Education Committee

12th Report 2006

Stage 1 Report on Protection of Vulnerable Groups (Scotland) Bill
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Education Committee

12th Report 2006

Stage 1 Report on Protection of Vulnerable Groups (Scotland) Bill

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Education Committee

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Remit:

To consider and report on matters relating to school and pre-school education, young people and social work and such other matters as fall within the responsibility of the Minister for Education and Young People.

Membership:

Wendy Alexander (member to 23 November 2006)
Iain Smith (Convener)
Rosemary Byrne
Lord James Douglas-Hamilton (Deputy Convener)
Fiona Hyslop
Mr Adam Ingram
Marilyn Livingstone (member from 23 November 2006)
Mr Kenneth Macintosh
Mr Frank McAveety
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INTRODUCTION

1. The welfare and best interests of children and young people are the Education Committee’s paramount concern.

2. During the Committee’s lifetime, child protection has been central to its work. It has conducted an inquiry into the implementation of the *It’s Everybody’s Job To Make Sure I’m Alright* report, scrutinised the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill 2006 and responded to stakeholder concerns regarding the implementation of the Protection of Children (Scotland) Act 2003. These have all been components of the child protection agenda that has now culminated, at the very end of this parliamentary session, in the introduction of the Protection of Vulnerable Groups (Scotland) Bill on 25 September 2006. Under Rule 9.6.1, the Bill was referred by the Parliament to the Education Committee as lead committee. It is for the lead committee to consider and report on the general principles of the bill.

3. Prior to commenting in detail on the general principles of the Bill, the Committee believes it is important to set out its position on trends in society’s attitude to the protection of children and young people. Protection of children is, of course, vital, but it must not come at the expense of their welfare and their right to experience a rich and stimulating childhood. Achieving a balance between protection and enrichment is a challenge, but one that it is essential that we face. Interaction between children and adults is a necessary element of children and young people’s development. The Committee is concerned at the rapid growth of a culture that is increasingly characterised by the desire to eliminate all risk and the negative effect this may have on children.

4. The Committee is clear that no single piece of legislation, no piece of guidance and no change in wider social culture will guarantee the safety of children and young people. Risk is inherent to life and learning about risk is an integral part of growing up. However, the Committee recognises that legislation is one part of the toolkit that can minimise risk. In considering this Bill, the Committee
kept the interests of children and young people in the widest sense first and foremost and been acutely aware of the need to balance protection with the need for a stimulating childhood in which children learn to form appropriate relationships with adults.

5. In the conclusion of this report, the Committee will recommend that the Parliament supports the general principles of the Bill on the basis that, on reflection and in the longer term, the revised vetting and barring system should be an improvement on the existing system.

6. The Committee recognises many of the concerns that have been expressed regarding Part 3 of the Bill and the inadequacy of consultation that has taken place, and recommends that it be withdrawn from the Bill and incorporated into proposed forthcoming legislation. This proposal is understood to have all-party support. This will allow fuller consultation to be conducted on the proposals.

7. The Committee is also concerned that much of the detail of the operation of the proposed vetting and barring system will be left to subordinate legislation and guidance that has not yet been subject to full consultation. The Committee recommends that Stage 2 consideration of the Bill should not begin until stakeholders have had an opportunity to comment on drafts of the related subordinate legislation and guidance.

8. In making these recommendations, the Committee fully accepts the importance of child protection and wants to see the creation of a new streamlined vetting and barring system. The Committee also accepts the importance of the principle of information sharing but considers that there needs to be greater discussion, consultation and debate over the detail of the practical implementation of Part 3 of the Bill.

DRIVERS FOR LEGISLATIVE CHANGE

9. The Protection of Vulnerable Groups (Scotland) Bill arises, in part, from recommendation 19 of the report\(^1\) of the inquiry set up by in 2004 by the UK Home Secretary David Blunkett MP, and led by Sir Michael Bichard, into the child protection procedures in Humberside Police and Cambridgeshire Constabulary, following the conviction of Ian Huntley for the murders of Jessica Chapman and Holly Wells in Soham, Cambridgeshire in 2003.

10. Sir Michael’s report found that the inquiry “did find errors, omissions, failures and shortcomings which are deeply shocking. Taken together, these were so extensive that one cannot be confident that it was Huntley alone who “slipped through the net”\(^2\).

11. Recommendation 19 of the report stated that—

‘New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. This register – perhaps


\(^2\) Ibid.
supported by a card or licence – would confirm that there is no known reason why an individual should not work with these client groups’.

12. The recommendations of the Bichard report were mainly directed towards England and Wales. However, Scottish Ministers indicated that they would ‘learn the lessons’ and ‘seek to streamline current systems and ensure there are no cross border loopholes across the UK that could be exploited by those who might do harm to vulnerable people’.

13. In England and Wales, recommendation 19 of the Bichard inquiry was implemented by the Safeguarding Vulnerable Groups Act 2006 which received Royal Assent on 8 November 2006. Implementation will take place in staged manner from 2007 with the majority of the new systems required to support the scheme being put in place in autumn 2008. The English and Welsh Act differs from the Scottish Bill in that it places the responsibility on individuals to participate in the vetting and barring scheme. The Scottish Bill requires employers to satisfy themselves that their employees are not barred from working with children or protected adults and provides a mechanism, through the vetting and barring system, for them to do so.

14. A consultation on the Scottish Executive’s proposals for a ‘Scottish Vetting and Barring scheme’ was announced in February 2006. The results of the consultation were published by the Scottish Executive in August 2006. The Bill takes forward the proposals.

15. The provisions of the Protection of Vulnerable Groups (Scotland) Bill will largely replace those contained within the Protection of Children (Scotland) Act 2003. The Act allows Scottish Ministers to set up the Disqualified from Working with Children List which came into operation on 10 January 2005. Section 11(3)(a) of the Act came into force on 11 April 2005. It is now an offence for an organisation knowingly to employ a person in a child care position, if that person is disqualified from working in such a position. Section 11(3)(b) has not yet been commenced. This section creates a new offence which organisations will commit if they fail to remove a disqualified individual from a child care position. This section has not been commenced because it raises the need for checks on existing staff and volunteers and is largely replaced by the provisions of the Protection of Vulnerable Groups (Scotland) Bill.

The Bill

16. The Bill is divided into five parts. The Policy Memorandum accompanying the Bill notes that Parts 1 and 2 create the legislative framework for a new vetting

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4 Consultation on Scottish Executive proposals for a new vetting and barring scheme for those working with children or vulnerable adults. Available at: [http://www.scotland.gov.uk/Publications/2006/02/07134454/](http://www.scotland.gov.uk/Publications/2006/02/07134454/)

5 George Street Research Report detailing the findings from the 'Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme' consultation. Available at: [http://www.scotland.gov.uk/Publications/2006/08/16155712/](http://www.scotland.gov.uk/Publications/2006/08/16155712/)

6 Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM
and barring scheme, intended to ensure that people who are unsuitable do not gain access to children or protected adults through work. Part 1 establishes the lists of individuals unsuitable to work with children or protected adults. Part 2 establishes the vetting arrangements for individuals working with children and/or protected adults. Part 3 makes provision for sharing information for child protection purposes, placing duties on relevant public bodies and organisations to disclose information when a child is at risk of harm. Part 4 makes a number of technical amendments to the Police Act 1997 to ensure the effective operation of Disclosure Scotland, including changes to the existing system consequential to the introduction of the new scheme. Part 5 makes minor amendments to the Regulation of Care (Scotland) Act 2001. Part 6 makes provision for the transfer of Disclosure Scotland staff to a new agency and provides a power to make provision consequential on the English and Welsh vetting and barring scheme.

Changes from the current system
17. According to the Policy Memorandum, currently the vetting system operates through a disclosure certificate which individuals may obtain by applying to Disclosure Scotland. There are three types of disclosure - basic, standard and enhanced, all of which cost £20 to the individual, although this cost is sometimes met by employers. A basic disclosure only provides information on convictions that are unspent under the Rehabilitation of Offenders Act 1974. A standard disclosure provides details of both spent and unspent convictions and, where an individual is applying for a job to work with children, whether he or she is on the Disqualified from Working with Children List (DWCL). In an enhanced disclosure, in addition to the elements of a standard disclosure, the police have discretion to provide non-conviction information they consider to be relevant to the position being in question.

18. One of the problems with the current arrangements is that disclosure checks are not dynamically updated, so can only be taken as accurate at the time they are issued. As a result, people who undergo a disclosure check when seeking employment or volunteering with one organisation often have to undergo another check when simultaneously or subsequently seeking employment or volunteering with another organisation.

19. The Bill’s proposals are intended to bring improvements to the current system. The Policy Memorandum states that—

‘This Bill is about keeping Scotland’s children safe from those who pose a danger when working with them, whether paid or unpaid, whilst reducing the bureaucracy for those that provide services to children (not least by making it simpler to apply for subsequent checks once a scheme member […]). Robust child protection systems support children’s engagement in learning, sport and leisure activities, and artistic activities, for example, which are so important in their development’.

20. The Policy Memorandum goes on to note that the underpinning objectives of the vetting and barring provisions of the Bill are that—

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7 Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 26, page 5
Education Committee, 12th Report, 2006 (Session 2)

- people who are unsuitable do not gain access to children or protected adults through work;
- people who become unsuitable are detected early and prevented from continuing to work, or seeking to work, with children or protected adults; and
- so far as practicable, the underlying processes minimise bureaucracy.

21. In achieving these objectives and developing associated legislation, claims the Policy Memorandum, ‘careful consideration has been given to striking the right balance between protecting vulnerable groups and not unduly comprising the privacy rights of individuals or the rehabilitation of offenders’.

THE COMMITTEE’S STAGE 1 PROCESS

22. The Committee considered the Protection of Vulnerable Groups (Scotland) Bill at its meetings on 15, 22 and 29 November 2006. It took oral evidence from a range of stakeholders, and held a ‘roundtable’ event involving representatives of voluntary sector organisations on 22 November.

23. The Committee issued a call for written evidence, and received more than 50 submissions.

24. Full details of the oral and written evidence received are contained in Annexes A and B. All the written evidence is available on the Scottish Parliament’s web-site. After hearing evidence from the Minister on 29 November, the Committee wrote to the Scottish Executive seeking clarification of a number of points. This letter and the Scottish Executive’s response to it are included as Annexes C and D respectively.

25. Reports were received from the Finance Committee and the Subordinate Legislation Committee. Those are attached at Annexe E and F respectively, and are referred to in the text of the report where appropriate.

GENERAL VIEWS ON THE BILL

26. This section of the report includes general points made by witnesses on the Bill. Where specific, detailed issues have been raised, these are considered in separate, dedicated sections of the report.

27. The Bill was broadly welcomed by the local authority sector. The Convention of Scottish Local Authorities (COSLA), the Association of Directors of Education (ADES) and the Association of Directors of Social Work (ADSW), in a joint submission, noted that they were, subject to a number of caveats which are

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8 Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 31, page 6
9 Available at http://www.scottish.parliament.uk/business/committees/education/inquiries/pvg/ed06-pvg-evid.htm
considered later in the report, ‘content with the spirit and intention of the bill,’ and added that—

‘[…] with some minor amendments to the words and clarification of how it will be implemented, this bill will result in a more cohesive, consistent and simplified approach to vetting and barring than the situation, which exists at present’.

28. The COSLA/ADES/ADSW paper also stated that the organisations were ‘reassured that multiple checks will be significantly reduced and there will be more consistency’.

29. Only four individual local authorities responded to the call for evidence, (although two local authorities were heard in oral evidence, as well as professional organisations representing senior local authority employees) but they were broadly supportive of the Bill’s provisions, subject to certain caveats.

30. The regulatory bodies responsible for registration of professional workers in the education, health and social work sectors were also broadly in support of the Bill although they all raised a number of specific concerns about particular provisions within the Bill. There were some general concerns over Part 3, under which certain public authorities and regulatory bodies will be under a duty to share information for the purpose of protecting a child from harm.

31. Trades unions also recognised the need to enhance and improve the current disclosure system, although the Educational Institute of Scotland (EIS), in welcoming legislation which has been the consequence of reflection on evidence gained from several sources over time,’ commented that, ‘drafting major legislation in response to an individual case may not always result in the most effective means of addressing the issues which have arisen from this case or incident’.

32. UNISON Scotland welcomed the Bill as, ‘a further step towards protecting the community and raising confidence in staff who work with these vulnerable groups’.

33. In contrast, voluntary sector organisations representing children’s interests and providing services, together with Scotland’s Commissioner for Children and Young People (hereafter: the Children’s Commissioner) were largely critical of the Bill, some going as far as calling on the Committee to recommend to the Parliament that the general principles not be approved, and others calling for Part 3 to be deleted.

34. In the main, the voluntary sector perceived the provisions of the Bill as being disproportionate to the risks faced by children. They also considered that the Bill was too concerned with so-called ‘stranger danger,’ and diverted attention away

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10 COSLA/ADES/ADSW, written submission to Education Committee in support of oral evidence
11 Ibid
12 Ibid
13 EIS, written submission to Education Committee in support of oral evidence
14 UNISON Scotland, written submission to Education Committee in support of oral evidence
from the fact that the greatest risk to children occurs in their own homes and that where harm is done it is most often at the hand of people who are known to them.

35. Children in Scotland went as far as to say that—

‘[…] even if the vetting and barring proposals had been the law of the land at the time of the Soham Murders, they would not have prevented the two girls in question from visiting the home of Ian Huntley’\textsuperscript{15}.

36. The wider voluntary sector, for example, organisations promoting involvement in sport, music and the arts, also voiced major concerns over the costs of implementation of the new vetting and barring scheme. Currently the Scottish Executive meets the cost of checks for volunteers in the voluntary sector, but not for paid staff. The costs of checks for existing paid staff in the voluntary sector will therefore need to be met from within the sector’s own resources.

37. There are also concerns over the costs to the voluntary sector of administering the scheme, particularly for smaller organisations.

38. Although the voluntary sector largely welcomed the ‘passporting’ proposals that would lead, to a large extent, to repeat disclosures no longer being required, overall the sector considered that the Bill’s proposals would lead to a diminution in the number of volunteers.

39. Many of the voluntary sector organisations also expressed opposition to the provisions in Part 3 of the Bill, which impose duties on a range of organisations to share information. Some, notably Scottish Women’s Aid, expressed a fear that they would be obliged to share information which they felt would seriously compromise their ability to provide their core service.

40. The remainder of the report considers the specific issues arising from the evidence received.

Subordinate Legislation

41. The Committee notes the comments of the Faculty of Advocates which states—

‘The Bill relates to a matter of great importance. The Parliament is the appropriate body to take decisions about the way in which this legislation is to work. It is a matter of concern that such a wide range of matters are to be left to the Ministers to determine’ and goes on to comment that ‘[…] the number and range of matters left to Ministers means that it is difficult to provide any conclusive advice as to whether or not the Bill will be effective’\textsuperscript{16}.

42. The Committee shares this view and, irrespective of the Parliament's decision regarding the general principles of the Bill, believes that Stage 2 consideration of the Bill should not begin until stakeholders have had an

\textsuperscript{15} Children in Scotland, written submission to Education Committee in support of oral evidence

\textsuperscript{16} Faculty of Advocates, written submission to Education Committee
opportunity to comment on drafts of the related subordinate legislation and guidance.

CONSIDERATION OF SPECIFIC ISSUES

A proportionate response?

43. There was a marked contrast between the views of local authorities, NHS boards, professional organisations and regulatory bodies who were generally in favour of the proposed vetting and barring scheme and voluntary sector organisations who generally opposed it.

44. The former were largely agreed that the Bill would, if passed, increase the degree of scrutiny both of those seeking jobs in the relevant sectors and of the existing workforce, and would make it less likely that unsuitable people would gain access to children and young people through employment.

45. Carole Wilkinson of the Scottish Social Services Council (SSSC), for example, told the Committee—

‘We are quite clear that the law needs to be improved. We are a relatively new regulator and in seeking to bring people on to the register, our experience is that there has not always been clarity around what information can be shared. As the previous witnesses said, there is concern among local authorities about the information that they can share with one another and with us. The bill provides an opportunity to make much clearer what information can be shared and to clarify some of the issues around data protection’17.

46. Trades unions were also generally in favour of the Bill, although a number of specific points were raised. UNISON told the Committee—

‘[…] The bill is part of a wider package of measures, but that does not mean in any way that it is unnecessary. We think that it is necessary and we welcome it.

We need to strike a balance. It is clear that protection of children and vulnerable adults is the paramount consideration, but we do not want miscarriages of justice that mean that staff who can and do make a valuable contribution to the care of children and vulnerable adults are blocked from doing such work when there is no good reason. The balance must be in favour of protecting the child or vulnerable adult, but we must recognise that point’18.

47. The police were also positive about the Bill. ACPO S told the Committee the Bill was—

‘[…] a significant step towards improving public protection and specifically the protection of children and protected adults. The aim of the Bill is to prevent

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17 Wilkinson, Official Report, Education Committee, 15 November 2006, column 3721
18 Watson, Official Report, Education Committee, 15 November 2006, column 3732
those who are unsuitable from gaining access to positions where they are able to cause harm to those who are least able to defend themselves. We know that many unsuitable individuals who would seek to gain this access are some of the most devious and dangerous and we must ensure that the proposals outlined in the Bill translate into real obstacles to this access.\footnote{ACPOS, written submission to Education Committee in support of oral evidence}

48. The voluntary sector, on the other hand, was more inclined to the view that the Bill represented a disproportionate response to the risk. The Scottish Council for Voluntary Organisations (SCVO), welcomed ‘[…] much of the PVG Bill, seeing it as potentially a vast improvement on the current POCSA regime. We are delighted, for example, at proposals under the new scheme for the ‘constant updating’ of disclosure checks and the option of subsequent nominal checks, hopefully reducing multiple checks in the sector. In addition we commend the Executive for retaining free volunteer checks under the new scheme.\footnote{SCVO, written submission to Education Committee in support of oral evidence}

49. Less positively, SCVO went on to say—

‘However, we believe there are significant problems with the Bill and the Financial Memorandum that could risk efforts to protect vulnerable groups in Scotland. Voluntary organisations are very often at the frontline of efforts to protect vulnerable groups, working to the benefit of children and adults across Scotland. If this legislation inhibits this voluntary activity, by diverting precious resources from frontline activity or by closing projects, groups or organisations, it will at the same time harm the vulnerable groups the Bill sets out to protect.\footnote{Ibid}

50. The Scottish Parent Teacher Council went further, stating in its written submission—

‘This Bill builds on and takes further the Protection of Children (Scotland) Act, but our experience of that legislation is that it is disproportionate, takes no account of actual risk and applies to both low and high risk activities without discrimination. We accept that there is a need to be very vigilant when people are appointed to work in children’s homes and in situations where adults have a close, regular one-to-one relationship with children, particularly when the child is dependent on that adult for care. However, the same does not apply to the school based Mums who turn up to help several other parents run a disco for the pupils. We even know of a case where villagers responsible for managing the use of their village hall were required by the local authority to have enhanced disclosure checks. We are unaware of any case of abuse that has arisen out of such activities.\footnote{SPTC, written submission to Education Committee in support of oral evidence}

51. The view emerging from the voluntary sector in general, children’s organisations and the Children’s Commissioner during oral evidence was that the Bill should be rejected and there should be a debate on the future of child protection and a review of the Protection of Children (Scotland) Act 2003
(POCSA). Any changes required could be achieved through amendment of POCSA.

52. **Recommendation 19 of Sir Michael Bichard’s inquiry into the events surrounding the Soham murders is very clear, and although his report applied directly only to England and Wales, it is appropriate that the Scottish Executive introduces a Bill in parallel to the legislative developments which have taken place in England and Wales in response to the Bichard report. The Committee recognises that the vetting and barring scheme, which has emerged directly from Sir Michael Bichard’s recommendations, is required, and, despite the issues which are highlighted in this report, will improve on the current disclosure regime in a number of important ways.**

53. **The Committee acknowledges that the impact of POCSA has not been fully audited, and that some of the changes required could be brought about by amendments to POCSA, as voluntary sector organisations have claimed. However, the Committee notes that not only would this require further primary legislation which would not be able to be passed in the current session of the Parliament, but that separate primary legislation would be required in order to provide for protection of vulnerable adults.**

54. **It is recognised by the Committee that, statistically, there is likely to be a greater risk of harm to children in their own homes and from people whom they know than there is from strangers. The Committee is conscious that heightened public anxiety about perceived danger to children has given rise to a highly risk averse culture which has reportedly led to many people no longer being prepared to volunteer. This has been compounded by the increasing use of litigation when accidents have occurred. The Committee regrets this, and believes it is important to put on record that although the protection of children and vulnerable adults is crucial, it is also important that children in particular have access to a range of opportunities for growth and development, and that the existence of such opportunities is, to a large extent, dependent on the existence of a viable group of adults who are prepared to take on the work required to deliver such opportunities.**

**Impact on the voluntary sector and volunteering**

55. **The Committee heard concerns from voluntary sector organisations that the Bill would have two major negative impacts on the sector. Firstly, the vetting and barring regime would discourage people from volunteering. Secondly the disclosure regime would impose unbearable administrative burdens on voluntary organisations, particularly smaller ones which may not have the capacity for adequate record keeping. Thirdly, there would be significant extra costs, because although the Scottish Executive has committed itself to meeting the cost of disclosure checks in respect of volunteer workers in the voluntary sector, there is no such commitment to meeting the cost of checks for paid staff. There would also be extra administrative costs arising from the implementation of the new regime.**

56. **SCVO brokered written evidence from a ‘voluntary sector coalition’ of 39 voluntary organisations, which noted that—**
'The voluntary sector desperately wants the new system to work to the benefit of children and ‘protected adults’ in Scotland, and we will enthusiastically work to make this happen’.23

57. However, the submission goes on to say—

‘We in the voluntary sector are concerned that without a greater focus on its implementation, this legislation could reduce voluntary activity, and lead to a closure of voluntary groups and organisations working to the benefit of vulnerable groups’24.

58. The submission calls for, amongst other things, extra funding for training and awareness raising, a cap on the costs of disclosure checks for voluntary sector paid staff at £20 (although the Scottish Executive has already promised to meet the cost of checks for volunteer staff), a simplified administration process utilising computer technology and an ongoing review of arrangements.

59. Other concerns raised by voluntary sector representatives included a lack of clarity over the extent to which ‘unconstituted’ organisations will be covered by the Bill’s provisions, and whether informal volunteers, for example parents helping on school trips, will require to be checked.

**Potential impact on volunteering**

60. The Scottish Council of the Scout Association, in its written submission to the Committee, was typical of some of the views received from the voluntary sector—

‘There is, however, growing evidence that an increasing culture of litigation and blame seeking, compounded by an ever-growing compliance agenda, is beginning to deter adult voluntary involvement. Most pertinently here, the step change in administrative requirements and responsibilities arising from PoCSA has placed enormous strains on local volunteer resources and has additionally stretched the financial resources of national organisations. It is giving rise to calls for a level of paid administrative support for volunteers that voluntary youth organisations are in general unable to respond to’.25

61. The possible impact on volunteers was, however, played down by local authority witnesses. Lynn Townsend of the Association of Directors of Education (ADES) told the Committee—

‘If we give out sufficient information and explanation, I do not think that volunteers and volunteer organisations will be put off by the bill’.26

62. This was backed up in oral evidence by COSLA, who said—

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23 Voluntary sector coalition, written submission to Education Committee in support of oral evidence
24 Ibid
25 Scottish Council of the Scout Association, written submission to Education Committee in support of oral evidence
26 Townsend, Official Report, Education Committee, 15 November 2006, column 3694
‘Similar concerns were raised when the Protection of Children (Scotland) Act 2003 was introduced. We have carried out a trawl of councils, which shows no evidence that the act has had a negative impact on volunteering’.  

63. The Committee considers that the voluntary sector is right to raise the question of the potential impact on people’s willingness to volunteer. However, the possibility of a reduction in the flow of volunteers must be balanced against the added security which it is hoped will be brought by the new vetting and barring scheme. Nevertheless, the Committee calls on the Scottish Executive to set out the steps it intends to take to address the concerns of the voluntary sector over the phasing-in time and cost implications to ensure that there continues to be an adequate supply of voluntary workers in Scotland. 

Financial impact on the voluntary sector and volunteering

64. Currently the Scottish Executive pays for disclosure checks which are required for volunteers working in the voluntary sector, but not for paid staff. Under the Bill, this situation will continue, but there are likely to be additional costs for disclosure checks for the existing paid workforce in the voluntary sector, which will fall on either the voluntary organisation or on the staff themselves. SCVO, in its written evidence the Finance Committee, estimated that the new costs on the voluntary sector over the proposed three year phasing in period would be £3million. SCVO also estimated that training costs could be £1million, and the total extra administration cost over the phase in period could be up to £20million. 

65. The Scout Association Council told the Committee—

‘[…] We estimate that the current cost to us in terms of staff time, IT support requirements and general administration would be between £40,000 and £50,000 per year. The financial memorandum does not show us the future impact of further access to online checking and so on. It is difficult for us to assess, but our costs are unlikely to go down. Those costs have to be met primarily from our youth members and volunteers because […] most of our income comes from membership subscriptions’. 

66. It is anticipated that voluntary staff (but not paid staff) in the voluntary sector will, as at present, have the disclosure fees paid for by Scottish Executive. However, it is understood that neither voluntary workers nor paid workers in the local authority sector will be paid for by the Scottish Executive. ADES told the Committee in oral evidence that this would be a problem for local authorities—

‘[…] I would like volunteers in the statutory sector to be covered by the financial arrangements, particularly as we are trying to give volunteering a much higher profile and involve more of the community in voluntary work. I am thinking specifically of the not in education, employment or training strategies. We are trying to involve young people, who are often involved in volunteering through their local authority and statutory bodies. It would be a
financial burden for local authorities if they had to pay for young people's vetting.\(^{30}\)

67. The Policy Memorandum indicates that no decision has yet been taken as to the timeframe required for phase-in, although the financial memorandum has assumed a three year phase-in.\(^{31}\) Clearly, a longer phase-in period will reduce the annual administrative impact on both the voluntary and local authority sectors and on Disclosure Scotland. The Deputy Minister for Education and Young People said—

> ‘The big worry has been that the requirement to conduct retrospective checks will mean that both the agency and individual groups will be faced all of a sudden with a huge surge in the number of checks. That will obviously depend to some extent on the group in question, but it will also depend on the period of time over which the scheme is phased in. The numbers will go down in proportion to the length of the timescale for carrying out retrospective checks, whether it is three, four or five years. There is no suggestion that we will introduce the scheme with a big bang—just like that—in one year and that a huge number of checks will suddenly land in the system. We do not envisage that the scheme will cause the voluntary sector or other people major administrative headaches beyond what is entailed in the current system.’\(^{32}\)

68. The Committee recognises that enactment of the Bill will bring a significant number of challenges to the voluntary sector. It is also likely to bring significant added cost, both in terms of the additional cost of retrospective checking of the existing voluntary workforce, and in relation to the administration and record keeping systems which will require to be put in place in order for organisations to comply fully with the requirements that will be imposed by the Bill, if it is passed.

69. The Committee recognises that smaller voluntary organisations may face the greatest challenges as a result of their limited administrative capacity.

70. Voluntary work is important, both for those carrying it out and for those—often the most vulnerable and least influential in society—who depend on the services provided by the sector. Nevertheless, the Committee takes the view that it is essential that the voluntary sector is able to fully implement the provisions of the Bill, in order to ensure that the vulnerable people with whom the sector works receive the fullest possible protection.

71. National organisations like SCVO are clearly facing a period when their resources and skills are going to be tested in providing support to enable their member organisations to cope with the provisions of the Bill. At local levels, there are also opportunities for organisations like councils for

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\(^{30}\) Townsend, Official Report, Education Committee 15 November 2006, column 3694
\(^{31}\) Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 155, page 34
\(^{32}\) Brown, Official Report Education Committee, 29 November 2006, column 3854
voluntary service to demonstrate their ability to support, in particular, smaller membership organisations.

72. The Committee calls on the Scottish Executive, before stage 2 of the Bill, to set out the steps it proposes to take to ensure that the voluntary sector is equipped to enable it to cope with the challenges ahead in relation to the implementation of the provisions of the Bill. The Committee also calls on the Scottish Executive to consider whether the resources it makes available to the voluntary sector need to be supplemented in any way in the short term to enable it to cope adequately with the proposed changes.

73. The Committee also asks the Scottish Executive to consider further and set out in detail its thoughts on the timescale for bringing the existing workforce into the scheme. Clearly, the more slowly this is to happen, the less the impact on the voluntary sector is likely to be, but the risk of an unsuitable person continuing to work in the sector is correspondingly increased. There is therefore a balance to be struck between cost/impact and the time taken to implement fully the new scheme.

Voluntary or mandatory scheme

74. Under the Bill, membership of the vetting scheme will be voluntary. However, it will be an offence for any organisation to employ a person (whether in a paid or voluntary capacity) who is not a member of the scheme to carry out regulated work. The only way for an employer to satisfy itself that a person is a scheme member, and not on one of the lists of those barred carrying out regulated work, will be to seek a disclosure check on the individual in question.

75. It will also be an offence for a person to try to carry out regulated work while on a list of people barred from working with the relevant group.

76. This is one of the differences between the Bill and the Safeguarding Vulnerable Groups Act 2006, which applies to England and Wales. The Act makes it compulsory for an individual to ‘become subject to monitoring’ before undertaking a regulated activity. It will be an offence for such an individual to participate in regulated activity. The Act also makes it an offence for organisations to employ listed individuals and for an employer to employ an individual who is not subject to monitoring.

77. In practice, the fact that an organisational employer will be committing an offence if they employ someone who is not a scheme member to carry out regulated work means that, at least as far as organisational employers are concerned, the vetting and barring scheme is compulsory. ADES, ADSW and COSLA, in their written submission to the Committee, argued that it was—

‘[...] disingenuous to imply that participation in the scheme is voluntary - by the end of the transitional period it will become impossible to work in the
sector without scheme membership, so effectively it is compulsory and this should be transparent from the outset.\textsuperscript{33}

78. It is understood that the Scottish Executive considered that it was not appropriate to create an offence to carry out regulated work when not in scheme membership, as anomalies surround whether or not a specific post involves regulated work. Placing the responsibility on the employer to satisfy himself that an employee or job applicant is a scheme member, therefore makes it easier to ensure that all employees and volunteers apply for scheme membership. However, it remains unclear why it was felt necessary to have different approaches in Scotland and England.

79. One of the Committee’s concerns is to ensure that public authorities and voluntary organisations are helped to manage and reduce risk, so providing further reassurance to all of us that our children and other vulnerable individuals are protected from harm. However, the Committee is also concerned that the Bill does not inadvertently encourage further risk averse behaviour which could damage children’s welfare rather than keep them safe. The Committee considers that by making it an offence for organisations to employ a barred person rather than making it an offence for the individual, this could arguably have the effect of making organisations more risk averse in their practices.

80. One of the possible disadvantages of this proposal is that people who may work with children or vulnerable adults as an individual contractor, for example musical tutors, may be able to avoid joining the scheme, as the individuals employing them, for example a child’s parent, would not be an organisational employer under the bill, and could therefore not be charged with the offence of employing someone barred from such work. Anyone providing such personal services should seek to become a scheme member, enabling them to be issued with a ‘statement of barred status’ which can be shown to parents or others paying for the service. It would be an offence for a person who was not a scheme member to try to carry out regulated work, whether the system’s success depends on the parents or those receiving the service being aware of the scheme in the first place.

81. The Committee considers that the proposals in the Bill in respect of individual contractors, service providers or suppliers are not wholly satisfactory. There is a greater possibility of subverting the system than is the case with organisational employees and this could potentially open up opportunities for unsuitable people to gain access to children and protected adults.

82. The Committee notes the Scottish Executive’s rationale for not making carrying out regulated work without being a scheme member an offence, but considers that insufficient work has been done to address the issues potentially arising from people carrying out work as individuals.

83. The Committee therefore calls on the Scottish Executive to re-examine this question in advance of stage 2, so that the Parliament can be satisfied.

\textsuperscript{33} ADES, COSLA, ADSW, written submission to Education Committee in support of oral evidence
that there are no potential loopholes in relation to individual workers. The
Committee also calls on the Scottish Executive to reconsider whether it
would be more appropriate to adopt the system proposed for England and
Wales, where the responsibility for determining a potential employee's
barred status is place on the individual employee rather than the employer.

Employees not directly employed by local authorities

84. The joint COSLA, ADES and ADSW submission raised an important point in
relation to people carrying out regulated work under contract to local authorities,
where those carrying out the work are not directly employed by the local
authority—

‘The Committee may be aware of concerns raised regarding vetting
arrangements for people working in contracted services, such as school
transport or catering in PPP schools. Paragraph 63 combined paragraph 52
Condition C should be amended to allow councils and other public bodies to
undertake vetting of individuals working in contracted services. The growth in
direct payments, which will be further emphasised with the increasing
personalisation of services coming from the Changing Lives agenda, will
increase still further the numbers of people providing services on behalf of
local authorities who are not directly employed by them. For consistency, to
maximise the protection of vulnerable groups, and to ensure public
confidence in the system and in our agencies, the responsibility for vetting
ought to lie with the council, or other contracting agency, rather than the
employer such as a bus company as applies under the existing legislation’34.

85. The Committee calls on the Scottish Executive to consider further the
question of employees and volunteers working for third parties who are
delivering local authority services whether under contract or some other
arrangement, and to develop clear guidance to local authorities on what
posts should be within the scheme.

One list or two?

86. The Bill as drafted provides for two separate lists—one of people barred from
working with children and young people, and the other of people barred from
working with protected adults.

87. The Policy Memorandum notes that during consultation on the proposed Bill,
opinion was mixed on the question of whether there should be one or two lists.
Although, as the Policy Memorandum reports, there are arguments on both sides,
the Scottish Ministers decided that, on balance, the arguments in favour of a two
list approach were stronger.

88. Opinion on this issue in evidence to the Committee was also divided. NHS
Greater Glasgow and Clyde supported the proposal for two lists, noting—

34 *ibid*
‘The provision of separate lists for people undertaking regulated work with children or protected adults vetted through the Central Barring Unit is particularly useful, given the turn-over of staff through locum or temporary bank or agency work and the resultant difficulties in identifying barred individuals in relation to the regulated job for which they are applying. Also, the separate lists may result in a more focused and proportionate response in determining referrals to CBU and the decision to bar individuals, given that it will relate to a specific category of work. This, in turn, will encourage all groups to make use of the scheme without diluting the protection of individuals.’

89. Stirling Council, on the other hand, argued—

‘However, we have serious concerns at the Bill’s proposal of different lists for people barred from working with children or adults. Employers require to be able to access both Social Services staff and increasingly Education and other support staff who work with families or individuals within a family setting. We believe such a difference would be therefore unworkable.

The proposed creation of two separate lists infers that a separate risk must be presented to both “groups” – adults and to children – before consideration of being barred from both. Is there evidence that someone with the capacity to harm a child may restrict that to children only or vice versa? We would suggest that robust risk management of services to vulnerable people of all ages, requires a holistic risk assessment of individuals who have substantial access to these individuals through their work.’

90. Regulatory organisations also expressed some concern over the proposal for two lists. The General Teaching Council Scotland, for example stated—

‘The Council accepts that there may be an ECHR issue in relation to combining the two lists together. GTC Scotland understands that as the Council’s workforce will only be working with children, disclosures would only give information about the children’s list. It is unthinkable that GTC Scotland could in practice unknowingly register an individual who is listed as unsuitable to work vulnerable adults. Notwithstanding that the Bill is concerned with regulated work and not contact, GTC Scotland would wish to press strongly that information is disclosed to the Council concerning both lists.’

91. The General Medical Council went further, arguing—

‘The existence of separate lists regarding children and protected adults is problematic. Under the standards set by us a person may be deemed unsuitable to work as a doctor because of their conduct towards any patient or person. It would appear to us that it is difficult to foresee the circumstances in which an individual may be barred from working with one group while

35 NHS Greater Glasgow and Clyde, written submission to Education Committee
36 Stirling Council, written submission to Education Committee
37 GTC Scotland, written submission to Education Committee in support of oral evidence
remaining able to work with the other. It is likely, of course, that many individuals will be included under both lists, but not all will be. We look forward to the consultation on how decisions about listing are made. If two lists are established then it will be important that regulators such as the GMC are made aware of an individual’s listing on either list, regardless of the apparent applicability or otherwise to their job role.\(^{38}\)

92. The Committee notes that Disclosure Scotland’s work on this issue is ongoing.

93. The Committee accepts that the Scottish Executive had to make a decision on the question of one list or two, and accepts that it has decided that the arguments in favour of two lists are stronger. However, as the evidence from a number of organisations shows, there may be issues than still need to be resolved in the detailed operation of the lists. It is accepted that detailed operation is not a matter of general principle and that consultation on this has still to take place. Nevertheless, the Committee invites the Minister to respond to the points made in the evidence presented here.

Operation of new vetting system

94. One of the policy objectives of the Bill, as set out in the Policy Memorandum, is, so far as possible, to minimise bureaucracy. One of the failures in the current system is that each disclosure only covers convictions and other information available before the date of the check. Should subsequent convictions take place, or other information become available, there is, at present, no system for dynamic updating. Consequently, each time the individual seeks work with a new employer, they are required to undergo a further check.

95. Under the new system, the need for repeat checks should be minimised, as the system will be dynamically updated with new information from the courts and police. This was welcomed by witnesses.

96. However, it became apparent to members that the need for repeat checks may not be reduced as much as has been claimed. For example, in the case of a person who is already a scheme member taking up a position with a new employer, the new employer would be expected to request a ‘short scheme record.’ In many circumstances this would show no change from when the person joined the scheme. But in some circumstances, where there had been new information added, the short scheme record would only indicate that new information had been added, not what that information is. In such circumstances, the employer would probably then require to make a further request for a scheme record. In these circumstances, and to avoid delay, some employers may take the view that it is more straightforward to apply for a scheme record in the first place.

97. A number of organisations, including the GTC, the GMC and the SSSC made this point. The GTC, for example, in its written evidence, stated—

\(^{38}\) General Medical Council, written submission to Education Committee in support of oral evidence
‘[...] It is recognised that for registration purposes in the future it may be feasible for GTC Scotland to accept a full scheme record obtained previously for another post or position together with a fresh short scheme record. However it would be simpler and cheaper to make the full scheme record available on line to regulatory bodies under a password code system proposed for the on-line disclosure request. This would provide all the up-to-date information instantly and hopefully at a greatly reduced cost to the scheme member in question\textsuperscript{39}.

98. A similar point was made by the GMC—

‘Relying on a Scheme Record, which may only be updated every 10 years, may not provide adequate safeguards. The availability of Short Scheme Records does not fully address this problem as, if new vetting information has been added since the existing Scheme Record was issued, the organisation in question will then be required to obtain a full Scheme Record. This system is potentially complicated and time consuming. Organisations may find that in most cases the new information is less relevant to the role concerned. For example, minor road traffic offences or fixed penalty notices would generally be concluded by our Registrar at an early stage and not engage our procedures. The issuing of a Scheme Record to inform an organisation of this may not be the best use of resources. A more efficient system would be to allow certain organisations, including regulators, to have direct access to the information held by the CBU which would be included on a full Scheme Record\textsuperscript{40}.

99. The SSSC also noted that—

‘All convictions are of interest to the SSSC even, depending on the circumstances, driving convictions. There is little point in knowing that there is new vetting information, if there is no mechanism for being told the content of the new information. This will mean for the purpose of registration with the SSSC, a Short Scheme Record would not be sufficient. [...] In these circumstances the individual would require a Scheme Record. The Bill therefore does not address the current unsatisfactory situation where duplicate Disclosure Scotland checks can be required within a short period\textsuperscript{41}.

100. The Committee appreciates that there may not be a straightforward solution to this problem. Nevertheless, it considers that the proposals as currently set out in the Bill, while some improvement on the current situation, could do a lot more to speed up and simplify the process. The Committee therefore asks the Scottish Executive to look at this issue again, with particular reference to the suggestion that relevant employers could be given password protected access to full scheme records.

\textsuperscript{39} General Teaching Council (Scotland), written submission to Education Committee in support of oral evidence
\textsuperscript{40} General Medical Council, written submission to Education Committee in support of oral evidence
\textsuperscript{41} Scottish Social Services Council, written submission to Education Committee in support of oral evidence
Definition of harm and inappropriate medical treatment

101. Some concerns were raised in evidence about the definition of harm. The Faculty of Advocates argued that—

‘In our view there requires to be some clarification of the definition of “harm”. Harm may not always be relevant for the purposes of the Act. One reading of section 93 might suggest that if someone regularly smokes near a child they may have caused the child “harm”. Persons who have an obligation to refer matters require to have a clear understanding of the type of behaviour which merits referral. The citation of examples of “psychological harm” in subsection 93(1) (b) are likely to pose problems of interpretation. It is important, in our view, that the definition in section 93 should give clear guidance as to the kinds of situations which would constitute “harm”. It might be considered whether the definition of “harm” in the Protection of Children Act 2003 should simply be inserted here.’42

102. The Scottish Social Services Council in its submission noted—

‘We have no difficulty with there being two lists and with individuals only being on one list. Our view is, however, that an individual listed on either list is not suitable for registration with the SSSC because they have been assessed as presenting a current risk to children and protected adults.

‘It is vital that the SSSC is informed of listing on either list even if the individual is registered with the SSSC as a worker whose functions relate to the other group. When a Scheme Record is sought for registration with the SSSC, both lists must be checked, notwithstanding the category for which registration is sought. The nature of social service work is that it is undertaken with individuals within their family and social context. Therefore, for example, an adult psychiatric worker will work with children of service users who suffer from mental ill health and a child care social worker will work with the adult members of the child’s family.’43

103. The Committee considers that the provision of updated vetting information on individuals is a key feature of the new scheme and it will be essential to ensure a robust system of disseminating this information to all relevant organisations. Disclosure Scotland noted the importance of the exchange of information with all organisations, stating that—

‘[…] the continual updating of the information is the new feature. Obviously, it is a bit more problematic, as we have to devise a way of ensuring that the central barring unit receives information when it changes on the police system.’44

104. This point was put to the Deputy Minister for Education and Young People, who, in a letter to the Committee, dismissed these concerns. He wrote—

42 Faculty of Advocates, written submission to Education Committee
43 Scottish Social Services Council, written submission to Education Committee in support of oral evidence
44 Gorman, Official Report, Education Committee, 29 November 2006, column 3838
‘The definition of “harm” in section 93 of the Bill is significantly more substantial than that in POCSA. The Executive does not consider that adopting the much briefer POCSA definition would assist in providing greater clarification to the meaning of “harm”. […] The Executive considers that reading section 93 to include within “harm”, for the purposes of this Bill, the situation of an individual smoking near a child, would not be a reasonable interpretation of that section. In addition, any such interpretation would be likely to be disproportionate and possibly incompatible with ECHR and consequently the section would be unable to bear such a meaning’45.

105. The Committee also notes that there appears to be no definition in the Bill of “inappropriate medical treatment.” The Committee accepts that the intention is probably to cover inappropriate behaviour such as sedating children or protected adults in order to make caring for them easier or to have fewer staff on duty, but considers that there is a danger, in the ‘risk-averse’ culture referred to earlier in the report, that adults might, in some circumstances, be hesitant about giving first aid to a child in the fear that they might be accused of giving inappropriate medical treatment.

106. The Committee notes the Scottish Executive’s position on the definition of “harm”, but remains concerned that the lack of clarity over this may have an impact on people’s willingness to work with young people and protected adults, because of concerns that they may inadvertently cause harm.

Questions on work and posts covered by legislation

107. Schedules 2 and 3 of the Bill set out details of regulated work, including activities, establishments and positions covered by the Bill, in the case of children and adults respectively. Under the Bill, the Scottish Ministers will have powers to modify these schedules as they think appropriate.

108. Many of the submissions to the Committee argued that more clarity was required in respect of the type of work to be covered by the legislation, or that there were potential loopholes which would allow people to work in certain posts without the need for scheme membership.

109. The EIS, for example, points out46 that whilst Directors of Education are included at schedule 2, other senior education staff and quality improvement officers are not, although they are arguably more likely to come into contact with children.

110. In respect of the duty (in Part 3 of the Bill) to share child protection information, The Royal College of Paediatrics and Child Health Scotland (RCPCH) notes that although health boards are included in the list of relevant bodies in section 80, general practitioners, who in many instances regard themselves as independent contractors, are not specifically listed. RCPCH goes on to state that

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45 Deputy Minister for Education and Young People, letter to Education Committee (see Annexe D)

46 EIS, written submission to Education Committee in support of oral evidence
'care may be needed to avoid this being used as a potential loophole to obstruct the appropriate sharing of information'.

111. The Scottish Churches Committee, in its written submission, expressed serious concern over the fact that ministers of religion and priests will not be included within the scope of the scheme for protected adults.

112. The WRVS also expressed concern over the related point that its workers would not be scheme members because WRVS does not provide ‘regulated work’. Currently WRVS workers are subject to enhanced disclosure checks.

113. The examples above represent a small sample of the comments received on the general issues of work and posts covered by the scheme. The Committee considers that they raise fairly fundamental issues, and calls on the Scottish Executive to examine the specific questions raised, and the wider question of how to ensure that there are as few loopholes as possible.

114. The Committee also recognises the importance of ensuring that all agencies, whether public, private or voluntary, receive clear guidance regarding which posts or activities should be included within the scheme, in order to avoid unnecessary applications and the creation of unmanageable workloads for both the organisations and the vetting and barring agency.

115. On a related point, the Subordinate Legislation Committee, in its report to the Committee noted that the proposed ministerial powers to modify schedules as ministers consider appropriate is ‘one of the most significant powers in the Bill’, and ‘unlimited.’ The Committee notes that the Scottish Executive disagrees that the power is unlimited, as any modifications must have sufficient similarity with the existing contents of the schedules.

116. Given some of the comments above, the Committee considers that it is probably appropriate for ministers to have this significant power, but it is also appropriate that the power is proposed to be subject to parliamentary affirmative procedure.

‘Overlap’ in ages of children and adults

117. A number of witnesses commented on the potential for confusion caused by the ‘overlap’ between adults and children in the Bill. Quarriers, for example, told the Committee in written evidence—

‘There is potential for confusion caused by the overlap between a child under 18 years old and a protected adult, aged 16 or over. For example, it is unclear to which list a worker should be referred if the person harmed, or at risk of harm, is 16 and or 17, and receiving services, ie they are both a child and a protected adult’.

