntary sector providers is fragile and the proposed level of £59.00 for initial membership will place an undue burden on playgroups unless they make the payment of the fee the responsibility of the person who needs to join the scheme for employability purposes; in other words they pass the cost of scheme membership to their employees. While the latter could be encouraged, SPPA would add this merely shifts the burden of initial enrolment in the scheme from financially pressed service providers to people who in the main work part time for low levels of pay. SPPA considers that such a high membership fee may have a devastating impact on the voluntary sector, particularly at a time of severe funding cuts and diminishing income streams, for example, in their ability to recruit and retain staff; in their capacity to effectively embed the PVG scheme into their organisational infrastructure.

The lower level of fees (£18) for requests for scheme record update or scheme membership statement is more reasonable, although SPPA anticipates there will be times when providers of daycare services will request a full scheme record, if the short scheme record update shows that there is vetting information on the full record or that new vetting information has been added or removed from the record since it was last disclosed. Without the vetting information that is on the record providers will find it of limited value as they will be making recruitment decisions on less information than is provided under the current Disclosure arrangement. To level a fee of £41 (if requested within 14 days of an update being issued) or £59 (requested after 14 days) adds to their recruitment costs and seems excessive when the information being requested is on record and should be easily accessible. SPPA would like to see a lower level of fee when these circumstances arise. SPPA also considers that the 14 day timescale is too short and thinks that a more realistic proposition is 30 days.

SPPA is heartened to read that fees continue to be waived for volunteers but has concerns that it appears to apply only to volunteers in 'qualifying organisations' as defined in the regulations. This appears to be departure from previous practice. The definition may be too prescriptive and may trap some volunteers into having to pay fees. SPPA would like to see **all** volunteers, irrespective of the status of their organisation to be eligible to the fees waiver.

Over the past years, we have seen fees for Enhanced Disclosures increase from £13.00 initially to its current level of £23.00. Increases have been imposed without explanation and SPPA has grave concerns that £59.00 is just the starting rate for the scheme and that fees will be subject to regular increases, thereby placing more financial pressure on providers of voluntary sector daycare of children services and the staff who work in them. While the initial high cost of joining the scheme and receiving scheme updates may be argued as necessary for initial set up costs to get the scheme up and running, SPPA would want to be consulted on any future proposals to increase fees as we think there needs to be more transparency in the process of how they are set and clearer justifications for any increases that are

imposed.

SPPA is of the view that asking a person to join the scheme twice causes undue expense if they want to work with both workforces and would ask for it to be re-visited. It is our view that an individual is a member of the PVG scheme and in the absence of any legal reason we feel administrative and technical solutions should be explored to avoid the necessity to join twice, if, for example an individual's role expands to work with both workforces, an individual's career pathway changes from working with children to working with adults or vice-versa. Failing an ability to secure administrative and/or technological solutions to accommodate the above SPPA, would like to see a significantly reduced rate for the second membership of the scheme, if an individual must become a member for each workforce. That someone can make an application to become a member of the scheme for both work forces from the outset for £59 only may give rise to 'just in case' type of applications being made because individuals know they will be expected to 'join again' if their role crosses the boundaries of work with children and adults.

The cost assumptions in the Regulatory Impact Assessment suggest ' within 5 years these costs will have been recouped by employers". Some organisations have suggested that it will take longer than this. The inference here is that costs will be borne by employers not employees. The envisaged 5 years (RIA) years or longer to recoup costs is an excessive burden for playgroups to bear as they struggle year on year for sustainability. Nor does it take into account the additional costs incurred for volunteers if, as some local authorities are considering, parents who get involved in playgroup sessions are required to be members of the scheme.

Regulated Work with Children

SPPA welcomes the Government's desire to ensure proportionality in the use of the PVG whilst ensuring the safety of vulnerable groups. However, some of the wording within the legislation leaves a potential for differing interpretations to be made, leading to inconsistencies and probably widening the scope for scheme membership rather than narrowing it. While understanding the difficulties inherent in providing a specific definition, clearer guidance on what is meant by 'normal duties', 'incidental tests', 'regular contact' and 'unsupervised contact' is required or it could lead to unnecessary applications to the scheme. The draft guidance should contain a mixture of examples which clearly illustrate what is meant by these terms to enable people to exercise proportionate judgements in their decision making about whether someone needs to be a member of the scheme or not.

Already, SPPA is hearing of local authorities who are requiring parents who undertake rota duty within playgroup to be disclosed, which in the future will mean they will need to be members of the scheme.

SPPA would endorse what we feel is a growing view that we ought to shift from the notion that all people in contact with children in a regulated service need to be checked, which was never the intention of PoCSA but interpreted as such by some; nor is it the intention of the PVG. We believe most strongly that the PVG is just one cog in a wheel of measures to safeguard vulnerable groups and that an organisation has a duty to have in place other systems and processes that support and maintain a vigilant and safeguarding approach to recruiting and managing staff, rather than placing an over reliance on a disclosure check at the point of becoming employed.