118. The Scottish Child Law Centre suggested that—

47 Royal College of Paediatrics and Child Health (Scotland), written submission to Education Committee
48 Quarriers, written submission to Education Committee in support of oral evidence
‘[…] there is confusion about the 16 to 18-year-old age group. If an adult is defined as someone who is over 16 and a child is defined as someone who is under 18, people who are aged 16 to 18 will be doubly protected’.

119. Questioned on this issue by the Committee, the Deputy Minister for Education and Young people commented—

‘The age of majority is the cause of a lot of discussion. The ages of 16, 17 and 18 are used for all sorts of different things, probably because people do not suddenly grow up at the flick of a switch. The transition has to work with the types of organisation that we have to deal with. Again, we are more than happy to consider that issue afresh; it is not particularly a matter of principle for us. Rightly or wrongly, the decision was taken that there would be more advantage in fixing the age at 18 and keeping the overlap, because of the organisations that will be covered and that work on the fringes of different issues’.

120. The Committee believes that there is scope for confusion in respect of this ‘overlap’ and that there may be a case for 16 year olds to be classed as adults. The Committee therefore calls on the Scottish Executive to consider this again with a view to clarifying the definitions of adults and children.

Disclosure of information to regulatory bodies

121. Some of the regulatory bodies, including the GMC, GTC and the SSSC, argued that it was vital that they were advised of any changes to the scheme record of an individual for whom they are responsible for registration.

122. The Committee accepts that this is largely an operational matter, but asks the Minister to respond to the points raised by the regulatory bodies and whether the sharing of ‘soft’ intelligence with regulatory bodies has any unintended consequences relating to personal privacy and human rights.

Foreign workers

123. The Policy Memorandum notes that ‘work is underway to secure the exchange of conviction information between [EU] member states’.

124. Children in Scotland, in its written submission to the Committee, noted—

‘The question of foreign employees needs to be more thoroughly addressed if this system is to be meaningfully implemented, primarily because of the difficulty of gaining access to reliable, complete background information across international borders’.

51 Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 152, page 34.
52 Children in Scotland, written submission to Education Committee in support of oral evidence.
125. In acknowledging a similar point, Dundee City Council, added that the vetting scheme information was only a part of the employer’s recruitment procedures—

‘The employment of any person, from overseas or not, must rely on robust recruitment and selection procedures. The vetting and barring scheme and the checks that it will provide are one aspect of that. [...] some people who may seek employment will come from states in which the checking procedures are not as effective and efficient as those in the United Kingdom. Large employers have to accept the evidence that is available via the scheme and the checking system as the best evidence available at the time, but we must ensure that our recruitment and selection procedures are robust enough to carry any deficiency that might exist in information coming from abroad’53.

126. More detail of the work being done in respect of vetting overseas workers was provided in oral evidence by Disclosure Scotland, who explained to the Committee—

‘When a foreign national [...] is convicted in this country, the central UK notification unit notifies the [...] authorities. Vice versa, if a Scot or UK resident offends abroad, we are notified. That scheme is to be extended to include intelligence and then to include employment disclosure. We are working with the EU.

The Home Office has arranged for the Criminal Records Bureau, our sister organisation in England and Wales, to carry out inquiries with other countries. The CRB has identified the countries from outwith the EU from which people most commonly seek employment. It has found that we get a lot of people from Australia, the Philippines and certain other countries, and it has negotiated with the authorities in those countries to try to get access to conviction information for disclosure purposes’54.

127. The Committee welcomes the work that is going on to secure conviction information between EU member states and beyond. However the Committee remains concerned that, with the large number of workers entering Scotland from the EU accession states, there is a potential for unsuitable people to remain undetected. The Committee therefore calls on the Minister to set out, as far as possible, the steps being taken to minimise the risk of overseas workers not being identified as unsuitable for work with children or protected adults in Scotland.

**IT issues**

128. It seems clear to the Committee that if the proposed vetting and barring system is to work properly it will be heavily dependent on the IT systems put in place to support it. Although the current systems can presumably be built upon, the new system appears, on the face of it, to be a much more dynamic system with many more users.

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54 Gorman, Official Report, Education Committee, 29 November 2006, column 3841
129. Little information was available during stage 1 evidence taking on the status of the workstream to develop the required system. The Financial Memorandum commits a sum of £2m for IT development. The Committee questioned Brian Gorman of Disclosure Scotland on this. He said he was—

‘not an IT expert so I do not really know whether £2 million is realistic, to be honest’\(^{55}\).

130. The Committee recognises that the development of the IT requirements is an issue beyond general principles, but nevertheless considers it so fundamental to the prospects of success of the proposals to be worthy of comment. Given recent history of IT procurement in the public sector, the Committee is slightly sceptical both about the £2m figure and the likelihood of a workable system being delivered in the required timescale. The Committee notes that the Finance Committee, in its report on the Financial Memorandum, was also ‘not convinced that the estimated costs will be sufficient’\(^{56}\).

131. The Committee therefore calls on the Scottish Executive to set out further details of the work being done to ensure that the required IT systems are in place and fit for purpose when required.

Language

132. A number of witnesses raised the issue of the potential confusing term, ‘statement of barred status,’ suggesting that to lay observers this might suggest that the holder is barred, when in fact the opposite is the case.

133. The Committee calls on the Scottish Executive to consider whether a less ambiguous name can be found for the statement of barred status.

Part 3: Duty to share child protection information

134. The Committee notes that the provisions in Part 3 of the Bill do not form ‘part of the vetting and barring scheme, although, as the Policy Memorandum indicates, vetting information, information on a disclosure record and listing information could constitute child protection information for the purposes of this Part’\(^{57}\). The Committee also notes that these provisions have not been subjected to the same degree of consultation as the rest of the Bill, although the development of the proposals was informed by three stakeholder events held in June 2006.

135. The Committee also notes that Ministers plan to issue, following further consultation, a code of practice to be used in addition to the legislative framework provided by the Bill (if enacted).

136. This section of the Bill proved to be one of the most controversial. Generally speaking the statutory organisations and groupings involved in the field were

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\(^{55}\) Gorman, Official Report, Education Committee, 29 November 2006, column 3835
\(^{56}\) Finance Committee report on the Financial Memorandum, paragraph 56 (see Annexe E)
\(^{57}\) Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 174, page 38
supportive of the provisions. Dr Helen Hammond of NHS Lothian, for example, told the Committee in oral evidence—

'We particularly welcome part 3. To return to the needle in a haystack analogy, we regard part 3 as the way to find the needles without having to go through the entire haystack. It offers a better way to identify the children whom we need to help earlier, before the major crises evolve. As my colleague said, all the inquiries and critical incident reviews have shown us that we need to get better at sharing information.' […] if we share information in the way that part 3 proposes, that will also help us to identify the adults who are a risk to children. Further, in many ways the intelligence that the police gather from inquiries and investigations into children’s situations provides them with the ability to begin to identify those adults who are a danger to children in our communities. That goes back to that two-pronged approach to identifying people who are a danger58.

137. Allan Gunning of NHS Ayrshire and Arran added—

'[…] If we can put in place effective information systems to make it easier for front-line staff to carry out their jobs in relation to the protection of children, that will be very much welcomed by front-line staff. That is probably where the emphasis should lie. There are many issues associated with part 3 of the bill that we might well come to, but the consistent messages that I get in feedback from front-line staff […] is that information systems are needed to make information sharing easier for people on the front line. If that direction of travel is supported by the bill, it will be very much welcomed within the NHS59.

138. Part 3 was also broadly welcomed by COSLA and by the professional organisations representing directors of social work and education. Many organisations made the point that although legislation may be required to enable information sharing in the first place, barriers to information sharing are largely cultural, and need to be addressed through training and awareness raising, which is helped by the current integrated children’s services agenda. Donald MacKenzie of Dundee City Council told the Committee—

'[…] In the jigsaw, the quality indicators framework and the standards framework are both emerging from the child protection reform programme, and there are multi-agency inspections by the services for children unit of Her Majesty’s Inspectorate of Education. That work will have to be embedded within robust self-evaluation systems in local areas. The promotion of best practice must be one of our key responsibilities but, alongside that, some compulsion will be required to ensure that the information shared is appropriate. We have to be good at doing something with information once it has been shared60.'
139. The General Medical Council, told the Committee that although it was ‘not against the principles or the notion of a duty’ it believed that the, ‘devil will be in the detail of the code of practice or the guidance that stems from the legislation’.

140. From the voluntary sector, Children 1st and Children in Scotland, called on the Committee to recommend to the Parliament that it should not agree to the general principles of the Bill. Children 1st indicated that it firmly believed that the proposals on sharing information belong in different legislation, along with reforms to the children’s hearing system and other planned legislation stemming from the *Getting it right for every child* agenda. Children in Scotland, reporting that it was not opposed to information sharing argued that, ‘the issue is so important that we urge you to separate it out and ensure that it is done right, not quickly.’

141. Scottish Women’s Aid was concerned that it might be obliged under Part 3 to share information which might compromise its ability to provide services to women suffering domestic abuse—

‘As we believe that the bill might have quite serious unintended consequences for many people who are in what is supposed to be a protected group, I must agree with my colleagues that part 3 should be deleted and its provisions subject to further consultation. We are concerned that, if that does not happen, much of the Executive’s work on tackling domestic abuse might be undermined’.

142. The Children’s Commissioner argued that young people would not provide sensitive information if they thought that ‘it will be shared with a huge number of people on the ground of "harm", which is undefined and is a low threshold, and that those people will be required to share it with others,’ and concluded that—

‘Perhaps we ought to take stock, given how much has been left open. We are going to have to wait anyway for the kind of detail that will make it possible to implement the bill. Why do we not take that time to reflect on whether it is really the way that we want to go and take a broader look at the whole child protection, child welfare, safe, active, happy agenda, for which we are aiming?’

143. The Scottish Child Law Centre told the Committee—

‘Part 3 of the bill appears to rule out any right of a child to confidentiality. The word "consent" does not appear […] it means that adults can go ahead with or without the child's consent and disclose the information to child protection services, the health service, police or social work services. That is what grates with us. Children have rights […] yet it is as if we are running roughshod over those rights by saying that children will not even get to give their consent. They will not even have to be asked; there will just be a duty

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61 Lane, Official Report, Education Committee, 15 November 2006, column 3721
62 See consultation at Scottish Executive website at: http://www.scotland.gov.uk/Publications/2005/06/20135608/56098
63 Coady, Official Report, Education Committee, 22 November 2006, column 3796
64 Marshall, Official Report Education Committee 22 November 2006, column 3794
on professionals to go ahead and disclose the information. If an element of consent were built into part 3, we might be starting to get the mould right.\textsuperscript{66}

144. The Scottish Child Law Centre concluded that—

‘We do not feel that the case for part 3 has been made convincingly. We are concerned that its wording is confusing and difficult to understand, and that it fails to meet the widely accepted criteria for good law. Leaving the detail not just of part 3 but of the entire bill to delegated legislation is not a good idea. As we have heard, and as has been said time and again, the devil is in the detail as far as the bill is concerned. The overall effect of part 3, if it proceeds in its current form, will be to cause widespread confusion and to overburden what is already a highly burdened system.\textsuperscript{67}

145. Not all voluntary sector organisations, however, were opposed to the provisions of Part 3. Barnardo’s welcomed the proposals, saying—

‘Barnardo’s supports the general principle of placing a duty on relevant public bodies and organisations to disclose information when a child is at risk of harm and to cooperate with such requests. We also agree with the general power for any individual to disclose child protection information and placing Scottish Ministers under a duty to produce a code of practice to support information sharing for child protection purposes. Nevertheless we are aware that various concerns have been raised and it is the handling of these concerns that will determine how effective the information sharing measures prove to be.\textsuperscript{68}

146. The Committee has had a long-standing interest in child protection issues, and has long argued in favour of the integrated children’s services agenda. Only a few months ago, at the request of the Executive, the Committee scrutinised legislation which allowed the joint inspection of children’s services. This Bill, which contained significant provisions regarding information sharing, was the focus for considerable debate. The Committee notes that, unlike those in this Bill, the provisions related to the sharing of information on an anonymised basis for inspection purposes only.

147. The Committee notes that whilst most of the professionals working within NHS boards and local authority children’s, education and social work services appeared from the evidence to be broadly in favour of the provisions of Part 3, the majority of voluntary sector organisations and those representing children’s and young people’s interests had deep concerns.

148. The Committee recognises that in many of the previous cases where children and adults have come to significant harm, information was available which, had it been shared and acted upon, could have led to intervention which might well have prevented the ultimately tragic outcomes. The

\textsuperscript{66} Macfarlane, Official Report, Education Committee, 29 November 2006, column 3821
\textsuperscript{67} Macfarlane, Official Report, Education Committee, 29 November 2006, column 3813
\textsuperscript{68} Barnardo’s, written submission to Education Committee
Committee acknowledges that Part 3 of the Bill is intended to ensure that child protection information is shared where it is appropriate to do so amongst relevant agencies which are in a position to take action to prevent such future tragedies.

149. However, the Committee has serious concerns with Part 3. Its proposals are fundamental, far-reaching and potentially life-changing for those upon whom they impact. The Committee accepts that the protection of children is a top priority but it considers that the issues involved are so complex and sensitive, encompassing the welfare needs of children and others who may have suffered harm and wider human rights concerns as well as. Whilst accepting the principle of appropriate information sharing in the child’s best interests, the Committee believes that further time for reflection and full consultation should be allowed.

150. The Committee believes that consultation on this aspect of the Bill has been insufficient.

151. The Committee recognises that an equivalent to Part 3 of the Bill is not included in the Safeguarding Vulnerable Groups Act 2006, and therefore is not required to ensure the coherence of vetting and barring across the UK.

152. The Committee agrees with many of the voluntary sector organisations which gave evidence, that Part 3 could also be included in the proposed legislation to reform the children’s hearing system and to develop the *Getting it right for every child* proposals, on which the Scottish Executive is already consulting. The Committee believes the risks involved in delaying the provisions of Part 3 of the Bill are outweighed by those associated with enacting legislation without going through the proper process of consultation and policy development.

153. In the meantime, the Committee believes that agencies can and should be reminded of the vital importance of information sharing by the issuing of a letter from Ministers to local authorities, health boards and chief constables.

154. The Committee concludes that Parts 1 and 2 of the Bill will, subject to caveats contained in this report, improve the current vetting and barring regime. Part 3, however, should be withdrawn from the Bill to allow time for proper consultation. The Committee recognises that it cannot be predicted what the legislative priorities of a future Scottish Executive will be, but believes there is cross-party support for urgent legislative reform of the children's hearing system, and that this is likely to be a suitable vehicle for the provisions contained in Part 3 of the Bill.

155. The Committee therefore calls on the Scottish Executive to delete Part 3 of the Bill at Stage 2.
European Convention on Civil Rights

156. A number of witnesses raised concerns over possible non-compliance with certain articles of the European Convention on Civil Rights (ECHR). The Scottish Child Law Centre, for example, argued that concerns included—

‘[...] the provisions on consideration for listing and the decision to list; the bill's compatibility with articles 6 and 8 of the ECHR; the lack of sufficient appeal procedures in relation to part 2, which could lead to challenges under article 6 of the ECHR; and, finally, some of the bill's wording leads to questions about legal certainty and potential challenges under article 8 of the ECHR’69.

157. Concerns were also raised over the limitations of the proposed appeals procedure, under which ministers must correct errors in a scheme record if they are satisfied that the information is inaccurate.

158. Many of the provisions of the Bill will be taken forward practically by subordinate legislation, which makes it more difficult, even for experts who have a deep understanding of ECHR, to come to a view on whether the Bill could face challenges under ECHR.

159. The Committee notes that the Scottish Executive considers that ‘the provisions of the Bill are compatible with those provisions in the European Convention of Human Rights (“the Convention”) which constitute “the Convention rights” within the meaning of the Scotland Act and the Human Rights Act 1998’70. The Parliament’s Presiding Officer has also given his view that the Bill is within the legislative competence of the Parliament, a view which is required to have regard to ECHR compliance.

160. The Committee is not able to give a view, but considers it would be helpful if the Scottish Executive would explain the steps it intends to take to ensure compliance and minimise the risk of challenge as the provisions of the Bill are rolled out through subordinate legislation.

Report of Subordinate Legislation Committee

161. The report of the Subordinate Legislation Committee is attached at Annexe E. The Committee asked the Deputy Minister to provide a response to the Subordinate Legislation Committee report. The Deputy Minister’s response is attached within Annexe D

162. The Committee notes that there is a considerable amount of subordinate legislation associated with this Bill.

163. The Committee recognises that it is entirely appropriate for certain aspects of legislation to be taken forward by means of subordinate

69 Reid, Official Report, Education Committee, 22 November 2006, column 3813
70 Protection of Vulnerable Groups (Scotland) Bill, Policy Memorandum, SP-73-PM, paragraph 162, page 36
legislation, and is also aware that scrutiny of subordinate legislation perhaps reaches beyond the lead committee’s role in consideration of the bill’s general principles at stage 1. Nevertheless, it would be helpful if drafts of key aspects of statutory guidance and regulations could be made available for scrutiny at the same time as the bill itself, as it is often almost impossible to reach conclusions on the general principles of bills without at least some awareness of the more detailed operational information which might be gained from some suggestion of what guidance, regulations and codes of practice would look like.

Financial Memorandum

164. Standing Orders Rule 9.6.3 requires the lead committees to report on the Bill’s Financial Memorandum, taking into account any views submitted to it by the Finance Committee.

165. The report on the Bill’s Financial Memorandum by the Finance Committee is attached at Annexe E.

166. The Finance Committee’s report contains a number of robust criticisms of the Financial Memorandum, arguing that much of the information in it is confusing and assumptions are not clear. The report also suggests the Financial Memorandum gives rise to ‘confusion,’ that there is ‘no clarity’ on the costs involved, and signals the Finance Committee’s discontent that it is asked to scrutinise the costs of legislation ‘where significant financial information will be contained in secondary legislation.’ With regard to IT, the Finance Committee was ‘not convinced that the estimated costs will be sufficient’. The Finance Committee concludes that it is ‘not convinced that the Bill represents value-for-money,’ and also, ‘questions whether it has been properly costed’ and notes ‘that there appears to be such a level of disagreement over the financial implications of the Bill between SCVO and the Executive this needs to be addressed as a matter of urgency’.

167. These are serious comments. The Committee asked the Deputy Minister to respond to the Finance Committee report and the Minister’s response is contained in Annexe E.

Policy Memorandum

168. Standing Orders requires, also under Rule 9.6.3, the lead committee to consider the Policy Memorandum, including details of the consultation carried out by the Scottish Executive.

169. The Committee considers the Policy Memorandum to be generally helpful in setting out the policy intention behind the Bill.

170. In respect of the consultation carried out by the Scottish Executive, the Committee notes that consultation on Part 3 has been limited, but otherwise considers it has been acceptable.
CONCLUSION

171. The Committee is fully committed to child protection, and indeed has devoted a considerable amount of its time to that single issue during the current Parliamentary session. The Committee recognises this Bill is necessary to provide protection for vulnerable groups and to dovetail with the Safeguarding Vulnerable Groups Act 2006. In respect of the vetting and barring provisions, the Committee recognises that, despite the difficulties and concerns raised in relation to Parts 1 and 2 of the Bill in this report, the provisions will lead to a vetting and barring scheme which is better than the current one.

172. Some witnesses called for this Bill to be shelved and for the Protection of Children (Scotland) Act 2003 to be reviewed and amended. The Committee recognises that, ideally, it would have been helpful to have a comprehensive evaluation of the POCSA regime. However, the Committee does not believe this is a realistic option. Amendment of POCSA would still require primary legislation which could not be timetabled in the current session, and it would also be difficult for such an approach to allow for the inclusion of adults.

173. The Committee therefore welcomes the policy intentions of the Bill. However, the Committee would wish to put on record its view that the Bill, though important, is only a relatively small part of the overall drive to maximise the protection from harm offered to children and protected adults. Equally important is the drive to change the culture with regard to information-sharing and working together in the key organisations responsible, mainly in local government, the NHS and the police. Much work remains to be done to drive forward this agenda, there is a wider debate to be held on how we continue to change the culture and promote good practice and continuous improvement across all the agencies.

174. The Committee recommends that the Executive publishes a single source of information and advice for all employers and individuals on whom the Bill may have an impact in order to assist organisations and individuals to come to terms with the intricacies of the new legislation.

175. The Committee is also conscious that there can be no bold claim that the provisions of this Bill will put an end to the kind of tragedy which led to the need for it in the first place. The Bill, if passed, will help, but as the Committee’s stage 1 scrutiny has revealed, there are still likely to be opportunities which someone who is determined to harm children or protected adults can seek to exploit.

176. In respect of Parts 1 and 2 of the Bill, the Committee notes that some important issues remain to be resolved: the lead in time for existing employees, the cost of disclosure checks and the extent to which IT solutions can be found which will be capable of delivering the aspirations of Ministers. Flowing from some of those issues are some serious questions over the financial assumptions, as has been highlighted by the Finance Committee’s report on the Financial Memorandum. More robust information
is required on the implementation time, and hence costs, the IT costs and the likely costs of individual disclosure checks. The voluntary sector has raised some serious concerns about the cost of implementation of the Bill’s provisions, and the poor and incomplete financial information provided in support of the Bill has made it very difficult for the Committee to determine the extent to which the voluntary sector’s concerns are justified.

177. The Committee considers that despite the limited time available, the Bill could have been presented with more sound financial information and at least some examples of the proposed draft guidance and codes of practice which are expected to be developed through secondary legislation. To allow the Parliament and key stakeholders to gain a clearer understanding of the operation of the Bill, the Committee asks that Ministers make drafts of guidance and regulations available for comment prior to commencement of its amending stages.

178. The Committee has previously stated its commitment to the integrated children’s services agenda. The Committee therefore acknowledges the need for the provisions contained in Part 3 of the Bill, which puts in place the legislative framework to enable child protection information sharing between relevant agencies, despite the children’s rights concerns of some witnesses. However, the Committee is agreed that Part 3 has been brought forward without the degree of consultation and debate which is essential for legislation on sensitive and complex issues, and which has the potential for life-changing impact on those affected.

179. This leads the Committee to conclude that, as mentioned earlier in the report, Part 3 should be withdrawn by the Scottish Executive, to allow further reflection and wider consultation to take place alongside the forthcoming consultation on the draft Getting it right for every child bill. As the Deputy Minister has acknowledged in his evidence to the Committee, the Executive’s original plan was to include the provisions of Part 3 within that Bill, and the Committee considers that would indeed be more appropriate than including it without further consultation in this current Bill.

180. The Committee considers that the Parliament is likely to wish to satisfy itself that the important issues raised in this report have been adequately addressed by the Scottish Executive before it will be prepared to agree to the general principles of the Bill.

181. Subject to the production of and opportunity to comment on draft regulations, guidance and codes of practice on Parts 1 and 2 prior to Stage 2 and to the withdrawal of Part 3, the Committee recommends to the Parliament that the general principles of the Bill be approved.

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71 Brown, Official Report, Education Committee, 29 November 2006, column 3863
Present:
Ms Rosemary Byrne  Lord James Douglas-Hamilton (Deputy Convener)
Fiona Hyslop  Adam Ingram
Mr Kenneth Macintosh  Mr Frank McAveety
Dr Elaine Murray  Iain Smith (Convener)

Also present: Alex Neil.

Apologies were received from Ms Wendy Alexander.

The meeting opened at 11.08 am.

**Items in private:** The Committee agreed to take items 10 and 11 and future consideration of its report on the draft national plan for Gaelic in private.

**Protection of Vulnerable Groups (Scotland) Bill (in private):** The Committee agreed its approach to Stage 1 scrutiny of the bill.

The meeting closed at 12.55 pm.
The meeting opened at 10.06 am.

Protection of Vulnerable Groups (Scotland) Bill: The Committee took evidence at Stage 1 from—

Tom Halpin, Deputy Chief Constable, Chair of the Association of Chief Police Officers in Scotland, Crime Business Area-Family Protection Portfolio, and Andrew Gosling, Detective Chief Inspector, ACPOS Bichard Implementation Team, Lothian and Borders Police

Lynn Townsend, Head of Service, West Dunbartonshire Council, Association of Directors of Education

Alex Davidson, Vice Chair of Area Community Care Standing Committee, Association of Directors of Social Work

Anna Fowlie, Team Leader, Children and Young People, Convention of Scottish Local Authorities

and then from—

John Anderson, Head of Professional Practice, General Teaching Council

Una Lane, Assistant Director of Fitness to Practice, General Medical Council

Carole Wilkinson, Chief Executive, and Val Murray, Legal Adviser, Scottish Social Services Council

Christina Mackenzie, Head of Midwifery, Nursery and Midwifery Council;

and then from—

George MacBride, Secretary of the Education Committee, Educational Institute of Scotland
David Watson, Scottish Organiser, and Steven Smellie, Chair of UNISON Scotland’s Social Work Issues Group, UNISON.

The meeting closed at 12.56 pm.
Scottish Parliament
Education Committee
Wednesday 15 November 2006

Protection of Vulnerable Groups (Scotland) Bill: Stage 1

The Convener (Iain Smith): Good morning and welcome to the 24th meeting of the Education Committee in 2006. We have only one item on the agenda—our first stage 1 oral evidence session on the Protection of Vulnerable Groups (Scotland) Bill—but that does not mean that the meeting will be short. We have three panels of witnesses. On our first panel we have Tom Halpin, who is a deputy chief constable, but our papers do not say where.

Deputy Chief Constable Tom Halpin (Association of Chief Police Officers in Scotland): Lothian and Borders police.

The Convener: Thank you. I see that it says that further on in our papers. Tom Halpin is chair of the Association of Chief Police Officers in Scotland, and has responsibility for the family protection portfolio, which reports to the crime business area. We also have with us Detective Chief Inspector Andrew Gosling, from Lothian and Borders police, who is with the ACPOS Bichard implementation team; Lynn Townsend, from the Association of Directors of Education in Scotland, who is head of service at West Dunbartonshire Council; Alex Davidson, who is vice-chair of the community care standing committee of the Association of Directors of Social Work; and Anna Fowlie, who is the team leader for children and young people at the Convention of Scottish Local Authorities.

I welcome you all. We have your written evidence, but if you wish you may make introductory comments. I stress that we have a lot of witnesses this morning, so please keep any comments brief.

Deputy Chief Constable Halpin: Our opening comments are in our written submission.

Lynn Townsend (Association of Directors of Education in Scotland): It is the same for ADES.

Alex Davidson (Association of Directors of Social Work): The ADSW shares a submission with COSLA and ADES.

Anna Fowlie (Convention of Scottish Local Authorities): I agree.

The Convener: That was commendably brief. I ask members to keep their questions brief and to direct them to specific panel members. If panel members wish to follow up on any points that are made, they should feel free to do so.

Mr Frank McAveety (Glasgow Shettleston) (Lab): The panel may be aware that the bill has already had an interesting journey through different committees of the Parliament. The Finance Committee had what I would euphemistically call some troubled perspectives on the bill. I do not know which witness feels most qualified to respond, but one of the central points about which members were concerned and animated is whether the bill will have a substantial impact on volunteers. Given what some might perceive as a level of intrusion by the bill, how might it affect people who volunteer, particularly to work with young people?

Lynn Townsend: If we give out sufficient information and explanation, I do not think that volunteers and volunteer organisations will be put off by the bill. However, on the financial memorandum, I would like volunteers in the statutory sector to be covered by the financial arrangements, particularly as we are trying to give volunteering a much higher profile and involve more of the community in voluntary work. I am thinking specifically of the not in education, employment or training strategies. We are trying to involve young people, who are often involved in volunteering through their local authority and statutory bodies. It would be a financial burden for local authorities if they had to pay for young people’s vetting.

Deputy Chief Constable Halpin: The experience of the current arrangements is that, although volunteers have to go through a bureaucratic process, people are not saying to us that it prevents them from volunteering. We do not anticipate that that situation will change.

Anna Fowlie: Similar concerns were raised when the Protection of Children (Scotland) Act 2003 was introduced. We have carried out a trawl of councils, which shows no evidence that the act has had a negative impact on volunteering.

Mr McAveety: What about the costs? We have received strong submissions that the overall costs, particularly to the voluntary sector, could be large. That was one of the issues with which the Finance Committee tussled.

Anna Fowlie: The costs from fees will not impact on the voluntary sector, because volunteers will be exempt from paying them. Costs may arise from the administration of the scheme, but I do not envisage them being hugely greater than the costs of administering the existing scheme.
Dr Elaine Murray (Dumfries) (Lab): I want to follow on from Frank McAveety’s comments. The Finance Committee heard evidence that far larger numbers of people are likely to be involved under the bill than have been involved under the Protection of Children (Scotland) Act 2003, yet Disclosure Scotland has had problems coping with the numbers of disclosures that are required under that act. The new scheme will rely on information technology systems working properly. As your organisations may have interacted with the IT systems, are you confident that they will be able to cope with the volume of records? On the back of that, are there any alternative ways to achieve the same aim?

Detective Chief Inspector Andrew Gosling (Association of Chief Police Officers in Scotland): We realise that the bill largely will produce new business and that we will all have enhanced responsibilities, particularly for continuous updating. More people will be in the scheme and the work that will be involved in maintaining it will be greater.

One issue that we have identified is the disparate IT systems in Disclosure Scotland, the Scottish Criminal Record Office and police forces. Other agencies may encounter that issue in time, as they come into the scheme and supply more information that could be useful for vetting. We appreciate that IT is a problem, and we are at the early stages of scoping the issue. We are working with the Scottish Executive to find out where the difficulties and challenges lie and how we can overcome them. We acknowledge that IT systems will play a big part and must talk to one another.

Alex Davidson: It has been extremely difficult and expensive to join up health and social care IT systems throughout Scotland, with each local authority and health board having to work together. Our experience suggests that we need a central drive to the information-sharing part of the bill to make it work well. The process is complicated, difficult and costly.

Dr Murray: At the United Kingdom level, many people have still not been transferred to the Child Support Agency’s new IT system, because it cannot cope with the volume. The Finance Committee heard that a million people in Scotland could be involved in the new scheme, if we take all the volunteers into consideration. If we multiply that up, that means that 10 million people will be involved in the scheme south of the border. Are you confident that we will get the system right?

Deputy Chief Constable Halpin: There is no doubt that the bill has big implications for the police service and other agencies in ensuring that no gaps arise that people can exploit to prey on vulnerable adults and children. As a result of the Bichard recommendations, there are enormous programmes in the wider police service to join up police systems, not just in Scotland but throughout the United Kingdom. The impact nominal index is one development that we are working on in the Scottish police service to ensure that the information that we are talking about is accessible. That work will continue.

The idea that information can be held by various agencies and brought together makes the business processes and information-sharing protocols and requirements that go along with the IT important. We believe that all the measures added together will be a significant factor in protecting children and vulnerable people. You asked whether the system will work: I believe that it will work, but we must ensure that we do not rely simply on IT for it to work, because the business processes are equally important.

Ms Wendy Alexander (Paisley North) (Lab): I wish to ask each organisation about ends and means. The end, or stated aim, is to have a vetting and barring scheme with a list that is available to employers. That requires a qualitatively different level of information sharing than has been the case so far. There is unanimity around that. The vetting and barring scheme should not simply cover historic convictions; it should draw on a wide variety of other information and should attempt to identify all those who could pose a significant risk to children or vulnerable adults. If that is the end, there seems to be near unanimity on it.

My question is about the means that the bill has chosen to deliver high-quality information sharing around a vetting and barring list, namely the requirement on all employees and volunteers to make individual applications that can be checked against the central list that is being drawn up. Did your respective organisations consider whether that means is the right one to deliver the end of having a high level of information sharing, vetting and barring?

It would be quite proper for you all to reply that the Executive has already determined the means by which it wants to deliver the outcome, and that your organisations have commented on the detail and have not reflected on whether having a million or more individual applications is the most appropriate means to deliver the end of a workable vetting and barring list. However, I am interested to know whether any of your organisations considered whether having that number of individual applications is the best way to deliver the shared outcome of the vetting and barring scheme and a high level of information sharing at the centre.

Anna Fowlie: That is a hard question. You are right to suggest that we have, of course,
considered what has been presented to us. I struggle to see what the alternatives might be. The one that springs to mind is simply having a big list of everybody who is known to every agency, but that would be questionable in human rights terms. Moreover, those people might never wish to work with children or vulnerable adults, so why would we hold a host of information on them? That would be even more unmanageable than dealing with a million applications. Drawing up such a list would potentially be a huge undertaking.

Ms Alexander: Why would that be the case? The list for vetting and barring would constitute a tiny proportion of the Scottish population, and not one in three adults.

Anna Fowlie: Of course it would, but how would we know that for sure? How would we find that out in a robust way?

Ms Alexander: Surely it will be vital to draw all the information together, so that the one in three adults in Scotland who apply can be tested against it. You will need to have shared information at the centre about who you debar.

Thank you for that answer—let me also ask the witnesses from the other two organisations. Did you think about or comment on the means that have been presented, that is, having a million applications?

Alex Davidson: I have a different take on that. People volunteer for a whole range of reasons, for example to find a way into employment. Some of the other legislation that the Parliament has enacted has emphasised reciprocity and helping people in that regard. Under the bill, we might need to set up the means to help people to volunteer.

In social work, health and many other professions, we are well used to being regulated. It is part and parcel of our daily business, so it is not a surprise to many people in the field. Almost 39 per cent of the services that are provided in social work are purchased from external organisations. That is a big issue. We need to give something back. It is a matter of finding different ways of doing that. When it comes to individual volunteers and small voluntary organisations in particular, there needs to be something to assist individuals to find their way through the process.

Deputy Chief Constable Halpin: Andrew Gosling may also want to comment on this issue. ACPOS’s position is that we responded to proposals given the experience of operating the current scheme. We played a full part in the consultation, and I compliment the civil servants who were involved. Introducing such a scheme is a significant challenge. The process inevitably causes us to reflect on where we are and how we can develop our systems and structures to respond. We considered the means but, given the stage at which we did so, it may not have been the cause of the change. I agree with Anna Fowlie that the alternatives do not seem to be workable.

Detective Chief Inspector Gosling: During the consultation, there was no suggestion that there might be an alternative to the process that has been described. Like Anna Fowlie, I struggle to think how an alternative would work. The only possibility would be for organisations to take on the responsibility of carrying out the detailed checks that are necessary. That begs the question whether they have the capacity or capability to do so. It makes complete sense for the process to be centralised in one unit. The key issue is the identification of individuals, not organisations. The fact that someone in an organisation is wayward and is identified as such does not mean that the organisation is wayward. We are trying to assure individuals within organisations.

Deputy Chief Constable Halpin: A comment was made about the means by which people come into the scheme. We must be careful to ensure that individuals are not able to exploit gaps between the different administrations and jurisdictions in the United Kingdom. We are working hard in that area, but we still have concerns about it.

The Convener: I would like to explore the issue further. I am not clear about the loopholes that are often referred to. How will people exploit such gaps? How will the problem manifest itself, if in England there will be a system akin to that which already exists in Scotland, and if anyone who moves into the workforce will be subject to checks? I do not see why the regimes must be identical on both sides of the border to prevent loopholes appearing.

Deputy Chief Constable Halpin: The systems that we put in place must ensure that if a check is performed under the Scottish scheme, there is absolute confidence that it is also valid for England, Wales and Northern Ireland. The technology involved should ensure that the system is continually updated, so that we know it is accurate. There are separate organisations and administrations within the different jurisdictions. The systems and IT that we use must ensure that there are no loopholes. We are alert to the issue and are seeking to close gaps as we work through the solutions.

The Convener: You are talking more about the technicalities than about the legislative framework.

Anna Fowlie: The legislative framework is also relevant, because the tests that are applied to determine whether someone is included in the schemes and systems in the different jurisdictions must be consistent. I agree that they need not be
They might, but there is less... 

The Convener: I am not entirely clear about that point. Vetting information is subject to the judgment of chief constables, so there will always be some variation in what is presented for vetting or other purposes. Presumably, the important point is that information that you receive from sister or brother organisations in England, Ireland and Wales should be robust. The test that will be applied to determine whether a person is appropriate to join the workforce in Scotland will not be a test from England; it will be the same test that is applied to people from Scotland.

Anna Fowlie: Yes, but the test of whether information is needed, which takes place before that point, must be consistent. The issue is getting foggy, but we are talking about the information that is provided from somewhere in the system in England. The information that we get is subject to a decision-making process in the other jurisdiction before we get it. We make our employment or listing decisions on the basis of that information.

The Convener: Yes, but the information that is provided by Disclosure Scotland is already subject to different decisions, because different chief constables might interpret matters differently.

Anna Fowlie: They might, but there is less subjectivity.

The Convener: That is because fewer chief constables are involved.

Detective Chief Inspector Gosling: I think that what Anna Fowlie is saying—with which I concur—is that we are pushing towards a situation in which, given the same set of circumstances and the same information, both central barring units will come up with the same decision, such that one administration will not be seen to be particularly soft or particularly hard.

Fiona Hyslop (Lothians) (SNP): The fact that the Safeguarding Vulnerable Groups Act 2006 received royal assent last week means that if there has to be some consistency with the system in England, we are stuck—we will have to work with the system that we inherit.

At this stage in examining the bill, we must address its fundamental principles. If we reflect on the lessons that we learned from the Protection of Children (Scotland) Act 2003 and the problems with disclosure that we are aware of, we should consider not only whether the proposed system will have a logic to it and will make sense once it is up and running, but how we get there in the first place—judging from previous experience, that is probably the more important task. Some of the submissions say that getting there in the first place may cause so many problems that we will never achieve the ideal system that should provide the protection that is needed.

The submission of ADES and the ADSW uses strong words in relation to section 46. It states: “the intention for implementation is a minefield, which needs to be resolved as a matter of urgency ... If councils offload large quantities of information to the Vetting and Barring Unit, the Unit will be swamped”.

Given the volumes that we are discussing, there is a great deal riding on the ability of Government to work with private providers such as BT to produce systems that will work. What are your concerns about getting to the ideal system? Should we include in the bill provisions about retrospection or phasing, to ensure that we get a system in the first place? Do you have anything to say about the transition period?

Lynn Townsend: We need to strike a balance between trying to be completely comprehensive and thinking of every single thing, and having a system that is manageable. We must keep matters in perspective. The bill is only one aspect of protecting children and ensuring safer recruitment; it cannot possibly eliminate all risk and cover every eventuality.

We have concerns about the practicalities, on many of which the bill does not provide clarity. We are concerned that much of what is proposed hinges on codes of practice and guidelines. It is important that those are clear so that local authorities, for example, do not worry about being in breach of their duty if they do not tell the central barring unit everything that they know about anyone whom they are concerned about. We seek clarity from the guidance so that we are not overwhelmed and do not overwhelm any central body.

Anna Fowlie: We need to learn the lessons of POCSA’s implementation and, in particular, what happened with Disclosure Scotland. As you will recall, we were extremely critical of what happened, although the situation was resolved successfully. The bill will add another dimension.

The paragraph in our submission on section 46 is about the fact that it has been difficult enough to provide the existing levels of information, yet the bill proposes to impose a range of new requirements. The intention behind that is understandable and fine, but we are not clear about what will be provided and when it will be provided—we are working on that with the civil servants. For example, will we have to report everyone who is an antisocial tenant, even though they might never apply to work with vulnerable groups? When will that information have to be supplied and to whom? Where will the information be kept if it is not provided at the time, but the
person concerned subsequently wants to work with vulnerable groups? “Minefield” is not too strong a word to describe the extent of the practical details that will need to be addressed. We are talking about new and highly complex territory.

10:30

Deputy Chief Constable Halpin: Andrew Gosling would be the best person to explain the position. My only point is that the process of updating information as it changes through the lifetime of the scheme has to be automated. We are still working on solutions to that. We cannot rely on someone deciding that it is important to tell us something, because they might not tell us in the end. Information needs to be updated and we need to examine how we can be certain that that is done.

Detective Chief Inspector Gosling: We do not continuously update information at the moment, so the proposal in the bill that we should do so is welcome. That will add value to the system, which is what we aim to achieve.

The challenge for us is the sheer size of the task. By the nature of the work that the police do, we come into contact with and receive information on people and circumstances that might be relevant for vetting purposes. There is an issue about the flow of information from the operational officer who deals with someone on the street. If that information is relevant—and we have to determine the relevance of all such information—we have to get it to the central barring unit and/or an employer for consideration.

Fiona Hyslop: What is the logic behind how the system will work for small voluntary organisations, for example? You will have millions of bits of information to use to try to protect us from a few hundred people—perhaps you can give us a better idea of numbers. A lot of sifting will have to be done. If an individual commits an offence and information about that goes into the police information system, and the individual then joins a small organisation, how will the information get to that organisation? If the system is automated, updated information will go to employers and social work departments, but how will it get to the small voluntary organisation that the individual joins?

Detective Chief Inspector Gosling: That is the nature of the beast: the problem is how to do that. We are examining primarily how to get information from the central barring unit or from Disclosure Scotland, which will be the clearing house for information. How will we tell the central barring unit or Disclosure Scotland what the information is, and how will they then tell the organisation? I am not sure about how the information should be physically passed on.

Fiona Hyslop: But how will you know that the person has joined the organisation anyway?

Detective Chief Inspector Gosling: Because they will have joined the scheme and their details will be held by Disclosure Scotland.

Fiona Hyslop: It will be easy if they are a new member of the scheme, because the voluntary organisation will check with Disclosure Scotland, but what if there is an update with more serious information? How will the organisation get that information?

Deputy Chief Constable Halpin: Our existing disclosure work practices mean that we assess changing circumstances all the time. Whether the information has come from the originating police agency or has been shared by another agency, our system of analysis assesses the impact of that information.

If information about an individual who is registered with Disclosure Scotland is updated, part of Disclosure Scotland’s role is to assess the new information and not just process it. Updating information puts in motion a chain of actions to ensure that the information gets out. There is no doubt that everyone’s workload will increase because of the bill—we understand that—but it could result in a chief constable having discussions with a member of the scheme about voluntary or existing disclosure or saying to an employer, “The certificate that you have is no longer relevant. Here is where we are today.” The process will not just be automated: information will always need to be assessed.

Mr Kenneth Macintosh (Eastwood) (Lab): I have two questions, but it might be worth the witnesses formally stating their position on the bill on the record, as they have done in their written submissions. My understanding is that they all support the bill and believe that it is a major step forward and an improvement on the current situation.

As Wendy Alexander said, the key is the sharing of high-quality information. I note from the ADES, ADSW and COSLA submission that you are concerned that the police can withhold information if they believe, for example, that doing so will prevent a crime. I note in the ACPOS submission that you might not want to share information that you hold on an individual because they will find out where you obtained it. The ADSW, ADES and COSLA argue that social work should have a similar provision. Will you expand on that?

We have not yet reached the point of knowing exactly what information will be shared. I am not saying that there is interprofessional rivalry, but
there is a practical difficulty. How far do we have to travel to reach a point at which we understand the importance of the information?

I have too many questions here. You suggest that a way around the problem is to include at the beginning of the bill an unambiguous statement that the child’s welfare is paramount and that that should be the guiding principle.

**Alex Davidson:** That last point could be the starting point—putting pressure on local authorities and their partners so that the protection of children and vulnerable adults in the community is at the highest level. That has already started in the work on child protection.

The second question is about the front end of the process, and it goes back to a previous question on risk management and understanding child and vulnerable adult protection issues in communities. I hope that the Adult Support and Protection (Scotland) Bill will soon be enacted.

There is a balance to be struck in risk management. We have to be proportionate when thinking about the risks of certain decisions. In social work, we have defined processes—through child protection, adult protection, case conferencing and other mechanisms—to weigh up risk. Decisions have to be made on when and how we begin to pull the trigger to let information flow. We have to weigh up everything with our colleagues in the police.

In child protection work, there might be a criminal prosecution and a balance might be required in deciding how quickly we report and how quickly we move on investigations. We need to work in a multi-agency way—we already do that—when weighing up risks and considering how best to fulfil our obligations in sharing information and feeding information into the barring process.

**Anna Fowlie:** We have made the point that more than specifically police information might be involved in a police investigation. There might be social work evidence and there might—although I do not know this—be medical evidence.

**Mr Macintosh:** The police will not wish to disclose to an applicant anything that will give them a clue as to how the police got the information in the first place. I take it that social work does not have the same concern. Your concern is more that information that you hold might be of benefit in a criminal investigation.

**Anna Fowlie:** Yes.

**Alex Davidson:** Yes.

**Deputy Chief Constable Halpin:** There is no difference between us in accepting that agencies have to work together. Tensions about disclosing or not disclosing information exist within the police organisation. Our point, put simply, is that the release of some of our information might put someone else at greater risk—indeed, that risk might be greater than the risk involved in the situation we are trying to prevent. The current arrangements allow us to work quite effectively, but there is a gap.

**Mr Macintosh:** Can I just put a second question to ACPOS? The ADSW, ADES and COSLA suggest that certain information—I am sorry. I will have to come back to this. I have made a wee note here. Can I come back in a second?

**The Convener:** Yes.

**Ms Alexander:** Only a very small number of people have bad intentions towards children or vulnerable adults. Nevertheless, people with such malintent have, in the past, proved pretty adept at avoiding the law and evading detection, which has been a huge challenge to the police service.

Frankly, if someone is a child sex offender of any kind or has malintent towards children, they will not apply to join the scheme. In that sense, are we simply creating a perverse incentive? I do not know whether you saw it, but last week’s “Panorama” documented the activities of a former sex offender on probation who decided to hang around a school. It occurred to me that that person would not be captured by the system, because although he clearly represents a danger to children he has not applied to be a volunteer. By introducing a system in which people are required to apply to be a member, are we not creating certain risks? All the evidence suggests that this very small minority of badly intentioned individuals will not apply to a scheme that bars them from certain work but will, as we saw last week on television, find other means of making contact with children. Is it the case that the scheme, as designed, would still allow a former sex offender to hang around children but would not officially bar him if he did not apply to work as a formalised volunteer?

**Deputy Chief Constable Halpin:** The scheme as designed is one layer of many layers of measures to protect children and to prevent that individual, who will be committed in his intentions and devious in his actions, from getting to them. We cannot look on the scheme as the only means of providing protection.

**Ms Alexander:** But does the system create any perverse incentives? What if, because they know that they will be debarred, every sex offender with malintent chooses not to apply and instead decides to seek other means of contacting children?

**Deputy Chief Constable Halpin:** That might be the case for some. However, that puts the responsibility on employers that do not operate the scheme.
I point out that some offenders have never confronted the fact that their actions are wrong and will apply to the scheme in the belief that what they have done is irrelevant and that they will be able to argue their case. In such cases, the scheme is still needed and relevant.

Ms Alexander: But, as ADES pointed out, there is no central list of people who represent a risk, because that is not permitted by the European convention on human rights. Surely such a list would catch every sex offender in Scotland. However, if we introduce a scheme that requires one in three adults in Scotland to bid in to it, sex offenders will decide not to do so and will therefore stay below the radar. Surely such a scheme runs the risk of creating perverse incentives. Has that issue been thought through or worked through with the bill team?

Deputy Chief Constable Halpin: My role takes in the whole range of family protection issues. However, throughout the consultation, issues such as the management of sex offenders and the future of serious and violent offenders have been raised and discussed constantly. As I said, the scheme is one of the layers in a range of child protection measures.

Detective Chief Inspector Gosling: It might help if I point out that people who should not be in such positions in the regulated workforce continue to apply for these jobs and are very often caught by the current Disclosure Scotland system. They often try to subvert the processes and get into the workforce by giving false or misleading information. I think that, with the new scheme, people will still try to challenge the system to get into these positions. After all, one can see from their challenges their absolute commitment to what they are doing and their drive to get that access.

10:45 The Convener: Ken Macintosh has remembered the question that he was going to ask earlier; I will let him in before he forgets it again.

Mr Macintosh: I have had my mid-morning moment, thank you. My brain is now back in gear.

The ADSW is concerned about the concept of vulnerability because it almost means that somebody with a disability will be branded as being vulnerable, which they clearly should not be. We are all vulnerable at certain times of our lives, but we are not necessarily vulnerable all the time. We must address that issue. The committee will receive other representations on the matter; I know that the independent voluntary sector, for example, will make a representation on it that will be much stronger than what I say.

We must respect the views of service users and carers. Similar tensions have developed in the debate on the Adult Support and Protection (Scotland) Bill in the Parliament. We must address such issues.

Mr Macintosh: Would somebody who is on a list because they have a history of taking advantage of children be a threat to vulnerable adults? Are such threats demonstrated by experience and practice?

Alex Davidson: I come to the issue from a different angle. People move round the care system in search of job opportunities, and some people can work in any sector. They can cross over into other sectors and different settings in which there are jobs and opportunities for any form of abuse to take place.

Mr Macintosh: I want to take things a step further. The bill is structured round the definition of a protected adult as a person who receives a service, but it has been suggested that the definition in the Adults with Incapacity (Scotland)
I agree with all that. Perhaps I would use less discriminatory language than the language that you have used; perhaps I would use language that focuses more on people's needs, addresses those needs in a different way and identifies what might be done to assist people. The Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment) (Scotland) Act 2003 do exactly that. Language that addresses such matters is already part of our legislative framework.

Mr Macintosh: I ask ACPOS the same question. If we were to move from defining a vulnerable adult as a person who receives certain services to a definition of vulnerability, would that be an improvement to the bill or a difficulty?

Deputy Chief Constable Halpin: The ACPOS perspective comes from considering the behaviour of predators rather than the decisions of potential victims. We are concerned that people who act in a predatory way act randomly. It cannot be said that someone who has offended against children will offend only against children in the future—that is not our experience in our workplaces.

Alex Davidson: In social policy, there has been a move towards the personalisation of services. That is the thrust of the social work report “Changing Lives: Report of the 21st Century Social Work Review”, which was published earlier this year, and it is reflected in “Delivering for Health” in the idea of the expert patient. The personalisation of services involves people having more control over their individual care packages, direct payments and so on. We need to get in and around that to protect people at the lesser end. We are employed not by organisations but by service users and we need to ensure that we have robust ways of protecting people.

Mr Macintosh: I did not ask about that, not because I had forgotten, but because your written evidence made it clear. For example, it covers whether bus drivers should be vetted by the bus company or by the council. Your submission is a helpful piece of evidence.

Mr Adam Ingram (South of Scotland) (SNP): I ask you to address the basic question of whether the bill is necessary. It is clear that that we need safeguards to protect children and vulnerable adults from sex offenders, but would it not be more effective to use police intelligence to do that rather than the bill's huge scatter-gun approach? That approach would create a vast bureaucratic panoply that targeted teachers, social workers, all local authority workers and voluntary organisations. Surely that is totally disproportionate.

Secondly, is it not a fact that focusing on this small part of the child protection agenda—or the child and vulnerable adult protection agenda—is a huge distraction from the major problems of child neglect and abuse in Scotland? The number of children who are referred to the children's panel and the children’s hearings system rises year on year. Resources are being poured into the bill, but its focus is surely a huge distraction and a wasted opportunity.

Deputy Chief Constable Halpin: People who abuse and cause harm to children and vulnerable adults are the most committed and devious individuals and they will take every opportunity to overcome the safeguards that we put in place. It is critical that the line of defence for communities includes proper supervision of those who are employed in what has been determined as the regulated workforce. We must create mechanisms that will allow agencies and others to report concerns so that they can be assessed.

You suggest that it would be effective to use only the police intelligence system. I would love that to be the case, but it is not. Even in our workforce, we have to put in an awful lot of time and effort to train and educate staff to report their concerns into the intelligence system. If concerns were to arise at the level of a care worker in a care home, how would we ensure that the information filtered through and eventually came into the system? We can make the proper assessment and safeguard the groups that we are talking about only if the information is in the system.

I believe that the scheme is critical. However, we must also be aware of and have our eyes open about the fact that if a check under the scheme comes back blank, that does not provide a clean bill of health, particularly because the wonderful influx of migrant workers means that we are now sharing information across international boundaries and not just the national boundaries of the United Kingdom. Even if we sort out the information in the new member states, it is not as reliable as data in the United Kingdom. That raises many issues. The scheme is critical, but we must have our eyes open about it and take the layer approach that I described to protecting people.

Lynn Townsend: I agree with all that. I reassure the committee that the bill will not distract us from our wider child protection duties. I return to the point that the bill is one tool. We need aspects of the bill; I am not qualified to comment on whether what it does could be achieved in another way.
We are doing work on lots of different fronts. We are helping children to be more resilient and more able to protect themselves because, ultimately, that is the way to crack the problem. If somebody is hanging about a school, we want children to report that. We want children to feel safe and to know what is and is not appropriate in their home as well as in the street, because we know that they could be more at risk at home than at the school gate. We are also doing much work to ensure that the whole community takes responsibility. Not just employers, but neighbours, shopkeepers and everybody must realise that child protection is their concern. However, safe recruitment is a major part of that.

Vetting is not the only measure; we agree that it is sometimes a snapshot. Vetting captures only people who have been convicted, so some people out there who are preying on children have never been caught. However, we hope to catch them if employers are vigilant.

We definitely need parts of the bill, but I assure the committee that we are not distracted by it and that we will not rely solely on it.

Alex Davidson: Social work operates in an environment in which significant other legislation around the process protects, and provides services to, people. That legislation includes the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Bill when it is implemented, and provisions on child protection and criminal justice work, such as the monitoring of sex offenders with our colleagues in the police, to try to catch the guy who stands at the school gate. We try to monitor sex offenders as well as in the street, because we know that is sometimes a snapshot. Vetting captures only people who have been convicted, so some people out there who are preying on children have never been caught. However, we hope to catch them if employers are vigilant.

As I said, that must be backed by good risk assessment, good understanding, professional judgment and multi-agency working. That is the backcloth and the bit that makes the bill stack up. The bill confirms a gap in services that may seem small, but I have sacked people who, we have found out through word of mouth, have left my office and walked down the road to work in a small, but I have sacked people who, we have found out through word of mouth, have left my office and walked down the road to work in a voluntary organisation. That happens—we can show that—so real problems exist. We must have risk assessment, professional judgment and a multi-agency context for how we do the business.

Decisions need to be made on the basis of proportionality. Not everything and everybody is involved; you are right to say that, otherwise, everyone would be on the register. I would worry about that, too. An element of judgment is needed.

Anna Fowlie: Everyone else has summed up the situation well. The bill is about employment and volunteering; it is not designed to tackle the wider issues. Other measures are available. As Lynn Townsend said, councils and other agencies are not distracted by the bill, but there is loads of evidence from many cases that people seek out employment and voluntary work with children and vulnerable adults. The bill is designed to address that and we believe that it will do so.

Mr Ingram: I still do not have a clear picture of how the bill will do a better job than would be done by enhancing information sharing about known sex offenders. If we focused on that and tried to improve information sharing with other agencies, would that not be more effective than drawing half the population into something that is needless as far as they are concerned? It would be bureaucratic and could lead us to take our eye off the ball, which is being carried by a small group in our society who prey on children and vulnerable adults.

11:00

Deputy Chief Constable Halpin: We need to remember that we are talking not just about sex offenders. Some individuals make their business by preying on people as bogus callers and using certain forms of employment as a front for getting into people’s homes. The disproportionate effect on victims of crime such as bogus caller crime—to use one example—is often not reflected in the circumstances that are reported in court. The victim loses their life savings and, in the long term, their confidence in living in a stable environment. I do not want to focus on just one predatory group that the bill will protect us from.

Ms Rosemary Byrne (South of Scotland) (Sol): Ken Macintosh touched on the responsibility for vetting people who are not directly employed by local authorities. There is a paragraph in the COSLA submission about that, and I want to take the point further. How broad is the definition of people who are not directly employed? I imagine that it could be very broad. How do we get the parameters right, and how much thinking has been done about it? It could be taken to the extreme of including people who work in parks and gardens in which children play, for example. How broad in scope is the definition?

Anna Fowlie: People who are employed in parks are directly employed by local authorities and would not come under that scope.

We mentioned the issue and are particularly concerned about it because concerns have been raised about the vetting of drivers involved in school transport. Those concerns have highlighted an anomaly. The expectation among the public and our elected members—who have been vociferous to me on the issue—is that the council is responsible when kids are on a school bus. It does not matter whether the bus is run by a local contractor such as First; it is the council that put
We believe the Executive should pay. We do not have a real decision about where to set thresholds in employment is a matter for the sector concerned. We respond to requests. We do not have a real view on who should and should not be vetted, because expertise on that lies with the individual sector. Our expertise is in gathering the information and intelligence that might help to support vetting inquiries.

**Lynn Townsend:** Local authorities often wrestle with school transport. The test for us is whether somebody has regular friendly access to children, as that is when they can develop a relationship with or groom children. A bus driver could certainly be in that position. Crossing patrol people are also important and positive characters in children's lives, but if they have bad intentions, they are in a dangerous position to exercise their power. We could apply tests—there could be consensus about how to do that—and ensure consistency about which posts are covered.

**Alex Davidson:** Adults with learning disabilities and mental health problems need particular care and attention when we are providing transport and other services. There are crossover issues—the issues for users are different but the risks are the same. Good risk assessment and management would be needed.

**Detective Chief Inspector Gosling:** The decision about where to set thresholds in employment is a matter for the sector concerned. We respond to requests. We do not have a real view on who should and should not be vetted, because expertise on that lies with the individual sector. Our expertise is in gathering the information and intelligence that might help to support vetting inquiries.

**Ms Byrne:** I want to probe that a little further. This might sound ridiculous, but there are people who work around schools who are subcontracted and not part of the local authority, such as the person who comes to clean the windows. When children see someone in a playground, they immediately think that they can trust them. I know that we do good work to educate them otherwise. Where does it end? How much thought has gone into all that? We would not want complacency to set in, which could happen if people think that all the checks have been made, when, in fact, someone has fallen through the net.

**Lynn Townsend:** I assure you that there is a lot of discussion about that in councils. We have considered the electricians, plumbers and what not who are around schools, but feel that it is not necessary generally to make provision for that, because they should be supervised. We should not have people—whomever they are—strolling around schools unsupervised. Education authorities and councils must ensure that we have proper supervision of people in buildings.

**Ms Byrne:** Are you content with section 70, which leaves open the possibility of greater private sector involvement in the vetting and disclosure function, but not the barring function, than is currently the case?

**Deputy Chief Constable Halpin:** That situation exists in England and Wales, and it works. Contractors deliver the service and our staff might be seconded to work alongside them. It is not a difficulty in principle.

**Lord James Douglas-Hamilton (Lothians) (Con):** I have two brief questions, the first of which is for Lynn Townsend, Alex Davidson and Anna Fowlie. Notwithstanding all the reassurances that have been given, charities and voluntary organisations fear that they will face substantial extra costs. If that should happen, do you think that the Executive should pay?

**Mr McAveety:** There is a standard response from COSLA to that question. [Laughter.]

**The Convener:** And the next question is whether the money should be ring fenced.

**Anna Fowlie:** You ask whether the Executive should pay the voluntary sector's additional costs. I cannot give a COSLA view on that, because I have not tested it, but my gut reaction is yes, the Executive should pay.

**Lynn Townsend:** Local councils could not pay.

**Lord James Douglas-Hamilton:** My other question is for Deputy Chief Constable Halpin. The premise from which we are starting is that we want a system that will operate effectively but which will not be overloaded and whose purpose is to be proportionate and not too heavy handed. Do you think that the bill will achieve that or should adjustments be made to it?

**Deputy Chief Constable Halpin:** We believe that the bill will achieve that. There is no doubt that the scope of the bill will greatly increase the demand on all our systems and we will have to learn what that means for our capacity in due course.

**Mr McAveety:** If the convener limits me to one or two questions, perhaps other members will put the other questions that I wanted to ask.

I make the observation that, leaving aside the issues of cost and proportionality, the experience of IT systems in other structures has not, to say the least, been one of efficiency. Even with the kind of legal framework and commitment that are proposed under the bill, I worry that police officers and the other people involved in the different agencies might not be able to get the desired
impact of being able to track people, follow them through and share information.

My question follows up on Tom Halpin’s earlier response, which touched on the uncertainty about the numerous migrants from the accession states. I have a pressing concern about a number of folk in one part of my constituency, on the south side of Glasgow, who, senior police officers suggest, are involved in a series of activities in their home country that cause problems in this country. There are issues to do with the vulnerability of children and our broad duty of care because of the activities in which some of those individuals are involved. I worry that a wee concern might mean that we do not introduce legislation until a future date, whereas those guys are able to operate to a swift and efficient timescale without being tracked. If we hang about for two or three years to sort out things, they might already have done a substantial amount of community damage and personal damage to some of the youngsters in or near their activities. How can we address much more expeditiously the issue of overseas workers, which is an immediate concern in the area that I represent?

Deputy Chief Constable Halpin: I can give the assurance that the issue is at the top of the agenda across the United Kingdom. The Criminal Records Bureau in England and Wales provides the central access point for the UK and similar arrangements are being put in place across Europe and elsewhere. We took the view that we do not want people from other countries wondering where to access information from the UK and where to send information to the UK. They will send the information to the UK central access point and the systems in the UK will disseminate that information so that we can access it. I am greatly encouraged by that work, which is ongoing.

Given the reality of globalisation, my concern is that different countries will have different types of data and different quality and security standards. It is possible for the data to be manipulated; we will always need to assess carefully the facts in front of us even if we sort out all the other problems. At this stage, we need to point out to employers that a blank answer does not mean that all is well. Employers need to make a judgment based on what is in front of them, so employee interviews will be crucial. However, enormous issues are involved.

Mr McAveety: If we cannot track the people who have been caught, charged, convicted and then released in Scotland, what hope do we have of dealing with this issue?

Deputy Chief Constable Halpin: Every time that we have an experience, we learn from that experience. We continually debrief people and alter the systems to ensure that such experiences do not happen again. I am confident that, if an individual is recorded within the United Kingdom scheme, the information will be available. We will still need to deal with the issue of multiple identities, which we always need to be careful about, but that is true for any person in the scheme.

Mr Murray: We have heard the argument that we need to introduce equivalent legislation to that which has been introduced down south. To a certain extent, I remain to be convinced about that, but there is a difference between the legislation in England and Wales and what is proposed in the bill. In England and Wales, it is an offence for someone who is not on the scheme to work with children and vulnerable adults, whereas in Scotland that will not be an offence. The Finance Committee was told that that was to try to respond to concerns that occasional volunteers who help out at a crèche or whatever might be criminalised. Is there not a danger that, under our proposals, certain people who are not on the scheme and are a threat to children might be able to work with children and vulnerable adults? I am thinking particularly of people who might advertise their services as private tutors to children, or people who might be paid under the direct payments scheme as carers for vulnerable adults. In trying to balance one concern, have we now let the door open to people who intend harm towards children, because they will not be criminalised for offering that kind of private services?

11:15

Deputy Chief Constable Halpin: Under the current scheme, that is a possibility. There is also a responsibility on those who employ outwith the scheme.

Fiona Hyslop: I would like the witnesses from ADES and the ADSW to comment briefly on overseas workers and to say what proportion of their workforce is from overseas.

I would also like the witnesses from ACPOS to give us an indication of the cost and resources involved for the police. I presume that you have been doing some scoping of numbers, so can you tell us for what percentage of individuals checked the vetting information will contain conviction or non-conviction information, bearing in mind that Bichard emphasised the importance of soft information as well?

Alex Davidson: I cannot tell you the number of overseas workers in our workforce, but I suspect that it is quite low, for a variety or reasons, of which communication is probably the key one. Most of our work is hands on. It is about caring for people and talking to people, which is something
straightforward that might prevent people from getting a job. I know from discussions that we had last year that there is considerable anxiety in England and Wales about people moving into home care and services of that kind in an unregulated way. That might be something that we need to address in Scotland soon, but I do not have figures at the moment.

**Fiona Hyslop:** Could you supply figures later?

**Anna Fowlie:** Yes, we could.

**Lynn Townsend:** Similarly, we could not give you figures for overseas workers from an education perspective. The figures will vary across the country, because populations vary and councils face different issues, but the number of overseas workers is certainly a growing issue. As we said in relation to school transport, there has been a recent influx of Polish bus drivers.

**Deputy Chief Constable Halpin:** I can also supply you with figures in writing. There is increasing demand on the services that we already provide and we would be concerned that there should be no impact on those services. I believe that we must ensure that we have the capability to protect people and, once we have achieved that, we must address the capacity issue. However, at this stage, let us concentrate on getting the capability.

**Ms Alexander:** I want to ask Tom Halpin about the future evolution of the scheme. There are roughly 5 million of us in Scotland and about 1 million kids. The assumption is that there are 1 million adults who, whether through employment or through volunteering, are in a position to build a relationship of trust with children, and who could therefore groom them. That implies that there are 3 million adults in Scotland who are not in a position to build such a relationship of trust with children or to groom them. As we have just heard, you have to choose whether bus drivers or parkies are in or out. It seems to be inevitable that some of those 3 million people are, in fact, in a position to do so. Because an awful lot more than 25 per cent of the Scottish population are in a position to do so. Does that mean that the flexibility of the systems and the costs need to be capable of expansion to double the size currently envisaged, based on the response of the people whom we are trying to target?

**Deputy Chief Constable Halpin:** I am confident that experience will show us, in due course, that there are those who have to be included in the scheme who are not there at present. We have never introduced a scheme for which that has not been the case. We will have to learn lessons. The numbers that you have cited are frightening. I am not convinced that the figure will be that high, but it will be higher than it is now. The approach to the convergence and consolidation of IT systems across the public sector—certainly within the police service—is that we are looking at how we share and manage information, rather than at the creation of an all-singing, all-dancing big box, which seldom gets delivered. We will grow organically as we learn from experience, but the impact of the possible increase in the figure in no way negates the relevance of the bill.

**The Convener:** Finally, Rosemary Byrne.

**Ms Byrne:** My comments follow on from Wendy Alexander’s questions and relate back to my earlier questions. I am still worried about complacency. If people think that folk have been checked, they will be more complacent. Should more training be given to ensure that people can see the warning signs? Such training can help people to understand that the fact that there has been a check does not mean that everything is rosy, that some people will not have been checked and that others may have been checked but may have slipped through the net for various reasons. What level of training should be given? Should something be included in the bill, or perhaps in the guidelines or the code of practice, to point up those issues?

**Lynn Townsend:** Again, I reassure you that we have already done a lot of work with our workforce to stress that the scheme is only one tool and that vigilance, proper supervision and all the other commonsense steps come into play. We have carried out a lot of training, but there certainly needs to be much more training on the mechanics of the new system, because it could be confusing to begin with.

**Anna Fowlie:** There will be a requirement for training, as there is for any new piece of legislation. As Lynn Townsend says, safer recruitment is an on-going issue in local authorities. People are continually being trained in better practices, but the bill is not the place for those issues to be addressed. If there is a place
for that, it is in guidance or in agencies’ own interpretation of the rules.

**Detective Chief Inspector Gosling:** ACPOS has always said that complacency is a danger, particularly if people have some information but not an awful lot. That is the case especially if it is non-conviction information. Conviction information is easy to digest, but non-conviction information can be harder to deal with.

We accept that there must be a better understanding among people working with all these groups of the role that they must play in the day-to-day monitoring and supervision of the workforce. We are confident that, broadly speaking, measures are in place for supervision, audit and compliance with rules and regulations and so on within local authorities and other such organisations. However, far more work probably still has to be done in the voluntary sector.

Perhaps the greatest concern is that the administrative burden that the scheme will bring might be too much for some organisations, so the check will not be done. A member raised the issue of whether a part-time worker who works only occasionally would be checked and whether the cost of the check would be a factor. From our perspective, it is not necessarily the cost, which is set fairly low, but the administrative burden that might put some people off. The focus of the requirement to improve education and awareness probably sits more in the voluntary sector and in relation to the circumstances that you mentioned—the private individual who engages a piano teacher for their child—to ensure that people understand that the fact that nothing is known about the person does not mean that they should be left unsupervised. That important message needs to go out across the sectors.

**The Convener:** Although I said “Finally, Rosemary Byrne”, I want to explore one other matter with the panel. It is the bit that the Executive forgot about: part 3 of the bill, on the sharing of information for child protection purposes. Does the panel consider that the sharing of information for child protection purposes that require legislative change to address? Do you have any concerns about areas in part 3? The submission from ADES and the ADSW refers to section 79, but I wondered whether there were any other areas that the panel might have concerns about.

**Anna Fowlie:** We need to be realistic about the consultation question. We acknowledge that there was no formal consultation on this part of the bill, but the informal processes that the Executive has gone through with us have felt very inclusive and have made us feel that we were consulted on all aspects of the bill. I do not know whether other people feel that they were consulted and included in that way.

On the point about legislative change, I think that most of the barriers to information sharing are within organisations’ cultures. We cannot yet say whether legislation will change those cultures but, in our view, it will not do any harm. COSLA is not traditionally pro-legislation if legislation can be avoided, but this is one area in which we believe that legislation will help to ensure that agencies understand that there is nothing to say that they cannot share information. That is an important point because partner agencies often tell us that they feel that they are not allowed to share information. The valuable part of legislation would be to do with enabling and allowing rather than forcing.

**Lynn Townsend:** I agree. The bill is a bit light on detail, so I am not entirely clear what the intention is. However, there is currently a lot of confusion and concern in multi-agency children’s services about the issue of what can be shared between organisations. That is separate from the IT issues that are to do with how we can share information when we all have different systems and, at the moment, no resources to make them compatible. I would be concerned if the bill took us down a road that did not allow us to consider things such as the integrated assessment network, which is on the horizon. Information sharing will play a big part in that. However, the bill does not give me enough information to allow me to comment further.

**Alex Davidson:** I think that Anna Fowlie is right to say that the weaknesses that exist are cultural rather than the sort that can be fixed through legislation. However, I think that we need to engage more properly with health colleagues in relation to some of that work. The Caldicott system can sometimes be used as a means of protecting information that needs to be shared and we might need to examine that further.

**Deputy Chief Constable Halpin:** As Anna Fowlie said, the informal contacts that we have had with the Executive have been good. We welcome the way in which we have been included in a number or working groups in relation to the development of information sharing. In that context, we feel that we have been included in the process.

We feel that legislation would help us by allowing people in other agencies to feel sure that
they can share information. I am not suggesting that they should be compelled to share information, because that is about the management framework. The real barriers might well be cultural, but a lot of that culture will have built up because people believe that there are legislative barriers to their sharing information. ACPOS seems to overcome those barriers more often than not. Our culture is about ensuring that information is shared appropriately and legally.

The Convener: In that respect, should the bill talk about a power to share information, backed up by appropriate guidance, rather than a duty to share information? If it talks about a duty, inappropriate information might be shared because organisations were frightened that they might fail to fulfil a duty.

Anna Fowlie: Because of the difficulties that have been encountered in accessing information from partner agencies, there needs to be a duty to share information. That is the view that our colleagues in local government have come to.

Deputy Chief Inspector Gosling: ACPOS would agree with that, too. The root of the bill is Sir Michael Bichard’s inquiry, which was about the failings in information management on the part of the police and other agencies that came into contact with certain individuals. Because the police and other agencies took decisions relevant to Ian Huntley based on information that they had at that time, rather than looking at a broader picture, he was able to wreak his particular work. From that point of view, the duty to share information allows a much more holistic view to be taken of the situation concerning a child or a vulnerable person, rather than things being looked at as individual incidents that a person is involved with.

The Convener: Thank you very much. I think that that concludes the questioning. We could probably have talked to this panel all day but, unfortunately, we have two other panels to deal with this morning.

11:31
Meeting suspended.

11:34
On resuming—

The Convener: We now move on to our second panel of witnesses, who represent a number of the regulatory bodies with an interest in the proposed legislation. I welcome John Anderson, head of professional practice at the General Teaching Council for Scotland; Una Lane, assistant director of fitness to practice with the General Medical Council; Carole Wilkinson, chief executive of the Scottish Social Services Council; Val Murray, legal adviser to the Scottish Social Services Council; and Christina McKenzie, head of midwifery at the Nursing and Midwifery Council. We have received your written submissions. I do not know whether any member of the panel wishes to add anything briefly before we go to questions. If you are happy to rest on your written evidence, we will begin the questions.

Fiona Hyslop: I will start with the part of the bill that deals with information sharing, on which we did not spend much time with the previous panel. The General Medical Council’s written evidence mentions the need for “Consented sharing”. It states:

“Decisions to disclose should remain a matter for professional judgement, and legislation compelling such sharing without reference to a public interest test … may cause confusion and lead to harmful sharing of information.”

We recently passed the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006. Various issues have arisen, and we know that the medical profession is particularly concerned about the sharing of information, especially without consent. Does the GMC have any particular concerns about part 3 of the bill? Are there some things in it that the GMC would like to be changed? How strong are the concerns? Does the GMC simply wish its concern to be noted while not being fundamentally opposed to part 3?

Una Lane (General Medical Council): There are two separate aspects to the issue of information sharing. One is to do with the information that we, as a regulatory body, would share with the central barring unit; the other is to do with the information that that unit might share with us about doctors who have been vetted and barred from working with either children or vulnerable adults. The bill is drafted in broad terms in that respect. A lot appears to depend on how the code of practice will work in reality.

Our concern is to do with the trigger points for referring to the central barring unit information that becomes available to us. There is a danger of a fog of information developing across agencies and regulators and between the regulatory bodies and the central barring unit. Let me give an example. At the General Medical Council, people raise with us approximately 5,000 complaints and concerns a year about individual doctors working throughout the UK. Some of those complaints and concerns involve allegations about doctors working with vulnerable adults or with children. Some of the information comes from the police, some from the courts and some from employers. There needs to be a certain level of clarity about when each body
may refer the information to the central barring unit.

**Fiona Hyslop:** Aside from the central barring unit aspect, part 3 of the bill is more about the general issues of child protection and the sharing of information. We have just been discussing whether there should be a duty or a power to share information. I suspect that the medical profession has concerns about the relevance of any duty to share information.

**Una Lane:** Part 3 is more about individual doctors sharing information that might come to their attention. On the standards that we expect of doctors, we would be concerned about a duty to share information automatically. We provide doctors with quite detailed guidance about every individual patient having a right to confidentiality with respect to the medical services that they seek and receive. That of course includes children. We provide detailed guidance about when information should be shared in the wider public interest or in the interest of the patient.

There needs to be some balance in considering whether certain information should be shared and what is the most appropriate information to provide. We are not against the principles or the notion of a duty but, as some of the earlier witnesses said, the bill as currently drafted takes a broad-brush approach. The devil will be in the detail of the code of practice or the guidance that stems from the legislation.

**Fiona Hyslop:** Do you think that the bill will change people’s behaviour?

**Una Lane:** From our point of view, it is important that the Executive works closely with us and with other regulatory bodies. We have quite detailed guidance for the professionals who fall within our ambit. It is important not to have differing guidance from different agencies about disclosure and the sharing of information.

**Fiona Hyslop:** I want to ask the other witnesses about the sharing of information. The question for us is whether we need new legislation—we are examining the bill’s general principles at this stage. Will part 3 of the bill bring about a significant change in the behaviour of the individuals who work in the sectors that you cover? From your perspective, do we need the provisions on sharing child protection information as presented in part 3 of the bill?

**Carole Wilkinson (Scottish Social Services Council):** We are quite clear that the law needs to be improved. We are a relatively new regulator and in seeking to bring people on to the register, our experience is that there has not always been clarity around what information can be shared. As the previous witnesses said, there is concern among local authorities about the information that they can share with one another and with us. The bill provides an opportunity to make much clearer what information can be shared and to clarify some of the issues around data protection.

**Christina McKenzie (Nursing and Midwifery Council):** The Nursing and Midwifery Council supports the view that there is a need for a duty to share information. Our experience is that sharing of information can be patchy. Like the GMC, we have codes of conduct and clear guidance for our registrants. The situation of people who are already on the register is trickier; if information is not being shared consistently, that makes it difficult for us to investigate people and take off the register people who need to come off it.

**John Anderson (General Teaching Council for Scotland):** The duty to share information is very important. There must be clarity. If such a duty to share information existed, there would be no data protection issues; they would fly away and information could be shared with confidence. A very clear cultural change needs to be pushed along ahead of that.

**Mr McAveety:** Do the witnesses believe that the bill will make any real difference to how their members operate in practice, or will it be a significant burden?

**Christina McKenzie:** It will make little difference to how our registrants practise because our codes of conduct, guidance and standards already cover the issues. The scope of the bill concerns us because it is not really clear whether it will apply across the health sector and regulators in the way that it should.

It will not make a difference to most of our current registrants, although it might to those who are self-employed or who work in the private or voluntary sector. The systems that cover those people might not be robust enough.

**Mr McAveety:** Is the GMC concerned about confidentiality? The issue has popped up several times in other pieces of legislation and the GMC has taken a strong position on it. Does the GMC have similar views about confidentiality in relation to the bill?

**Una Lane:** The confidentiality issue probably pertains mainly to individual practitioners and how they work rather than to the sharing of information between regulators and agencies and between regulators and any central unit. Some doctors might be concerned about an unqualified duty to share information in all circumstances—as currently drafted, the bill appears to propose an unqualified duty. In our submission, we suggest that we would like to work closely on the drafting of a code of practice or guidance on the sharing of information so that the standards that we expect of doctors across the UK are not confused by
differing approaches to guidance in different countries, organisations or agencies.

**Carole Wilkinson:** It is not clear in the proposed legislation to whom the duty would apply. The list of relevant persons ought to be revisited. We wonder why the bill does not include social service workers, which would encompass the range of workers who work in the care sector and would align with the workers whom we regulate.

As earlier witnesses said, it is important to see the bill in the context of the wider raft of measures that is in place to protect people and to regulate the workforce. Those pieces of legislation should be aligned so that the jigsaw puzzle fits together and flows out in alignment to the UK. As people have said, we should not rely too heavily on the bill closing a major loophole; we should see it as just one piece of a jigsaw puzzle.

11:45

**Mr McAveety:** I will ask about another matter on which it would help to have your comments for the record. Section 19 gives the Scottish ministers the power to obtain information from other public bodies when deciding whether to list an individual. Are you all familiar and content with what will be required of you under section 19? Of the four bodies that are represented here, two—the GMC and the Nursing and Midwifery Council—are not mentioned in the bill. Would you like to be brought within the scope of that section? In practice, is that likely to happen? Just in case, I say for the record that I have probably been registered with the GTC.

**Christina McKenzie:** The Nursing and Midwifery Council would like to be brought within the scope of the provision. We are happy to share information on our registrants, but we would like to be included in information sharing in the other direction.

**Una Lane:** We understand that we will be included under “Any other person specified in an order made by Ministers”.

**Mr McAveety:** Are you all content with the expectation in section 19?

**Val Murray (Scottish Social Services Council):** The SSSC welcomes the opportunity to share information with ministers.

**John Anderson:** We, too, welcome the provision. The Protection of Children (Scotland) Act 2003 provided an element of discretion, so the ability for the Scottish ministers to require information from us will help.

**Fiona Hyslop:** My question arises because the witnesses are registering organisations and governing bodies. One way in which the bill differs from the legislation in England is that the Scottish ministers will have the duty and responsibility to establish the lists, whereas an independent agency will do that in England. Is that appropriate?

**Val Murray:** We are happy with that, as long as the process complies with human rights legislation and as long as the panels that are established to make listing decisions can justify their decisions under the general law. The answer is yes.

**Fiona Hyslop:** I take it that the GMC does not have a view on the matter.

**Una Lane:** I will give my personal view. As long as the system and the processes that are in place are fair, objective and transparent, whether it falls to ministers or an independent agency to make decisions on the barred list is not an issue.

**Fiona Hyslop:** Whether the ministers or others should take the decisions is a political issue.

**Una Lane:** Sure.

**Dr Murray:** Sections 10 to 13 propose that when an individual is being considered for listing, they can continue to work, subject to safeguards—for example, their employer and regulatory bodies such as you will be notified. Will that provide adequate protection?

**Una Lane:** The GMC has powers to take interim action in relation to a doctor when allegations or issues are brought to our attention and before we make a substantive decision about that doctor. As long as the information about doctors is made available to us—whether it will be is one of our concerns—we are confident that we can take fairly swift interim action if serious allegations are brought to our attention.

**John Anderson:** The GTC has similar powers of interim suspension, which were commenced on 1 July. It is important that whatever codes of practice are drawn up form the key element, with due respect to child protection issues, in how we deal with a person who is under consideration for listing and who remains to whatever degree in the workforce.

**Val Murray:** The SSSC has powers of suspension, so we would welcome notification that somebody was being considered for listing. We need information about why an individual is being considered for listing—otherwise, it is difficult for us to put in place our suspension processes and to consider suspension. We ask for notification not just of consideration, but of the reasons for consideration.

**John Anderson:** We agree strongly.

**Una Lane:** That is one of the GMC’s key concerns—we raised the issue with Westminster during the progress of legislation there. We feel strongly that the information behind any decision to place a doctor on a list must be made available.
to the GMC so that we can take interim and substantive action when appropriate.

Christina McKenzie: The Nursing and Midwifery Council has similar powers to make interim orders of suspension. In addition, for midwifery, we have local supervising authorities throughout the UK, which can immediately suspend someone from practice and then notify us. That is why it is important that we have the information that someone is being considered for listing and the reason why.

The Convener: Should the central barring unit have powers of provisional barring as well as powers to consider an individual for listing? I think that, under the bill, the unit will have the power to put an individual provisionally on the barred list.

Christina McKenzie: That would be worth exploring. We investigate allegations and we may consider that some of those allegations are serious enough to warrant suspension. It would be helpful if the same approach should apply in the bill.

Mr Macintosh: Una Lane said that there are complaints against 5,000 doctors a year throughout the UK. I ask each of the organisations to give me a feel for how many of their members would be likely to be affected by the bill. I do not know whether the witnesses know that from experience or whether they will have to estimate it. In how many past cases would they have had to decide whether to suspend a professional under the criteria that apply in the bill?

Val Murray: The SSSC is a new regulatory body. Our register opened in 2003 and we have only 11,000 members at present but, in future, we will have more than 130,000. In the past three years, we have had 250 complaints about registered workers. Under the proposed procedure in the bill, we would want to get a scheme record for each person on our register. As Carole Wilkinson mentioned, we have concerns about whether we will be able to do that for all the people who are entitled to go on our register, as some positions are not covered by the bill. We expected the positions that the bill covers to be the same as those that are covered by exceptions orders under the Rehabilitation of Offenders Act 1974, which, in our case, means all social workers, all social service workers and anybody who holds an office or employment with the Scottish Social Services Council.

Una Lane: Based on past history, the number of doctors to whom the bill would apply would be very small. Currently, 220,000 doctors are registered to practise in the UK. Although 5,000 complaints and concerns are raised with the GMC each year, we take action on only a small proportion of them. Over the past number of years, we have taken action on the registration of something in the region of 300 to 400 doctors a year. Within that figure, the number of allegations of inappropriate behaviour, inappropriate relationships or sexual relationships with patients is extremely small. Such allegations are usually brought to our attention as a result of a police investigation or a conviction.

John Anderson: We have 65,000 active teachers on the register and we investigate approximately 450 complaints per year, but those complaints range across the scale. We take action on and remove roughly 15 to 20 teachers per year. Not all of those will be for child protection-related offences; they could be for theft, dishonesty or fraud.

Christina McKenzie: The Nursing and Midwifery Council has 682,000 registrants. Probably something in the region of 4,000 to 5,000 allegations are referred to us a year and approximately 1,300 of those proceed to misconduct cases and hearings; the rest are weeded out. The bill may increase that number slightly, because of improved information sharing. This may mean that we will start more investigations, as we now have the power to start investigations without an allegation.

Mr Macintosh: Thanks—I just wanted to get a feel for the numbers.

I will put my next question to the GTC representative, as the issue is covered specifically in his written evidence, but it is probably for all the witnesses. All the professional bodies that are represented suggest that information should be shared backwards and forwards, because a decision to put somebody on a list would almost certainly mean that they would be suspended by their professional body. You feel that you need access to that information. The GTC’s evidence states that, at present, under an informal agreement, it receives information, for example, on criminal convictions. Is that correct?

John Anderson: Yes. We are given information under circular 5/1989, which is a formal, but not statutory, arrangement. It is important that we continue to get such information. The CBU may decide to bar a person based on a child-related offence or other information, which is fine, but our concern is that we must get information that does not lead to barring and we must continue to get information about non-child-related offences. Regulating the profession is primarily about child protection, but it is not solely about that—we take into account honesty, integrity and other matters to do with a person being a teacher. The same applies to other professions such as doctors. We therefore want the bill to put on a statutory and fully formal basis the information flow that I have just described, so that we can continue to regulate
as we have done, or perhaps even more effectively.

Mr Macintosh: So you already get information, which you use to make judgments about somebody’s moral character and whether they should be a teacher. For example, you would require information about somebody if they were a fraudster.

John Anderson: Yes.

Mr Macintosh: At present, you receive such information.

John Anderson: Yes, we do.

Mr Macintosh: Do you think that you will not receive that information under the new system? It strikes me that you will get additional information.

John Anderson: We are unsure about that, but we are sure that we want the information.

Mr Macintosh: Are you concerned that, in effect, the CBU will have access to the information and will take decisions for you, which will be fine, except that, ultimately, you might make a different decision, based not only on child-safety grounds, but on grounds related to moral or professional issues?

John Anderson: Absolutely. We apply several different tests. As our written submission states, we consider not only whether people are suitable to work with children, but whether they are suitable to join the workforce of registered teachers. Obviously, those issues overlap, but there are differences, too.

Mr Macintosh: Do the other professional bodies have a similar view?

Carole Wilkinson: Yes. I cannot imagine a situation in which somebody who was on a barred list would be deemed suitable for registration. However, like any other regulatory body, the SSSC cannot have decisions made for it. We must make individual judgments and to do that we need all the information that we can possibly get. As John Anderson said, the issue is not only about child protection; we take into account a much broader range of offences, behaviour and conduct in judging whether someone is fit to be on our register.

Christina McKenzie: To emphasise that, even if a decision is made not to put someone on a list, the fact that they have been investigated may be of interest to us. We may take a different view about their suitability to remain on our registers. We want to know about the issues, even at the investigation stage.

Mr Macintosh: I want to follow up a question that Elaine Murray asked. Your organisations will be notified if somebody is put on a list, but you say that you will want to know why. However, if you apply for a full vetting check, will that not tell you why?

John Anderson: We need permission from the person concerned to do that.

Mr Macintosh: So there is a consent issue.

John Anderson: Yes—that is one of the elements.

Val Murray: We also need access to updated information. The scheme record may change, but we have no way to access that unless, with the individual’s consent, we can access the full scheme record. There needs to be a trigger.

Mr Macintosh: If the record of someone who had been working for you, who had been checked and had no record, changed would you be notified?

12:00

Val Murray: My understanding is that we would not be notified of that. We would be notified of a change in barred status, but the scheme record contains not just that information but all the vetting information.

Mr Macintosh: That is right. If there was a change to their barred status you would be notified, but if the change stopped short of that, you would not be notified.

Lord James Douglas-Hamilton: I have two quick questions. The first is to the General Teaching Council for Scotland and the Nursing and Midwifery Council. Do you think that you should have a power under the bill to refer a particular individual for inclusion on either list if the circumstances justify it?

John Anderson: Yes. The power is discretionary. The wording in the bill is similar to that in section 4 of the 2003 act, which allows us to use discretion. I hope that that helps you.

Christina McKenzie: We want the bill to be strengthened to say that people must be members of the scheme, rather than that they “may apply to Ministers to join the scheme.”

In the same way, we would want the power to say that a person must be added to the list if we found that there was a case to answer.

Lord James Douglas-Hamilton: Thank you. Una Lane said that the proposed code of practice should be subject to parliamentary scrutiny. What exactly do you have in mind? Do you think that the Education Committee should comment on it before it is issued?

Una Lane: Our concern is that a lot of the detail will be in the code of practice. We have been
involved actively thus far in the development of the bill and would like to continue to be involved in the production of the draft code of practice. The code of practice will contain the detail that all the witnesses have been discussing. Given the importance of it, we think that it should be subject to the same scrutiny as the bill.

Christina McKenzie: I agree.

The Convener: You said that you want the bill to say that people must be—rather than may be—members of the scheme. Is it not the case that, given how the bill is drafted, people will have to be members of the scheme? There is no discretion, because it is an offence to employ anyone with barred status and the only way to determine whether they are barred is to apply for the scheme record of the appropriate level. In effect, any member who is working will have to be a member of the scheme in any case.

Christina McKenzie: We did not think that that was clear in the bill. Our reading of the bill was that it provides that people may join the scheme, rather than that they must be in the scheme.

Una Lane: There might be issues with individuals who work exclusively, privately and independently, rather than for an employer or contracting authority. It is not clear to me how the legislation would apply to them if there is not an obligation on the individual to join the scheme or if it is not an offence for somebody to practise while barred. That is an issue for us, given that some doctors work exclusively and independently as sole practitioners in private practice throughout the UK.

Carole Wilkinson: The other issue is how far the bill reflects how services are changing, which some of the previous witnesses talked about. We are moving towards more services being smaller and personalised, with individual service users employing their own carers, and away from building-based services. The bill refers to services as if they are building based. It needs to be future proofed so that it captures some of the workers who are not captured in the current definitions.

Mr Macintosh: I have an associated question. The bill would place obligations on the statutory sector. The voluntary sector is concerned about how the bill would apply to it. Should those obligations also apply to the voluntary sector?

Carole Wilkinson: The voluntary sector should not be seen as one thing. There are very large voluntary organisations that are as big as or bigger than local authorities and for which the bill’s demands will be significant, although I do not think that those demands will result in the concerns that have been mentioned, and there are small voluntary and private organisations for which the bill will have an impact. If an organisation employs social service workers and delivers care services, the provisions should apply to it, whether it employs two people or 2,002.

The Convener: Do panel members want to comment on the definition of harm, specifically in the section entitled “Referral ground”? Are you concerned about that definition? Are the representatives of the General Medical Council and the Nursing and Midwifery Council concerned about the referral ground for individuals who have “given inappropriate medical treatment to a child”?

Una Lane: Yes. The provision is woolly. I am not sure about its intention, although the other grounds for referral are quite clear. The phrase “inappropriate medical treatment” could cover a multitude of treatments that are provided to patients. Again, we would like to work with the Executive and others to ensure that the definition is clearer.

Christina McKenzie: We support the GMC’s position on that.

Val Murray: We have an issue with referral grounds. The bill refers to harm that has been done by “an individual who is or has been doing … regulated work with children”.

Children should be protected from a person who has been found guilty of harming a child in a situation in which they have not worked with them or carried out regulated work with them. We have given an example in our submission. Somebody could be dismissed from their employment in another sector as a result of harming a child, but that would not constitute a referral ground under the bill. That individual would not be listed unless the harm to the child came out in a court conviction, was a relevant offence and led to a discretionary or automatic barring.

The Convener: That is a valuable point.

I have one more question about “inappropriate medical treatment”. Someone suggested that teachers and social workers, for example, might not give first aid to children because they might be concerned that they will give inappropriate treatment. Do you have any concerns about that?

John Anderson: That is a difficult area at the moment and the provision could make things more difficult. The Educational Institute of Scotland may discuss issues relating to teachers and to giving paracetamol to children, for example. There could be issues.

The Convener: As no panel member wants to add anything and members have no more questions to ask or comments to make, I thank John Anderson, Una Lane, Carole Wilkinson, Val Murray and Christina McKenzie for their valuable
We believe that although

We do not regard the bill as a

accept that there will be legislation in the area, but

case that involves a youngster and a person who

an issue when there is a serious and distressing

reaction. Media headlines tend to say that there is

greater concern is probably the media and public

in relation to applicants to the teaching profession

concerned about how information would be shared

the sharing of information within the United Kingdom,

the Isle of Man and the Channel Islands. We are

concerned about how information would be shared

in relation to applicants to the teaching profession

who come from the European Union and

Commonwealth countries, who have a right to

enter the UK. In particular, we would be extremely

concerned if the bill placed barriers in the way of

those closest to the children whether their parents, carers

or other family members.”

Does that mean that the bill is a distraction?

George MacBride: I do not think so. Our

greater concern is probably the media and public

reaction. Media headlines tend to say that there is

an issue when there is a serious and distressing
case that involves a youngster and a person who

was paid to be responsible for her or him. We

accept that there will be legislation in the area, but

people are seriously mistaken if they think that

legislation is the only course of action that is

needed. There must be a culture in which all

citizens, whether or not we are employed or

working as volunteers, are concerned about young

people’s safety. The bill alone—necessary though

it might be—cannot address the need for such a

culture. The bill, subject to necessary

amendments, must be part of a package.