SPPA supports the position of SCVO which is that charity trustees should be treated the same as any others in similar positions and would like clarification why charities appear to be classified as more high risk than a private company or

voluntary sector organisation doing regulated work.

The description of charity trustees is different in the adult schedule from that in the children's one. Unless there is a specific reason, which would need to be explained, they need to be consistent.

The suggestion that those involved in the "appointment, management and dismissal" of employees doing regulated work will become scheme members" would in the case of a playgroup likely lead to an increase in the number of people on a playgroup committee being checked as these functions may be carried out by different people at different times.

Draft PVG Guidance

It is SPPA's understanding that the purpose of the guidance is to provide individuals, groups and organisations with clear and concise information so that they become familiar with the PVG scheme and confident in how they interact/comply with it. We have concerns that a 'one size fits all' all guidance document will not be fit for purpose. Drawing on our experience of PoCSA and the guidance and support that we provided to voluntary sector daycare providers, SPPA anticipates that umbrella organisations, such as us, will need to draft guidance and provide training that is more specific to providers of services for children and for the individuals who work in them. Inevitably this has resource implications for organisations, many of who are facing severe financial constraints at this time of economic recession and cutbacks. Will resources be made available to support these types of initiatives, as was the case under PoCSA?

The new scheme is complex, and from our experience with PoCSA there will be many providers of services whose knowledge and understanding of the scheme is minimal. SPPA has questions about how the guidance will be disseminated as it has been intimated that, in the main, the document will only be available on line. If this is the case, it is likely that many small scale providers will have difficulty in accessing the information, let alone becoming confident in its use.

The Government should not underestimate the challenges many smaller groups and organisations will face in interpreting these regulations in relation to the activities and work they are doing, or correspondingly their need for easily accessible guidance, relevant training and support.

It would be helpful to awareness raising, if summary 'key points' leaflets/brochures which distil the essence of the scheme for wider dissemination were made available; the Scottish Social Services Council Codes of Practice could provide a useful model.

SPPA is concerned that there appears to have been little progress made in terms of producing training materials to help organisations prepare staff for implementing the scheme.

The 'real life' exemplars found in the guidance provide very useful illustrations of who should be a scheme member.

Other Points

Proportionality

SPPA has ongoing concerns about local authority interpretations of the Act and the PVG scheme, with some insisting on checks which we think are disproportionate and not legally required. For example, in SPPA we are aware of some local authorities

who expect all duty parents in a playgroup to be disclosed. A duty parent may help out in the playroom 2-3 times a term under supervision; they do not have regular contact with children in the service on a day to day basis nor are they left in sole charge of children. While, membership of the scheme would be free to them as volunteers, this approach by some local authorities places undue stress and an unnecessary cost burden on voluntary sector groups as well as deterring parents from becoming involved in the group. It also has the potential to overload the capacity of CRBS to deal with applications.

The implementation of the legislation and subsequent guidance must be clear enough so as not to introduce by inference, if nothing else, the need for all parents who get involved in their child's early years provision to be members of the PVG. In our view this would be disproportionate, costly and at odds not only with the intention of the Act but also Government policies to encourage parental involvement in line with the aspirations set out in the Early Years Framework and to encourage, in general, participation in volunteering.

Timing

SPPA's understands that the scheme is to be implemented towards the end of 2010, and the training/guidance materials are to be available 6 months before, i.e. June 2010. We make the assumption that this is still the case. However, thinking of the groups that we represent more time is likely to be needed in order to prepare for the introduction of the scheme. We feel strongly that organisations should not be pressured into putting the scheme into place to meet timescales which do not allow sufficient lead in time for guidance to be disseminated, training to be undertaken, process systems to be revised and resources secured to implement effectively. Our understanding is that there will be a period of **at least** 6 months from the time the legislation is finalised to the time that it takes effect. We trust that this is still the case as this delay will be absolutely crucial in enabling SPPA to prepare voluntary sector pre-school providers for the introduction of the scheme.

SPPA welcomes the intention that the scheme, in its first year of going live, will focus on new entrants to the regulated workforce and that organisations will be given time to plan for the retrospective checking of individuals already in regulated work. We consider the 4 year time-scale sufficient for compliance with the PVG.

Registered Body: subscriptions

There does not appear to be any details about the costs applicable for annual subscriptions payable by organisations who wish to register with Disclosure Scotland. As a registered body this is a cause for anxiety, as it is among other groups, who will want to continue their existing registration with Disclosure Scotland but may be squeezed out because of the level of the annual subscription.

Automatic Listing

It is not clear why it is possible and what conditions apply for removal from the list on completion of a custodial sentence.