Ms Byrne: Are there signs that such a package

will be in place timeously and that it will be

relevant to the current situation?

12:15

George MacBride: We believe that although

many elements of the package are present, they

have to be supported, partly by resources and

partly through publicity—and that has to continue.

Ms Byrne: I worry about the complacency of

assuming that the job is done because people

have been checked and gone through the system.

We talked about that with the first panel of

witnesses, too. Will staff be trained well enough to

see signs of abuse?

George MacBride: There must be training and I

sincerely hope that there will be. Education

authorities already require all teachers to undergo

annual training in child protection issues. That

should continue and it should not be tokenistic. It

is important that people recognise in children the

possible signs of abuse that requires intervention

and that they are aware of signs from their

colleagues that might raise concerns.

There must be recognition that training will often

be complex and produce difficulties. People might

not be happy about what they see in a child but

fear that if they take it further they could be casting

aspersions on the family. There must be a culture

of support if people take their concerns further. If

their original judgment is mistaken, that should not

hold against them. Rather, further training should

be offered—to the individual and to the whole

organisation.

Ms Byrne: I put the same question to Unison.

Dave Watson: We do not regard the bill as a

distraction, although we recognise and agree with

the EIS’s point that there are very few cases and

that most abuse does not take place in circumstances where children are cared for. The

bill is part of a wider package of measures, but

that does not mean in any way that it is

unnecessary. We think that it is necessary and we

welcome it.

We need to strike a balance. It is clear that

protection of children and vulnerable adults is the

paramount consideration, but we do not want

miscarriages of justice that mean that staff who
can and do make a valuable contribution to the care of children and vulnerable adults are blocked from doing such work when there is no good reason. The balance must be in favour of protecting the child or vulnerable adult, but we must recognise that point.

Another important point is that the people who work in such environments want this legislation. I must have dealt with hundreds of cases that involve staff who have been accused of various things. It is almost always other staff in that environment who report the abuse. They want protection under the law as much as everyone else.

**Stephen Smellie (Unison):** Training is given in social care and social work, although it can be argued that there is never enough training. There is a clear need for child protection awareness training to go further than the specific care environment of teachers and social workers. Good local authorities, for example, offer training to a wide range of staff who might come into contact with children or vulnerable adults—for example joiners and electricians who go into council housing. They are given awareness training in what to do if they see something suspicious. We need such training, which would contribute to the culture of awareness in the community of which George MacBride spoke.

People need to know what the issues are, what to do and how to recognise thresholds. People can be caught in a difficult situation: they see something that does not look 100 per cent right, but they do not know whether it goes far enough for them to do something. We need to open up discussion and provide clarification of what it is appropriate to report and what happens afterwards.

**Mr Ingram:** What is the EIS’s position on the proportionality of the measures in the bill? In your submission you criticise the bill for its one-size-fits-all approach and highlight the difference between the responsibility of a teacher for his or her class and a parent who is just helping out on a school trip. Why should both individuals be subject to the same level of check?

There are concerns about the scale of the bureaucracy and costs involved in establishing a system as defined in the bill. Can you give us some insight on that and perhaps some other ways of moving forward?

**George MacBride:** I would not seek to speak on behalf of voluntary organisations, although we understand that they have concerns. Our concerns arise from a practical school point of view. Let us take the example of a head teacher who requires an adult to go on a trip with a class teacher and classroom assistant or auxiliary, because regulations require three adults to accompany the number of youngsters who are going. Under the bill as we read it, if a parent volunteers, possibly at a late stage, the head teacher faces a difficulty. If the parent is not already a member of the scheme, they have to become a member, which will not happen in one week however efficient the scheme is.

There are cost implications, but we suspect that bureaucracy and delay are bigger issues. I am not going to be very helpful, because we have not thought of ways of dealing with that, but guidance on definitions of responsibility would probably be the best way forward. There is a definition of a responsible person in the bill, but there should be a broader definition of responsible person and possibly of the responsible roles that they play. I am sorry that that does not take us far, but it would be our starting point.

**Mr Ingram:** Are you saying that the professional who is in charge of the operation should take responsibility, rather than that anyone associated with the activity should have to go through a check?

**George MacBride:** Our understanding of the bill is that it defines the responsible person at school as the person responsible for managing the school—the head teacher—or, in their absence, someone who is a member of the scheme. We recognise that, however briefly they are employed, all teachers will have to be members of the scheme, and we assume that that also applies to other staff employed in the school, although we do not speak on their behalf.

Our concern is about people who participate as volunteers, possibly only rarely, and always under the direct supervision of an adult who is a member of the scheme. Some education authorities already take a defensive approach and say that any adult who comes into a school, other than when visiting about their own child, should have Disclosure Scotland status. That can be a barrier to some.

**Mr Ingram:** Does David Watson agree with the EIS standpoint on that?

**Dave Watson:** It would be difficult to define the levels of responsibility for different checks. I understand the context of large schools, which are large units, but a lot of our members work in small units, particularly in social care and the voluntary and housing sectors. Such units care for as few as two or three persons or, in some cases, individuals. In those circumstances, it would be difficult to define the level.

To be frank, supervision is non-existent in some units. There have been many cases, certainly in some community care settings, when staff have been recruited virtually off the street. Staff are
supposed to have supervision, but in reality some are looking after four, five or six cared-for persons on their own. It would be difficult to rely on a managerial structure that is sometimes nonexistent. The drift of social care and, to a lesser degree, health care seems to be in the direction of greater personalisation and smaller units.

Mr Ingram: So you would approve of an approach in which individuals had to apply for registration.

Dave Watson: It would be extremely difficult to define the difference. If it could be done, fine, but the reality of social and health care means that it would be difficult to do.

Mr Macintosh: The professional bodies that gave evidence earlier argued that as well as their sharing information with the central barring unit, the central barring unit should share information with them, so that there is no discrepancy between whether someone is barred and whether they have any professional standing. There is logic to that—it would ensure common decision making across the board and a lack of confusion. Do you agree that there should be an exchange of information both ways?

George MacBride: Yes. The bill makes clear if the vetting information is to be preserved until he or she is found guilty. That raises tensions in the context of the bill. The length of time that is available to ministers to use their discretion to place someone on the register should be explored, because there is an issue to do with ministers’ lack of accountability—I do not mean to Parliament, but under the bill. People who make vexatious allegations will be accountable, but ministers will not be accountable for their final decisions on whether someone is barred and whether they have professional standing.

Lord James Douglas-Hamilton: I have one or two short questions. Although there is a unanimous view that children must be very strongly protected, does George MacBride agree that to prevent malicious or vexatious accusations of abuse or inappropriate conduct being made against teachers, it would be appropriate for teachers against whom accusations are made to remain anonymous until the issue has been decided one way or another?

George MacBride: Fundamentally, our position is that when accusations are made against a teacher that may result in criminal court action being taken against her or him, anonymity should be preserved until he or she is found guilty. That raises tensions in the context of the bill. The length of time that is available to ministers to use their discretion to place someone on the register should be explored, because there is an issue to do with ministers’ lack of accountability—I do not mean to Parliament, but under the bill. People who make vexatious allegations will be accountable, but ministers will not be accountable for their final decisions on whether someone is barred and whether they have professional standing.
Lord James Douglas-Hamilton: If there are any draft amendments that you consider appropriate, please send them to the clerk.

I have a second question. There may be ECHR reasons for having two lists rather than one. Would you prefer there to be just one list, if that were competent?

George MacBride: We do not have a view on that. Our concern has been to comment on the list of people who work with children.

Lord James Douglas-Hamilton: Does Mr David Watson have a view on that?

Dave Watson: We have considered the matter and have decided that we have no difficulty with there being two lists. We asked our members whether it would be a problem to have just one list. In our field, we could not think of a circumstance in which someone would be barred under one list but able to work under the other. There may well be such circumstances, but we could not think of any. If a decision was made to have just one list, we would not rush the barricades.

Lord James Douglas-Hamilton: Against the background of the free movement of labour in Europe, were a public perception to develop that some people had been checked less rigorously than others, what reassurance could usefully be given?

Dave Watson: As we highlighted in our submission, our concern is that such reassurance could not be given at the moment. We have been involved in discussions at European level about common systems and common qualification routes, but I am not convinced that they have been developed yet.

We highlight a further problem, which is a counter-scenario. Unison in Scotland has a large overseas nurses network, which has some 2,000 members. It has examples of the home countries of refugees who have fled political persecution not being minded to be sympathetic to their applying for positions in this country, with the result that they cannot prove that they have a track record. They may have criminal convictions from their country of origin that would certainly not have stood up in this country, but which mean that they are blocked from doing work that they are well able and well qualified to do. There are two sides to that argument, but there is no evidence that Governments have addressed the issue.

Lord James Douglas-Hamilton: Do you feel that the processing time for disclosures will be sufficiently short to ensure flexibility? For example, will it allow parents to accompany teachers on school trips or to help with various sports activities?

George MacBride: We hope that the proposed scheme will be much more efficient than the current Disclosure Scotland procedures. Our experience is that Disclosure Scotland appears to operate at highly variable rates—sometimes it responds quickly and sometimes it responds slowly. We do not know where in the system the delays occur. It is our reading of the proposed scheme that it will be a more efficient way of ensuring that information is fed back to employers quickly—provided that they are already members of the scheme.

Dave Watson: Our experience of the Disclosure Scotland procedures is similar—the length of time that they take is extremely variable. At present, I could not provide any assurance that the system is operating quickly enough. We welcome the proposal to set up a new executive agency to replace the current arrangements and agree with the EIS’s point about any future changes.

The Convener: If anyone has a mobile phone switched on, could they please switch it off because it interferes with the sound system.

Mr McAveety: Both organisations’ submissions favour a series of amendments to modify some of the bill’s excesses. The concluding page of Unison’s submission says that it might well be better “to have a lighter statutory touch in terms of duties and place greater emphasis on development of good practice.”

Will you expand on that statement because that is not necessarily what we heard earlier?

Dave Watson: That comment is on part 3 of the bill. It is certainly not our view on parts 1 and 2.

Our concern about part 3 arises particularly from the views of our members who work in social care and health. The various groups of staff who are involved have different professional cultures. I am head of legal services as well as being responsible for policy, so I see the precognitions in cases where we provide legal support. If I read a precognition from a health care worker and one from a social care worker about the same incident, their approaches will be different. I am sure that the approach of an education worker would be different again.

However, things are coming together through the joint futures agenda. Social care workers and health care workers are working together and other arrangements include education people. In recent years, good practice has developed and a number of local authority areas have great initiatives in which groups come together in...
partnership to agree common reporting systems and approaches to the sharing of information. That is great progress.

I do not want to overstate this, but we are slightly concerned that, if we place a duty on someone but it is not clear in the hierarchy how that duty is to be applied, there is a risk that they will behave in a highly defensive way. They will think, "I have a duty to share information, so I'm going to share virtually everything that crosses my desk." There is a risk that practitioners who make professional judgments every day of the week will veer too far in the direction of being defensive. We are concerned that the bill might tip the balance too far in that direction.

Mr McAveety: You answered some of my questions in your response to Lord James, particularly in your comment on new workers who come to the UK. There is a history of individuals from overseas making a substantial contribution to the health service, and it may well be that their political and social circumstances back home are markedly different from those in Scotland.

Earlier, I raised a particular concern with the ACPOS representatives—it is mainly a constituency concern—about what I see as a temporary group coming in from one of the accession states in substantial numbers. They have had a history of difficult records. Some members of that community might settle here and move into the care sector, but at the moment the community leaders are not necessarily the nicest people to meet. How do we strike a balance that addresses that concern? The Home Office and the police are a long way from resolving the immediate problem, particularly in urban parts of Scotland and the UK. People can easily rent accommodation and disperse quickly if there are pressures. How can we address the concern that you raise in your submission?

Dave Watson: There are great difficulties. The only way to address them is to have common standards at the European level, but those are still some way off. To be honest, information sharing is a challenge within Scotland and the UK, let alone between the UK and states such as Romania and Bulgaria, which do not have the infrastructure that we have. There are huge challenges. I have noticed an increase in the number of cases that cross my desk. It works both ways, but I accept that you have a valid concern.

However, I add a caveat, which follows on from one of Lord James's points. As we state in our submission, malicious accusations are made in a significant number of cases, particularly in the private care sector. For example, a nurse or care worker falls out with the owner or manager of a care home. The worker says, "Right, stuff you. I'm off to get another job," but they find that they have been referred to the regulatory body as someone who is not a fit person. In other words, a malicious accusation—or, at best, a misleading accusation—is made. The person's new employer says, "Oh dear," and may well withdraw the job offer. In employment law, the only remedy is a notice period of a month's pay. The person is left with no job and no money and their employment prospects are damaged.

We hope that there will be no delays in any of those processes, but some things can take an awful long time to be resolved and a person can be left in limbo as the result of a malicious accusation. That is why we focused on the particular issue of damages. I accept that there has to be a balance, but there must be some penalty for those who provide misleading or malicious information.

Fiona Hyslop: First, I congratulate George MacBride on his ability to give evidence to two committees on the same day—

Dave Watson: And me.

Fiona Hyslop: And you, yes. We are impressed by your multitasking abilities.

The EIS expressed concerns about governance and indicated that it was pleased that governance would be by an Executive agency. The difference in Scotland would also be that ministers would have legal responsibility, unlike in England, which has an independent barring board. The EIS then goes on to express concerns about section 70 of the bill, which provides that ministers may outsource some of their functions. The proposed system will be underpinned by complex IT solutions and the state does not have a good record of delivering IT solutions in a range of areas. How realistic is the EIS’s opposition to section 70? David Watson might also want to reflect on that.

George MacBride: I emphasise that we do not believe that any part of the minister’s functions should be outsourced. We acknowledge that the state has not always been good at providing IT systems. The record is even worse where it has bought IT solutions from the private sector—the English national health service is currently crashing to defeat having done so.

Good IT solutions have been found and provided to the public sector at local authority and national level, so it is possible. Frankly, it is more cost effective for the public sector to provide IT solutions than to outsource that provision to the private sector.

We would also be concerned if sensitive information that could impact on people’s careers, employment, income and social life was outsourced to organisations that could not be held
fully to account in the way that an Executive agency could be. The management and administration of the list and the scheme must be carried out by people who work within the public sector and its ethos, and who are accountable for their actions through the public sector. We were unaware that the English model—or the Westminster model—was different, but it is appropriate for such a duty to lie with ministers because they are ultimately accountable.

**Dave Watson:** We agree with that, largely. Big IT projects do not have a very good record, but a lot of private sector schemes are not much better. Big public sector schemes are usually underpinned by private sector companies and contractors who have not been able to meet the specification. There are also plenty of examples in the commercial sector of big IT schemes breaking down. Big ICT solutions seem to cause problems to whoever delivers them.

We also want to highlight identity fraud. Members might have seen that the BBC did an investigation quite recently into ID fraud and contact centres. We contributed to that investigation because we have done some work on that and we have quite a lot of experience, having between 4,000 and 5,000 contact centre workers in Glasgow, mostly in the private sector. Strathclyde police are concerned about ID fraud.

There is a high risk of ID fraud where there is a high staff turnover, and commercial contact centres and solutions have higher than normal rates of staff turnover. In some parts of Scotland, the staff turnover can be as high as 100 per cent a year. In such circumstances, it is very difficult to inculcate the sort of culture that George MacBride was talking about. However, an Executive agency would have a very clearly understood public service ethos running through it. I accept that there is no absolute guarantee of that, but Executive agencies are less likely to have some of the problems of the commercial sector.

12:45

**Fiona Hyslop:** There are obviously implications in the handling of a million pieces of information about a million individuals.

This question is particularly for Unison. There is and has been a problem with individuals not sharing information in serious child protection cases. Some of the solutions have been based on IT systems to share information about children but, by and large, the approach seems to be piecemeal. Earlier, we heard from ACPOS—you did not hear this because you were at the Communities Committee meeting—that the process is likely to be evolutionary and that existing systems, rather than a big new IT solution, will underpin the new procedures. How comfortable are you that the new information-sharing system under part 3 of the bill will be adequate to protect your members from allegations? Your members will be protected by information-sharing systems if they work but, if they do not work, your members may be more vulnerable. Is sufficient progress being made on that?

**Dave Watson:** You raise two concerns. The first, which we raise in our written evidence and which I mentioned earlier, is that the bill could lead to more defensive practices and a huge increase in the amount of information. The amount of data that the ICT systems will have to handle will increase vastly. Although the police have some well-developed systems—which are run largely by our members who are civilian police workers—those are not quite there and, frankly, local authorities and health boards do not have appropriate systems in place. Therefore, the process will have to be evolutionary, because the appropriate systems are not in place at present. We have a concern about that.

The second concern is that, even if the systems are in place, an issue arises about security of data. A lot of information is at present shared either verbally or through paper-based systems, not IT systems, which leads to all sorts of difficulties with information flow. However, a balance needs to be struck. We understand the importance of the verbal and paper-based systems. The bill is driven by one or two well-publicised cases, but there is nonetheless a lot of good practice in information sharing using the available systems. I am afraid that anyone who thinks that, in a short period, we will have fabulous ICT systems buzzing round local authorities and health boards to implement the bill is sadly mistaken. If we are to have such systems, the bill’s financial memorandum is, frankly, a joke.

**George MacBride:** I would be concerned if we thought of ICT as the only solution to the issues, particularly those that part 3 of the bill attempts to tackle. We can put information into an effective and efficient ICT system that joins up the various services but, if nobody is there to make use of the information, or trained to make use of it, the exercise will be pointless and simply about gathering information. It may be much more cost effective if, when a teacher has a concern of a child protection nature, they work in a culture in which they know who the designated social work colleague or social work manager is and can telephone them to raise the issue. That can be much more effective than simply giving a piece of information to an administration worker, who then puts it into the system, hoping that somebody at the other end of the system will read it when it is flagged up. ICT is not the only solution; it helps, but first we need a culture of interagency working.
Fiona Hyslop: We have heard a strong message from you and from ACPOS that, at the end of the day, the critical issue will be the human action that is taken, rather than the underlying IT system.

Dr Murray: The witnesses have touched on my concern, which leads on from Lord James Douglas-Hamilton’s questions about whether there will be sufficient protection from the possibility of malicious accusation. A constituent of mine who was offered a job working with children in the leisure industry had the offer withdrawn because somebody complained anonymously to the police that she had been seen in a pub taking an illicit substance. She seemed to have absolutely no right of appeal. There obviously are not sufficient safeguards at present against that type of malicious accusation. Are you reassured that the proposed system will be sufficiently rigorous to prevent such accusations causing people to lose their jobs?

Dave Watson: We do not see rigour in the proposals, although, in fairness, it is difficult to build that into systems and there is not an easy solution to the problem. We have highlighted gaps in the bill and COSLA, ADES and the ADSW have highlighted technical concerns about issues on which the balance has not been shifted fairly or on the right basis.

There are rights of appeal under part 1. We are reasonably happy with those, but it must be acknowledged that appeal to the sheriff, the sheriff principal and then to the Court of Session on a point of law is a very long process to put something right. In part 2, we can see no right of appeal at all. It appears that the central barring unit will take a view and that will be that, even if the information is inaccurate.

I do not think that anything can be put in place on malicious accusations. We are talking about a wide range of different employers who are entitled under other legislation to make common-law judgments about who they employ. It is a basic principle of employment law that it is impossible to force someone to work for somebody or force someone to employ somebody. That principle has underpinned Scots employment law since time immemorial and I do not expect that that will change. Therefore, it is necessary to include penalties for people who make malicious or even misleading accusations to discourage them from doing that.

It is interesting that, in recent years, better protection for malicious references has been developed in employment law. I refer to the concept of malicious falsehood, for example, under which there is now at least some defence for people against whom false references are given. That protection is not perfect by any means and is not good enough, but it is better than it was. Perhaps some refining of section 38 might achieve similar protection. I accept that there is a balance to be struck. We do not want to make the protection so threatening that people will not pass information on because they might get sued but, on the other hand, we must realise that someone’s livelihood could be lost for a long time. I accept that it is a difficult judgment to get the balance right. Unison does not wish to discourage the sharing of information, but we cannot afford to allow good members of staff to have their careers and lives ruined because of malicious accusations.

Lord James Douglas-Hamilton: Some helpful points have been made. If the witnesses feel able to send the committee any amendments that they think would improve the bill, that would be extremely welcome. I ask them to send amendments to the clerk.

Fiona Hyslop: The GTC says that trainee teacher should be identified as a registrable occupation. Does the EIS have any views on that? Is it sensible?

George MacBride: We consider it sensible. We agree with that.

The Convener: I will finish by asking the same questions that I asked the previous panel of witnesses on the bill’s definitions of “the referral ground” and “harm”. Do the witnesses have any concerns about those definitions?

George MacBride: I will raise an issue about the definition of harm. Glasgow City Council had a policy that none of its education employees could give a child—or even a young person aged 15—a sticking plaster, for example. The EIS would be concerned if any of the definitions in the bill exacerbated that overdefensive attitude. We do not have a detailed view on the definition of harm, but we share the concerns that Unison colleagues expressed about encouraging such an overdefensive approach.

Dave Watson: Unison flagged up a number of definition issues. We have been having discussions with colleagues in the bill team who have been working on the definitions, and the code of practice might resolve some of the issues. The important thing is that people need to know what they have to do. Uncertainty is not helpful, particularly when duties are involved, because it has an impact on disciplinary procedures in the public authorities and the voluntary sector organisations that work in those areas. There has already been a lot of defensive work, particularly in the health sector, in nursing care and social care. It is even difficult to encourage people to provide first aid in workplaces, which people are more and more reluctant to do. To be fair, there is nothing in the bill that adds to that, but there is a general
The Convener: That concludes this morning’s evidence taking. I thank George MacBride, Dave Watson and Stephen Smellie for their valuable evidence.

The committee will meet again at the same time and in the same place next week to take further evidence on the Protection of Vulnerable Groups (Scotland) Bill.

Meeting closed at 12:56.

problem of litigation and risk management, which has deteriorated in recent years.

The Convener: Given the serious implications that referral would have for your members, is it satisfactory that some of the issues will be left to guidance or secondary legislation? Should the bill perhaps contain clearer definitions?

George MacBride: The EIS would prefer to have clearer definitions in the bill, but we would have to go away and think about what they should be. If we come up with any answers, we will submit possible amendments.

Dave Watson: We would like clearer definitions in the bill. That is usually our approach, as we share others’ nervousness about the powers of secondary legislation. However, many of the issues are extremely complex and cover a wide variety of professional practice. If the bill was only about education, social care or health care, we could probably put clearer definitions in it but, because it encompasses a wide variety of different provision, it is difficult to do that. To be frank, we would struggle to come up with definitions that would cover every circumstance without having long schedules that would look like statutory instruments or codes of practice.
Present:
Ms Wendy Alexander
Lord James Douglas-Hamilton (Deputy Convener)
Adam Ingram
Mr Kenneth Macintosh
Iain Smith (Convener)

Ms Rosemary Byrne
Fiona Hyslop
Mr Frank McAveety
Dr Elaine Murray

The meeting opened at 10.01 am.

Protection of Vulnerable Groups (Scotland) Bill: The Committee took evidence at Stage 1 of the Bill in round table format from—

David Williams, Senior Director, Quarriers
David Little, Scottish Association of Local Sports Councils
Lucy McTernan, Director of Corporate Affairs, Scottish Council For Voluntary Organisations
Judith Gillespie, Development Manager, Scottish Parent Teacher Council
Jim Duffy, Chief Executive, Scottish Council of the Scout Association
Kelly Donaldson, Information Officer, Voluntary Arts Scotland
George Thomson, Chief Executive, Volunteer Development Scotland
Norman Dunning, Chief Executive, ENABLE
Michael Hankinson, Operations Manager, Princes Trust
John Harris, Strategic Head, Central Registered Bodies Scotland
Joe McIvor, Development Manager, Youth Scotland

Protection of Vulnerable Groups (Scotland) Bill: The Committee took evidence at Stage 1 from—

Donald Mackenzie, Lead Officer Child Protection; and Jim Murray, Senior Solicitor, Dundee City Council
Andrea Batchelor, Head of Service (Inclusion), South Lanarkshire Council
Allan Gunning, Chief Operating Executive, NHS Ayrshire and Arran
Dr Helen Hammond, Child Health Protection, NHS Lothian

and then from—

Professor Kathleen Marshall, Scotland’s Commissioner for Children and Young People

Maggie Mellon, Director of Children and Family Services, Children 1st

Dr Jonathan Sher, Director of Research Policy and Practice Development, Children in Scotland

Heather Coady, Children’s Policy Worker, Scottish Women’s Aid

The meeting closed at 13.43 pm.
The Convener (Iain Smith): Good morning ladies and gentlemen. Thank you for coming to the 25th meeting in 2006 of the Education Committee.

There is one item on today’s agenda, but it is a long one. We will continue to take evidence on the Protection of Vulnerable Groups (Scotland) Bill. There are three panels this morning. We will have two conventional panels later, but the first one involves a slightly different format. This is the first occasion on which we have had a round-table session, at which representatives from a number of voluntary sector organisations will give us their views on the bill. To save time, I will not introduce everyone. I ask all members, in particular, but also other participants in the round-table discussion, to keep their comments as brief as possible so that we can cover all the main issues.

I thank all the voluntary organisations for coming to the committee this morning and for their written submissions, which I found extremely interesting. They raised a number of important and valuable points.

I ask all members of the public and people round the committee table to ensure that they have their mobile phones switched off. Even if they are on silent mode, they can interfere with the sound systems.

I thank all the voluntary organisations for coming to the committee this morning and for their written submissions, which I found extremely interesting. They raised a number of important and valuable points.

I will get the discussion going by seeking thoughts on the general aims of the bill and the workability of the proposed vetting and barring scheme. For example, some written submissions from the voluntary sector suggest that the scheme is perhaps a distraction from what should be the main focus of policy in the child protection sector. Other witnesses have considered whether the bill is a proportionate response to the issue. Would a representative from a voluntary sector organisation like to start by commenting on the general aims and workability of the bill? I see that Judith Gillespie has her hand up—I thought that I could rely on her.

Judith Gillespie (Scottish Parent Teacher Council): The general aim of ensuring that youngsters are safe is clearly important. We all recognise that in certain situations people have an intimate and close one-to-one relationship with a child who is dependent on that particular adult. It is important to check the background and circumstances of that person carefully.

The focus of the legislation has become incredibly wide. The fact that it aims to have something like 25 per cent of the adult population and a third of the working population police checked is indicative of that width. It is driving people who would volunteer on a casual basis out of the system. It is putting a disproportionate amount of emphasis on and energy into one area of child risk even though the recent statistics show that the main risk to youngsters is from physical neglect, which is a rapidly growing area of problems and accounts for the increasing number of youngsters who are being referred.

The bill is disproportionate. Further, there needs to be a better definition of terms and a proper decision about the age limit between a child and an adult. As I said, not only is it bureaucratically cumbersome, it is positively damaging to the well-being of children.

Lucy McTernan (Scottish Council for Voluntary Organisations): Members of the committee will be aware that the Scottish Council for Voluntary Organisations has expressed the voluntary sector’s significant concerns about the sheer scale of what is proposed in the bill and the likely impact on the activity of voluntary organisations. In our recent evidence to the Finance Committee, we made plain our views that the Scottish Executive, in its financial memorandum to the bill, had omitted to consider the expense and bureaucracy that the sector would have to bear under the proposals. Further, we think that insufficient thought has been given to the potential effects on volunteer involvement.

Today, I would go further and suggest that more time is seriously required than this committee has to consider the wide-ranging consequences of the size and nature of the proposed scheme. It was only in the past week, through an answer to a parliamentary question, that we learned that the number of people on which police record information is held—the vast majority of which is totally irrelevant to care positions—exceeds 1 million. We know that the number of people caught by the bill in the voluntary sector alone is likely to be 1 million and I would suggest that it takes only common sense, not statistics, to work out that it will have a significant and sweeping impact.

The bill has some positive points, including the welcome introduction of the passporting of disclosures, which would reduce bureaucracy.
However, we think that there are some serious and large holes in the funding arrangements of the bill and we would like the committee to give serious consideration to trimming down what is proposed by moving forward on the things on which there is consensus but not moving forward on the things that would impact widely on the voluntary sector and the community.

Mr Adam Ingram (South of Scotland) (SNP): Judith Gillespie talked about volunteers being driven out of the system. We heard similar evidence prior to the introduction of the Protection of Children (Scotland) Act 2003 but, last week, the Association of Chief Police Officers in Scotland and the Association of Directors of Social Work suggested that the number of people volunteering had not been affected by that act. Do you agree with that view? If not, could you outline how you think that the new legislation will impact on volunteering activity?

Judith Gillespie: I suspect that ACPOS is thinking about a more formal, registered level of volunteering whereas the kind of volunteering that we are involved in is the low-level volunteering that involves people giving, say, an hour of their time to support an activity at a school or at a sporting event in a supervisory role because, otherwise, there would not be enough adults to take care of the number of children involved. That kind of informal volunteering will be caught up in the proposed legislation, as it was caught up in the Protection of Children (Scotland) Act 2003, as a result of which people are just saying, “I haven’t got the time or the energy,” and are not volunteering. There has been a significant drop-off at that level of volunteering, but that is not registering in the statistics that you were given last week because it does not involve formal, appointed posts. However, volunteering at that level has a major impact on the ability of the more formal organisations to run their events because, unless they have an adequate adult child ratio, they cannot operate.

Norman Dunning (Enable Scotland): I echo what Judith Gillespie has said. Our organisation has more than 60 informal groups or branches throughout the country. Although they are registered charities, some of them are very small and operate highly informally, running social events and clubs. Of an evening, 70 or 80 people will come through the door to take part in their activities. On such occasions, it is not clear who might be a protected adult—people do not wear labels that say that—or who is a volunteer because, essentially, we are talking about self-help activities. A small group of three or four people will run things, but everyone else will work together. The people involved would not describe themselves as volunteers and would not be listed as such; they would call themselves friends.

How could we possibly apply the bill’s provisions to such a scenario? Frankly, they would kill it dead. There is a great deal of concern among our members who are involved in such activities that that is exactly what will happen—people will not come forward. They are frightened that what is an informal but supportive atmosphere will become driven by a bureaucratic process that they cannot manage. We should remember that although such groups have a formal constitution, they are run from people’s front rooms. They do not store records on people somewhere. That is not how things work—it is not a formal set-up.

Dr Elaine Murray (Dumfries) (Lab): I find it astonishing that the equivalent legislation south of the border went through the House of Lords and the House of Commons without anyone raising such concerns. Given that the population there is ten times the population in Scotland, if a million people in Scotland will be affected, 10 million people down south must be being affected.

My concern is that if the bill just does not work, it might do more harm than good. With the Child Support Agency, for example, we know that the technology has never been able to deal with the legislative change. Might the bill give people a false sense of security? Could a case be made for putting a stop to the bill’s progress and considering the reform of POCSA, along with other, slightly longer-term changes? We do not want to reach a situation in which people think that everything is okay just because someone is in the scheme.

Judith Gillespie: The situation in England is interesting. The legislation in England is slightly behind that in Scotland and the extent of checking has not caught up with the position here; whereas the discussion there was about the fact that a million volunteers had been checked, the consultation document for the Protection of Vulnerable Groups (Scotland) Bill said that 500,000 people had been subject to disclosure in one year. It is partly because the legislation in England is slightly behind that there has not been the same level of awareness. However, it is not right to say that there has been no opposition in England because there has been and it is growing—people are beginning to realise what the consequences of the legislation will be.

Elaine Murray suggested that the present system might be overburdensome and that a review of POCSA might be necessary. That is absolutely where we are at. We have run with POCSA for long enough and its effects have made many groups, including the Scottish Parent Teacher Council, increasingly alarmed about the direction in which the process is going.
The Convener: I will allow Lucy McTernan to respond before we hear from George Thomson and Joe McIvor.

Lucy McTernan: The fact that the parallel legislation in England is more contained than the POCSA regime here in Scotland means that it has not had as broad an impact or affected the same number of formal and, indeed, informal organisations as has been the case in Scotland.

I remind people of what happened when part V of the Police Act 1997 came in. The voluntary sector in Scotland alerted the legislators that it would have a big impact on volunteering and, quite rightly, the Scottish Executive introduced proposals to provide free checking for volunteers. It was only after the fact that England caught up and the Home Office was persuaded to do likewise. As Judith Gillespie rightly says, we have been slightly ahead of the debate for a number of reasons. It is not a question of copying what is happening in England. We must set the standard of what is right, proportionate and appropriate for child and vulnerable adult protection here in Scotland.

Dr Murray: Are you advising us that the bill is not what is required? Would you go as far as to say that the bill should be rejected?

10:15

Lucy McTernan: We are saying that we would not start from here. The current POCSA regime is counterproductive in many ways, but it has not had the wide-ranging impact that it might have done if full retrospection had been introduced. The bill will introduce full retrospection and provisions that go wider and deeper. The potential impact of that is pretty enormous. We are saying that we would like the worst aspects of the current POCSA regime to be corrected and some of the bill’s good proposals to be put into place. We would then like a pause for breath so that we can see whether we are travelling in the right direction.

George Thomson (Volunteer Development Scotland): Volunteer Development Scotland’s evidence is that the information on what impact the bill will have is contentious and contradictory. Over the past 10 years, the trend in volunteering in Scotland has been pretty stable. No real detrimental effect from the current legislation can be seen in the overall figures. Our research suggests that 84 per cent of people in Scotland do not have an issue with being required to undertake a disclosure check when they believe that that is required for a volunteer placement.

I think that the argument or debate needs to be centred around balance and proportionality, as has been mentioned this morning. We need balance and proportionality in respect of the organisations that are captured by the legislation. There is uncertainty about whether the bill should apply only to constituted groups in particular activities or to loosely formed groupings as well. If the bill captures loosely formed groupings, it will have an impact that will take us into unknown territory.

Another matrix of issues is who the bill will capture in the regulated workforce and which kinds of volunteer roles will be specifically required to be subject to a disclosure check. While ensuring that there continues to be credibility among the population at large about the good sense of undertaking proper scrutiny of people who will hold trusted positions with children, we will need to draw a line about what kinds of roles that will be applied to. If we get that wrong, the fears and concerns that have been expressed might appear.

Joe McIvor (Youth Scotland): I agree with colleagues around the table about the reduction in the number of volunteers over the past few years. Our evidence suggests that, with the onset of POCSA, we lost around 100 youth groups. That is a considerable number. Obviously, our worry is that the same might happen under the bill. We are only now beginning to get back on an even keel after the onset of POCSA, so we still feel that a lot of work remains to be done. Most of our emphasis has been on comprehensive recruitment, as opposed to simple checks. We feel that putting the emphasis purely on checks is a backward step.

David Little (Scottish Association of Local Sports Councils): I am national secretary of the Scottish Youth Football Association and I am representing the Scottish Association of Local Sports Councils.

I want to come at the issue from a slightly different angle by giving the coalface perspective. At the inaugural meeting of the lead child protection officers group for the Scottish governing bodies of sport, 65 out of 70 sports were represented. At the last meeting, only 12 were represented.

The first thought that I want to leave with the committee is about capacity. The volunteer sector in Scotland contributes more than 9 million hours each month, which equates to an annual contribution to the Scottish economy of £2.52 billion. On average, Scottish Youth FA volunteers spend 10 hours per week training, coaching, arranging matches and participating in matches. That equates to approximately 6 million hours per annum. There is no further capacity within the SYFA. We have amended constitutions to reflect POCSA.

On the issue of capability, only 44 of the 70 governing bodies of sport currently have child protection policies in place. The SYFA’s
membership includes a large variety of clubs and SALSCL’s membership includes a large variety of sports councils, which cover the spectrum from enthusiastic volunteers to people who say, “Leave us alone to get on with our sport.” That causes complications when an attempt is made to implement measures on protection. Everyone in sport is trying to protect children, but there should be an audit of POCSA before we go further. Change causes big problems for the volunteer sector in football and other sports. A new form will be produced within the next few months and if the bill is passed, a revised form will be needed, which will require a massive change.

The SYFA has carried out 6,000 disclosure checks and is one of the volunteer sector’s main users of the excellent central registered body in Scotland. Only 10 Scottish volunteer groups carry out 1,000 or more checks. Should we simply comply with the law of the land, or should we get involved in the protection of children, as I believe that we should?

There should be a full education package, which should include information technology systems that will be needed to implement changes.

In 2005-06, the SYFA, which is a subscription-led organisation, spent £25,000 on administration and costs to do with protection. In 2006-07, I anticipate that spending on staff and so on will rise to £41,000. I have not mentioned training, but it will cost £18,000 to train 900 protection officers in our 3,400 clubs.

I want to make three final points. First, in POCSA a child is defined as a person who is under 18, but in the bill a person who is 16 is an adult, which would create a black hole in the SYFA. Currently in the SYFA, a young person who is wearing a strip and running about playing football in a public park is covered by child protection legislation. The vulnerable adults issue would cause us massive problems. Secondly, will representatives of grass-roots sports be more fully involved in consultation? Finally, if organisations such as the SYFA are struggling to cope with the added financial and resource problems associated with protection, how are local sports councils and small governing bodies in Scotland coping?

The Convener: Thank you. We will talk about the financial implications of the bill and training, but first I will bring in other panel members.

Jim Duffy (Scout Association Scottish Council): I echo some of what David Little said. It has been suggested that legislation has not had an impact on volunteering, which is not strictly true. Although the Scout Association has managed to retain the bulk of its volunteers who work directly with young people, the real impact of legislation has been on administrative support for volunteers, which is a matter of increasing concern to us. We are restructuring our volunteer administration and management system throughout Scotland and a key driver for that was the increasing difficulty in recruiting volunteers to the administrative and training roles that are essential if we are to ensure that our vast volunteer workforce is properly supported.

The length of time that disclosure takes has had one of the biggest impacts on administration. We do not disagree with disclosure; we are very supportive of a system that is helping to increase the safety of the young people in our care. However, we must get the issue into perspective. Disclosure is only one of a range of processes that are involved in the vetting and recruitment of adults. Sometimes we get the matter out of proportion, to the point that the disclosure check becomes the most important element of vetting. It is important, but it is far more important for the protection of young people that we have people who understand what constitutes good practice and apply it, and who recognise and respond quickly to dangers. There is great concern in the youth work sector that we are getting to the point that someone is a paedophile until they can prove themselves not to be.

I and many others are staggered by the scale of the bill, which proposes to bring more than a million people in Scotland into the checking process. If the Executive wishes to do that successfully, an enormous amount of resources will be required to administer the system. The information that is before us is somewhat disingenuous, as it almost implies that the process is cost neutral for youth organisations such as ours. It is not. There is a cost for the Executive, because the more checks that are carried out on volunteers, the more the Executive will have to pay. It is not cost neutral for organisations such as ours, because the administrative costs in IT hardware, training staff and producing the support documentation that we need are enormous. We must take those costs into account.

I support moves to improve the POCSA regime. The voluntary sector worked hard with the Executive to get a sensible regime and we made a lot of progress. We can do more in that area. However, sometimes it is time to take stock—to step back and to ask what we are getting into and whether what we plan to do will hugely improve the safety that we offer to young people.

Mr Kenneth Macintosh (Eastwood) (Lab): A number of issues have been raised. Written evidence has been submitted on difficulties such as overlaps in age—when a person between 16 and 18 is to be regarded as an adult and when as a child—and the demand for notification of changes in address within three months of any
change. That evidence will be helpful, assuming that we proceed with the bill.

I return to an issue that was raised by Elaine Murray, Lucy McTernan, Judith Gillespie and others. I recognise fully that we do not want to create a system such as that which Jim Duffy has just described. We used to value all volunteers for their commitment, but now the first reaction to someone who volunteers to work with children is suspicion. That is an appalling situation. However, as Lucy McTernan said, we cannot rip up the system and start again. My understanding of the written evidence is that most groups welcome the bill as an improvement on the current situation. In other words, the bill will reduce bureaucracy and focus the number of checks that are carried out. A large number of people will be affected, but what is proposed will be far less onerous than the current system of disclosure. Am I right in thinking that the bill represents an improvement on that system?

Jim Duffy: The bill has the potential to improve the situation. However, the devil is in the detail, and much of the detail in the memoranda suggests that the improvements for which we were hoping are unlikely to come through.

Lucy McTernan: As I said in response to Elaine Murray, some aspects of the bill would improve the current situation, but a raft of other provisions could make the situation much worse. We welcome the proposed passporting regime and would like it to be implemented. The updating of disclosure records—the flagging process—is potentially useful. I am referring to the back end of the system—the measures that will match what is happening down south. We welcome the option of a disclosure that does not release vetting information—the statement of barred status—and a better, online, application process. We would also like to see a clearer definition in the bill of which organisations are caught. A couple of people mentioned informal associations.

There is a raft of things in the bill—basically, everything that I have left out—that we would not like to see introduced at this stage, because a lot more thought needs to go into them.

10:30

Mr Macintosh: The things that you highlighted as being an advantage cannot be introduced without the bill.

Lucy McTernan: They could be introduced through the bill or by amending the existing legislation.

Ms Rosemary Byrne (South of Scotland) (Sol): Thank you for your helpful written submissions. I want to pose the opposite question to Ken Macintosh’s. It is interesting that although all members of the committee have read the same submissions and have heard the same evidence, we are taking different things out of the discussion.

David Little said that an audit of POCSA is needed. Do the other witnesses share that view? George Thomson of Volunteer Development Scotland said that there should be research on its impact on volunteers. The flavour of what we are hearing is that we do not have full information on the matter and that we need to consider it further. Similar themes—age, for example—are picked up in many of the submissions. On protection of children, are there dangers, first, of complacency, given the amount of work that people will have to do and, secondly, that the bill will not hit the mark?

Ms Wendy Alexander (Paisley North) (Lab): I want to dwell on the issues that Elaine Murray, Ken Macintosh and Rosemary Byrne have raised. Given where we are in the legislative process, the committee has a choice to make about what to recommend—in fact, Scotland, collectively, has a choice to make. This is the third bill on child protection and how to deal with stranger danger that we have been asked to pass in less than five years. Either we say that we will try to get this third bill right, even though large parts of the provisions of POCSA—not least the retrospective provisions on volunteers—have not been properly commenced, or we say that the way to proceed is to commence fully the provisions of POCSA and use it to make the suggested improvements. The valuable insight from today’s meeting is that we have to reflect on that issue.

If we try to scale back the bill so that we do not presume that everyone who offers to volunteer represents a danger to children, we might not pare it back sufficiently to deal with some of the anxieties that have been expressed. There would certainly be a new information and training regime on top of the two that are related to the Police Act 1997 and POCSA. Alternatively, we could start with POCSA and build on it.

Many people are more expert than I am on the subject. I simply want to clarify on the essence of the choice that the committee will have to make. I would welcome guidance on whether we should pare back the bill and do an audit of POCSA, thereby having a third bill in this area, or try to build on the POCSA regime. Many of us have an open mind on that and are interested in your views.

Kelly Donaldson (Voluntary Arts Scotland): I want to touch on the statistics that are coming out about volunteers and about the hidden statistics behind them. Reference has been made to the number of volunteers who work in small groups and are not mentioned. There are also the hidden victims whom we have found, through POCSA. A
huge amount of confusion reigns supreme out there. Those groups already find the wording of the legislation difficult and are getting not clarification but mixed messages from local authorities and, for example, from people from whom they try to hire halls. Everyone seems to have a different slant on the legislation. From our point of view, the existing legislation should be made more understandable, so that everyone can sing from the same hymn sheet.

It is not so much that volunteers are not coming forward—they still are—but that, because they are so confused, they are refusing to have children in their groups. They want to stick to training or sharing their craft with adults. If a child wants to join in, they see that as being too difficult for them so they do not let them into the group. It does not show up in the statistics that there is a 15-year-old who wants to learn macramé but no one will let her join a group because someone would have to get checked and that would be difficult. That is never going to show up in the statistics.

Judith Gillespie: I want to respond to Wendy Alexander’s point. The beneficial aspect of the bill is that it will streamline the process by allowing multiple checks. However, having listened to a lot of the voluntary groups in consultation processes, I know that many have taken information from police checks and used it for other purposes. I am, therefore, not sure how effective the central barring system will be in reducing the number of times that people have to go through the evidence process.

On the overall question of what we should do, the real problem is schedule 2 of POCSA, which says what the act applies to. The fact that it is full of unhelpful vaguenesses has meant that the process has become extensive. The final paragraph of schedule 2, however, allows ministers to revise and review everything in the schedule except that last paragraph, so there is scope for ministers to revisit schedule 2 in order to tighten and improve the definitions in it. In many respects, the confusion comes directly from the wording of the schedule. Everybody agrees that there are aspects of the checking process that are good and helpful, but it has become so widespread and has infiltrated so far that there are difficulties with it and people interpret it differently because the definitions in schedule 2 are extremely vague. When we asked about it, we were told that it would have to be decided in a court of law: a parent who was volunteering to help at a school disco and who was told that they might end up as an interesting test case in a court would not bother turning up. The definitions in schedule 2 need to be seriously reviewed.

Fiona Hyslop (Lothians) (SNP): The committee has a fundamental decision to make concerning what we will do with the bill, so we need a steer from those who have not contributed so far on what they want us to do. The committee has spent most of its time over the past four years dealing with child protection—it looks as though there will be more legislation next year under “Getting it Right for Every Child: Proposals for Action”.

Multiple disclosures came up two years ago. If the message is that the Executive should go back and think again, the committee can recommend that. We can ask the Government to have another look at the bill and to pause. If matters in respect of multiple checks could be improved by a short amendment to POCSA, the committee could perhaps progress that.

The other issue is the new scheme. Many people agree that POCSA should be amended to enable retrospective checks; however, that would create records on a million people about whom the new scheme in the bill is meant to establish records. The question is whether it would be better to opt for the new scheme for those million people or to amend POCSA and have retrospective checks under that act. We are caught between the devil and the deep blue sea. In either case, the vast majority of the Scottish population would end up having to be checked. Would that protect us from the evil individuals whom the bill is meant to screen out?

There is a balance to be struck and we must consider how we can achieve it. This is a rare opportunity for the committee to get different perspectives from interest groups. If you want us to say no to the bill and to pause, we can do that, but we need to hear strong views on practical things that you think can and should be done. It may be that we can get away with doing some of those things quickly now, under POCSA. I would worry about a filleted bill that did some things but did not do everything being rushed through before dissolution and the May election. There are hard choices to be made—this is your opportunity to give us a strong steer as to what you want.

David Williams (Quarriers): We recognise and agree with much of the purpose behind the bill. We welcome especially the recognition that people who work with protected adults should be subject to the same scrutiny as those who work with children. Although the emphasis of the debate is on children—that is absolutely appropriate—the recognition regarding people who work with adults causes some conflicts and difficulties in the bill.

There has already been some debate about whether a person’s status as an adult should start at 16 or 18, and about the list to which they could be referred. We also feel that there is potential for confusion between the responsible agencies in referring and making approaches to the lists. In our opinion, disclosure information that is given to
employers should indicate registration on either list. That is a challenge because the proposal is that a person will be referred to only one list, which is where the information will come from directly.

We also think that, in the process of the bill, the focus has been on speed rather than effectiveness. As has been mentioned, other bits and pieces of legislation are either in place or pending—I am thinking of the getting it right for every child bill—that may be more appropriate places in which to address sharing of information.

**Norman Dunning:** The bill is also about adults—we should remind ourselves of that fact—and it suffers from some of the difficulties that are evident in respect of the Adult (Support and Protection) (Scotland) Bill in respect of the definition of protected adults. How are we to draft a definition that makes sense? The definition in the bill, which relates only to the person who is receiving a service, will not be operable. Apart from anything else, in the informal voluntary groups to which I have referred, people would not necessarily know the definition. There is no clear way in which to pick out or label an adult as being in need of protection.

Added to that, given the nature of so many self-help groups, it is often not clear who is the volunteer or helper and who is the potential victim. People in such groups work together to achieve an end.

If, under the bill, someone was told that they could not work within such-and-such a group because they had such-and-such a conviction, that would kill a lot of the self-help groups in which people who have convictions are trying to move forward and bring other things into their lives. We will kill off that whole process if we are not careful. People with learning disabilities may also have perpetrated crimes, and the same might be true of other groups—in fact, even more so.

**The Convener:** Michael Hankinson of the Prince's Trust Scotland might want to comment on that. Your submission refers to rehabilitation of offenders and other issues of that nature.

**Michael Hankinson (Prince's Trust Scotland):** We refer specifically to rehabilitation of offenders. We are in the business of trying to help young people who have criminal records to correct the situation, so we are always concerned about legislation that might lead us to bar people unnecessarily or which might dissuade people from putting themselves forward to do things because they have a criminal record, although it might be entirely irrelevant to the reason for the check.

10:45

Two things interest me. We really do not know what effect the previous legislation has had on people's desire to volunteer. The Prince’s Trust’s experience is not altogether clear on that, but some people have certainly refused to undergo checks because they have been checked twice before. There is no doubt that the improvement that is on offer—to make disclosures transferable—would be greatly welcomed.

I say as a general comment that, in preparing for the meeting, I found it quite difficult to know what a lot of the proposals really mean. It seems that we are being asked to comment on a lot of unknown detail.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** The committee has to address two or three important issues. First, there needs to be further discussion about first principles and whether we are going in the right direction.

Secondly, it troubles me that most of the submissions say that people are worried about the proportionality of the bill in relation to what is meant to be the concern. However, I cannot really see where any of the submissions propose solutions other than to start again, which might be worth considering, or to make amendments to existing legislation. It would be helpful to explore either of those two options, given that we are going into the particularly intriguing final five months of this parliamentary session.

Thirdly, barely a week goes by in my area without a volunteer who has a colourful past popping up, but I do not think that that should impact on the concerns that we have about people who have committed much more serious crimes. My area will contain a number of people whose history would, under the bill, dissuade them from participating or volunteering as they have done in the past, which would be extremely regrettable, given that they are, as we speak, making positive contributions to their communities. We should try to address that.

The other issue that we do not have a lot of time for is the cost of the bill. The SCVO raised that point when the Finance Committee was discussing the financial memorandum to the bill. I know that we are going to move on to talk about that shortly, but I would like to hear views on possible cost impacts, particularly because various views have been presented about the impacts on smaller scale organisations.

**Jim Duffy:** I can give a quick response to that question. We estimate that the current cost to us in terms of staff time, IT support requirements and general administration would be between £40,000 and £50,000 per year. The financial memorandum does not show us the future impact of further
access to online checking and so on. It is difficult for us to assess, but our costs are unlikely to go down. Those costs have to be met primarily from our youth members and volunteers because, as David Little said, most of our income comes from membership subscriptions.

I have expressed concern about administration of the scheme. The bill could bring about lots of improvements, particularly on passporting and the possibility of online access to checking information, for which we have been asking for a considerable time. We want to discuss improvements that can be made to the existing system. As a simple example, we are told that Disclosure Scotland is going to introduce a new disclosure application form in a month. Although we are one of the largest volunteer-led youth organisations in the country, we have not been involved in that; in fact, we are not aware of any other major volunteer-led youth organisation that has had any input. I should also point out that the six largest volunteer-led youth organisations provide more than 50 per cent of Scotland’s youth-work capacity.

It is one thing to improve a form that we have all agreed, but to alter a form to which we have had no input might cause us difficulties, the greatest of which will be our having to sell yet another change to our volunteers. All the processes and procedures that we have developed over the past four years will simply go out of the window at very short notice, without taking into account volunteer-led organisations’ capacity to respond. If we make such a change quickly, the process will be discredited further. There might well be another set of changes 18 months down the line. I do not think that the people who will have to deliver the changes are being considered.

The assumption seems to be not only that the process will be cost-neutral but that it will all be supported by professional staff, but for the vast majority of organisations that will have to make the bill work, that is simply not the case. We need to reflect on whether we have the capacity to deliver the provisions. More important, we must also have a proper evaluation of risk, which has never been carried out.

The Convener: A number of people want to comment but, given that the written submissions have alerted the committee to the problem in respect of disclosure fees, it might save time if we do not discuss it now.

I wonder whether we can discuss issues such as the hidden training and administrative costs for organisations. In its submission, Enable makes interesting points about the level at which decisions to disclose information are taken and whether the people who make such judgments have the right training and background. Judith Gillespie from the SPTC has also highlighted that issue.

David Little: Our answer to Frank McAveety’s question is that the bill will cost £41,000. Fiona Hyslop will forgive my football analogy, but I have to say that, at this time, we do not need moveable goalposts. Instead, we need one piece of legislation that encapsulates everything.

Jim Duffy’s comment about awareness was spot on. It takes a long time for voluntary organisations to make people around Scotland aware of changes to procedures and paperwork. As I said earlier, we have carried out 6,000 checks, but we have 16,000 people on the computer and retrospective checking increases our workload. Of those 6,000 people, we have excluded 19 which, if I can use another football analogy, means that the score is 19-nil—with the nil being for training.

Like Lucy McTernan, we welcome the passport proposals, but we want to be involved with and to assist in their practical preparation. For a start, unless passports are six feet high and carved from granite, many people will lose them, which will mean that we will have to recheck everything. If forms are passed on, identifications can certainly be recorded, but the groups will still need to carry out ID checks. If, for example, I were to show up saying that I was Wullie Smith, I would still have to prove that I was Wullie Smith. We need to consider the matter, especially the IT aspects, in respect of which we need to ensure that the MOT is still live.

Judith Gillespie: Parent-teacher associations are in a similar position to Enable Scotland in that voluntary groups operate from kitchens and are completely incapable of managing the process at all or of holding information and keeping it confidential.

I echo Jim Duffy’s point: we have to look again at what the real risks to children are. A scatter-gun approach is being taken and it is spreading wider and wider. However, there has been no review or audit of how much risk or danger to children is being removed. There has been no starting point: when I asked the Scottish Executive what figures it was starting with, it said that it had not collected any. There is therefore no benchmark against which we can measure success.

The main risks to children fall outside the areas to which checks will apply. When we looked at the figures for referral, the information did not mention the main reason for referral, which is physical neglect. From talking to social workers, we understand that such neglect is a result of increasing drug abuse among adults. That needs urgent attention.

The bill fails to address the real problems for children, but it will also be positively damaging. A
huge level of anxiety is building up among adults about other adults, and among children about adults. The Institute for Public Policy Research has shown that adults in this country are the worst at relating to children. That, to some extent, is a by-product of what the institute describes as “paedophobia”. There is a climate of distrust—many men feel completely incapable of offering a helping hand to a child in public in case they are characterised as having done it for the wrong reasons.

It is time to take stock and do an audit. We have to see where we are. If we want to make improvements, schedule 2 of POCSA can be changed simply by a ministerial decision. There is scope for a review, but we should halt at the moment before we charge on any further.

John Harris (Central Registered Body in Scotland): The problem is that, although we are presented in the bill with a model that might be consistent for professional, regulated and statutory bodies, the not-for-profit sector includes a diverse range of organisations with different aims, aspirations, scales, remits, methodologies and resources. As has been said this morning, questions arise about the point at which a body is sufficiently formed to fall within the legal provisions, and about the basic needs of individual volunteers who will be captured by the scheme.

The voluntary sector’s turnover of members, leaders, management committees and paid staff should be an important factor in designing the legislation, to ensure that the bill’s objectives are met. That opinion has been exemplified by much that has been said this morning. Our experience of dealing with part V of the Police Act 1997 and with the Protection of Children (Scotland) Act 2003 has been that organisations have considerable weaknesses at all levels in dealing appropriately with their requirements.

We agree that organisations will benefit from a reduction in bureaucracy, which the bill will bring about. For instance, disclosures will be portable and new information will be available to update assessments—information on barred status, for example. However, those advantages must be balanced against the additional responsibilities and pressures that will be imposed on organisations large and small.

We have heard from larger organisations about the impact on them that will result because large numbers of people work for them, but a word ought to be said for the smaller groups that do not benefit from paid staff, do not have their own premises and facilities, and do not have the support that large organisations, such as Jim Duffy’s, do. His problems are size and scale; other organisations suffer from their absolute smallness.

11:00

On the basic level, organisations will need to ensure that they have adequate records systems to cope with transfer and movement of information between each other and the central barring unit, but it is by no means certain that they will be able to do that. Furthermore, the imposition of various penalties on volunteers and managers who fail to participate correctly in the scheme is a great danger.

We need to tailor the legislation to the specific needs and requirements of the sector so that it reflects needs and outcomes and takes account of many of the points that have been made. By the end of this financial year, the central registered body will have processed just under 200,000 disclosure applications since 29 April 2002. That figure is based on actual figures for the preceding years and an estimate for this year’s outturn.

If the bill remains as it is, the capture of additional individuals will push that figure up, which raises questions about the scheme’s ability to cope. Support will be needed, including accessible support for larger and smaller organisations and systems that will enable them to put the legislation into effect. We are talking about a structure that is not sufficiently finely tuned to current needs.

The Convener: For the record, when you refer to 200,000 disclosures, do you mean individuals or disclosure applications?

John Harris: Disclosures that have been performed on individual applicants.

The Convener: So that means 200,000 separate individuals.

John Harris: Yes.

Michael Hankinson: Those are the free checks.

John Harris: Yes.

Joe McIvor: I want to answer Frank McAveety’s point about the overall costs. Youth Scotland made an investment of £100,000 over three years not only in the administration of disclosures but in the wider issues of recruitment, health and safety, risk assessment and child protection in general. We must now make strategic decisions about what to do next. Cost is a massive issue, in relation to not just administration but changing people’s behaviour, which is difficult.

George Thomson: Frank McAveety was right to ask about the first principles on which we work. For me, the first principle is how children and adults are served by people in a regulated workforce. The context of the bill should be how we provide something of worth to our children and vulnerable adults and, in deciding how we apply ourselves to the regulated workforce, we have to
know about the risk. I agree with Judith Gillespie that there does not seem to have been much analysis of the risk that we are trying to deal with. To me, that would have been the first principle.

Then, in deciding how to minimise that risk, we need rational and thought-through approaches. It is salutary that evidence shows that two thirds of those who go through the disclosure process are women. Does that show that we are approaching the risk in the best way? I do not think that we are, especially if we are working without a definition of the risk. To my mind, it is a matter not so much of whether POCSA can be improved but of whether we can define who should be captured by the legislation. If we can do that, we can decide how to apply ourselves to the risk. Unless we have that definition and apply proportionality, the administrative and other aspects will not matter—we will miss the key point.

Lucy McTernan: I welcome the points that committee members have made, which allow us to get right down to the fundamentals of this whole business. In the past, the debate has been about how we will cope with the proposals, but we ought to welcome and take seriously the opportunity to look again at the fundamental risk and at the potentially counterproductive nature of the system, as Judith Gillespie said.

On behalf of voluntary organisations, the SCVO has been saying for a considerable time that voluntary organisations are largely at the front end of providing new and innovative services that benefit children and young people, and that overly bureaucratic systems provide no more than a distraction of effort, innovation, will and time from the development and delivery of services that benefit young people. If we want the ultimate outcome of the process to be a safe, happy and fulfilling childhood, perhaps we should start not by being overly attentive to risk and putting in place major bureaucratic systems. Colleagues from the voluntary sector tell me that we ought to look more broadly at the potential unintended consequences of the bill on voluntary organisations’ practice on the ground, rather than simply asking whether organisations can deal with the cost.

On cost, in effect we are being asked to sign a blank cheque for fees and for the cost of a so-called self-financing system. Already, in the couple of years since POCSA has been on the go, there has been a 47 per cent increase in fees. If we go down the road that is proposed, unless there is a cap on fees, not just time and effort but cash resources will be expended on keeping the system going.

Ms Alexander: One of the justifications for the bill is that it is a copycat measure that we are obliged to take, following on from the Bichard recommendations. However, the crucial difference is that in Scotland a voluntary scheme is proposed. Whether the scheme should be voluntary is disputed, but if we start with the fundamental issues that we have heard about—ensuring happy childhoods and accurately assessing sources of risk—the haystack that we are building to find the needles will not capture what goes on in the home.

Perhaps even more worryingly, because the scheme is voluntary, we must ask whether the legislation will capture those few evil individuals who we know will seek to evade the system and so will not apply but will still find locations and ways in which to groom and approach children. When we pursued that issue last week, the view of the police and other witnesses was not only that we should have 1 million people in the scheme, but that, if we found that a child had been groomed at other locations or on other occasions, it would be logical to extend the scheme to the relevant section of employees—for example, all bus drivers, all parkies and perhaps a vast number of other local authority workers. If everybody who ever helped out with a school disco was added in, that would quickly raise the number of people captured by the scheme not to 1 million but to 2 million.

At least three members of this committee also sit on the Finance Committee. What is worrying is that none of the estimates for IT costs even scopes out the possibility of bringing another 100,000 members of local authority staff into the system. If we are about giving children a happy childhood and protecting them from the few people who pose a real risk to them, I am also not sure that a voluntary scheme captures our objective. Further comment on that would be helpful.

I invite comments on the counterproductive aspect of the bill. I am greatly worried about resource diversion from other areas of child protection. The costs that are currently given for the IT systems associated with the scheme are £2.5 million. I cannot begin to understand why the comparable costs of new IT systems in the health service to service 1 million or 1.5 million people are tens of orders of magnitude larger than that; indeed, people around the table have suggested that the proposed IT system would be more complex than those to put together because the essence of its success will lie in sharing information across a vast range of professional organisations. Information will not simply be held in one system, as it is in the health service. Is £2 million for a system that will cover at least 1 million people in Scotland an underestimate of the costs that will be involved? The danger is that if we legislate, we will be compelled to support the IT system to deliver what has been proposed. History suggests that such a system will cost more than has been suggested. Where will tens of millions of
pounds come from? The POCSA systems do not have the required sophistication because they do not allow repeat checks and, so far, we have simply fuddled the challenge of retrospection for all, so we will not build on a largely existing system. Given our objectives, does anyone have any observations to make on the costs and the wisdom of having a voluntary scheme in Scotland?

Jim Duffy: I am not an IT expert so I will not comment on the IT costs, but it is important to note that the small amount of money to cover IT costs to which Wendy Alexander referred is more than the total grant support that the Executive currently provides to national youth work organisations for their core activities.

I thought that we had put the matter of the scheme being voluntary to bed when we discussed POCSA. The scheme will not be voluntary. There will be a legal duty on trustees to ensure that they do not engage paid or volunteer staff who are on a banned list to work with children or vulnerable adults. At the moment, the only way of finding out such things is to do a disclosure check. If we do not take action, the scheme has the potential to criminalise volunteers and trustees accidentally. Accidental criminalisation is still criminalisation. Let us please not say that the scheme will be voluntary—it will not be.

Mr Macintosh: I want to return to the question that I asked earlier and to the question that Frank McAvety asked about alternative paths. Judith Gillespie talked about using POCSA—but to do what? I do not want to sound unsympathetic about the concerns that have been raised—indeed, I do not think that any committee member will be unsympathetic to them, particularly to the idea that a meaningless bureaucracy will be created that will not provide any security—but we should consider the point of the proposed legislation. The voluntary sector is caught up in the proposals, but the bill is not for it; it is for parents and families who are looking for security. Ultimately, we are trying to address the concerns of many people about how safe children or vulnerable adults in the community are with people who run facilities, services and so on. Volunteers supply services, but ultimately we are concerned about people who want security above everything else. The first question that parents always ask is how safe their children will be with someone who is looking after them and whether they can be trusted. The committee has a duty to ensure that we can at least provide some reassurance about that, which is why we are discussing what we are discussing.

It is all very well to say that things are getting out of hand and that the proposals are too unfocused. Perhaps something can be done to focus the bill, but I have not heard about an alternative direction of travel? How can we refocus on the very small number of people who represent a serious danger? At least the proposed system would provide comfort to some people that we are taking their concerns seriously.

The Convener: The other side of the coin is the issue of back watching, to which one or two submissions refer. Organisations might become so concerned about protecting their own interests that they will forget that they should be protecting children. Perhaps people can also pick up on that issue.

11:15

Lord James Douglas-Hamilton (Lothians) (Con): There is no doubt that everyone here supports the protection of children and young adults. The premise of my question is the fact that we do not want something that is disproportionate and which has excessive costs. We do not want a rush job that will not stand the test of time. Judith Gillespie states in her submission:

“We think the costs and bureaucracy are facing in entirely the wrong direction. They are focused on the lowest areas of risk leaving children exposed in areas of much higher risk.”

To pick up Wendy Alexander's point, we do not want to take out the haystack in order to find the needle.

Does the Scottish Parent Teacher Council recommend that the bill should not proceed? Should the Executive think again and come forward with a more professional job that is not disproportionate and does not have excessive costs?

Judith Gillespie: Absolutely. It is important to examine the risks, the things that children suffer and the occasions on which children suffer serious abuse and to recognise publicly that most of those happen in domestic situations, which the bill does not cover.

There have been a number of horrendous cases in which known paedophiles have attacked and abused or killed children, so there is perhaps a need to spend money, time and effort on putting in place better ways of monitoring people who are already known to the system. However, how often have children suffered any kind of abuse at a school disco, for example? Ken Macintosh made a good point about parents' anxiety, but the IPPR research shows that that anxiety is being falsely fuelled. It is important that people who know and understand the risks put things back in proportion so that parents do not become excessively anxious.

The risk is not huge if a child takes part voluntarily in an essentially public activity with lots
of other people. We advise our PTAs that the most important thing is that the adults who are present operate a self-monitoring process against each other. In that way, the safety of the child comes out of the behaviour of the adults rather than from a bureaucratic check.

John Harris: On the driving force behind engagement with us, voluntary sector organisations do not operate in a vacuum. Often, the necessity for groups to become involved is driven by those who provide funds and accommodation or by the policies of local authorities, NHS Scotland and the care sector regulator. As a result of that, voluntary sector organisations often get confused about which guidance and rules they should follow. There is sometimes a lack of coherence between the demands of the local authority, the care sector and others, particularly funders.

Voluntary sector bodies need to be included in the discussions so that there is coherence in the requirements that are imposed and the persons who need to be involved. As Jim Duffy said, the scheme is not exactly mandatory, but it is not exactly non-mandatory either. There are indirect drivers in the system. We should not forget those who provide insurance, because they have a clear interest in what organisations do, who is insured and what level of risk they bear.

The Convener: The discussion could go on all morning, but unfortunately time does not allow for that. I will take any final points that members wish to make, then I will allow any witnesses who wish to make final comments to do so. However, all comments will have to be brief.

Dr Murray: Confusion is felt about whether participation in the scheme will be voluntary. It is not really the case that the scheme will be voluntary, but it will not be an offence not to participate in the scheme. That is deliberately different from the position south of the border, so that people who help casually, in a crèche or elsewhere, will not be criminalised for doing so. The only problem is that that allows a toehold for perpetrators, people who have evil intent towards children or a record of abuse will probably not apply to join the scheme and will hope to have contact with children when people are not aware of the scheme. That is a danger in the bill.

As the Custodial Sentences and Weapons (Scotland) Bill raises issues of monitoring people in the community, does it offer possibilities for focusing on people who are known sex offenders and who have a record? Instead of assuming that the rest of us are pins and not hay, would such an approach find the pins?

Ms Byrne: My final question is whether it would be more appropriate to improve the existing system and to put financial resources into training and education to identify inappropriate behaviour and to enable groups to pass on that training as widely as possible. I mean also education to enable the vulnerable—children and vulnerable adults—to identify different behaviour by people who associate with them.

Fiona Hyslop: We have not touched on the part on information sharing, although the submissions contain comments on it. I ask for final views—as opposed to some of your concerns, of which we have a note in the submissions—about what, if we were to fillet, tailor or change the bill, or pause for a rethink, should be done with information sharing as a process.

Norman Dunning: I agree absolutely with Rosemary Byrne. What balance do we strike in best protecting people? Do we best protect them by putting them on a list or do we make it easier for them to recognise risk? Giving people information and knowledge about what constitutes risk and about how to recognise problems or difficulties in others’ behaviour will make them more likely to recognise risk. Together with that, we need to make it easier for people to self-refer if they think that they have a problem. Abuse is most commonly detected not because somebody spots it or spots someone on a list but because somebody reports something as suspicious. Educating people is crucial.

I will return to the points about what we should do. As an organisation, we work with children and adults and with formal and informal services—today I have concentrated on informal services. We have POCSA, which could be reformed. We also have all the regulation that accompanies the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, which regulates people who work with informal services. Those schemes are working and would be improved by better checking mechanisms, as proposed in the bill. There are ways to improve those systems.

The informal work with adults that I talked about involves a self-help element. We need to have a cool look at the risk that we are trying to prevent and what we are so worried about. My organisation has done what I described this morning for the past 50 years and I can say with absolute certainty that we have never killed anybody and I am not aware that any serious crime has been committed in any of our clubs. That is a bit like what Judith Gillespie said about playgroups. Given that, why is that activity to be put at risk by legislation whose need has not been established?
Jim Duffy: I do not want us to go away today thinking that the scheme is voluntary. I understand what Elaine Murray says—that an individual's decision whether to join the scheme is voluntary—but the people who run a crèche and recruit an individual will have a legal responsibility to check that individual and they will not be able to do that in any way other than by compelling that individual to become a member of the scheme. The scheme is not voluntary—please do not think otherwise.

George Thomson: I agree with Jim Duffy. I wonder whether the issue could be reframed. One way of looking at it is to ask what the consequences of non-compliance are. In England, the consequences of non-compliance are greater, because it is a criminal offence even if someone is not on the list. In Scotland, not complying has no consequences unless an organisation happens to take on someone who is on the list. Therein lies a real problem for us. One could argue that the current system is being supported by the lack of compliance. Currently, 11,000 organisations comply. The SCVO has said that there may be as many as 45,000 organisations that should be complying. One could make the case that as many as 30,000 organisations are not currently complying with the legislation. That takes us back to the issue of who needs to comply, and why. If we do not define that, everyone is in the frame.

David Little: I put on record again that the SYFA and SALSC are fully committed to the “2006 Accord for the Protection of Children in Scottish Sport”. The point that Rosemary Byrne made typifies the problems that we have. We need education and training. We know children, but we have huge difficulties with vulnerable adults. The vast majority of our problems come from verbal abuse. Some coaches get a wee bit excited. There are also neglect issues—sometimes we do not wrap kids up at the side of a football pitch. We need our people to have the education and training that will enable them to identify the people and scenarios that we have discussed.

The Convener: I thank everyone for coming along to the session, which members and I have found extremely valuable. We may consider taking a similar approach in future. I am sure that there are some issues that we have not covered and that you would have liked us to cover. We have not considered definitions of harm, for example, and people may wish to return to that issue. We have seen the written evidence that you have submitted and will take that into account, along with what we have heard today. If you have thoughts about alternative approaches that you think could achieve the aims of the bill or about ways in which the bill could be amended to deal with some of your concerns, please let the committee know, so that we can consider your suggestions and raise them with the Executive. There will now be a short suspension.

11:27
Meeting suspended.

11:38
On resuming—

The Convener: We move on to our second panel of witnesses and a more conventional format. We will have to wait and see whether that is a good or a bad thing; if it is a bad thing, that will have nothing to do with the panel that is before us. I welcome our witnesses. Donald MacKenzie is lead child protection officer and Jim Murray is senior solicitor at Dundee City Council. Andrea Batchelor is head of service for inclusion at South Lanarkshire Council. Allan Gunning is chief operating executive for NHS Ayrshire and Arran—I do not know whether that means that he is a surgeon. Dr Helen Hammond is responsible for child health protection at NHS Lothian. Thank you for your written submissions. No one has indicated an immediate desire to make brief additional comments, so we will move straight to questions.

Mr McAveety: My question follows on from the previous evidence-taking session. A substantial number of concerns have been raised consistently about the proportionality and applicability of the bill. What impact do you think the bill as drafted will have? Should we revisit the central principle of whether it is the right thing to do?

Donald MacKenzie (Dundee City Council): The evidence that the committee heard last week and earlier today makes it clear that the bill is one piece of the jigsaw—it is part of a package of measures to protect children.

Any system for checking people to see whether they are unsuitable to work with children will, by its very nature, be robust and, some would say, intrusive. There has been discussion about looking at only those who have already been convicted. I am not sure how we could take a comprehensive look at everyone who wants to do regulated work without a system as robust as the one proposed in the bill. In order to identify the very few people who might pose a risk to children, we might need such a comprehensive system, even though it might seem like we are doing an awful lot to get to those few.

Mr McAveety: Would any of you have suggested this style of legislation to address those issues?

Dr Helen Hammond (NHS Lothian): NHS Lothian is a big statutory organisation. We know that there are cases in which children and
vulnerable adults have come to harm from our employees, so we need a vetting and barring scheme such as the proposed scheme. The issues that colleagues raised during the roundtable discussion in relation to the voluntary sector are of great concern to us. The voluntary sector is a different setting and I echo the point that was made that many of our most vulnerable children and families receive a huge amount of innovative support from it. In a sense, there are two sides to the discussion. NHS Lothian thinks that the bill will simplify current arrangements and provide for the necessary vetting and barring of our employees.

Allan Gunning (NHS Ayrshire and Arran): The underlying objectives of the proposed new scheme are certainly welcome in the national health service. However, the arrangements will only be as strong as the weakest link, which is why the debate around the voluntary nature of the scheme is important. We in the health service do not work in isolation; we are dependent on arrangements with others in other organisations. I wonder about communication about and understanding of the bill, particularly among, for example, parents of learning-disabled children who are putting together care packages under their own steam without the involvement of statutory agencies. Would such parents understand the scheme? Would they know whether the person who they were considering employing to care for their child should be vetted under the scheme? There are issues about how the arrangements will work in practice. Our concerns are not so much from the NHS perspective, but relate to our interrelationships with other agencies.

Dr Murray: In the earlier evidence session, we heard that the vast majority of abuse that children suffer goes on in their own home, with informal contact, rather than at the hand of council or health service employees or those working in the voluntary sector. Given the complexity of the bill, is there a danger that in trying to protect children you will be forced to concentrate on systems of checks and balances, rather than on identifying children who are at risk, which is what your employees, or those in the voluntary sector who work with children, do? People will be watching their backs and concentrating on the structures and systems, rather than identifying children who are being abused or neglected. Everybody approves 100 per cent the aim of the bill, which is to protect children and vulnerable adults, but are we approaching the issue from the wrong direction?

11:45

Jim Murray (Dundee City Council): I do not think that it is an either/or situation. Some of the debate that we heard earlier this morning seemed to be moving towards the idea that, if we do not have a vetting and barring scheme, we will simply have to approach things in a different way. Both approaches are being taken now: there is POCSA and there are the other forms of information sharing among councils that happen already. We should not be drawn into thinking that, if the proposed scheme is introduced, time and effort will not be expended in other ways. That will happen as well.

The proposed scheme is not to do with all aspects of child protection. A lot of other things are going on already. The proposal is about having a vetting and barring check—that is as much as we want it to be about. You mentioned what happens in the home. As I understand it, the bill as drafted does not seek to interfere with that side of things. Other things are already going on in that regard, and if you are suggesting that the bill does not have regard to things that go on in the home, you are right, as it was never intended to do so.

Andrea Batchelor (South Lanarkshire Council): I agree. It is a matter of moving forward on a number of different fronts, which is exactly what the child protection reform programme has done. It has raised the awareness of a whole range of people of needs that have been highlighted but which are not covered by the bill. I do not think that there is any reason to suppose that the bill will be a distraction from those efforts or that there is any need for reassurance on that score.

On the issue of proportionality, there is a risk in looking for the few people who might cause difficulty. We are talking about more than just the major incidents of harm and about more than sex offenders. The bill gives us additional assistance in looking for people whose conduct has not been appropriate, such as employees who have neglected their duties and put children at risk. The provisions will be very helpful to us.

There is a wide consensus that some of the bill’s provisions will be helpful in reducing the difficulties that are associated with the present arrangements. It is really important that a big organisation such as South Lanarkshire Council has a robust recruitment process. The vetting process is only part of that process, but it gives us valuable information about people whom we would not wish to employ for work with children or protected adults. If the bill is not passed, those helpful improvements will be lost to us for the foreseeable future.

Dr Murray: The problem to which we were being alerted was the wide scope of the bill—the number of people who are encompassed by it—which would put considerable pressure on a number of sectors, and possibly on your organisations, too. It has been suggested that we might be able to amend existing legislation and
make changes to ministerial powers without producing new primary legislation. Do you think that there is an alternative way to achieve the bill's aims? Could we simply build on what we already have, rather than introduce new measures?

Andrea Batchelor: That was certainly suggested earlier this morning, but I do not think that any specific proposals have come forward. The idea of reviewing the Protection of Children (Scotland) Act 2003 should be examined. The Protection of Vulnerable Groups (Scotland) Bill will take a considerable time to implement. Many of the difficulties with it that have been raised are to do with implementation and the need to consult on the various codes of practice, for example. Any step to move on from the present position and to remove the current difficulties in the system will take time.

Donald MacKenzie: Another point that I want to make about the discussion earlier today and about the numbers of people who will be involved is that I have not heard any examination thus far of schedule 2 to the bill, especially parts 1 and 2 of that schedule. Perhaps we should examine the scope of the bill by looking at the definitions that are contained therein. For example, schedule 2 makes reference to the “normal duties” of a person's position and to whether those include “Being in sole charge of children”.

It also refers to “Contact with children ... in the absence of ... a person carrying out an activity mentioned in paragraphs 2, 3 or 4.”

We need to concentrate our minds on, and gain a proper understanding of, what is intended by schedule 2 to the bill. That point is up for discussion. I pose the question whether the bill will sweep as many people into the net as has been suggested.

Jim Murray: On the suggestion that we could simply amend POCSA, the definition of “child care position” in schedule 2 to that act can be amended by order, but such an order would not allow for the provision of a new scheme. The suggestion would take us so far, but it would not allow us to have a registered scheme. That requires separate legislation.

Even if such an amendment to POCSA provided quite a lot of scope in respect of the protection of children, the bill includes provisions that deal with protected adults as well. That is clearly something new and different. It would seem slightly incongruous to include provisions on protecting vulnerable adults in the Protection of Children (Scotland) Act 2003.

Allan Gunning: On whether people will end up watching their backs, a big issue for front-line staff will be the sharing of information, which is dealt with in part 3 of the bill. If we can put in place effective information systems to make it easier for front-line staff to carry out their jobs in relation to the protection of children, that will be very much welcomed by front-line staff. That is probably where the emphasis should lie. There are many issues associated with part 3 of the bill that we might well come to, but the consistent message that I get in feedback from front-line staff—I should clarify that I am not a surgeon but a PhD and, as chief operating executive, I am in charge of the actual running of services—is that information systems are needed to make information sharing easier for people on the front line. If that direction of travel is supported by the bill, it will be very much welcomed within the NHS.

The Convener: I apologise for the rather bad joke that I made earlier.

Ms Byrne: Given that members of the previous panel considered that there should be an audit of the current legislation, research into its impact on the voluntary sector and a review of the systems that are in place already, do you think that the consultation on the bill was robust enough and thorough enough? Given the timescale for the bill, the bill’s importance and the concerns that have been raised by members of the previous panel and others, do you think that we are considering the bill too hastily? Many of the issues that have been highlighted need further consideration and amendment. Do you think that the bill takes us to the nub of the issue—these questions were posed by a member of the previous panel—concerning the nature of the risk that we are trying to deal with, whether we are rushing through the bill too quickly, whether we have consulted enough and whether we should review and research some elements of the proposals before we go much further? I know that those are huge questions.

Andrea Batchelor: How could the risk be researched? Unfortunately, at the moment you are depending on impressions from a range of organisations. That is not a good position to be in. However, to design a research programme that would answer such broad questions would be very difficult indeed. Certainly, our experience is that there is a degree of risk associated with people working with children—it may well exist for people working with protected adults as well—that needs to be dealt with as robustly as possible.

You asked about the effectiveness of the consultation, which took place earlier this year. During the consultation, the point was raised that most of the problems associated with the bill are to do with its implementation—for example, specifying who will be covered by the bill, what the costs will be and how people will be supported in getting to know the new arrangements. Those
issues have been raised and they need to be dealt with.

**Allan Gunning:** There were opportunities for everyone to feed into the consultation on parts 1 and 2 of the bill. Part 3, on sharing information, is critical, but I understand that ministers intend to prepare a code of practice on which there will be further consultation. It is important that that consultation should be detailed because of the complexities of some of the issues to do with confidentiality, patient-doctor relationships and so on.

I agree with Andrea Batchelor’s assessment that the problems are to do with implementation and the pace at which that happens, as well as with ensuring that we are geared up and have the capacity to implement the bill appropriately. That applies not only to the NHS and local authorities, but to other players such as Disclosure Scotland and sheriff courts, if they are to handle appeals. Everything has to be in place so that the considerable effort that has gone into the bill is not let down by credibility issues to do with turnaround times for checks and so on. We need to learn the lessons of our earlier experiences, but implementation will be key.

**Jim Murray:** I agree with Allan Gunning. One of our concerns is about the kind of legislation that is made—the more and more primary legislation provides for codes of practice, regulations, orders and so forth to be made under secondary legislation. There is not enough wording on the face of the bill to allow organisations to comment.

The speed of delivery will be all right, provided that time for consultation is set aside to allow all the people who want to talk about it to contribute. There was no consultation on part 3 of the bill, although there was consultation on the other parts. We agree that the speed of delivery is not a concern, provided that there is back-up in secondary legislation before provisions are put into place and that there is meaningful consultation time.

**The Convener:** If we are talking about creating detailed guidance under secondary legislation that will go out to lengthy consultation, which will mean that the bill will not be implemented for some considerable time, does it make any sense to pass primary legislation before that consultation takes place? Would it not make more sense to have the consultation on all that detail and then pass primary legislation that fits with what comes out of the consultation?

**Jim Murray:** That might be a question for your draftspersons. However, it depends on the detail. As all the witnesses in previous evidence-giving sessions have said, the devil is in the detail, so we cannot comment yet. It is a question of how much more should go into primary legislation. Regulations are bound to be required and guidance and codes of practice will follow in any event because the area is so complex—I cannot envisage how all the detail could be put into primary legislation without those back-ups.

**Ms Alexander:** We are the lead committee on the bill, and will say whether it is a good bill or a bad bill. We have a unicameral Parliament, with no upper house to revise bills, so there is an obligation on us to be clear about whether legislation will be good, in relation to its objectives and its detail. The witnesses are the only people who will speak for local government and the health service to the committee about whether they can make the bill work and whether the issues are only around implementation.

I want to ask a question based on a quotation from the submission from the Faculty of Advocates that we received today—we do not have time to hear from the faculty directly.

The top lawyers in the land say:

“The Faculty has attempted to provide as full an analysis as possible of the potential legal and practice issues which the Bill presents. However, the number and range of matters left to Ministers means that it is difficult to provide any conclusive advice as to whether or not the Bill will be effective … The Bill is not easy to follow; even the opening section provides no definition as to the scope and purpose of the Lists. The lack of coherence in the manner in which the Bill is drafted, and the lack of clarity in definitions, will be an issue for larger groups”—by implication, local government and the health service—

“who will have to utilise personnel and resources to help them understand and apply the Bill’s provisions.”

The faculty goes on to say:

“We also take the opportunity to make the general point that where there are criminal sanctions”—which the bill will have—

“there must be clarity in respect of the action, or inaction, which may constitute a criminal offence.”

The submission then refers to the lack of clarity in a number of sections.

The top lawyers in the land say that they cannot determine whether the bill will be effective, that it does not define what constitutes harm and that, although there will be criminal sanctions, there is no clear explanation of what will constitute a criminal offence. If I was the head of a personnel and resources department at any health board or local authority in Scotland, those views would frighten the living daylights out of me. Is it just a question of implementation?
12:00

Jim Murray: The secondary legislation will have to be extremely robust. However, I have not read that submission.

Ms Alexander: Fair enough.

Jim Murray: To date, within the existing legislative framework, we have tried to provide constructive criticism, on the assumption that there will be a vetting and barring scheme.

In relation to criminal sanctions, it is true that there are difficulties to do with definition. The quote that you read out did not mention the fact that reasonableness arguments can be used as defences to criminal charges—in other words, the fact that it might not have been reasonable for someone to know that regulated work was being undertaken or that a protected adult was involved could be used as a defence. In some respects, I agree with the views that you quoted, but one could go further and say that the Crown Office might find it difficult even to raise a prosecution. Those issues need to be explored.

I do not want to reiterate everything that I have said, but I hope that if the Faculty of Advocates examines the situation at the end of the process once all the secondary legislation has been put in place, it will find the position far clearer. There are occasions on which it is not necessarily completely unambiguous whether a criminal offence has been committed. The submission from the Faculty of Advocates is not the first occasion on which lawyers have sat on the fence on that.

The Convener: If all legislation was crystal clear, there would be no need for lawyers.

Does Wendy Alexander have a follow-up question?

Ms Alexander: I want to ask about the lack of coherence in the drafting of the bill, its lack of clarity and the fact that the opening section provides no definition of the scope and purpose of the lists. Do the representatives of the health service or local government have anxieties about those issues?

Andrea Batchelor: Yes, and we have expressed our anxieties. We have stressed the requirement for clear guidance to be provided in secondary legislation, whether in codes of practice or in other forms. However, I repeat that the bill has its good points, in that it will help to improve the situation with respect to all the issues that have been raised today.

Ms Alexander: I have just one more question. It might be unfair to ask you, but would it be better to adopt the bill’s approach or to amend POCSA? Which route would be preferable?

Andrea Batchelor: The limits on potential amendments to POCSA have already been mentioned. As has been said, the bill will be helpful in that it will provide greater protection for protected adults. It is difficult to see how that could be achieved without the bill.

There is no question but that the bill will present great difficulties for the voluntary sector. The issue is about who will be covered to work with protected adults. We have worked our way through the issues to do with volunteers working with children and I think that children are much better protected as a result of the legislation that has been passed in that regard. It would be good if the same were to happen for protected adults. In addition, the bill will enable us to improve the situation for volunteers as regards multiple checking. In our experience, multiple checking is often the straw that breaks the camel’s back. There are a number of other examples of how the bill improves the present situation from the point of view of the bureaucracy that is involved.

Fiona Hyslop: The implementation of any legislation is vital. We know that the implementation of the Protection of Children (Scotland) Act 2003 was in danger of criminalising tens of thousands of voluntary organisations, and we should learn a lesson from that. Ministers had to come back and say, “Hang on. We are not going to proceed so quickly. We are going to change things.” The lesson that we should learn from that is that implementation can fundamentally change the way in which a bill is put forward.

I want to pursue the issue of what the bill will mean in practice and what the good things in it are. We want to get the multiple checking issue sorted out, which is related to one of the other fundamental changes that the bill will bring in: the fact that any check must be contemporary. Perhaps Jim Murray can give us a legal point of view on this. We want the disclosure passports to contain information that is accurate today, rather than only when the disclosure application was made. Would it be possible, under the Protection of Children (Scotland) Act 2003, to have a system whereby the police could inform the local authority or the health board of any change in a person’s criminal behaviour—a conviction, or whatever—without requiring the new scheme to be established?

Jim Murray: POCSA is really only about checking whether someone has been placed on a list by ministers or by a court decision. That is as much as POCSA does at the moment.

The bigger question, which was touched on earlier, is about the need for a culture change as well as a legislative change. A number of statistics were quoted earlier, one of which was the fact that 84 per cent of people would not have any problem...
with being asked to undergo a check. That does not seem to be an issue, although there is an issue about the cost of the checks. That seems to be being addressed in the bill, under which the procedure will cost less because there will not be multiple checks. I know that I am not answering your question, but I think that this is all part of a bigger question.

The committee must decide whether you agree that you want to have a scheme of registration. As we ask in our written submission, if you do, is there any merit in the scheme being voluntary rather than mandatory? The organisations from which you have heard have all said that the scheme will really be mandatory as they will have to carry out checks; otherwise, they will be liable for people who have a criminal record. The person that we have not talked about is the non-organisational employer—the person who could be duped. It is important that, at some stage in the discussions, we address the question why the scheme should be mandatory from that person's perspective. If there were a mandatory scheme, the individual would not have to make decisions about a potential employee on the basis of their own judgment; the law would require that person to have been checked and to be part of a scheme. That is important.

I am not sure whether I have answered your question.

**Fiona Hyslop:** You think that the new scheme would be simpler for organisations to deal with.

**Jim Murray:** Yes, definitely.

**Dr Hammond:** The view of my organisation is that the new scheme would certainly be simpler. It is also important that there should be consistency in what happens north and south of the border, so that Scotland would not become a safe haven for people who might be picked up by checks south of the border. That has not been mentioned yet this morning.

**Fiona Hyslop:** The point was made last week that, if the scheme is meant to be consistent north and south of the border, and legislation was passed in England a couple of weeks ago, we could be stuck between a rock and a hard place.

**Allan Gunning:** That takes us back to a point that I tried to make earlier about the population of Scotland understanding what is intended. The debate in the earlier evidence session focused on whether the scheme should be voluntary. It seems to me that that would pose problems for people understanding what is involved. Making the scheme simpler and universal not only would help to close potential loopholes, but would make the Executive’s and Parliament’s intentions more understandable to the population at large.

**Fiona Hyslop:** I have a brief question about the voluntary sector. Increasingly, both health board and council children's services are provided by contracted voluntary organisations. Do you have any views on the implications of the bill for that?

**Dr Hammond:** That is absolutely right. We heard about that earlier. It is important that voluntary bodies that are contracted to deliver services alongside us, in health, come under the same legislation as our direct employees.

**Donald MacKenzie:** I echo that.

**The Convener:** I want to follow up on the issue of the loopholes that people could exploit, as I am confused about where they might occur. Dr Hammond mentioned the concern about people from south of the border migrating up here to get posts so that they can abuse children or adults. However, if they take up new posts, they will have to be checked under the Scottish system. How would a loophole occur?

**Donald MacKenzie:** There would be no loophole with an organisational employer, because the organisation would have to check the person. Our submission relates to the question whether the scheme should be mandatory or voluntary.

The policy memorandum gives the example of a piano tutor. A person who arrives here and sets himself or herself up as a piano tutor does not have to join any scheme. Nobody is obliged to ask them to demonstrate their suitability or their barred status. If the parents who want to have their child tutored happen to know about the legislation and ask the person to show them a certificate saying that they are not barred from tutoring children, then that is fine—they can exercise that choice. It is their right to have that choice. However, I am not sure why we should have a list of jobs that are regulated and then say that some of the people who do those jobs do not need to be checked against a scheme that we are setting up. That seems to be an anomaly.

As the ACPOS representatives told you last week, in some detail, the skill and ability of the person who wants to get access to children for the purpose of harming them know no bounds. Someone will see that loophole in the legislation and will attempt to drive their coach and horses through it.

**Andrea Batchelor:** There is also the position of the employee who perpetrates harm or intends harm but is not prosecuted because there is no corroborative evidence for prosecution; yet, that person may be known to organisations as somebody who moves from place to place. The bill will tighten up the legislation in such cases by enabling information of that kind to be shared. For example, when an employee resigns before they are disciplined, that information will be passed on.
At the moment, there are circumstances in which that could happen, but it is difficult to do and it takes a long time. The bill will provide additional protection in such situations. I presume that that is one of the loopholes arising from the different legislation in the north and the south.

**Lord James Douglas-Hamilton:** I have a couple of quick questions, the first of which is for Donald MacKenzie. It was suggested in earlier evidence that it would be rare for somebody to be suitable for working with children but not suitable for working with vulnerable adults, and vice versa. From your point of view, would it be simpler to have one list rather than two lists, if that could be arranged?

**Donald MacKenzie:** I listened to the evidence on that matter that was put to you last week. We cannot envisage a situation in which a person who was unsuitable to work with one group would not be considered unsuitable to work with the other. However, we do not believe that having two lists would present us with any administrative or additional financial obligations, so we do not have a particularly strong view on whether there should be one list or two.

12:15

**Lord James Douglas-Hamilton:** I have another question about potential loopholes. Do you have many employees who have come from overseas, perhaps temporarily? If a public perception were to develop that such persons were not being vetted as rigorously as others were, how could reassurance best be given?

**Donald MacKenzie:** The employment of any person, from overseas or not, must rely on robust recruitment and selection procedures. The vetting and barring scheme and the checks that it will provide are one aspect of that. With reference to the evidence that was presented to you last week, we acknowledge that some people who may seek employment will come from states in which the checking procedures are not as effective and efficient as those in the United Kingdom. Large employers have to accept the evidence that is available via the scheme and the checking system as the best evidence available at the time, but we must ensure that our recruitment and selection procedures are robust enough to carry any deficiency that might exist in information coming from abroad.

**Allan Gunning:** That is an important point. As far as employers are concerned, the scheme would assist in making informed decisions about suitability for employment, but it would not replace those robust recruitment procedures that have been mentioned as part of the wider picture. I think that that is the reassurance that the public are looking for.

**Mr Macintosh:** Notwithstanding the concerns that were raised in the previous evidence session, it is quite clear from the evidence that we have heard today that the bill extends to vulnerable adults a level of protection that does not currently exist. It also provides a system for making the checks that need to be made in the statutory system in which you all work. In that respect, from what I can gather, the bill provides for an improvement on the current system.

I would like to go into that in a bit more detail, because we have not had many comments on the record. The new system takes a three-tiered approach, with the idea of people having barred status and so on. Is that the right approach? Does it offer the flexibility, security and reassurance that are needed?

**Jim Murray:** The approach is welcome, but there is some devil in the detail. When information comes to Disclosure Scotland but there is not to be a consideration for listing, the employer organisation is not told about that and the situation becomes apparent only when a short scheme record is sought. Of course, that will not actually say what the vetting information is; it will simply say that there is new vetting information. There are therefore some implementation problems.

With regard to primary and secondary legislation, some changes are needed in the wording about primary legislation; we make some suggestions in our written submission. Aside from those points, however, we think that the proposal is helpful. Anything that will allow us not to have to check and check again is good news. It has also been suggested that primary legislation could allow the use of electronic means. There has not been much discussion of that side of things in any of the evidence sessions so far, although organisations expect that there will be online checking.

Another observation—not a criticism—is that if information was to be made available to organisations, it might be easier simply to make the information accessible in a scheme record throughout the process. There would not be a short scheme record; one would simply go online, on a read-only basis, and look at the information that was there to date. Our submission highlights concerns that there could be a situation in which there is new information, or previous information, that the employer does not know about because it was not the employer at the start, when the scheme record first came out.

In general, the proposals are welcome, but some tweaking could be done and some changes could be made.
Dr Hammond: I will pick up on your last point. NHS Lothian raised the issue that perhaps every so often the organisation should be required to check whether there was any new information on a long-term employee.

Jim Murray: This brings us back to the purpose of the central barring unit and Disclosure Scotland. When any new vetting information comes up, whether or not it leads to consideration for listing, the way forward might be for the information to be passed on or flagged up; for example, a statement could suggest that certain employee records be checked because new information is available that might be interesting to the employer and might lead them to take action as they see fit. We are concentrating on having a lot of information, which will eventually be important as a result of the drip effect, but the employer does not necessarily know about it when it is initially added to the scheme record.

Allan Gunning: Continual update of the information is one of the key points. As employers, we must make best use of that provision.

Mr Macintosh: Those points were made last week, so it is good to get your views on the record too.

With regard to the overlap between the voluntary and the statutory sectors, Dundee City Council gave again the helpful example of employing a piano tutor. There is a distinction to be made in the approach that is taken by service users, parents and so on between the statutory sector and others. Factors such as the element of risk and who pays for the service can shift a lot of responsibility on to the provider. To my mind, there is a clear distinction between a state-employed teacher and a privately employed piano teacher in respect of the element of risk.

Many voluntary services are provided in partnership with the health board and the local authority. For example, we heard last week that when a bus driver drives a school bus that is on contract to the council, responsibility for vetting the driver should probably rest with the council, because the service is state run. The suggestion was that it should be made clear that the obligation is placed on the local authority. The same would apply in the health sector. Even under the direct payment scheme, the individual should probably choose from a list of approved providers. The money is being provided by the state, so whoever is selected by the individual should be vetted and approved by the state. Do you agree with that approach?

Allan Gunning: Clarity is needed about the arrangements under which the service is being provided. For example, when voluntary organisations provide services to NHS Ayrshire and Arran, there is a clear contractual arrangement between the parties. The situation gets trickier around the edges when voluntary agencies or individuals are involved in aspects of care that do not come under the NHS umbrella, and that is where difficulties and uncertainties can arise. There is clarity about the requirements when the services that are being provided come under the NHS umbrella. Similarly, when contractors come into a paediatric ward in a hospital there are clear expectations on the contractors in respect of conducting checks on their staff. I do not know whether that answers your question, but I think that I am making a clear distinction.

Mr Macintosh: I think that it answers the question. It also shows that a lot of detail has to be worked out.

It comes back to balance and proportionality. For example, we should not prevent the self-help groups that Enable Scotland talked about from meeting. They might meet on NHS premises and although we would not want to stop them meeting, at the same time there should not necessarily be an obligation on the NHS to vet the group members. The NHS should not be saying, "We will not allow you to use our room unless you are vetted through us." That is the sort of area in which a line would be drawn, but ultimately that is a matter for the code of practice rather than for the bill. That is my view, but I want to hear your views.

Dr Hammond: There is a specific but related question about our general practitioner colleagues. They are independent contractors in the NHS, and the bill is not clear about where they sit. We would want them to be part of the scheme.

Jim Murray: Our perspective is that the employer has to do the work. If we contract someone to provide a service, they have to do the checks. An earlier example was about bus drivers. In that case, the company that employs the bus drivers would do the checks. We as a council would be keen that the checks were done and we might even assist the contractor to ensure that it does them, but the signatory is the contractor as the employer.

Mr Macintosh: So you would contract out the obligation—it would be part of the contract that you made.

Jim Murray: It is not our obligation. The bus company is the employer, so vetting is its obligation throughout. However, we would want to be clear that a bus driver was an appropriate person. Another example would be when a school hall is used for another activity. We would ask the organisation whether it had done the relevant checks. If it said yes, that would be sufficient, but in practice we would often want to find out more. That is not in the legislation; it is good practice.


Dr Murray: Andrea Batchelor mentioned the fact that the bill gives employers the capacity to pass on information if they feel that somebody might not be appropriate for working in a certain field. Dave Watson from Unison raised a concern about that last week, particularly in relation to the private sector. On occasions, employers who fall out with their employees maliciously pass on information that is incorrect. It can be difficult for the individual to prove their innocence, and they may be deprived of future employment. Do you have any views about how to approach that issue?

Andrea Batchelor: There is always a risk that people will act maliciously, but the bill provides for a central barring unit that will mean that decisions are taken consistently. That must be an advantage. Information will be carefully considered.

Currently, we do our best to consider information carefully, and sometimes it is not possible to establish the truth. In those circumstances, organisations have to rely on their experience, professionalism and judgment in taking cognisance of all the factors on the table, considering what is going on in an organisation and the community around it, and weighing up whether there is malicious intent. The instances of malicious intent may be low, and the advantages of a system that captures individuals who are intent on avoiding identification outweigh that difficulty.

Dr Murray: I referred last week to a constituent who had the offer of a job withdrawn because of an anonymous complaint to the police that she had been seen taking an illegal substance in a pub. It was never confirmed that she had done that, but because the police put it on her disclosure record, the offer of a job that involved working with children and young people was withdrawn. Would the central barring unit improve on that situation? Will the system be more structured, with a more consistent set of rules on the information that is and is not considered?

Andrea Batchelor: One would hope so, because otherwise there would be no point in introducing it. The three-tier system on the information that is released will also help, as such soft information will not be released in all circumstances.

Jim Murray: The new system will improve the situation because what is envisaged is a determination process, which we have currently under determination regulations. That means that a person who is potentially going to be listed will first have the opportunity to make their case not to be listed, giving any evidence to demonstrate that information about them has been made up.

That is different from information that comes on a scheme record, which is defined as vetting information and is seen by all organisations. I agree that, if someone got a warning that was recorded, it might lead to their not getting a job. That takes us back to the question of what Disclosure Scotland decides is appropriate vetting and general information to include on scheme records.

12:30

Fiona Hyslop: We have heard a spectrum of views on part 3 of the bill. Do the witnesses agree with South Lanarkshire Council that part 3 should be extended to cover vulnerable adults as well as child protection? Scotland’s commissioner for children and young people and Children 1st believe that part 3 might lead to defensive practices that would result in the child protection system being flooded with information. That would create difficulties, because the important information would be overlooked.

Donald MacKenzie: I am aware of the written submissions from the next panel. The important thing is that we get information sharing right, whether it is included in the bill or whether the committee recommends that it is taken out and included in subsequent legislation. We have been working for so long to get information sharing right—one might say that we have been mucking about with it.

We have all read the inquiry reports on the disasters that have happened and the comments in those reports on difficulties with information sharing. Our plea is that, however information sharing is framed and whichever piece of legislation it is included in, the provisions that are included must be accepted by all and regarded as the primary commentary on the subject. The Parliament must ensure that they are seen in that way. Professional organisations or others must not set up professional guidance or other regulations, because that would create barriers to effective information sharing.

We have a chance to crack the problem properly, and the robustness of part 3 is crucial. I do not have a particular view on whether part 3 should be removed, but I am sure that you will hear evidence on that from the next panel. My view is that we must ensure that we get things right.

Fiona Hyslop: Could you cope with the amount of information that is likely to be shared?

Donald MacKenzie: Getting information sharing right involves being clear about which information must be shared. Concerns have been raised about social services being flooded with any and all information because people will have a defensive
attitude. Given those concerns, we need to be careful to get the things around the legislation right, such as the code of practice or guidance.

I acknowledge that there is potential for the bill to bog down front-line services, particularly at the front door, where the concerns come in. Such services are already stretched. However, in taking our time to get things right, we must not ignore the bill’s aim to ensure that the information flow is maintained. We must ensure that, when social workers, doctors, health visitors and teachers are all involved and engaged with one another, they keep the information flowing.

Dr Hammond: We particularly welcome part 3. To return to the needle in a haystack analogy, we regard part 3 as the way to find the needles without having to go through the entire haystack. It offers a better way to identify the children whom we need to help earlier, before the major crises evolve. As my colleague said, all the inquiries and critical incident reviews have shown us that we need to get better at sharing information.

Fiona Hyslop: Parts 1 and 2 are about finding adults. Part 3 is about finding children.

Dr Hammond: Yes, but if we share information in the way that part 3 proposes, that will also help us to identify the adults who are a risk to children. Further, in many ways the intelligence that the police gather from inquiries and investigations into children’s situations provides them with the ability to begin to identify those adults who are a danger to children in our communities. That goes back to that two-pronged approach to identifying people who are a danger.

You mentioned a loophole, and there are a couple of issues that we are concerned about in that regard. We were sorry to see that there was a duty on the organisation but just a power on the practitioner. I would much prefer there to be a duty at both ends, so that both the organisation and the professional have a duty to share information if they are concerned that a child might be at risk of harm. We were also concerned about paragraph 202 in the policy memorandum, which talks about the ability to override that duty if someone believes that another child might be at risk. We could not think of any situation in which it would be better not to share the information. The other child who would be at risk would, presumably, also have to be protected. We were very unclear about that and would be worried that that would allow colleagues who work with adults to say, “Well, we do not know whether there will be a risk to another child, so we are not going to share that information.” That seemed to be a potential loophole. However, the overall thrust of part 3 is welcome.

Allan Gunning: Part 3 gives us the opportunity to address some of the clutter that has accrued in this area. It is interesting to note that a lot of the effort that has gone into information sharing between local authorities and the health service has been to do with initiatives such as the single shared assessment. The area that we addressed first using that method concerned older people. We can use that experience to help inform the code of practice under part 3.

Ms Alexander: Some people have told us that, although information is often available and shared, there is a lack of action to protect children. I note that, in the recent case in the Western Isles, information was shared but was not acted on decisively. Further, in the case of Kennedy McFarlane’s death in 1997, the inquiry found that even the social work department’s own records showed that it should have been clear that action was necessary. Similarly, the Caleb Ness inquiry found that there had been enough information to correctly lead to the decision to place Caleb on the child protection register but that, because there was no detailed action plan, he was left at risk.

How do we ensure that the focus is right in terms of where the risk lies?

Dr Hammond: I was involved in the inquiries into the deaths of Kennedy McFarlane and Caleb Ness. Certainly, in the Caleb Ness case, you would have expected that a different judgment would have been made. That is about training. However, I should point out that there was a lot of information about the adults in the Caleb Ness case that was not shared when the decisions were made. In the case of Kennedy McFarlane, I accept that the individual agencies should have acted differently with the information that they had. However, the effect of putting together all the information from the various agencies was quite startling. It could be argued that a duty along those lines would have made a difference—probably in both those cases, but definitely in relation to Kennedy McFarlane’s case.

Ms Alexander: The challenge for the committee comes back to the issue of the needles. We know who the needles are, but we are not putting energy and resources into that area. The anxiety is that, if we build a haystack, we will not concentrate resources on the needles. The point about those three high-profile and tragic cases is that, in all of them, the information was shared but not acted on. Do you have any observations on how we can focus on the needles?

Dr Hammond: I do not agree that the information was shared effectively in the cases concerning Caleb Ness and Kennedy McFarlane. The Western Isles case is different.

There is no substitute for people working well together. We have to work across the agencies to make effective plans to keep children safe. In
order to do that, we have to share information effectively. I do not think that this is an either/or situation.

**Ms Alexander:** No, the question is to do with where the work is best done.

**Dr Hammond:** It is to do with making best use of the information once it has been shared. That is to do with implementation, training and developing a culture in our organisations that will facilitate that.

**Allan Gunning:** Joint working and training will be at the heart of our philosophy and approach. In child protection, a huge effort has been made to improve training. The training has to be appropriate and, where possible, that has been done jointly across the different agencies in Ayrshire. There is a team approach and everybody is getting the same information. We have been getting services on to the front foot, and that will allow us to make progress.

**Donald MacKenzie:** Helen Hammond took my line when she said that it was not an either/or situation. In the jigsaw, the quality indicators framework and the standards framework are both emerging from the child protection reform programme, and there are multi-agency inspections by the services for children unit of Her Majesty’s Inspectorate of Education. That work will have to be embedded within robust self-evaluation systems in local areas. The promotion of best practice must be one of our key responsibilities but, alongside that, some compulsion will be required to ensure that the information shared is appropriate. We have to be good at doing something with information once it has been shared.

**Ms Byrne:** We all know of the excellent improvements in courses to educate teachers about child protection. However, there is a huge grey area when it comes to identifying issues to do with drugs. Many teachers struggle to see the signs, and there is a lack of trust in schools about telling class teachers the things that they can look out for in individual children. We must protect the children but also ensure that teachers are aware of issues.

Are enough resources going into education and training? Does the financial memorandum for the bill suggest that enough resources will go into backing up the bill’s provisions? Getting the education and training right will be key.

**Andrea Batchelor:** We endorse the need for proper education and training on the bill, but the bill will not make any difference to teachers’ awareness of what to look out for in relation to drugs. However, child protection training for teachers already involves looking at such issues thoroughly and carefully. In the past five years, we have taken enormous strides in considering the needs of children in whose families there is substance misuse. Those needs relate not only to the potential for children to gain access to drugs themselves, but to the fact that children in those circumstances can become young carers, which can affect their education. We are looking at such issues carefully and trying to raise awareness about them. However, that does not relate to the bill.

**Ms Byrne:** It is all part of protecting vulnerable young people. The committee wants to know whether the bill is hitting the right notes. Is the current work on education and training enough, and will a review that seeks to improve the existing legislation be enough? Do we need the new bill, or should we put our resources into firming up what we have already and into ensuring that awareness raising is part of the present training? That is the nub of the arguments that have come from our evidence sessions so far.

**Andrea Batchelor:** Again, it is not an either/or situation. The child protection reform programme has an unstoppable momentum; it will continue to improve child protection. This bill will give us an opportunity to address the difficulties in the present vetting and barring system.

12:45

**Donald MacKenzie:** Following on from the theme of the either/or situation, I would add that the answer to the original question is that there are not enough resources. That does not mean that we should not have this bill, along with all the demands on resources that its implementation will make; the bill is appropriate.

Although I am an employee of Dundee City Council, my responsibility is to try to join the dots across all agencies such as the police, the health services, social work and education, and the voluntary sector. There is evidence to support the belief that people need to train together in order to work well together, but it is difficult to get people together. When I make a call to Dundee’s education department to say that I need X number of teachers to work with X number of social workers and health visitors, the first question is where the replacements will come from, because the children still need to be taught in school that day. I cannot take bus loads of teachers out of their jobs for a day. There are issues about getting people to learn together so that they can work better together, but that does not displace the need that arises from this bill for heavy resource input.

**Dr Hammond:** I echo that. The General Medical Council and the Nursing and Midwifery Council, for example, have given clear professional guidance
that we should share information when we think that a child might be at risk. We have done a lot of teaching and training on that during the past few years, and we have received helpful guidance from the chief medical officer. Despite all that, we still have some problems in getting information shared effectively and we need legislation to underpin that.

The Convener: I thank the witnesses for their evidence. We will have a short suspension while the panels change over.

12:47
Meeting suspended.

12:51
On resuming—

The Convener: We move to the third panel of witnesses. I apologise to them for keeping them waiting for so long. As most of them were in the public gallery for the previous evidence-taking session, they will know that it has been an interesting morning and that we are dealing with a complex bill. I apologise for the fact that one or two members have already had to leave and that others may have to drift off. We will try to get through the evidence as quickly as possible.

The final panel this afternoon consists of Professor Kathleen Marshall, who is Scotland’s commissioner for children and young people; Maggie Mellon, the director of children and family services at Children 1st; Jonathan Sher, director of research policy and practice development at Children in Scotland; and Heather Coady, children’s policy worker for Scottish Women’s Aid.

Before I open the floor to questions, witnesses may make brief comments in addition to the written evidence that we have received. We intend to concentrate on part 3 of the bill, although there may be questions relating to the other parts. We have already picked up from other witnesses and from your written evidence many of the issues that you have raised in relation to parts 1 and 2.

Kathleen Marshall (Scotland’s Commissioner for Children and Young People): I will start by explaining where I am coming from in my comments on the bill. My comments are based on what children and young people have told me. As many members will know, when I consulted children and young people on policy priorities—what they wanted me to do—16,000 of them throughout Scotland voted for accessible and affordable things to do, which often require the support of trusted adults to put them in place.

Children and young people do not talk about the disclosure system, which is dealt with in parts 1 and 2. All that they know is whether adults are available to interact with them in a healthy way. They have told us that they want to be part of our society and communities. They do not want to be pariahs, with everyone else too afraid to get close to them to give them the relationships that they need.

Children and young people want access to leisure and recreation facilities. This morning, we have heard a lot from many of the agencies that run such facilities about their fears about the current policy direction. At the moment, there is a huge emphasis on involving young people and getting them to participate in processes. Last week, a young man told me that his 14-year-old sister had been debarred from taking the minutes of a community council meeting because the council could not guarantee that there would be someone present in the room who had been disclosed. That comes from the culture that the policy direction has created. I am happy to talk about that. I welcome some of the positive measures in parts 1 and 2, but I have serious concerns about the overall direction.

Part 3 deals with information sharing. I appreciate the aim but, as some members have heard me say before, the response is disproportionate. The bill will not necessarily achieve the aims that it sets out to achieve, and it drives a coach and horses through young people’s right to confidentiality. In that respect, it will not add to their protection but decrease it. Young people will not give us sensitive information if they think that it will be shared with a huge number of people on the ground of “harm”, which is undefined and is a low threshold, and that those people will be required to share it with others.

Young people have told me that they were not consulted on the bill. I consulted my own reference group of 12 young people from throughout Scotland. In that context, I refer members to the children’s charter that the Scottish Executive promulgated a couple of years ago. Then, children and young people gave the clear message that they have a right to be kept safe and that people should think carefully about how they use information about them.

I am happy to expand on any of my points.

Maggie Mellon (Children 1st): I will be brief. First, I will deal with a question that was raised in the two previous evidence sessions. We think that it would be wise to step back from the bill, because it raises more questions than answers. When serious questions were asked about proportionality and the bill’s impact in those two sessions, it was said that everything would have to be worked out in guidance.
One issue that did not arise in those sessions was how effective checking against a list would be and how much useful information would be provided by doing so. Currently, few people would be on the lists. Determining who is dangerous for children to be in contact with and how to deal with them is a key matter, but we have not got that right. Not many people are prosecuted or sacked for being dangerous to children. Most of the incidents that we know about have taken place in domestic circumstances, and the bill would not deal with them.

Public confidence has been discussed. We would be concerned if the bill raised public confidence by implementing a system that took up a lot of resources and misled people into thinking that it was fine for their children to go to a certain club or to a piano tutor who produced a certificate for a check that had been carried out. The public need to know key things about how to protect their children and children need to know key things that will not be found out in a bureaucratic system of checks.

The opportunity costs of the bill should be considered. Professor Arthur Midwinter has talked about the lack of resources in children's services. Resources that are devoted to implementing the bill's provisions and developing the proposed system are resources that will be taken away from something else. We ask members to consider the issue of proportionality in protecting children and the opportunity costs that are involved.

Research has been mentioned. Considerable research has been carried out on where the dangers to children come from. The dangers in Scotland that result from poor nutrition, poor housing, threats from traffic, alcohol, illness and the effects of poverty are not being tackled. We must consider proportionality in that context and where the concern for children lies.

There is a case for calling the bill a bill to protect vulnerable organisations or employers, as it would allow employers to say that they had carried out appropriate checks. As Kathleen Marshall said, there has been an increasing focus on protecting adults from the risk of allegations or prosecutions as a result of who they allow to have contact with children, rather than a focus on child protection itself. We should step back from the proposals.

We have provided evidence on sharing information. We firmly believe that the proposals on that belong in different legislation, in line with getting it right for every child agenda.

Dr Jonathan Sher (Children in Scotland): Removing part 3 and embedding it in the proposed getting it right for every child bill is not only a good idea but an essential idea for three reasons. First, much more serious and detailed consultation is required to sort out the complexities that are involved. That consultation could take place alongside the process of developing a code of practice. Legislative proposals should be considered once all the relevant information has been received rather than in advance of consultation and receiving the information that is needed to inform legislation. Things have been done backwards.

Secondly, information sharing exists not in a vacuum but in a context, and that context is “Getting it Right for Every Child”. Information sharing is directly tied to information use, which in turn is tied to training and education. Given that it is all of a piece, it is not sensible to solve just one piece of the puzzle when we know that a terrific piece of legislation based on “Getting it Right for Every Child” is on the horizon.

We are not opposed to information sharing. Indeed, quite the opposite—the issue is so important that we urge you to separate it out and ensure that it is done right, not quickly.

13:00

Heather Coady (Scottish Women’s Aid): Scottish Women’s Aid represents women, children and young people who experience domestic abuse. As we believe that the bill might have quite serious unintended consequences for many people who are in what is supposed to be a protected group, I must agree with my colleagues that part 3 should be deleted and its provisions subject to further consultation. We are concerned that, if that does not happen, much of the Executive’s work on tackling domestic abuse might be undermined.

Dr Murray: Maggie Mellon has already responded in part to my first question. Everyone from whom we have heard is signed up to the importance of protecting children and vulnerable adults. However, this morning, representatives from the voluntary and statutory sectors put forward conflicting views on whether the bill—not only part 3, but parts 1 and 2, which set out the vetting and barring system—is the best way of achieving the aim of protecting children and young people. Does it represent the best approach? If not, can you propose a better alternative? After all, some of the evidence that we have received suggests that the issue is more to do with risk management than risk assessment.

Kathleen Marshall: I have worked in child protection for many years and, like everyone else in the room, I am completely on board with the child protection agenda. This is not a red-corner-blue-corner issue. We all want to ensure that our children have the best protection possible. However, we need to have a cost benefit analysis.
of the matter. Children have a right to protection, but they also have a right to develop, to access leisure and recreation and to form relationships. As you have pointed out, this is a question of risk management and proportionality.

There is some merit in doing what we can to put barriers in the way of people who have been convicted of serious offences against children or who might pose a serious risk to them. If we can find simple and proportionate ways of doing that, we should consider them. That said, we must focus on the real risks and the contexts in which such people operate. For example, I do not see why someone who takes minutes at a community council meeting must be surrounded by people who have been disclosure checked. At events that I held for young people when I was formulating my own child protection guidance, it was suggested that the parent carers who looked after their own disabled children should have to fill in a six-page form on their suitability for such a role. I replied that, as the people who organised the event, we should be responsible for being vigilant.

I agree that we need to focus on this matter. That said, I do not know whether people simply do not understand or are confused about the law or whether it is the law itself, but something has fed a very unhealthy culture in which people have withdrawn from interacting with children and young people. Some have talked about cotton-wool kids. I think that the term should be barbed-wire kids because, in the current culture, it is as if they have signs that say "Keep out", "Don't touch" or "We're dangerous". We have to roll back and focus on the real problems and risks.

As someone said this morning, given where we are starting from, there are some good things in the bill, such as provisions on avoiding repeat disclosures, on personal employers and on updating records. Perhaps we ought to take stock, given how much has been left open. We are going to have to wait anyway for the kind of detail that will make it possible to implement the bill. Why do we not take that time to reflect on whether it is really the way that we want to go and take a broader look at the whole child protection, child welfare, safe, active, happy agenda, for which we are aiming?

Dr Murray: Would you advise the committee to recommend to Parliament that the bill should not proceed?

Kathleen Marshall: Yes.

Maggie Mellon: That is the view of Children 1st. We advise the committee to step back. Children 1st is formally called the Royal Scottish Society for the Prevention of Cruelty to Children, so it is clear that our mission is child protection. As Kathleen Marshall said, there is a danger in distinguishing between the professionals and the voluntary sector, because there are professionals in the voluntary sector.

Children 1st checks rigorously its employees who have contact with children, not just through the disclosures that we have to do—on which we do not rely too much, because we know that the list of people who are unsuitable is tiny and they are not likely to have criminal records—but by relying on other things. We are not against checking, but we think that it is much more dangerous to have a climate in which people do not want to have anything to do with children in case they are accused of having malicious intent. Somebody said earlier that now you have to prove that you are not a paedophile. For my children and all the other children in Scotland, I would far rather have a situation where caring adults—99.5 per cent of us—would stop a child running on to the street or spot a lost child and help them. Most men in Scotland today would probably say that they would not do that.

The checks and disclosure requirements are fine for us, because we are professionals who are working with children and we already vet our people carefully. If half the population of Scotland and their relatives and associates have to be checked, we will be putting all the sand on the beach through one tiny sieve in order to find the boulder, which we always knew was there anyway.

Dr Murray: So your advice is that the bill should not proceed.

Maggie Mellon: Yes, and that we should put child protection back in the context of child welfare. Child protection on its own is just a system that we have instead of a system for ensuring child welfare. It has to be embedded firmly in a child welfare approach that encourages adults to love and nurture children.

Dr Sher: The position of Children in Scotland is that we should step back from the bill. It is meant to address the important but limited problem of stranger danger. It consumes much of the oxygen of child protection and child safety, when the unquestionable fact is that the fundamental danger to our children is not stranger danger but harmful homes. By pulling all the attention and resources towards stranger danger, it is inevitable that we will neglect a much more serious problem in society. Vetting and barring is important, and we should absolutely have a system for it, but even at its best it does only two things: it identifies those who are known to have harmed children or to be a clear and present danger to them and provides a way of accessing information that is knowable. The problem is that it seems to make a promise that, down the road, it will not be able to keep.
A vetting and barring system does not guarantee that a person whom it clears will never harm children. I will use the example that Maggie Mellon gave. Unfortunately, if a piano tutor holds out a certificate and says, "I have never been convicted of a crime against a child and there’s no reason for you to suspect me," that does not mean in our unpredictable world that they will not harm a child.

We should absolutely have a vetting and barring system. We should do it and do it right, although deciding whether to do so by separate legislation that separates children’s issues from those of vulnerable adults, by changing POCSA or by another method I leave to wiser minds. Yes, vetting and barring need to happen, but we need to take steps that protect children for real, not steps that create the illusion of safety but provide only the reality of fear. Our concern is that we need to take steps that matter.

It is worth pointing out that Children in Scotland stands at an interesting crossroads in the debate. Our 300-plus member organisations, which represent tens of thousands of professionals who work with children, include all the professional associations that deal with children, most voluntary sector organisations that deal with children and 80 per cent of local authorities. However, I am not here today to represent the views and best interests of professionals, organisations or agencies. The reason why they are members of Children in Scotland is that our job is to speak up for what is in children’s best interests, which is to take steps that genuinely protect them and do not give just the illusion of safety.

Heather Coady: We echo all that has been said. It is important to consider how best to protect children. As has been said, many dangers exist in the home. That is certainly the case with domestic abuse. Much work still needs to be done on how best to protect children and on taking a consistent approach to child protection, which we do not have—anxiety is felt about that. We want people to put their energy into and give their attention to that rather than part 3, which will place a duty on people to share information. That is a great concern to us.

Dr Murray: What is your advice to the committee? Should the bill progress beyond stage 1 to be amended or should it be withdrawn?

Heather Coady: The bill certainly should not progress as it stands. Part 3 is our big concern.

Dr Murray: So you are less concerned about parts 1 and 2.

Heather Coady: We have some of the same concerns that our colleagues have, but we do not take the same strong position.

Lord James Douglas-Hamilton: I notice that Scotland’s commissioner for children and young people, Professor Kathleen Marshall, wrote in her conclusion:

“Given ... the lack of consultation on these information sharing provisions, the Committee may wish to consider asking the Executive to withdraw Part 3 of the Bill. Revised information sharing provisions could be included (as originally intended) in the Bill that will come out of the Getting it Right for Every Child process, which is expected next year. This will allow time for reflection, research and consultation. In particular, it would allow for a more careful integration in the Bill of respect for the views of children in line with Article 12 of the UNCRC.”

Do all the witnesses recommend withdrawal of part 3 and bringing it back in another bill later?

Dr Sher: That is Children in Scotland’s recommendation.

Maggie Mellon: That is Children 1st’s recommendation, too.

Lord James Douglas-Hamilton: You all speak with one voice on the issue.

Heather Coady: If the provisions were brought back later, we would still have concerns about the duties, but that would be for later. At this stage, we recommend removal of part 3.

Maggie Mellon: I should clarify that we would want the provisions to be changed if they return in the getting it right for every child bill, because getting it right for every child means making individual decisions about information sharing for every child.

Lord James Douglas-Hamilton: It is a fact that children and young people have not been consulted on part 3 and that you hope for full-scale consultation.

13:15

Maggie Mellon: Yes, and with others involved in protecting children.

Kathleen Marshall: Consultation should be done with other agencies as well. One of my other concerns is that the bill does not seem to be tied in to other child protection systems and reporting mechanisms. There are a lot of different thresholds. The bill presents a very low threshold. Some people, such as the police, would be subject to dual reporting systems.

Perhaps part 3 was drafted in a bit of a hurry, because it was brought forward. It is interesting that it seems to have been considered in the context of information sharing, whereas it really verges on mandatory reporting, on which a lot of research is being done worldwide, and from which we can learn. Consultation should focus a lot more on the actual problem. I described the bill at a cross-party group event as potentially a
sledgehammer to crack a small but hard nut. On which issue do we wish to focus? The accompanying documents say that mostly the system is working, but it needs to be tidied up a bit to address a particular issue. However, we do not need a huge sledgehammer to do that. The whole concept has to be reconsidered.

Lord James Douglas-Hamilton: A more measured approach would mean a much better chance of getting it right.

I have two more questions, the first of which is for the children’s commissioner. We heard from the Scottish Council for Voluntary Organisations, which proposes to give small voluntary organisations the option of applying for a barred status check. That is a somewhat detailed point. How do you feel about it?

Kathleen Marshall: A barred status check. Do you mean—

Lord James Douglas-Hamilton: They would ask for a lesser check.

Kathleen Marshall: That could happen. This morning’s discussions have shown that we can talk about the detail, which contains some good points, but we are basically shuffling things around. The strong message coming through is that we should reconsider the whole issue of how we view childhood and how children relate to adults. We could take a brave decision today to do that—to ask what we are talking about and what is the best way of ensuring children’s safety.

I would prefer to think more about your point. If the SCVO has said that, I take it seriously, but it is only a nibble at the edges of a huge debate.

Lord James Douglas-Hamilton: My second question is for Heather Coady. It has been made absolutely clear this morning that we are interested in the protection of children and vulnerable adults. Is it not equally important that we should be concerned about the protection of young mothers who might have been subjected to considerable violence and who have had to leave the matrimonial home and seek refuge? Confidentiality for women who have been subjected to great violence is every bit as important as the protection of children and vulnerable adults, and we need the bill to bear that in mind.

Heather Coady: Absolutely. We have been concerned about that throughout the discussions. Scottish Women’s Aid effectively offers a confidential service, but there are limits to it in relation to children being at risk. We all understand that and we all want to ensure that children are safe. It is very difficult to—I am sorry, but I have forgotten what I was going to say.

If the bill is passed as it stands, we would no longer be able to offer a confidential service to women, children and young people who are experiencing domestic abuse.

Lord James Douglas-Hamilton: Is it, therefore, your evidence that there is considerable danger that women will be placed at risk if the bill is passed in its present form?

Heather Coady: Yes.

Lord James Douglas-Hamilton: If it was properly consulted on and dealt with as suggested in the proposed getting it right for every child bill, there would be a much better chance of getting it right.

Heather Coady: Yes, there would be a much greater chance of that. We are really concerned that women will not come forward.

Lord James Douglas-Hamilton: And would getting it right remove women from the possibility of recriminatory action?

Heather Coady: Yes. As things stand, women are terrified to access services, which is often why they come to us. They can be very concerned about their children being removed. As the bill stands, if someone accesses our services we will bear some responsibility for notifying the council. That is certainly not the way that we work just now.

The Convener: Although the bill as it stands gives ministers powers to vary the list of people and organisations that have a duty to share information, it does not include organisations such as Scottish Women’s Aid. Are you seeking clarification that the duty to share information will not be extended to voluntary groups such as your own?

Heather Coady: As far as we understand it, that duty currently includes Scottish Women’s Aid. We provide a service—a housing service. We are a care provider, and we are regulated by the Scottish Commission for the Regulation of Care. As far as we understand it, we would have a duty to comply.

The Convener: That it not our understanding, but we can clarify that with the minister. If there was clarification that the duty would not extend to you, would that remove some of your concerns about part 3?

Heather Coady: We spoke with the bill team at length, and our understanding was that it would extend to us. If we did not come under that category, however, that would change things considerably. We would be quite relieved, in fact. It is not that we are against sharing information—that is absolutely important—but it is a different matter to have a duty to share information placed
on us. The onus is on councils to say that they would like information about a certain family. It would be difficult for local Women’s Aid groups to say that, in the interests of confidentiality and safety, they do not feel that they can share the information. There is tension already, and the potential exists for it to get worse.

Dr Sher: The Scottish Executive has proved time and again to be good at consultation. One of the advantages of stepping back is that it will give the Executive the opportunity to do one of the things that it does exceedingly well—taking a measured view of all the different opinions on a given subject. We do not have all the answers on all the details today, but that is the point. The subject is much too complex for us to know everything about it now. We advise the committee to allow the Executive to carry out the consultation process and take the time and space to develop a proper code of practice instead of creating a system that would simply be the latest manifestation of the unfortunate maxim that when we act in haste, we repent at leisure.

Fiona Hyslop: My question is to Kathleen Marshall. Were part 3 to be removed from the bill, would you still object to the first two parts progressing?

Kathleen Marshall: There would be losses in that case, given the status that we have now and given that we have a system of disclosure. Some things, such as multiple applications, are not helpful. However, we have to weigh that in the balance. I have been told that the bill has been very closely crafted and that, if we started taking certain bits of it out, we would probably end up with something very confusing.

I would prefer it if we stepped back now and considered possible ways of addressing the good bits of the bill in a more focused way while holding a debate on the broader issues of what we are doing, what we are trying to achieve, whether we are succeeding and whether unintended consequences are arising that could have a huge impact both on children and young people and on the health of society.

Fiona Hyslop: I have a general question to everybody. The bill is a result of the Bichard inquiry into the Soham murders, and the equivalent legislation has already been passed in England. You no doubt have connections and communications with sister bodies in England. Should we decide, enough, no further, how should Scotland respond to concerns that our bill will not be compatible with the law down south? Can you share with us some of the concerns that commissioners in Wales and England or organisations there connected with child protection have expressed about whether the Safeguarding Vulnerable Groups Act 2006 marks the way forward for anybody?

Maggie Mellon: The bill is indeed based on the Bichard proposals. Ironically, those proposals and the way in which they are being developed would not have dealt with the threat that Ian Huntley posed to those two girls. Ian Huntley was not police checked, although he should have been for the job that he did. The girls came to visit Maxine Carr, his partner, who probably had been police checked and who was working in their school.

The Bichard proposals, which included the recommendation that those working in a child care position or in a voluntary organisation should be police checked, did not cover members of the household, married couples and neighbours. Ian Huntley could have been working in Tesco rather than as a school janitor; those two little girls would still have gone to his door.

We are not suggesting for a minute that all the people I mentioned should be police checked if children might come into contact with them, because that would include every adult in Scotland. However, the proposals do not address the risk that was identified.

The bill is the third attempt in five years to address the issue, and in some ways it is barking up the wrong tree. Every time that there is another child death or tragedy, somebody realises that there is a loophole in the system and says that we should check another group of people—neighbours, husbands or brothers-in-law who may visit once a week. We will all end up being checked against what is a small list. What are we checking for? We are checking against a negative.

Fiona Hyslop: Jonathan, can you reflect on any experience from down south?

Dr Sher: As the committee may already know, the information-sharing provisions in the Safeguarding Vulnerable Groups Act 2006 were the subject of an investigation that took nearly two years. It was not a quick and easy decision-making process. We can learn from what has happened in England, and we certainly ought to, but ultimately the alternatives are not either to pass the bill unchanged or to do nothing. Our recommendation is that we get part 3 of the bill right. If that takes a few months more, it will be inconsequential compared with the positive effect that getting it right will have.

As a matter of personal observation, I moved a couple of years ago to Scotland instead of England in large measure because I thought that Scotland was the place in the UK that had the greatest potential for getting the legislation right. The fact that England has done something already ought not to goad us into being hasty. In fact, it ought to redouble our commitment to showing
what is distinctive about Scotland by taking the same broad goal and tackling the issue even better than down south.

Mr Macintosh: All the witnesses have made their views known forcefully today, and I am sure that they will resonate with the committee members who have some anxieties about the bill. However, I would like to act as devil’s advocate in making a few points.

Jonathan Sher spoke earlier about the culture of fear that we may be creating. The bill has not been passed yet, so we cannot say that it has created a culture of fear. An anxiety exists in our community about the danger posed by adults to children. That was not created by the Government or the bill; indeed, the bill is designed to address it. We obviously want to ensure that we do not have the counter-effect of creating more anxiety in the process of addressing fear. It would be wrong to suggest that the bill does anything other than try to address an anxiety that exists among parents, families and people who look after vulnerable adults about the nature of our society.

Maggie Mellon started off by saying that we could rename it the protection of vulnerable organisations bill, and there is a grain of truth in that. Let us concentrate on the professionals in the statutory sector rather than voluntary workers. Surely the point of the bill is to create better practice and get everybody who deals with children to behave in a manner that we as parents or other members of society would expect. Nobody is pretending that the bill is the answer to everything, but let us concentrate on the professionals in the statutory sector rather than voluntary workers. That was not created by the Government or the bill; indeed, the bill is designed to address it. We obviously want to ensure that we do not have the counter-effect of creating more anxiety in the process of addressing fear. It would be wrong to suggest that the bill does anything other than try to address an anxiety that exists among parents, families and people who look after vulnerable adults about the nature of our society.

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Having said all that, I am not saying that I am unsympathetic to what has been said today.
We want time to reflect on where the line should be drawn and how we can create a culture in which people are aware of the real risks rather than have the false sense of security that people can get from thinking that someone has been checked.

Another issue is the unintended consequences of the legislation. People are afraid to work with children because they feel that, if even a suspicion comes out on the disclosure check, no employer will employ them even though they are not barred. For example, one teacher who wrote to me provided me with all the details of an investigation into an allegation against her that was shown to be completely unfounded. However, her disclosure certificate stated simply that an allegation had been investigated and was found to be unfounded. She pointed out to me, “If I go for a job and there is another candidate who has a clean certificate, who will take the risk of choosing me?” That is bad for children. On this issue, the rights and interests of children and adults come together. It is not in the interests of children for adults to feel that they will be disadvantaged by an allegation that is not proven.

The proposed system raises serious questions on which we need to reflect. That is not to say that we should do nothing. We should think about the issue and focus on and define where the kind of approach that is proposed would be most effective. Let us create a culture in which people are aware of risks and in which people are available who will support children and young people and their parents, rather than frighten them off.

Maggie Mellon: We started off saying that the bill throws up more questions than it answers. I think that Kenneth Macintosh raised those very questions in his remarks.

We are looking for time. I understand that the bill is expected to complete stage 3 in February. That does not give us time to answer some of the very serious questions that have been raised. We have been told that the bill does nothing without the guidance and the criteria, which will be developed to address who is unsuitable to work with children, who can, and whether the certificates should reflect that. None of those issues have been dealt with. We have solutions for child protection and child welfare in Scotland, and we are more than happy to put them before the Parliament; however, we cannot do that in 10 minutes and before February 2007.

Dr Sher: Please understand that neither we nor our colleagues are suggesting that the vetting and barring system should be dismantled. We are strong supporters of the system, which needs to be strong and to do what it does well. That is a given. Nobody is in opposition here, and I cannot imagine that there is anyone in the Parliament, in the Executive or among the organisations that have given evidence today who does not have the same goal: to protect children, to reassure parents and to provide what other benefits are possible. There are good things in the bill. Our suggestion is simply that, instead of getting a couple of things partially right, let us get the whole thing right and be done with it.

Our fear in political terms is that, if a bill is passed that is not completely right, the political scorecard will still read that the box has been ticked and the issue has been dealt with. The Parliament will then move on to the other 45 important issues that Scotland faces. Before the box is ticked and the Parliament moves on to other issues, we want it to know that it has done the best possible job on behalf of children. We are your allies in that process.

The Convener: I have a final question on part 3 of the bill. One of the issues that has been raised by Scottish Women’s Aid and other organisations is the fact that people will not come forward for services because of a fear that their information will be shared willy-nilly across different sectors. I accept that that is partly related to how harm and risk are defined in the bill. Have your organisations done any research into whether young people would be frightened to come forward for, for example, sexual health information or drugs information and advice because they believed that that information might be passed on to the police or other organisations and might end up on a vetting and barring record—as one of the submissions that we received today suggested—so that, at some future date, when they applied for a job, something that they did as a 15-year-old would count against them? Do you have any evidence of that? The submission that the committee has received from LGBT Youth Scotland expresses concerns about people from that group not coming forward because they fear disclosure of personal information. What evidence do you have to back up such concerns?

Kathleen Marshall: We all have some evidence of that. The people who work on the front line with children and young people often tell us of that fear, based on their own research. I hark back to the Executive’s children’s charter, which was developed with children and young people. The clear message was given that we should respect their privacy and think carefully about how information should be shared. Our reference group was very clear about that and was concerned that young people will no longer talk to adults when they should. We also know from the experience of ChildLine that, when children talk about sensitive issues, confidentiality is the first thing that they talk about. Some more specific research has been
done on the issue, which Maggie Mellon might want to address.

**Maggie Mellon:** There is some specific research based on the views of children who phone ChildLine. As Kathleen Marshall said, many of them want a guarantee of confidentiality before they will begin to share their concerns.

Our concern about information sharing is that it is often about adults watching their backs. If they have received some information and feel almost a duty to report something, that information will be passed on. Children 1st and a number of other organisations are concerned about the perception that we protect children by quickly passing on information. For example, someone might think that, because a child has told them that their father hit them last night, they must immediately go and do X, Y and Z. However, what children tell ChildLine and us is that they will not tell us about something unless they know that the matter will be handled very sensitively. Therefore, information sharing has to be carried out in an informed way.

As Jonathan Sher said, we absolutely support the sharing of information in order to protect children from harm and on the basis of good child welfare. All parents would support that—in fact, parents probably want more information to be shared than is currently shared in order to protect their children. However, we should not think that information sharing is an end in itself. Children—and the parents and carers who look after them—should not be scared to talk over their anxieties and report them. We do not want neighbours to think, “I can’t say that I think that these children are being left alone or hurt because there will be blue lights outside the door. It might not be helpful because the children will be taken into care.” People need to know that information about children will be dealt with carefully.

**Heather Coady:** There is plenty of literature on domestic abuse and child protection and the difficulties of dealing with that thorny issue.

**The Convener:** I am concerned not just about abuse, but about cases where children risk harming themselves through their behaviour, such as experimenting with drugs or sex. In those situations, they need good advice to reduce the risks but they might be frightened to come forward in case information is passed on to other agencies. Do you have evidence that 14 to 16-year-olds do not come to get advice because they are frightened that information will be passed on to the police or others?

**Kathleen Marshall:** That is a difficult question, because those are the people who have not shared their concerns. However, young people who do come forward sometimes talk about the barriers and the reasons why they have not talked about things before.

There are already thresholds for information sharing. The Children (Scotland) Act 1995 places an obligation on local authorities if the case falls within certain levels of risk. However, we are talking about a more generalised duty at a vaguer, lower level of harm. The problem is that there might be knee-jerk reactions if people pass on information. The sharing of such information will not do anything to protect children; it will not be an additional safeguard and it will put them off coming for help in the first place. It is the generalised nature of what is proposed that is significant.

I have written child protection guidelines and taught people that we do not give children a promise of absolute confidentiality if we cannot keep it. Instead, we try to discuss with them the thresholds of information sharing, but sometimes they will not talk even then. The only resort, which is a complete cop-out, is to say, “Well, you can phone ChildLine,” but if ChildLine is feeling threatened by the proposals as well, we will give the children nothing. We are taking away all the resources that children have.

If you want some more focused information on that, we will need more time and space to reflect and focus on the real problem. Most people are sharing information and the system is working. The bill aims to underpin good practice, but we need to ask: what is the scale of the problem? What do we need to do to share information effectively?

**The Convener:** I think that the committee is exhausted, and has exhausted its questions.

I thank the panel members for their powerful evidence. I am sure that the committee will reflect on it carefully. We look forward to discussing the matter with the minister next week in our third and final oral evidence session on the bill.

*Meeting closed at 13:43.*
EDUCATION COMMITTEE

EXTRACT FROM MINUTES

26th Meeting, 2006

Wednesday 29 November 2006

Present:
Ms Rosemary Byrne Lord James Douglas-Hamilton (Deputy Convener)
Fiona Hyslop Adam Ingram
Marilyn Livingstone Mr Frank McAveety
Mr Kenneth Macintosh Dr Elaine Murray
Iain Smith (Convener)

The meeting opened at 9.51am.

Protection of Vulnerable Groups (Scotland) Bill: The Committee took evidence at Stage 1 from—

Alison Reid, Principal Solicitor, and Katy Macfarlane, Solicitor, Policy and Education Officer, Scottish Child Law Centre

and then from—

Brian Gorman, Manager, Disclosure Scotland

and then from—

Robert Brown MSP, Deputy Minister for Education and Young People; Dr Claire Monaghan, Head of Children and Families Division; Andrew Mott, Bill Team Leader; Maggie Tierney, Head of Protection and Regulation Branch and Liz Sadler, Police Division, Justice Department, Scottish Executive.

The meeting closed at 13.31 pm.
Protection of Vulnerable Groups (Scotland) Bill: Stage 1

09:53

The Convener: The second item on the agenda is the final day of oral evidence on the Protection of Vulnerable Groups (Scotland) Bill. We have three panels of witnesses today. On the first panel are Alison Reid, principal solicitor, and Katy Macfarlane, solicitor and policy and education officer, at the Scottish Child Law Centre. The committee has already received your written evidence. If you would like to make any additional comments, you may do so before I open the meeting to questions from members.

Katy Macfarlane (Scottish Child Law Centre): Alison Reid and I are both solicitors, as you said. We would like to make brief opening statements. We welcome the opportunity to give evidence to the Education Committee on the Protection of Vulnerable Groups (Scotland) Bill. I have to say at the outset that we come very much from a child’s rights perspective. The Scottish Child Law Centre deals specifically with the rights of children and young people in Scotland, so that is where we are coming from.

As we see it, the bill covers two distinct areas: parts 1 and 2 relate to vetting and barring procedures, and part 3 relates to sharing child protection information. We are keen for the committee to deal with the bill in those two distinct areas. I shall lead on part 3 and Alison Reid will lead on parts 1 and 2, although I am sure that we will interject on each other throughout the session.

As regards part 3, I stress that the Scottish Child Law Centre very much agrees with the proposition that the sharing of child protection information is required and is essential for child protection purposes. However, as will emerge from our evidence, we remain unconvinced that part 3, in its current form, is the best way to do that. Whatever system is adopted, it must achieve set policy aims and have built-in flexibility and longevity to enable it to work effectively for the foreseeable future.

I have a few further points about part 3, on which I am happy to be questioned. Crucial elements are missing from the policy aims as set out in the policy memorandum. I am happy to go over that point. The lack of reasonable consultation was brought up in the previous two evidence-taking sessions, and I am also happy to say more about that. The Executive has its own children’s charter, but that seems not to have been taken into consideration for the purposes of the bill. Other issues that we are keen to discuss include proportionality in relation to the European
Alison Reid: Good morning. I am Alison Reid, principal solicitor at the Scottish Child Law Centre. We are supportive of the bill’s aim in parts 1 and 2, which at the Scottish Child Law Centre. We are happy to go over all those points in response to questions, but now my colleague Alison Reid will make her opening statement.

Alison Reid (Scottish Child Law Centre): Good morning. I am Alison Reid, principal solicitor at the Scottish Child Law Centre. We are supportive of the bill’s aim in parts 1 and 2, which is to ensure that unsuitable people do not gain access to children or protected adults through work. We welcome the simpler mechanics of obtaining scheme records, which should reduce the need for multiple checks. However, because there has been no audit of the current system of child protection as introduced by the Protection of Children (Scotland) Act 2003 and the Police Act 1997, as amended, we do not know the effect of the current legislation. That leads us to conclude that such an evaluation of the system requires to be carried out, following which amendments to the current child protection legislation could be made.

As a result, we are concerned about the following matters, on which we will be happy to expand. First is the balance between the protection of children from potentially dangerous adults and the encouragement of positive relationships between adults and children, both of which are necessary for a child’s health, development and welfare. Second is the development of a culture of reliance solely on the basis of vetting and barring information, particularly in the light of provisions for workers from overseas. Third is the approach of taking an English problem and translating the solution to it into Scots law. Fourth is the complexity of the bill and the extent of the use of secondary legislation. Fifth is the lack of focus and definition in the bill, which leads to several further issues, on which I am happy to expand. They include the provisions on consideration for listing and the decision to list; the bill’s compatibility with articles 6 and 8 of the ECHR; the lack of sufficient appeal procedures in relation to part 2, which could lead to challenges under article 6 of the ECHR; and, finally, some of the bill’s wording leads to questions about legal certainty and potential challenges under article 8 of the ECHR.

Dr Elaine Murray (Dumfries) (Lab): We have had diverging evidence from different sectors about parts 1 and 2. Generally speaking, the statutory sector is very much in favour of the bill, while the voluntary sector is pretty concerned about the potential financial and time effects on its operations. You reflected some of those concerns in the evidence that you just gave. Can the bill be amended to keep the good bits, or should the proposals be reconsidered altogether?

10:00

Alison Reid: There are some good bits in the bill, and if there was a way of taking them forward, that would be great. They include the reduction in multiple checks, which are a real downside to the current system. It would be great to keep that measure. I am not sure that we could address that issue in isolation, however. There is a much bigger picture here than just that issue. We concluded that we need to look at the bigger picture, rather than focusing on just some details.

We have been at the committee meetings for the past two Wednesdays and have listened to the evidence that has been given. Because there has been no official audit of the effects of the current legislation, we have had to pick up clues as to what has been going on. We heard from the voluntary sector that there has been an effect on informal volunteering—it is not necessarily reflected in the statistics, but there has been an effect—and we heard Unison’s concerns about unsubstantiated allegations. We also heard last week about the concern that people are starting to presume that an adult who works with children has to prove that they are not a paedophile. We are in danger of crossing the line on that. This week, I read in the newspaper about the tragic deaths of two students in a mountaineering accident and about the mountaineering club’s response that it is now reluctant to accept members under the age of 18 due to the fear of litigation and the paedophilia angle. We have to think about the balance of what we are doing in the bill.

Katy Macfarlane: I agree with Alison Reid. The evidence has given us cause for concern over the past two weeks.

Dr Murray: So your advice would be to pause and take stock rather than progress and try to amend the bill.

It has been argued that, as comparable legislation has already been passed in England and Wales, certain bits of important information about people whose actions could be harmful to children may somehow be lost at the border if...
Scotland does not pass the bill. How do you respond to that?

**Alison Reid:** We need to reflect on how we have got to where we are today. We all know about the Bichard inquiry and recommendation 19 of the Bichard report, which is what we are particularly focusing on. When the report was published in June 2004, the most recent relevant legislation in England was the Protection of Children Act 1999, but in Scotland we had already passed the Protection of Children (Scotland) Act 2003, which was just about to come into force. Scotland and England were at different points, so I am concerned that we are trying to solve the problem in Scotland by examining where England was when the Bichard report was published. We should take stock—to use your phrase—and think about where we are now. We have the 2003 act, so we should build that into the picture and take time to analyse the whole picture rather than just jumping in and following on from England.

**Katy Macfarlane:** That is absolutely right. It is better that we do not take off-the-peg legislation but tailor the bill for Scotland, because Scotland and England come from different starting points. The Scottish Child Law Centre is not saying that the whole bill should be scrapped, because we are in favour of protecting children, but it needs to be tailor-made for the system that already exists in Scotland. It is not enough to cut and paste the English system into ours. Let us get the bill right for Scotland. It is not enough to cut and paste the legislation in England into ours. Let us get the bill right for Scotland. It is not enough to cut and paste the English system into ours. Let us get the bill right for Scotland. It is not enough to cut and paste the English system into ours. Let us get the bill right for Scotland.

**Mr Kenneth Macintosh (Eastwood) (Lab):** I will ask about two matters. The first is the overlap between the definitions of child and protected adult. The definition of a child in most legislation is somebody who is under 16, but in the bill it is somebody who is under 18. You alluded to that issue in the example that you gave of the mountaineers. How would you resolve that? Should we just make the age in the bill 16 and, as three years. It might take a wee bit more time, but it is certainly worth it.

**Alison Reid:** It took me a bit to understand the different definitions in the bill, because the construction is quite complicated. It makes sense to define a protected adult as being 16 years old and above. That definition should definitely go down to age 16. The question then is whether a child should be defined as someone who is under the age of 18. I have not reached a conclusion on the matter, but we must think carefully about it, especially in relation to part 3. We have discussed sharing information about people up to the age of 18, when they could be married.

**Katy Macfarlane:** I agree that there is confusion about the 16 to 18-year-old age group. If an adult is defined as someone who is over 16 and a child is defined as someone who is under 18, people who are aged 16 to 18 will be doubly protected, which is not a bad thing. We discussed that at work the other day. However, the matter needs to be decided on one way or the other. I do not know whether the overlap in ages is good, because it will lead to interpretation problems. In short, we do not have a conclusive answer—the issue is another thing about the bill that we have found confusing.

**Mr Macintosh:** Other people who wish to extend protection have alerted us to their concern about the confusion that exists about when someone becomes an adult.

I have a question about part 3. A legislative duty to share information will be placed on professionals, which is obviously a step forward. Currently, such arrangements are covered by guidance, but they are surely not working. All professionals who work in the area have a professional and ethical obligation to share information in order to protect the welfare of children, but they are not doing so, which is why the Executive has proposed that there should be a duty to do so. It is normal practice to include duties in bills and the practicalities of how to fulfil those duties in subordinate legislation, guidance and good practice information. If the bill is passed, it will impose a duty to share information, but arrangements will not be implemented until guidance has been produced, consulted on and so forth. Should any parts of the guidance be included in the bill?

**Katy Macfarlane:** With the greatest respect, you said that people are not sharing information, but the Scottish Executive has said that 95 per cent of professionals are sharing information. There is no doubt that information is being shared, but more detailed guidance is needed to give professionals the confidence to share information.

The process in which we are involved was kick-started by cases such as the Caleb Ness case and the Western Isles case. I do not want to take up too much time by reading out quotes, but Councillor Eric Jackson said of the report on the Western Isles case:

> “Anyone who reads this report will be horrified. It is unacceptable that despite having and sharing the information early intervention did not take place.”

A couple of other quotes that I have back up what he said. Information was shared, but no action was taken as a result of that information sharing.

The same applied in the Caleb Ness case, although not to the same extent. Information was
shared as much as it could be, but the inquiry report stated:

“Most GPs and Health Visitors in Lothian are linked up by a computer software system, known as ‘G-Pass’, whereby information can be shared. However, the software does not allow for a page relating to Child Protection, so the Health Visitors’ careful ‘Cause for Concern’ records cannot be accessed through it.”

The report recommended

“that the Trust carefully reviews its record keeping systems to facilitate … sharing of information.”

It did not say that people must start to share information; it said that information was being shared, but the “effective sharing of information” had to be facilitated and protocols and guidance had be put in place to ensure that that happened, people received information and action was taken on the basis of that information.

The Scottish Executive has said that 95 per cent of professionals are sharing information. I wonder whether it is a bit naive to think that any legislation—whether on this issue, crime or anything else—will capture 100 per cent of the population. That is an unrealistic proposition. We must think of other ways of getting the remaining 5 per cent of people whom we want to capture. We cannot say that the bill completely covers every professional who works with children.

Mr Macintosh: I accept your view on the matter, although it is interesting to note that last week the opposite view was put to us by Dr Helen Hammond from NHS Lothian, who stated specifically that in the case in Edinburgh information was not shared.

We are talking about a small number of cases for which the current systems do not work. You take the view that we could deal with those cases by facilitating matters and improving the current situation rather than by imposing an obligation or duty, as the bill does.

I go back to the original question. Assuming that we take forward the bill as drafted, should particular obligations to share information be in the bill rather than deferred to subordinate legislation at a later date? Your view is that there should be no duty, but if we go down that road, as is currently proposed, should we include particular protections in the bill, instead of leaving them to subordinate legislation?

Katy Macfarlane: There should be a duty, but it should not be enshrined in legislation: it should be a professional duty. In our written evidence, we identify provisions that should be changed, should part 3 of the bill be kept. However, I stress that we do not think that part 3 should be kept. We should stand back and look at part 3, like parts 1 and 2. We can then decide whether to reintroduce it in a different form, as part of the bill arising from the getting it right for every child agenda. I am talking not about putting it to one side and reintroducing the same provisions after a time delay, but about consulting children and professionals between now and the introduction of the GIRFEC legislation to ensure that any statutory duty that we introduce is right. If we decide not to introduce a statutory duty, there should be consultation on non-statutory guidance.

There are probably too many issues to be addressed. In our view, part 3 is just not right. We are very keen on the sharing of child protection information, but part 3 as it stands is not workable and will not lead to better relationships between children and adults. In fact, the exact opposite will be the case—part 3 will diminish the relationship between children and adults that currently exists. Children will just back off and will not tell adults anything.

I do not know whether the committee planned to question me on this point, but I have downloaded a massive consultation that the Children’s Rights Alliance for England and Triangle conducted before the non-statutory guidance on information sharing was produced down south. It is an English document, but children are children. It is full of comments from children that the Scottish Executive did not take into consideration before drafting part 3. I cite one comment by a 17-year-old girl—bearing in mind that people up to the age of 18 are regarded as children down south. She said:

“I think the people who are passing information need to consider the consequences of what will happen if they disrespect the child’s wishes … like the child’s not going to confide in them anymore or trust them. Obviously that’s going to be bad if they’re in a situation where they’re in danger or they’re self harming … and then they’ve got no one to turn to because they don’t trust anyone”.

Those are the issues that have not been taken into consideration. When we spoke to the Scottish Executive, it was clear that it had not consulted and had not carried out a children’s rights impact assessment. Those are fundamental things that we must do before passing a law. If we do not proceed on the basis of full information and knowledge, we will end up with bad law that does not work and which we will have to amend. We do not want to be in that position.

10:15

Alison Reid: We may have fallen into the trap of looking at one policy issue in isolation. We should really take three issues into account. The first is the issue with which we are dealing—information sharing. The second is what we do with the information once we have it. Katy Macfarlane’s point about codes of practice relates to that. The third is confidentiality and privacy, which is a
complicated area of law. There are many different confidential relationships, for example between doctors and patients and between solicitors and clients. In 1984, the Scottish Law Commission wrote a big paper on the issue, which is extremely complex, especially if we take into consideration article 8 of the ECHR. We need to consider confidentiality alongside the other two issues that I have highlighted, and to come up with a complete package for dealing with them.

Ms Rosemary Byrne (South of Scotland) (Sol): Katy Macfarlane has answered the question that I was going to ask. However, I also want to ask about awareness raising, education and training. In your written submission, you mention an issue that has cropped up at the committee over the past few weeks—the complacency that could develop if it is believed that everyone has been checked against the list and the vetting and barring have worked. We know that certain groups will not come forward to be checked against the list. What is your view on that and on the wider issue of educating and training people, including our children and young people, to recognise signs of risk?

Katy Macfarlane: You are absolutely right. I will comment only briefly, because Alison Reid is leading on this part of the bill. We are conscious of the false confidence that will result from people assuming that they have information that a person is above suspicion. That is not the way in which we should proceed in society.

As professionals, parents and carers of children, we must equip our children for adulthood, which means a number of things. It may mean leaving them in the house on their own for 20 minutes when they are 14 or 15, to give them an idea of what that is like. It means ensuring that they start to have a say in decisions that affect them. That should be built up from a low level, so that when they reach adulthood they can make decisions, with the support of their parents and others.

We are not equipping children for adulthood if we smother them and say, “You cannot speak to anyone. Every adult is a paedophile until it is proved that they are not. Don’t let anyone touch you. If your teacher touches you, come straight home and tell me, and they will be suspended.” We live in a clinical, sterile society. I do not want my children to grow up in such a society, but the attitudes that I have described are gradually creeping in. We need to stop that development in its tracks and re-educate adults and children to assess risk, so that children can take risks knowing that they are protected and their parents know where they are. The only way of equipping our children—who are the adults of the future—for adulthood is to allow them to come across and to deal with risks. The problem could become generational. If current children grow up to be terrified adults, they will bring terrified children into the world and we will never get out of the cycle, I do not know whether I have stolen Alison Reid’s thunder.

Alison Reid: Not at all. I want to focus specifically on the reliance on scheme records and concerns about complacency in relation to employment. I draw members’ attention to the issue of overseas workers. The Bichard report’s recommendation 30 was:

“Proposals should be brought forward as soon as possible to improve the checking of people from overseas who want to work with children and vulnerable adults.”

The Bichard inquiry heard evidence that

“in future years, potentially 40 per cent or more of the teaching workforce could come from overseas.”

Whether or not that is right, that is the evidence that Bichard was given. I am less concerned about overseas teachers, because they are regulated by professional bodies abroad, but it is difficult to put checks in place for other groups, such as play leaders in nurseries. That is where the false confidence comes back into the system, because we are unable to check a large proportion of workers. We really need to address that, although there are difficulties with doing so.

We should also be aware of the scheme’s limitations. We are not dealing with stranger danger. The scheme is about work, and we are not able to cover stranger danger in that context. False confidence is a worry, and we must ensure that we educate employers who will have to make decisions about employing people with vetting information in front of them. How they are supposed to do that is another issue.

Marilyn Livingstone: You heard in my declaration of interests that I chair the cross-party group on survivors of childhood sexual abuse, which I have been doing for five years. Through Malcolm Chisholm, we have an expert working group that was set up by the Scottish Executive, which has taken evidence. The group has a good geographical spread and includes representatives from voluntary organisations such as Children 1st.

My concern is about the balance between sharing information and protecting the child’s confidentiality. I have had constituency experience of the non-sharing of information resulting in an horrendous situation, but I have also heard from young people that they will not come forward without confidentiality. If they do not come forward, abuse can happen to other children, and we know the ramifications of that. What would be the best way to get the right balance between ensuring that information is passed on and maintaining the child’s confidentiality and feeling of safety? It
would be helpful if you could explain how that could be done.

**Katy Macfarlane:** You are absolutely right and we agree with you about the need for a balance. We do not pretend to have fairy dust to sprinkle over the situation to make it all better. There is and will remain a conflict between sharing information and protecting confidentiality.

It is not right to completely overrule a child’s right to any confidentiality. The Scottish Child Law Centre does a lot of training for professionals on confidentiality and the sharing of child protection information. Our view is that the child owns the problem and, if a child discloses something to an adult that the adult thinks is a child protection issue, it is a question not so much of the law but of good practice. That is why we stress that good practice is everything. In our view and experience, if the adult shares with the child what they are going to do, asks the child’s opinion and gets them on board, the child is much more likely to agree to do it. There are distinct people whom the child simply does not want to know things; they are generally parents. Sometimes, if the child can be assured that the parent will not know about their problem but help will still be sought and the problem will be addressed, they are much more willing to come forward, accept help and allow confidential information to be disclosed to others who can help.

Part 3 of the bill appears to rule out any right of a child to confidentiality. The word “consent” does not appear in part 3 so, as far as we are concerned, it means that adults can go ahead with or without the child’s consent and disclose the information to child protection services, the health service, police or social work services. That is what grates with us. Children have rights—you guys have given them rights in legislation, as has the United Kingdom Parliament, yet it is as if we are running roughshod over those rights by saying that children will not even get to give their consent. They will not even have to be asked; there will just be a duty on professionals to go ahead and disclose the information. If an element of consent were built into part 3, we might be starting to get the mould right.

We are completely bypassing children’s rights—we have not even consulted them. If we did, they would say, “Ask for our consent and consult us when you are going to pass on information. We might just startle you and agree that it is okay.” Children come back time and again to the point that nobody ever speaks to them or asks them what they want. That needs to be built into the bill. I used the find function on my computer to look for the word “consent” in part 3, but it simply is not there. That is an indictment of our supposedly child-friendly society.

**Alison Reid:** The professionals forever want an answer, but there must be a judgment call as to whether they share information. We must get the balance right, as Marilyn Livingstone said. The problem is that, under the bill as drafted, professionals will share information and pass it on. The balance is out of kilter. Professionals look for a straightforward answer, but such matters always come down to a judgment call.

**Katy Macfarlane:** Under part 3, the professionals will not have a judgment call—they will just go for it. Discretion has gone to the wind and nobody will have a judgment call.

**Lord James Douglas-Hamilton (Lothians) (Con):** I have two questions, the first of which is on proportionality. We have heard that a small minority of people who harm children do so in the course of their employment—there are possibly only a few cases annually. Does the bill achieve the right balance between vetting the many and monitoring the few whom we know pose a real threat?

**Alison Reid:** That is a good question, but I do not know whether we know the answer. That is the problem and that is why we said earlier that we need to investigate the effect of the current legislation to find out whether the net is too wide or too narrow and what we are achieving in return for the potential damage that we are doing to children by restricting them and perhaps overprotecting them. That is the big debate and the big question.

**Lord James Douglas-Hamilton:** My second question is about the proposal in your written submission for a specific provision on considering the child’s views, as in the Children (Scotland) Act 1995. I should mention an interest, in that I took the bill that became that act through the House of Commons. How should we ensure that people strike the right balance between the child’s views and other factors in deciding how to share information?

**Katy Macfarlane:** Ultimately, the professional is in the driving seat. The bill will almost give professionals a tick-list that says, “Have you spoken to the child about disclosing their information to people?” However, the child might not have said yes. As part of good practice, we must ensure that adult carers and professionals who work with children ensure that they talk to children and listen to their views about how to proceed when there are child protection issues. However, putting a provision on that in legislation will not mean that it will happen. I said that 95 per cent of people in the sector share information anyway, but I wonder whether that is with or without the child’s consent—I do not know, but I hope that it is with consent. I do not think that putting a provision in legislation will increase the
95 per cent to 96 per cent or 97 per cent. I think that 95 per cent is a pretty good figure.

10:30

Alison Reid: We mention in our written evidence the way in which section 11(7)(b) of the 1995 act introduced the views of the child into the legislation. I am supportive of the approach taken in that section, which imposes a duty to consider a child’s views “taking account of the child’s age and maturity”.

That is a good formulation.

Lord James Douglas-Hamilton: If Alison Reid has any views on an amendment that could improve the bill in this regard, could she kindly send a draft amendment to the committee clerk?

Alison Reid: Yes.

Fiona Hyslop (Lothians) (SNP): Do you agree that there should be a vetting and barring system?

Katy Macfarlane: I think that we do. As Alison Reid said, in its current form the proposal is not as good as it can be. Our job, and your job as MSPs, is to make it as good as it can be. We must vet people who work with children. That is fundamental, especially in today’s society. However, as Alison Reid said, we must conduct an audit of what is happening, consider where the danger is coming from and pinpoint the areas on which we need to concentrate, rather than taking a blanket approach that stipulates that everyone will be vetted and everyone will be either a member of the scheme or barred.

Wendy Alexander said at the previous committee meeting that there are a million children in Scotland and that there are probably about 2 million people who work with children. We could get to the point at which everyone is vetted. That is not realistic. We are in favour of having legislation in place to ensure that children are protected as far as they can be from people who work with them, but it must be tailor-made to meet our needs here in Scotland. We are in favour of the bill; we do not think that it should be scrapped wholesale.

Fiona Hyslop: The committee must come to a conclusion on these issues. I think that you are saying that you are comfortable with the vetting system that is currently operated by Disclosure Scotland, but the nub of the issue is how we introduce barring, as recommended by Bichard. Is that where the difficulty lies?

Katy Macfarlane: For us, the difficulty lies in the wording in many places in the bill. We have read through the bill. As solicitors, we—not only the two of us but the rest of our colleagues at the Scottish Child Law Centre—have pored over the bill and thought, “What does this section mean?” We are solicitors with a fair bit of experience, but we cannot decide what the bill means. How will it work in practice if solicitors cannot make head or tail of it?

Fiona Hyslop: The bill creates a negative scheme. A million or more people might go into it just to prove that there is no information about them. The alternative is a positive scheme, which would be a central listing scheme. The concern has been raised with us that we cannot have a positive scheme because of ECHR issues. From a solicitor’s perspective, is that the central reason why the Executive has proposed this huge scheme, instead of saying, “Look, we recognise that there will be individuals on whom we have information and we must find a mechanism for barring those few individuals, rather than vetting the whole of Scotland”?

Katy Macfarlane: We have not considered that issue in detail. I do not have a view on whether we should take a blanket approach that means that everyone is vetted and, if their certificate is blank, they are okay to work with children, or whether we should pinpoint people who should not work with children.

Alison Reid: It comes back to the fundamental issue that we do not know where the problem lies. Until we know where the problem lies, we cannot address it. If we can find a way to establish where the problem lies, we might be in a better position to come up with a solution.

Katy Macfarlane: It is necessary to conduct an audit that investigates where the dangers come from. Many of the dangers come from stranger danger. The bill will not touch that issue—it will not deal with the guy who hangs around outside schools. A couple of weeks ago, a representative of the Association of Chief Police Officers in Scotland told the committee that other provisions are in place to track down such people and to ensure that they are caught. However, this is not the right way of dealing with the matter. We must stand back and carry out an audit. We must ask where the danger is coming from and what poses the greatest risk to our children, and attempt to address those issues through legislation.

I do not know whether the bill breaches our privacy under article 8 of the ECHR. As a professional who works in child law, I would be happy for my record to be downloaded by someone else, but that is because I have nothing to hide. As was mentioned earlier, there are people who have a wee thing on their record that they do not want the world to know about, but the world will know about it. That will cause a few problems. I am sorry, but I do not know the answer to Fiona Hyslop’s question.
Mr McAveety: We have been told that we need to get the balance right. Bluntly put, the views that the voluntary sector has expressed in its submissions on the relevance and practicality of, and the need for, part 3 are substantially different from those of the statutory sector. Why are their views so divergent?

Katy Macfarlane: They are divergent because the statutory sector is coming from an adult's perspective and the bulk of the voluntary sector—Children 1st, Children in Scotland and the Scottish Child Law Centre—is coming from a child's rights perspective.

Mr McAveety: Last week, councils and health boards were strongly of the view that, despite potential problems, part 3 is still the right thing to do. The voluntary sector took a much more sceptical view. The committee and I are trying to get a sense of how we can navigate between those two positions. Can you help us to do that?

Katy Macfarlane: You make a good point. COSLA and some local authorities are very much in favour of part 3, but their concern is the protection of adults. Last week, Maggie Mellon said that this is almost a protection of vulnerable organisations bill, but it is supposed to about protection of vulnerable adults and children. That is the issue on which we must focus. Of course adults in jobs that involve working with children will want to share information, because the consequences for them if they do not are possible suspension, disciplinary procedures and having to appear in front of a tribunal. We are losing sight of the welfare of the child. Under the 1995 act, the welfare of the child is paramount. That is also the primary consideration under the United Nations Convention on the Rights of the Child. We must bear that in mind when passing on information. It is not about the protection of adults, although that is a factor, but essentially about the protection of children.

The reason why there is such a discrepancy between the views of the statutory bodies and those of the voluntary bodies is that they are coming at the issue from different angles. There needs to be a compromise—we need to meet in the middle. However, that is where the devil is. Consultation will help us to get together. However, consultation on part 3 was very limited and was by invitation only. We did not come along and no children were invited. I am not surprised that the bill does not accord with anyone’s point of view, because no one’s point of view was considered at consultation stage. We must get round a table and try to reach a compromise—that is the only way. We cannot go down the line of just protecting adults or of doing everything that children say. We must find agreement in the middle. We can do that only by sitting round a table with representatives of all those with an interest. That is why we must stand back and take our time over the issue. The bill in its current form will not work.

Dr Murray: You talked about stranger danger a few minutes ago, but is it not the case that 80 per cent of the danger that children face occurs in their own home, either in the form of abuse or neglect, given the unfortunate increase in substance abuse and drug addiction in particular? Are you concerned that by concentrating on stranger danger we might be taking effort away from identifying youngsters who are in danger at home? Should we concentrate on training professionals to recognise when the children in their care are in danger at home, rather than their having to hope that the children are okay and ticking a box to say so?

Alison Reid: Yes. It is well known that the main dangers to children are within families or circles of friends. I hope that professionals would be able to consider that aspect, as well as what they can do at work. We need to encourage people to recognise the signs of danger to children in their home. I hope that what you suggested would not happen and that one aspect would not detract from the other.

Katy Macfarlane: I agree absolutely. We hoped that the bill would do the work that training should be doing, but it will not. We need to get out there and speak to people, run workshops with them and carry out role-play with them. Legislation does not train; it sets out the framework for people to decide whether they want to go ahead with it. We need to devote a lot of resources to training people and telling them what it is okay to do. So many professionals are terrified and do not know what to do, because they do not have leadership or people telling them that it is okay not to disclose at the first instance but to work with the child to get their confidence before disclosing, as long as they are kept involved in the process. Training is hugely important.

The Convener: You said in your opening statement that you were concerned that provisions in part 2 of the bill in relation to vetting might fall foul of article 6 of the ECHR, given the lack of an appeals process. Will you expand on that?

Alison Reid: Yes. There are two aspects to that. The first relates to the consideration for listing and the decision to list. There is a lack of clarity in the bill. In relation to consideration for listing, the definition states:

“conduct includes neglect and other failures to act”.

The bill states that individuals will be considered for listing

"Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included".
Given the vagueness of the language used, it is unclear what conduct would leave it open to ministers to list an individual. That could be a subjective decision, given the definition of harm, which we mentioned in our submission. We are concerned about that. The fact that someone might not know that they had done something wrong raises concerns in relation to article 7 of the ECHR, which is about whether offences are foreseeable.

Articles 6 and 8 of the ECHR are also relevant. Some of you might be aware of last month’s case of R v Secretary of State for Health, which was based on part VII of the Care Standards Act 2000 and considered the provisional listing system in England in relation to the protection of vulnerable adults. The case went to judicial review. The provisional listing system for vulnerable adults is slightly different in that people cannot work while they are provisionally listed. The same wording is used in the act in that it states that “it may be appropriate” to list people. That is the test that is used.

In that case, it was held that the law was incompatible with articles 6 and 8 of the ECHR. The situation with regard to article 6 was slightly different because, once the person had been provisionally listed, they lost their job. However, under the bill as drafted, it will be left to ministers to provide guidance on what should happen when someone is considered for inclusion on the list. The content of any such guidance will require careful consideration to ensure that the procedure remains compliant with article 6.

However, in R v Secretary of State for Health, the law also fell foul of article 8 of the ECHR. As the suspicion of misconduct was serious enough for the individual to be felt to constitute a risk to vulnerable persons, it was also calculated that it would interfere with his personal relationship with colleagues, the vulnerable persons with whom he had worked and others. The same applies to the bill. The policy memorandum suggests that if an employee is being considered for listing, the employer might increase the level of their supervision. However, if that happens to someone in a small business, it will be obvious to all their colleagues that something has happened. In the case that I cited, article 8 was invoked because the person in question was being treated differently as a result of being provisionally listed.

Under the bill, once a person has been listed, they have recourse to a rather limited appeals procedure. For example, under section 17(4), they cannot question or dispute the tribunal’s findings of fact. However, as the Faculty of Advocates points out, an individual might not have been able to express certain views at their tribunal hearing. We are also concerned that, once a person has been listed, they cannot apply to the court for an interim suspension of their barred status.

Decisions on automatic listing have also been left to ministers, which I think is an inappropriate use of secondary legislation. If they are able to decide to list someone automatically, that provision should be made clear in the bill.

**The Convener:** With regard to vetting information, you mentioned the very specific issue of listing. Actually, there are four criteria for vetting information, two of which relate to straight factual matters such as convictions. The other two criteria set out in section 46 are

> “information which the chief officer of a relevant police force thinks might be relevant … and … such other information as may be prescribed”—

again, I presume, by regulation. It seems that, under the bill, people are not allowed to challenge those two criteria, even though ministers will be required to correct a scheme record that proves to be inaccurate. Can a person challenge those grounds? If not, is that provision ECHR compliant?

**Alison Reid:** That was the other point that I wanted to make.

If there is non-conviction information on a job applicant that a chief constable thinks might be relevant, it will be included on the certificate that goes to the prospective employer, who will have to decide whether it is true. The mechanism for verifying such information is a problem in itself. Moreover, if the person does not get the job for whatever reason—perhaps because another applicant had a clear certificate—what do they do then? Their certificate now contains certain information that they might well not agree with because, for example, it was provided by someone who was unhappy with them in their previous job.

The only recourse open to those people can be found in section 48, which allows a person to challenge a scheme record’s accuracy. However, ministers will correct inaccuracies only if they are satisfied that the information is inaccurate. With the presumption that the information on a certificate is true, the burden of proof immediately shifts and, unless ministers are satisfied otherwise, the information remains on that certificate. There is certainly no mechanism for discussing the standard of proof used to reach such a decision and, beyond the provision in section 48, people have no other way of clearing their name. In my opinion, that is incompatible with article 6(1) of ECHR.

**The Convener:** As there are no other questions, I thank the witnesses for giving evidence and
providing us with further food for thought on this bill.

10:51
Meeting suspended.

10:58
On resuming—

The Convener: We move on to our second witness—I was going to call him a panel, but that is probably an exaggeration—Brian Gorman, who is the manager of Disclosure Scotland. Do you wish to make an opening statement?

Brian Gorman (Disclosure Scotland): Yes. Thank you for inviting me to give evidence on the Protection of Vulnerable Groups (Scotland) Bill. For the past four and a half years, I have been responsible as head of Disclosure Scotland for the day-to-day management and delivery of the Scottish ministers’ functions under part V of the Police Act 1997. The proposals in the bill will affect the 1997 act and, therefore, Disclosure Scotland’s work.

Disclosure Scotland will be part of a new executive agency that ministers are establishing to deliver their functions under the bill and the 1997 act. It will continue to provide basic, standard and enhanced disclosures under the 1997 act and will also carry out some similar functions and tasks under the bill. Disclosure Scotland will be responsible for application handling, gathering criminal record information, collating such information, passing it to the new central barring unit, maintaining the list of scheme members and ensuring that any information about a scheme member that subsequently comes to light is brought to the central barring unit’s attention. We handle applications and gather information now, so our tasks will be similar. At the moment, any information that is gathered is sent to the applicant and the employer but, in future, we will pass the information to the central barring unit for consideration.

11:00

The introduction of retrospective checks for people who are already working with children and protected adults could mean that as many as 350,000 checks will need to be carried out annually for the first three years of the scheme’s operation. Those will be in addition to checks for people who join the regulated workforces for the first time and our on-going work under part V of the 1997 act. Disclosure Scotland will aim to carry out all that work within agreed service levels.

The other big change for Disclosure Scotland will be its move from the Scottish Criminal Record Office to the Scottish Executive. Almost all staff have attended a presentation about the proposals in the bill that affect Disclosure Scotland. The Scottish Executive is working with us to involve staff in and inform them of the significant changes that lie ahead.

I am confident that, with what is being done and what is planned for the future, my colleagues and I will rise to any challenge that the bill has for us.

Dr Murray: As you know, equivalent legislation has been passed in England and Wales but, in Scotland, the statutory sector’s views on the bill diverge from those of the voluntary sector. If we were to take the voluntary sector’s advice and not progress with the bill, what would be the consequences for information sharing with England and Wales?

Brian Gorman: It could present difficulties if we were to work to different pieces of legislation. At the moment, the whole UK works to the Police Act 1997, and moving away from what the rest of the UK is doing could have consequences for the sharing of information across borders if different determinations were being made as to whether a person should work in a prescribed workforce. There could be challenges under the current arrangements if we were not to move forward at the same time as England and Wales and Northern Ireland.

Dr Murray: Disclosure Scotland experienced difficulties not just with the implementation of POCSA but with various other things that were going on at the same time. You said that the retrospective element of the bill would mean an additional 350,000 checks in Scotland. England and Wales have not had any system and will have to introduce the whole process. They have 10 times the population of Scotland, so will they be able to cope? If problems of the sort that occurred here occur there, could there be dangers in relation to the information that we receive?

Brian Gorman: You are right, in that England and Wales have considerably more retrospective checking to do—I believe that a figure of something in the region of 9 million checks has been quoted. However, consideration is being given to the best way of introducing retrospective checking and I am sure that, when that plan is produced, it will allow for the proper checking of the workforce in England and Wales within a reasonable timescale.

The 350,000 retrospective checks a year that Disclosure Scotland expects to have to undertake will include a number of checks that we already do, so I do not envisage an additional 350,000 checks. We reckon that about one million people in the workforce will need to be rechecked. However, because a large number of the checks
that we do every year are repeat or retrospective checks, we reckon that probably only 200,000 to 250,000 additional checks a year will be required. We are in discussions with the Scottish Executive on the timescale for the introduction of retrospective checks, the period over which they should be carried out and the staffing levels required to undertake such an increase.

It is worth pointing out that when Disclosure Scotland first started up four and a half years ago, we did about 140,000 checks a year, but this year we expect to do 600,000 checks. Our turnaround time currently averages four days if Disclosure Scotland can supply the disclosure without going elsewhere. We have shown that we can cope with increased volume and, working together with the Scottish Executive, which funds the Disclosure Scotland service, we can plan to ensure that there are no delays involved in additional checking if that results from the bill.

Dr Murray: Is it proportionate for an adult who works in the statutory sector and who has daily contact with children to be checked in the same way as a volunteer parent who occasionally helps out at a school disco?

Brian Gorman: The short answer is yes—it is proportionate. Anyone who works with children or protected adults should undergo the same level of check, whether their position is voluntary or paid. We do not want to create a system in which volunteers are not checked at the same level as paid workers, as those seeking access to children or protected adults for the wrong reasons would see voluntary work as the easiest route to that access and would therefore go for voluntary rather than paid work.

The Convener: I seek clarification of your answer to Elaine Murray’s first question on information sharing among Scotland, England and Wales and Northern Ireland. Your answer implied that there may be difficulties because there would be different procedures for barring. If different bodies treat information differently, does that create a problem when they share that information?

Brian Gorman: We currently have agreements with the Department for Education and Skills to access the barred list in England and Wales. We are seeking access to the Northern Ireland list, although because Northern Ireland shares its children’s list with the DFES, we get the information via checks with England and Wales.

We get a daily update from England and Wales on the current listings of people on the vulnerable adults’ list and the children’s lists, and that will continue—we will still get that information. However, there would be difficulties if we had different means of deciding why people go on the lists. Someone who was barred from working with children in England and Wales might not be barred in Scotland unless we extend the scheme to ensure that, irrespective of whether the bar is applied in Scotland, England and Wales, or Northern Ireland, it is effective throughout the UK. We are currently examining how we can ensure, under the legislation, that we catch everyone who appears on any list throughout the UK.

The Convener: I am still not clear about the information. Presumably, if someone from England came to work—

Brian Gorman: We would check the barred list in England and Wales.

The Convener: I was thinking about vetting information, on which decisions are based to include someone on the barred list or perhaps not to employ them even if they are not barred. Does the bill resolve any issues to do with access to vetting information, or are there no such issues?

Brian Gorman: Part V of the Police Act 1997 adequately covers the need to obtain information from police forces in England and Wales and Northern Ireland. That will not change. There might be an issue with additional information for prescribed purposes, if the purposes were prescribed elsewhere but not in Scotland. However, we will still get the vetting information from police forces in England and Wales and Northern Ireland.

Mr Macintosh: I want to ask about the figures on the types of people who are being checked. I appreciate that you may not have all the information to hand, but you could perhaps give us a guide.

You said that you started checking people at a rate of 140,000 checks a year and that the rate is now 600,000 a year. The total for the first four years is 1.5 million. Is that correct?

Brian Gorman: Yes.

Mr Macintosh: This is of particular relevance to the Finance Committee’s report, in which serious concerns were raised about the cost and impact of the bill. How many of the 1.5 million checks were individual checks and how many were repeat checks?

Brian Gorman: The people who are affected by the bill are those who have had checks at enhanced level and some who have had checks at standard level. Of the 1.5 million checks, just over 900,000 were at enhanced or standard level. We cannot get exact figures, but we estimate that one third, or 300,000, of the 900,000 are repeat checks.

Mr Macintosh: How many times are checks repeated? I take it that your current systems do
not allow you to keep individuals’ names and addresses, and so you cannot give a total number for individuals who have been checked. You run a check and that is it.

**Brian Gorman:** Yes.

**Mr Macintosh:** If your estimate is that one third are repeat checks, could that third be responsible for all 900,000 checks?

**Brian Gorman:** Yes.

**Mr Macintosh:** In other words, if a third of the checks are repeat checks, the total number of individuals who have been checked could be 300,000. It could be that 300,000 people have had repeat checks, plus an additional 50,000, 100,000 or 200,000 people who have had one-off checks, but we do not know that for sure.

**Brian Gorman:** We cannot say. We have tried to interrogate the system using postcodes and address information to try to identify whether checks for the same address have been made. That is where we got the figure of one third from.

**Mr Macintosh:** Did that interrogation give you any idea about how many repeat checks people had? What was the variation? Did some people have five checks, or did everyone have two or three?

**Brian Gorman:** The information that we have received from individuals is that some people have had more than one repeat check. A number of individuals have written to us to say, “This is the sixth check that I have had to undergo as a volunteer—surely something can be done about that.” Some people undergo a number of checks through different employers for different reasons. However, without the name of the individual, we cannot search the system to find out whether they have had, say, seven checks.

**Mr Macintosh:** We are all aware that multiple checks are a problem that the bill is designed to address. I am just trying to understand the figures. Apart from anything else, people who volunteer in one area often volunteer in other areas.

One of the major concerns about the bill is the underlying concern that a system that is clearly needed and wanted by the statutory sector, to which it would apply, is seen as both a blessing and a curse by the voluntary sector. The voluntary sector includes people whose full-time, paid employment is very similar to jobs in the statutory sector, as well as the parent helper at the school disco. Can you break down your figures on applications for disclosures? Even if we do not take into account repeat applications and consider only individual applications, how many are for posts within the statutory sector and how many are for volunteer posts?

**Brian Gorman:** Checks for volunteer posts are applied for via the central registered body in Scotland. Once the check comes to us from that body, we do not know whether it is for a voluntary post. The check is processed and the umbrella body—the CRBS—is invoiced. The CRBS certifies that the check was for a voluntary post and the invoice is then sent to the Scottish Executive for payment.

11:15

**Mr Macintosh:** How many requests for checks do you get from the CRBS?

**Brian Gorman:** We get approximately 1,100 per week. In the past 12 months, we have had about 68,000 applications from the CRBS. Some of the larger voluntary organisations are registered with us and come to us direct. They are mainly organisations that have paid employees even though they are voluntary organisations. When we undertake checks for them, they have to pay for them. Most voluntary organisations—in fact, 99 per cent of them—go through the CRBS because, in that way, they do not have to pay for the checks on their volunteers.

**Mr Macintosh:** I can understand that incentive.

How many people get checks in relation to full-time posts and how many are checks for people who help out with school runs and discos or one-off events? It is perhaps the checks on the latter group that cause the greatest concern.

**Brian Gorman:** In broad terms, the CRBS sends us 60,000 to 70,000 requests for checks per year, and those are for people who are volunteering to do that type of work.

**Fiona Hyslop:** I take it that you have read the Finance Committee’s report on the bill, which contains some stark comments. It notes:

“In supplementary evidence, the Executive stated that the current disclosure system costs £100m over ten years and ‘this scheme is estimated to be less expensive through increased efficiency.’”

Given that Disclosure Scotland will have to operate the new system, do you agree with that?

**Brian Gorman:** The biggest project that will need to be undertaken in relation to the new system is the development of an information technology solution to handle the information and automate as much of the process as possible, although there will still need to be human intervention. If we introduce online applications at all levels, paper applications can be done away with. If applications are made online, they will go directly into the system and there will be no need for them to be input by employees.
Separately from the bill, we are also developing a new system that will allow information to be screen scraped as it enters the system. Information will be taken away behind the scenes and searches will be carried out on the criminal history system in the police national computer and on the lists that we hold, which, as I said earlier, include the English list and the Scottish list. When Disclosure Scotland staff look at the check, the possible hits will be displayed. The human time and effort that are spent in searching the system will be reduced, but there will still be a human element of decision making on whether a record applies to the applicant.

The new system will certainly reduce our overheads. As we know, the biggest cost to any employer is the cost of staff, which accounts for 80 per cent of overheads. However, I am not saying that we will have a paperless, workerless office. We will have to ensure that the information that the computers provide to the operators is quality checked, and we are satisfied that that will happen.

Those are the major things that we are doing to try to reduce the cost of running the service. We are trying to automate as much as possible both the user side and the Disclosure Scotland side.

Fiona Hyslop: So you think that the new system will be more efficient and cost less than the current system in the long term.

Brian Gorman: Yes—once we get the IT developments in place.

Fiona Hyslop: Is the budget of £2 million enough for you to do your job?

Brian Gorman: I am not an IT expert so I do not really know whether £2 million is realistic, to be honest. I do not have an in-depth knowledge of IT systems.

Fiona Hyslop: The crux of the issue is that you are managing an IT-dependent system. It would be helpful if you would write to the committee if there is further information on that. The committee is pressed for time to produce its report, so it would be helpful if you did so promptly.

Paragraph 6 of your written submission goes through your current numbers. You expect about 1 million Scots to be captured by the system, a lot of whom would have been checked anyway—the extra checks amount to between 200,000 and 250,000 per year. Do those figures cover just the set period in which you will go through the existing workforce? Will the savings in relation to number of checks come in because the system will be a contemporary one, which means that the information will be current on any given day as opposed to just when the disclosure was issued?

Brian Gorman: The advantage of the proposed system is that the continuous updating will, we hope, reduce the number of repeat checks that will be required. The information will be fed from the systems that we will check into the central barring unit so that it can make barring decisions. The proposals for short scheme checks mean that we anticipate a vast reduction in the number of enhanced disclosure checks—new and repeat—that will be requested. Therefore, as well as making savings because of IT, we expect that there will be a reduction in the number of enhanced checks that Disclosure Scotland will have to deal with. Once everyone is in the scheme, given the constant updating that will take place, there will be no need for people to apply for disclosure checks as often as they do at present.

Fiona Hyslop: To follow up on that, I will ask you the same question that I asked ACPOS. If something happens that causes a member of the scheme working with or volunteering for a small voluntary organisation to have a record that is fed into your system, how will you ensure that when the new information comes in from the police or wherever, you will be able to reach the organisation and tell them that the person is no longer suitable?

Brian Gorman: There are two issues: will the new information result in the person being barred, or will it not affect their barred status?

The constant updating that we have been speaking about will be provided to the central barring unit and not to the employer. If the employer wishes to find out the current status of an individual under the new scheme that is proposed in the bill, they will need to do a short scheme record check, either by computer or by making a phone call; I think that that is what is being proposed.

If the central barring unit bars an individual from working in a particular workforce because of new information that the police have supplied, there will be an obligation on the central barring unit to inform the individual that he is barred and to obtain details of who he went through the scheme with. The central barring unit will then contact that group, perhaps through the CRBS, to inform it that the individual is now barred. Remember that, under the bill, a barred person will commit an offence if he continues to work within the scheme.

Therefore, we will notify a newly barred individual that he is now barred and is under an obligation not to work within the scheme. We will then trace through the individual the voluntary organisation that the individual was working for and inform it that the individual is now barred.

Fiona Hyslop: All that would depend on the cooperation of an individual who might be an evil
person who wants to harm children—in fact, they have probably done so already; that is why they will have a record—to say which organisation they were currently volunteering for and had access to.

**Brian Gorman:** Obviously, we will have recorded the organisation that applied for the check when the person entered the scheme, if the person came through that system.

**Fiona Hyslop:** If part of the benefit of the scheme is that it is a passporting scheme—once you have gone through the process, you do not have to go through it again—how do you keep track of any other organisations that have access—

**Brian Gorman:** An organisation that takes a person on board has to record an interest in him. Before they can even make the short scheme check, the organisation needs an access code. We will record that information and will be able to say who asked for a short scheme check on an individual.

**Fiona Hyslop:** Will the central barring unit be able to access that information?

**Brian Gorman:** Yes. The central barring unit will be able to say who was the last person to run a short scheme check on an individual.

**Fiona Hyslop:** Therefore, the unit should be able to trace the organisation that the applicant was working with without having to get in touch with the applicant.

**Brian Gorman:** Yes. However, under the bill, we will need to tell the applicant that they are barred, because if they continue to work in the workforce, they will be committing an offence.

**Fiona Hyslop:** The passporting element is welcome. Several years ago, we took evidence from you about your concerns. The new scheme involves having an up-to-date system. Is it possible to establish such a system under the existing POCSA legislation?

**Brian Gorman:** Anything is possible. However, for a start, the POCSA legislation covers only children, not protected adults. Given that it would need to be significantly extended to deal with the situation that we are discussing, which could lead to the process becoming cumbersome, I feel that new legislation would be the best way of covering children and protected adults. The bill is trying to achieve such a system as well as meeting Richard’s recommendation that there be a scheme that enables a trace to be kept on people who work with children and protected adults.

**Fiona Hyslop:** If we were dealing only with children, and not vulnerable adults, do you think that it would be easier to establish such a system under POCSA?

**Brian Gorman:** It would certainly be easier, as you would not have the protected adults element to incorporate. That would have to be dealt with in new legislation, as POCSA relates only to children.

**Mr Adam Ingram (South of Scotland) (SNP):** The welcome feature of the bill is that repeat checks and multiple disclosures will no longer be required. Instead, there will be a constant updating process. I want to explore how that system will work. I get the impression that you will be interrogating police computers for the information and then transferring it to your own records. Could you tell us a little bit about how that will work?

**Brian Gorman:** Currently, when we do a check, we transfer information that we find to a document that is known as the disclosure certificate. That is as far as it goes, although it is also held on our internal workflow system. In the future, when we get information from police sources, as well as recording that information on our system we will pass it to the central barring unit, which will make a barring decision based on that information. If a barring decision is made, a disclosure certificate will not be issued and the person will not be entered into the scheme. If the information suggests that the person should not be barred, the disclosure certificate will be issued and information will be held by the central barring unit. The continual updating of the information is the new feature. Obviously, it is a bit more problematic, as we have to devise a way of ensuring that the central barring unit receives information when it changes on the police system.

11:30

Scotland has a central intelligence database that is known as SID—the Scottish intelligence database—and a central criminal history system that holds all of the information that we need to carry out the checking of sources. People’s names are flagged on that system, which tells us that a police force holds information on them. We need to adapt the system to enable us to get updated information from the police immediately. We are working on that at the moment. Just as important, we need to find out when information is deleted from the police systems, because we will want to tell the central barring unit that a certain piece of intelligence is no longer held by the police, which means that the central barring unit should not hold it either. At the moment, we are examining how we can update the system, which we do not think will be too difficult or expensive, and also how we can get information off the system.

Another issue concerns proscribed information, which could come from a local authority. Again, it is envisaged that we will have a single point of contact in the local authority. The local authority
will set up a central unit that will pass information to the central barring unit.

Mr Ingram: Forgive me for saying so, but that sounds like an extremely complex and bureaucratic system. It seems to be entirely dependent on your IT systems. What assurances can you give us that the quality of the information will not suffer as it transfers through those various routes?

Brian Gorman: At the moment, as ACPOS might have told you, the police have methods of evaluating the information. Obviously, conviction information is updated directly by the courts—the courts put the information on to the criminal history system on the day on which the person is convicted. The police input the pending prosecution when the person is charged and the procurator fiscal updates other information that directly feeds into the criminal history system. When new intelligence is placed on the intelligence system, that is flagged up in the criminal history system.

On the intelligence side, the police have a 5x5x5 evaluation rule to ensure that the information is valid and relevant. That offers a degree of assurance as to the quality of the information.

The information is transferred to us exactly as it is held on the systems. It is not as if someone is inputting the information to transfer it; it is downloaded automatically. The information on the police systems, the criminal history system and the central intelligence system is moved by the IT system. There is no human intervention beyond the pressing of a button to allow that to happen, which means that the quality of the information will not diminish.

The new part of the system relates to the work of local authorities. Obviously, a lot of discussion needs to be undertaken on how that information will be validated and on the quality of that information.

Mr Ingram: I still think that we need to be concerned about this. For example, with the best will in the world, human error will creep in from time to time and mistakes will be made. If some piece of non-conviction information appears on someone’s record and they want to challenge it because it will blight their career and their future employment prospects, how will they go about doing that?

Brian Gorman: Currently, there is a disputes procedure under part V of the Police Act 1997, which allows any person to dispute any of the information with ministers. If the issue is about what we call other relevant information, or non-conviction information, the dispute is generally passed to the police force that gave the information to us and they reconsider whether the information is relevant.

In general, the disputes that we deal with are not so much about inaccurate or incorrect information as about information that people do not think is relevant. If an incident happened five years ago and the person was not charged, they wonder why the police are disclosing it. Under part V of the Police Act 1997 and under the bill, the decision on relevance lies with the chief officer of the police force. If the chief officer continues to believe that the information is relevant for a particular post, in the case of part V, or a particular workforce, in the case of the bill, he will stand by his guns. The only recourse that is open to the individual is to take the chief officer to court through civil proceedings.

Mr Ingram: I want to go back to the financial memorandum. I understand that Disclosure Scotland is looking to move to new premises, but that is not included in the financial memorandum. You will also have staff recruitment, retention and training costs, but those do not appear in the financial memorandum. When we add those costs to the IT costs, we may be looking at a much bigger bill than is anticipated. Will you comment on that?

Brian Gorman: Disclosure Scotland is currently looking not for alternative premises but for secondary premises. Because of the volume of work, we have no room in our current accommodation to expand any further. Should the bill be passed and the new central barring unit be established, we will have no room to accommodate that in our current accommodation. Several options are being considered and costed, but no final decision has been taken. Obviously, whichever option is chosen, it will be the most efficient one, with regard to Disclosure Scotland’s operational costs and those of the proposed new central barring unit. No site has yet been identified. Discussions are on-going with the Scottish Executive on where the premises might be.

The only issue that staff have concerns about is that, because a new executive agency is in the offering, where it operates will be up to ministers. If we move from the greater Glasgow area because ministers want to locate us somewhere else in Scotland, that will have a massive cost. The existing staff probably would not want to work in Inverness, Aberdeen or Dundee so, if we were to move out of the greater Glasgow area, we would start off by looking for replacements for the 200 existing staff as well as for any additional staff.

Lord James Douglas-Hamilton: You mentioned that you are in discussions on timescales. What are your views on the length of the phasing-in period?
Brian Gorman: I assume that by phasing in you mean the retrospection period for bringing people into the scheme. We envisage a three-year period, hence our estimate of 300,000 or so extra checks per year over three years. A timescale of three to five years was first envisaged, but it is now thought preferable to bring people into the scheme as soon as possible.

Lord James Douglas-Hamilton: I have a question about employees from overseas. If an employer asks you for information about somebody who has spent time overseas or who has just come from overseas, it may not be easy for you to access all the relevant information. How can you be better supported in that?

Brian Gorman: Recommendation 31 of the Bichard report is that we should get more information from foreign countries. People in the European Union are working on how we can gain information from EU countries. At present, there is an exchange of information for policing purposes. When a foreign national—let us say someone from Poland—is convicted in this country, the central UK notification unit notifies the Polish authorities. Vice versa, if a Scot or UK resident offends abroad, we are notified. That scheme is to be extended to include intelligence and then to include employment disclosure. We are working with the EU.

The Home Office has arranged for the Criminal Records Bureau, our sister organisation in England and Wales, to carry out inquiries with other countries. The CRB has identified the countries from outwith the EU from which people most commonly seek employment. It has found that we get a lot of people from Australia, the Philippines and certain other countries, and it has negotiated with the authorities in those countries to try to get access to conviction information for disclosure purposes.

Lord James Douglas-Hamilton: You may not be able to answer my next question, as the matter may not be within your knowledge. We have heard a certain amount of evidence about costs to the voluntary sector, some of which is to the effect that the Executive may have underestimated the actual costs. Do you have any views on that? Are the problems insurmountable?

Brian Gorman: If there is a will, there is a way. I do not know the current cost of disclosure to the Executive arising from the voluntary sector or the cost to the voluntary organisations. However—it is easy for me to say this—it would not be right to exclude the voluntary sector just because there may be additional costs to the Executive, as that would encourage the paedophile element to try to get into the voluntary sector.

Lord James Douglas-Hamilton: My final question is about the efficiency of operations. A paedophile on your list might happen to have the same name as two dozen other people.

The Convener: For example, Smith.

Lord James Douglas-Hamilton: Are you confident that there has never been a misidentification or mix-up of names? Is there a checking system to ensure that the right person goes on the list and not somebody else who is unlucky enough to have the same name?

Brian Gorman: Obviously, quality is built into our processes. If we hit a record that may be a case such as you describe, we give that hit to our exceptions handling people, who make further inquiries by contacting the Scottish Executive or the holders of the list, in the case of the DFES, and the individuals concerned. We verify everything as much as possible. At the end of the day, if the worst comes to the worst, we ask for fingerprints to compare.

The Convener: As members have no more questions, I thank Brian Gorman for the evidence that he has given on behalf of Disclosure Scotland.

We will have a short suspension while the minister and his team make their way into the room.

11:43

Meeting suspended.

11:47

On resuming—

The Convener: We move on to our final witness session. Last but not least, I welcome Robert Brown, the Deputy Minister for Children and Young People, back to his familiar place. The Executive officials from the Education Department who are with him today are Claire Monaghan, head of the children and families division; Andrew Mott, bill team leader; and Maggie Tierney, head of protection and regulation branch. The star from the Justice Department today is Liz Sadler from the police division. They are here to give evidence on the bill. Once the minister has made any opening remarks, I will open up the session to questions.

The Deputy Minister for Education and Young People (Robert Brown): Liz Sadler is here to keep us all in order, as a guest from another department.

This is an important bill that raises a number of complex issues with which I know the committee has been grappling. I look forward to reading the
stage 1 report in due course. The committee is aware that a lot of time and effort has gone into child protection, for the good reason that a number of high-profile and tragic cases have occurred, which have rightly raised public concern. Some of those cases have involved sexual or physical abuse in the home. The biggest proportion of child abuse occurs at the hands of a parent, a partner or a close relative. The central public issue is to ensure that public agencies and professionals are in contact with the family and are equipped and trained to act properly to reduce the risk to the young person. That was the purpose of the children’s charter and the extensive programme of improvements to child protection arrangements, which were based on taking responsibility and sharing information, on which the committee receives reports from time to time.

However, some tragedies occur, because people in professional or other positions of trust betray that trust and harm children and young people. The central purpose of the bill is to build on the experience of the current regime—part V of the Police Act 1997 and the Protection of Children (Scotland) Act 2003—to streamline it, to reduce the bureaucracy, to eliminate the gaps in current protection and to extend protection to vulnerable adults, which is a new area for the Education Department and for the committee.

The majority of people who work and volunteer with children and protected adults do so entirely with the safety and welfare of those children and protected adults at heart. Many of them provide all sorts of life-enriching experiences for young people. However, there are some people who would harm them and who use the workplace as a means of gaining access to them. The vetting and barring provisions in the bill will provide greater protection for children and protected adults and will prevent unsuitable individuals from entering employment or voluntary work with them. The bill will also deliver the means to remove them if they become unsuitable. Furthermore, it will provide an additional tool for employers to use alongside safer recruitment and protection procedures when determining the suitability of a person to work or volunteer with their client groups.

The bill’s proposals follow the tragic murders at Soham and derive from the principle recommendations of the Bichard inquiry. It is important to stress that early on, because it is the background to a lot of what the bill is trying to achieve. The recommendations called for a system of registering those people who work with children or protected adults. It is fair to say that the vetting and barring provisions have been warmly welcomed by almost all of our stakeholders, although there are issues on the detail. I am aware that a number of issues have been raised in evidence to the committee and in the Finance Committee’s report. Some of those are matters of detail, but there have been concerns relating to the fundamental purposes of the bill and the perceived proportionality of the scheme. A view that seems to swirl around this issue is that children are overprotected to the extent that they lose the innocence of childhood and that people, particularly men, are discouraged from entering certain jobs or from volunteering. I take those concerns seriously, but I want to put them in context.

It is important to remind ourselves of the central purpose of the bill—indeed, of the existing legislation—which is to protect children and vulnerable people from the attentions of some really nasty individuals who can cause them serious harm. There could be up to 10,000 individuals in Scotland who should either not be allowed to work with children or vulnerable adults or about whom there is information that should at least be considered by potential employers within the statutory, voluntary or private sectors. There is little argument about any of that, and there is a high level of agreement on the need for a system to keep many such people out of the workforce that deals with vulnerable people.

The bill provides a scheme for those working with vulnerable groups and will make it an offence for a person to enter the relevant workforce if they are barred from so doing. Importantly, it will streamline and improve the current separate and, to some extent, cumbersome arrangements—particularly at the user end—for protecting children. The bill builds on the existing system by integrating disclosure and vetting arrangements and introducing continuous online updating of records. For the first time, it will introduce a list of individuals who are disqualified from working with protected adults. It will ensure cross-border integration and complement the legislation that has just been passed in England and Wales. It will ensure that the Scottish ministers are accountable for our systems north of the border. A lot of what the bill means in practical terms has been worked through, but along with our stakeholders we will continue to shape the provisions.

The bill will reduce bureaucracy and on-going costs, because there will no longer be a need for repeat disclosure checks once a person is registered. I want to be clear that checks will remain free for people who work in the voluntary sector, who will benefit from a quicker and simpler system for repeat checks. There is little argument that such a scheme is necessary for those who work in the professional sector as teachers, social workers, youth workers, and in paid child care positions and so on. The situation in the voluntary sector is more complex, because the sector is itself complex. For example, it includes large organisations, such as the uniformed
organisations—the committee has heard evidence from the Scout Association. Regardless of the legislation, they often have a central infrastructure to help them to deal with recruiting leaders and so on. The voluntary sector also includes smaller groups, such as small football clubs and parent-teacher associations, that have little or no infrastructure. Some of their volunteers work much more incidentally with children. That area has caused many of the concerns about the bill.

Apart from streamlining the arrangements, the bill will give comfort and reassurance to volunteers, voluntary groups and parents that unsuitable people can be identified and rejected. The bill will support proper recruitment practices to ensure that only suitable people are involved with children. That aspect was called for previously by the voluntary sector and by the Education, Culture and Sport Committee in the previous session, during the deliberations on the Protection of Children (Scotland) Bill.

Part 3 of the Protection of Vulnerable Groups (Scotland) Bill, about which there have been some issues, deals with the separate but important issue of information sharing to prevent children from coming to serious harm, or indeed dying, because professionals are uncertain about when, with whom and to what extent information should be shared. I know that the committee has had concerns about the consultation arrangements but, as you are aware, the bill has been the subject of a number of stakeholder events, and the code of practice will be available—at least, in advance form—before stage 2. The code will be fully consulted on with stakeholders and the Education Committee.

Important issues have been raised about children’s rights, regarding confidentiality and health information in particular. I understand that you have heard about that this morning. Those are not new issues. They have been around for a bit, and we have a working group that is considering them in detail. They arise under current practice, and there should be ample scope to explore them fully in the context of the code of practice. They are at the heart of several incidents in which things have gone wrong through a failure to share information, and it is undoubtedly necessary to focus effectively on that area.

I conclude my remarks by returning to the main vetting and barring part of the bill. The message that I want to give to the committee is that most stakeholders are signed up to the aims of the bill and to the shape of the arrangements relating to the workforce. There are concerns about how the bill will apply to the wider voluntary sector, especially to smaller bodies and those that are more on the edge. We want to continue to engage with those groups and to satisfy their concerns.

We will continue to work out the detail with all the stakeholders, large and small, in the voluntary and statutory sectors. As we have said from the beginning, we will consult on secondary legislation covering a number of topics. The consultation topics will include fees, about which you have taken evidence; thresholds for barring; the phasing-in process—the retrospective issue—of the checks on the current workforce; information sharing; and guidance on the various aspects of the bill. We have always said that there will be consultation on those matters, and I state clearly that there will be full and effective consultation. We have an entirely open mind on the problems, issues and concerns that might be raised.

There is a need to ensure that the smaller groups, in particular, are able to access speedily commonsense and practical guidance about what they need to do. The central registered body already has a role in that, which we can consider in detail. People need to know what to do about parents who go on school trips or day trips, about people who help at school discos and about the myriad different situations that can arise. Some of the scenarios that have been mentioned in evidence clearly do not have implications under the bill or its predecessor legislation and would not require the sort of checks that we are talking about. The scenario of legislation whose implementation is carefully considered and carried forward by subordinate legislation or by guidance is a familiar and proper one in the Parliament. Committees are rather good at dealing with it and with all the implications.

I make no apology for returning to the point that the bill is all about further protecting Scotland’s children and vulnerable people. It is also about ensuring that the vetting and barring and information-sharing systems are efficient, robust, sustainable and a considerable improvement on the current arrangements. I hope that the committee will come to the view that I have expressed and conclude that failure to pass the bill would leave us with an inferior framework that has several clear and identified disadvantages. I suggest to the committee that that overarching scenario is part of how we will examine the more detailed concerns, which I hope we can deal with—as we always do—at stages 2 and 3.

I am sorry to have gone on a bit, convener, but I wanted to make many points in my introduction. I am afraid that I took advantage of your good will in doing so.

The Convener: Thank you, minister. As this is a complex bill, there will be a lot of questions. However, we have only a fairly limited amount of time, therefore I suggest to colleagues that we first ask questions on the overall principles of parts 1 and 2, concerning the vetting and barring scheme.
After that, we can ask questions on the detailed issues that come out of parts 1 and 2, and then look at part 3 separately. Otherwise, we may jump backwards and forwards in a way that would not allow us to have a coherent discussion.

Several people from the voluntary sector who have given evidence have stated that POCSA and part V of the Police Act 1997 have been operating for only a relatively short time and there has not been an audit of how effective they are. What we are doing, therefore, is building on existing legislation that has not been audited to see whether it is working effectively. Why has there been no such audit? Would it not be better to have that audit before we introduce new legislation?

12:00

**Robert Brown:** There has been a developing picture. We have had disclosure for some time, although the POCSA regime was established more recently. When I was the convener of the committee, we addressed the issue of the retrospective check problems. Many of the issues have been in the public domain for quite a long time.

The bill was instigated by the events in Soham and by the gaps and potential problems that were identified in that case, some of which exist in Scotland and some of which do not exist in quite the same way as they existed in England. The opportunity was taken to look afresh at the framework of the legislation to deal with what had been identified right from the beginning as a number of deficiencies in the way in which it operated.

There may well be a case for an audit and review—post-legislative scrutiny or whatever—of the bill in the future, but the argument at present is that we either have the current arrangements, which everybody acknowledges contain deficiencies in practice, or we proceed with substantial and major improvements in the legislative framework. Those improvements will not produce a new system per se—they will build on the existing system—but they will deal with identified problems and produce a situation that is significantly better in key respects than what we have at the moment. That is the central point that we must keep our eye on.

It is always open to the committee to engage in post-legislative scrutiny. That has been done for other bills. We acknowledge that the implementation of complex arrangements will in itself contain complexities, but we must deal with the situation that exists just now.

**Mr Macintosh:** I welcome the minister’s opening remarks, which, although lengthy, addressed many of the concerns that exist. It is clear that he has been listening to the concerns that have been expressed to the committee so far.

I would like to explore a broad concern first. The bill will not be responsible for creating anxiety about the willingness of volunteers to come forward or the role of men in society, but there is concern that it will compound existing anxieties about those areas. The bill responds to what happened in Dunblane and, more recently, in Soham. However, there is a feeling that we need to assess whether, rather than addressing those concerns and anxieties, we are compounding them.

I will give an example that was raised this week, which highlights a specific issue in the bill. Cameron McNeish, the outdoorsman, climber, explorer and rambler, has suggested that, since the advent of the POCSA regime, climbing clubs are less likely to take young people out on the mountains because they are concerned about their liability, their legal exposure and—in his words—the implications of being on the receiving end of accusations of paedophilia or whatever. If young people are not being given such experience, there is a strong argument for saying that they are being overprotected. They should learn what it is like to be out on the mountains at a young age rather than wait until they are 18. Ramifications also arise from the fact that the bill treats everybody who is over 16 as an adult, whereas the POCSA regime treats everybody who is under 18 as a child.

Perhaps the minister would like to comment on the idea that legislation has had, and could have, unintended consequences.

**Robert Brown:** Yes. I take that concern seriously. Aspects of the youth work strategy, once the consultation on it has ended, will be entirely relevant to your point. However, I refute the suggestion that the bill—or, indeed, the POCSA regime generally—has much to do with the question of outdoor activities for children. There are different issues—important and valid issues—about insurance, expertise and safety, but they arise in a different context. I do not think that they relate directly or indirectly to the bill or to the arrangements that have been set up already.

I repeat what I have said before. If people have confidence in the system, at least in terms of engagement with public bodies—I include in that context the voluntary sector organisations that handle and deal with children in various ways—that will go a long way towards creating confidence generally in the way in which the important issue of the welfare of children is dealt with.

There is work to be done on how we move towards setting challenges for young people. We
must ensure that they are able to take part in outdoor education activities—rock climbing, white-water rafting and all the other things that they want to do—and that schools are able to have confidence in the arrangements for such activities. However, that issue is different from the one that emerges from the bill. It has a lot more to do with having in place expertise, appropriate insurance and training for people in how to conduct such activities satisfactorily. There also needs to be expertise on hand at the other end—people who know about mountaineering, white-water rafting and so on—to complement the expertise of youth organisations and schools. That is a much broader issue that, in the context that you mentioned, has relatively little to do with the bill.

Mr Macintosh: I will give a slightly different example to illustrate a related issue. You made the point that there is a general concern about our having a risk-averse culture. Regardless of whether the bill is directly related to the example that I gave, there is a concern that it is part of the general creep towards a risk-averse culture and that, slowly but surely, we are adding to that problem rather than addressing it. What can we do to help people get a better understanding of risk?

The committee will know that I often cite examples from East Renfrewshire, although I am not sure whether they show the area in a good light. Our school is having a Christmas fair a week on Saturday. We got someone to volunteer to play Santa at the fair, mainly because he has a Santa suit. As members can imagine, there is not a huge number of volunteers to play Santa at such fairs. The volunteer works at the Variety Club and has had a disclosure check in Glasgow, where he lives. He is now required to undergo another disclosure check. His response has been say, “I’m scunnered. I do not want to go to the council offices with my passport and the form.”

Mr McAveety: His passport says that he is from Greenland.

Mr Macintosh: I must declare an interest: I have had a disclosure check and so I have been asked to play Santa in his absence.

Mr McAveety: You will be a caring Santa.

Mr Macintosh: The voluntary sector covers a range of people, from those who work full time as carers, for example, right through to those who want to help out of generosity and the goodness of their heart. We should embrace and welcome those people and try to make things easier for them.

Much as I dislike the current situation, I understand that the bill will improve matters. The man in my example has had a disclosure check, so his case could be resolved by a quick phone call or computer check. Would the minister like to comment in general on the situation in which we have landed ourselves and its effects on kind-hearted people who, unlike me, have the figure to play Santa?

Robert Brown: Without question, the bill will improve the arrangements for dealing with the sort of situation that you describe. There are issues on the edge. We must consider whether people need to be checked in the first place, if their contact with children is incidental and not unsupervised. That is one reason why we need to look much more closely at the advice that is available to people. When we discussed the issue previously, the Executive was prone to say, “There’s the law. We have passed it and cannot give opinions on it—it is a matter for the courts.” However, we set up the central registered body in Scotland, whose role is to provide advice much more satisfactorily. The advice is on tap in larger organisations, and the body’s services need to be advertised more widely—its relevance is highlighted in all the leaflets—as it can give quick, consistent advice to small organisations on what they should think of doing in particular situations. I hope that it will be able to put to rest many of the fears that exist.

I agree entirely with your central point, which is that we should expose young people to challenges in all sorts of ways to enrich their life experience. I do not think that the bill acts against that, although it has got caught up in the argument.

You are right that there is a risk-averse culture. The Education Committee has often talked about the walking bus idea and the fact that parents are often unwilling to entrust their children to any arrangement for travel to school other than travel by car. That is another aspect of the matter. We need to send out strong signals that we are talking about risk minimisation and risk management rather than the elimination of risk, which is not possible either for children or for adults.

However, people are entitled to have confidence in and be comfortable with their dealings with professional organisations and voluntary sector organisations that look after their children. The bill is designed to increase that confidence but it does so in a way that is compatible with the normal recruitment procedures used by the scouts, the Boys Brigade, youth clubs and other organisations. The bill is an extra weapon that will make things work more satisfactorily. I hope that the committee agrees that that is what the bill is about.

Dr Murray: You said in your introduction that, if we do not pass the bill, inferior legislation would be in force in Scotland compared with south of the border.

Robert Brown: No. With respect, I said that the legislation that we have at the moment is inferior
to what we would have if we pass the bill.

Dr Murray: But an equivalent bill was passed south of the border—I think that it received royal assent recently. Everybody accepts that some provisions in the Protection of Vulnerable Groups (Scotland) Bill represent improvements—for example, it will do away with the need for multiple checks—but the voluntary sector is concerned about other provisions. If we removed some of those provisions, such that the bill was not identical to the legislation in England and Wales, would you still feel that the bill was inferior to what they have down south?

Robert Brown: First, I did not say that I was concerned about whether the bill was inferior to the legislation in England. I said that, if we do not pass the bill, the current provisions in Scotland, which are inferior to the provisions in the bill, will continue. Liaison with England is an issue that we need to be careful about because a lot of people move around and there are organisations that operate on both sides of the border.

The bill is different in a number of material respects from the arrangements in England. That is not a problem in itself, but we have to make sure that the two systems are compatible and that we do not accidentally introduce oddities or create a situation in which people on the two sides of the border do not have confidence in each other's systems. We should not have to recheck people and make them go through the whole system again; we do not want the situation in which somebody is validated in England but not in Scotland, with all the incidental problems that that might cause. That is why we need to be cautious.

Officials are in close touch with the officials who are handling the implementation of the legislation down south, including the definitional issues and the things that will come out in subordinate legislation. Indeed, the fact that issues might arise during such discussions is one reason why some aspects in the bill can be developed by subordinate legislation.

Dr Murray: What information would not be shared across the border if we do not pass the bill?

Robert Brown: It is not a matter of information sharing across the border. At the moment, the arrangements are such that, if somebody is barred in Scotland, they are also barred in England. There is a consistent approach. It might be helpful if Claire Monaghan expands on that.

12:15

Dr Claire Monaghan (Scottish Executive Education Department): At present, if somebody is barred in one jurisdiction, they are barred in the other. However, we have the opportunity for scheme membership to travel across the border, rather than have to conduct point-in-time checks and deal with the consequences that arise from those. If the two jurisdictions had different thresholds for barring, it would be more difficult for them to accept each other’s decisions.

If, for example, the threshold for barring in England was lower than that in Scotland, what would that imply for Scotland if an individual who was barred down south were to apply for a job here? We need to tweak the details so that they are as close as possible, while maintaining the integrity of the Scottish system. It was decided to have a separate Scottish system to reflect both the need for the Scottish ministers to be accountable for this important area of policy and the distinctive Scottish legal system. The change comes primarily from the fact that the bill introduces scheme membership, and we want that to be able to travel across the border because, for example, some people work in both jurisdictions or live in the Borders and work in one jurisdiction but volunteer in the other.

Dr Murray: It is intrinsic to those cross-border arrangements that we have confidence in each other’s systems. In Scotland, having introduced POCSA, we have experience and have worked through some of the teething troubles of operating those provisions. That has not happened in England, which has come from having very little to having a system that is probably more onerous than the one that the bill proposes, as far as its restrictions on volunteers are concerned. Can we have confidence that the English will be able to work their system? If their system runs into the sorts of problems that we ran into with the length of time that it took to get a disclosure check, will that not put a spanner in the works anyway, because we will not be able to have confidence in the information that they send us?

Robert Brown: It is not so much a matter of confidence if there are time delays. I appreciate that bureaucracies can produce such issues and, if there was incompatibility between the systems, it would compound that problem. We are not able to solve any problems in England, which either will or—I hope—will not emerge over the course of time, but Scotland and England are able to learn from each other’s experience.

The point remains that many people move between England and Scotland. From your constituency experience of a number of other issues, you are well aware of the ways in which people’s lifestyles cause cross-border flows. It is important that the systems in England and Scotland are compatible. We are not saying that there is anything in the bill that is likely to cause a major problem in that regard.
The most important decision is probably the level at which the bar is set for inclusion on the list. If that was substantially different between the two jurisdictions—there is no obvious reason why it should be if we are dealing with the same issues in the same circumstances—that would cause us problems with an incompatibility that we would have to deal with. Therefore, it is important not only that we liaise with our colleagues on the other side of the border but that we are able effectively to engage in that liaison and influence events there, in the same way as our colleagues will influence events on our side of the border.

It is important to point out that the matter will be under the Scottish ministers’ jurisdiction. We are not setting up a UK scheme under which we would be surrendering our rights to some Westminster body. We are keeping the matter under our control so that we are accountable to the Scottish Parliament and the Education Committee for the way in which the system works.

Dr Monaghan: Down south, there is already a list of people who are disqualified from working with vulnerable adults. Such a list is one of the main provisions that the bill introduces; at present, Scotland has only a list of people who are disqualified from working with children. We will be able to draw and build on the experience in England—in particular, in relation to the issues connected with people who should be on both lists.

Lord James Douglas-Hamilton: I have a question about proportionality. The financial memorandum estimates that the number of people who will be covered by the vetting and barring scheme will be about 1 million. The Scottish Council for Voluntary Organisations estimates that the number in the voluntary sector alone is 956,000, so could not the scale of the vetting be very large indeed and extremely cumbersome?

Robert Brown: I will probably ask Andrew Mott to deal with the detail of the figures but, broadly speaking, the number of people who will be affected by the new scheme will be similar to the number of those who are affected by the old one. A large number of people have now gone through more general disclosure, which covers other purposes as well as child protection. Quite a lot of the volunteers to whom you refer are also members of professional workforces, so they will already have been dealt with, and they will be dealt with professionally under the new arrangements.

Therefore, we can knock down those figures by about half or two thirds. The big issue in respect of the numbers involved is that of retrospective checks, which existed under the old scheme and which will exist under the new arrangements. We all broadly accept that, when people come into the workforce, change their job or whatever, the matter must be dealt with. However, some people have been in voluntary organisations, or have been teachers, for 20 years, so there will be a bit of a tailback. The approach will, to an extent, depend on post-legislative scrutiny and consultation. Although the policy memorandum states that the timescale within which checks are to be carried out on such people is three to five years, we do not have a closed mind to the issue. The approach is designed to fit in with what the voluntary sector and the professional bodies would be doing in any event, and the process will be carried out in a way that is manageable for Disclosure Scotland or, more precisely, the proposed new agency. It is not a new issue. Essentially, the longer the timescale for the conducting of retrospective checks, the less of an issue it becomes.

For new entrants to the scheme, the situation will be similar to the existing situation. Obviously, the vulnerable adults aspect has been added to the regime, but otherwise the schemes are similar. I do not know whether you want us to go into that in more detail. Andrew Mott could probably give more detailed information about the precise figures on which we have based the calculations.

Lord James Douglas-Hamilton: I will ask about costs. Do you have further plans to provide assistance, particularly to voluntary organisations, in the expensive start-up period? Obviously, it is welcome that the Executive will pay the cost of vetting voluntary staff, but costs will also be incurred for checks on paid staff and for training and administration.

Robert Brown: Again, the position is similar to that which exists under the current legislation. As you rightly say, we agreed at an early stage to pay the costs for checks on volunteers in the voluntary sector. That has been widely welcomed and is a useful addition to the system.

Leaving aside the retrospective aspect for now, what will happen for the new workforce is similar to what happens now, in that new people will be checked. The number of checks will be similar to the number that the voluntary sector copes with now and has coped with for the past few years. An additional administrative cost is not imposed by the bill in that regard.

The big worry has been that the requirement to conduct retrospective checks will mean that both the agency and individual groups will be faced all of a sudden with a huge surge in the number of checks. That will obviously depend to some extent on the group in question, but it will also depend on the period of time over which the scheme is phased in. The numbers will go down in proportion to the length of the timescale for carrying out retrospective checks, whether it is three, four or
five years. There is no suggestion that we will introduce the scheme with a big bang—just like that—in one year and that a huge number of checks will suddenly land in the system. We do not envisage that the scheme will cause the voluntary sector or other people major administrative headaches beyond what is entailed in the current system.

Lord James Douglas-Hamilton: Might a longer phasing-in period assist in containing costs?

Robert Brown: Undoubtedly it would. In a broad sense, the number of people who come through each year on top of the new entrants is a consideration when we look at the length of the period over which we will phase in the scheme. If the timescale is to be 50 years, it is obvious that far fewer numbers will be involved, but if we phase in the scheme over the period that we have suggested, some extra numbers will come through, although they will be manageable. The issue is to manage the transition phase carefully in a way that works with the grain of what the voluntary sector wants to do.

Many bodies—both professional bodies and major voluntary sector bodies—review the training, qualifications and so on of their leaders and other volunteers periodically, perhaps every three, four or five years. The scheme will fit easily into those arrangements, which organisations have already put in place for the valid purpose of securing themselves against problems—for example, if volunteers have gone off message or whatever.

Lord James Douglas-Hamilton: The minister will be aware that the Scottish Council for Voluntary Organisations has recommended capping fees. Is there any impediment to doing that?

Robert Brown: We are more than happy to discuss the matter with the voluntary sector. However, our calculations are based on the idea that there will be a greater cost—albeit of a relatively marginal kind in the overall scheme of things—in carrying out the checks at the point of initial entrance to the scheme, but a significantly reduced cost in doing the follow-up checks, which are often the cause of concern. Across the board, the total cost should be similar or, with any luck, a bit lower than it is at the moment.

Lord James Douglas-Hamilton: You refused to support an amendment that I lodged on the ground that there had been no consultation on it. How do you answer the voluntary organisations’ complaint that there has been inadequate consultation on significant parts of the bill?

Robert Brown: There has been the normal consultation on the vetting and barring aspects, so I think that you are referring to the information sharing provisions in part 3. They are important provisions, on which we accept that there has not been the usual form of consultation. However, there has been considerable engagement with stakeholders about the detail. As I said before, we will engage with stakeholders and the committee on the code of practice, which will be available soon. Since before the provisions became a live issue for the bill, there has been a working group, which Maggie Tierney has been involved in, on the sexual health of young people. That on-going issue cuts across a number of departments and interests. A lot of work has been done with stakeholders, notwithstanding the admitted lack of formal consultation that we normally expect with major aspects of a bill.

Dr Monaghan: It is also worth registering the intention to consult fully on all aspects of the secondary legislation on the vetting and barring scheme, which we hope will allay any fears that the committee has. That exercise will fully engage with the voluntary sector and all the organisations affected by the legislation.

The Convener: I want to follow up on that point. A number of submissions from the voluntary sector and organisations such as the Faculty of Advocates raised the concern that much of the bill relies on secondary legislation, which makes it harder to get a clear picture of whether it is ECHR compliant and proportionate and whether it provides value for money. Without the secondary legislation, we cannot get a clear picture.

One example is the level at which the bar will be set for automatically listing people, and there are also issues with prescribed information. Many aspects of the bill will be determined by secondary legislation, which makes it difficult for us to decide whether the proposals are reasonable. Would it not have been better to publish the full scheme, including the secondary legislation, and then to consult on it fully to ensure that the primary legislation fitted in with the consultation? Have you not tied your hands behind your back by determining the primary legislation and then publishing the secondary legislation in line with it? You might discover from the consultation on the secondary legislation that you have made mistakes with the primary legislation.

Robert Brown: I take the point as far as it goes, but it is not an uncommon practice to have primary legislation—

The Convener: It does not matter whether the practice is uncommon; it matters whether it is right or not for this particular legislation.

Robert Brown: It has not been an uncommon practice, both before and since devolution, to use secondary legislation to flesh out the detail of the implementation of bills. I am aware that committees are often keen to have advance
copies of the documentation on key parts of bills before they deal with amendments to them, and that is sometimes entirely relevant. However, fees and costs are a normal matter that has no conceivable relevance to the bill’s principles. The matter is detailed and technical; in any event, we are going to consult on it.

On the bar for listing and ECHR compliance, there are provisions in the bill that relate to appeals and core procedures to give people reassurance. We have already said that we are going to consult on the detail.

The Convener: I am sorry to interrupt you, but if ministers determine through secondary legislation the level at which the bar will be set, the appeal system will not matter—it will determine only whether someone has reached that level. It deals with a matter of fact and, if ministers set the bar too low, ECHR issues will arise.

12:30

Robert Brown: There are two issues with that. First, we will consult on the secondary legislation that deals with the setting of the bar. Although secondary legislation cannot be amended, we will be happy to share a draft of the proposals with the Education Committee and stakeholders in advance of formally laying it. The procedure is there to allow perfectly valid and full parliamentary scrutiny of the precise details.

Secondly, individuals will not be able to appeal the level at which the bar is set. We expect aspects of the decision-making process to be appealable, as appropriate to the circumstances of individual cases. That has been provided for in the bill and will not be affected by whatever level the bar is set at. People will have the right to take up the matter with an external judicial authority if they have concerns about the way in which their case has been dealt with.

The setting of the bar is a matter for the bill or subordinate legislation, as appropriate. You can agree or disagree about the way in which that is done, but, given our assurances about consultation and advance drafts, it cannot be said that we are imposing measures by ministerial diktat without having regard to the views of stakeholders across the board, including those of the committee, which is an expert on the system. I hope that that reassurance about the process is satisfactory.

There can be situations in which secondary legislation reflects on a definitional issue in the primary legislation. If the committee has concerns in that regard, I am more than happy for it to flag them up for us to consider. We do not share the view that has been expressed, but if we are wrong, we are happy to have drawn to our attention the committee’s concerns, or concerns that stakeholders have raised with it.

The Convener: You might have heard the question that I asked the Scottish Child Law Centre witnesses on the vetting information. Categories of vetting information include

“information which the chief officer of a relevant police force thinks might be relevant” and

“such other information as may be prescribed”,

which will be determined by secondary legislation. There is no appeal, other than to the civil court, to challenge whether such information is relevant vetting information. The only reference to it in the bill is the provision that

“Ministers must correct a scheme record if they are satisfied … that … it is inaccurate.”

There is no way of challenging the relevance of the information. Is that ECHR compliant, given that people will not have an opportunity to put their case?

Robert Brown: We think that it is. That situation exists under the current legislation; the bill does not provide anything new in that regard. Liz Sadler can tell you about the chief constables’ involvement. It might be useful if she gave the committee a bit of information about the mechanisms for dealing with issues that might arise.

Liz Sadler (Scottish Executive Justice Department): The police have published guidelines on the procedures that they follow for the collection and retention of the whole range of information. They use a model called 5x5x5, which covers an evaluation of the information, its reliability and who they can share it with. The information is graded according to how reliable and robust it is. I am happy to provide you with further written information about how that works if you would find that helpful.

Access to information for disclosure purposes is a small subset of that larger provision for the police to retain information. Under part V of the Police Act 1997, which will be largely replicated in the bill, if the police hold non-conviction information about individuals, Disclosure Scotland refers the case to the chief constable who, under national guidelines, considers whether the information is relevant to the post that is being applied for. Under the bill, the chief constable will consider whether the information is relevant to the sector of the workforce in question. If the chief constable decides that the information is relevant, Disclosure Scotland has to put it on the disclosure certificate, of which the individual gets a copy. The individual can appeal to Scottish ministers about the inclusion of the information and they must ask
the relevant chief constable to review their decision.

Ministers must issue a new disclosure certificate if the appeal to the chief constable is successful. If an individual remains unhappy with the chief constable’s decision, he or she has a right of appeal to the information commissioner. The chief constable is required to abide by any decisions that the information commissioner makes with regard to the information that is held.

Since Disclosure Scotland started work, more than 65,000 enhanced disclosures out of a total of 1.1 million disclosures have included non-conviction information. In 264 of those cases individuals disputed the non-conviction information that was disclosed, and 124 of the disputes were upheld. That equates to around 0.18 per cent of cases.

**The Convener:** It is about half of the cases that were disputed.

**Robert Brown:** On top of that, there is the right of application for judicial review of the act of any public authority, including chief constables. There are a number of other remedies, but Liz Sadler has described the main ones.

**The Convener:** I could prolong the discussion, but I will not, because other members want to comment.

**Fiona Hyslop:** In seven years as an MSP considering bills in committee, I have never come across a bill that has been subject to such a critical report from the Finance Committee and have never heard so many expert witnesses say that we should pause for reflection. We should also bear it in mind that you are planning to introduce a fourth piece of legislation, on getting it right for every child. The convener has commented that the bill as introduced is very broad and imprecise, and that we need time to reflect on the secondary legislation before passing the primary legislation. The Faculty of Advocates has said that the bill lacks coherence and is not easy to follow. Given all those points, would it not be wise for you to take stock, to reflect and to take more time for a debate on risk generally in Scotland, to ensure that we have a bill that is fit for purpose?

**Robert Brown:** We must be careful to distinguish between the various issues that are swirling around the debate. A great deal has been said about our being a risk-averse society, but most of that has little relevance to the issue that the bill addresses. However, it is obviously the job of the committee and the Executive to consider the substantive merits of the points that the various witnesses have made.

The Finance Committee has made a number of points. As I explained in response to earlier questions about the cost of the bill and the figures that have been provided, we take issue with one or two details of the Finance Committee’s report. Inevitably, such matters involve a degree of estimation, but I do not think that a period of delay or reconsideration in the next session would affect the Finance Committee’s observations one way or the other. For the most part, they are technical issues that can be resolved through questions from the committee. I am anxious to address any particular concerns that members have.

With regard to the more general issues, it is reasonable to consider the two elements of the bill separately. The lack of consultation on part 3 of the bill, which relates to information sharing, has been highlighted. I have tried to indicate to the committee that in my view there has been considerable engagement with the sector, notwithstanding the lack of formal consultation. We are keen to take on board the issues that were raised this morning in respect of children’s rights. Those formed part of the discussions that Maggie Tierney’s group had before the bill was introduced. I am reasonably confident that the code of guidance, which is central, gives us the ability to take forward part 3 in a way that addresses those issues.

The more substantial part of the bill deals with vetting and barring. In my opening remarks, I indicated that it was not about asking whether there was a better scheme somewhere in the ether. If there is, we have not heard of it. The alternative is to improve the current arrangements as soon as we can. There is general acceptance that a number of facets of the bill do that.

We need to get the main legislation in place to enable us to deal with the funding and preparation issues to allow us to make progress with the subordinate legislation. I see no great advantage in postponing remedying the faults identified in the current arrangements, which cause hassle to the voluntary sector and which mean that there is less protection for Scotland’s young people than there might otherwise be. We have an opportunity to make improvements, although that will not happen overnight, as the issues are complex, but fairly quickly, as we make progress with the subordinate legislation. I see no great advantage in halting now and starting all over again in the next session of Parliament, because the issues will be the same.

We must ask what advantage there would be in deferring, continuing or delaying consideration of the issues. Most of the issues are not fresh to us—they were about when I was convener of the Education Committee and some of them go back to the previous session of Parliament, when the Education, Culture and Sport Committee...
considered the Protection of Children (Scotland) Bill. For the most part, the issues are not new. They are complex issues that involve difficulties, but the Executive, our partners in the statutory sector and many stakeholders in the voluntary sector now have a fair track record of knowledge about what the system means in practice.

Fiona Hyslop will recall that, when the existing arrangements came into place, a lot of work was put into providing a procedures manual—I cannot remember what its name was—to assist voluntary organisations to deal with the implications. A lot has been learned from that process as well as from producing the current proposals.

**Fiona Hyslop:** The minister has obviously been too long away from the committee. He may recall that one reason why so much work was done on the implementation and operation of POCSA was precisely because the committee took evidence and raised concerns with ministers at that time. The committee has a track record of ensuring that concerns about the implementation of child protection measures are dealt with properly. We had a result that time; the issue now is whether the committee can come up with the right solution this time round.

To an extent, the Executive is taking a risk because, from what you say, it will be six years before the system is fully in place. If we are not going to have an immediate big-bang solution, why not get it right? What consideration did the Executive give to amending POCSA after carrying out post-legislative scrutiny? I realise that POCSA does not deal with vulnerable adults—frankly, we should give that issue more of an airing and consideration than we have done until now.

**Robert Brown:** Absolutely.

**Fiona Hyslop:** However, to separate out that issue for now and to deal specifically with children, would it be possible to amend POCSA so that we can have the passporting system and the retrospective element? Did you consider whether that was possible?

**Robert Brown:** It is fair to say that all things are possible, but we need to decide on the best way in which to proceed in the circumstances. POCSA could have been fiddled with—

**Fiona Hyslop:** Did you consider that?

**Robert Brown:** That is part of what we are doing. To all intents and purposes, the scheme will amend the POCSA arrangements. Disclosure will still be at the heart of the system. We will set up a new agency, but that is a technical amendment of the process and will be an improvement. Whether we are amending the current scheme or introducing something entirely new is a matter of definition. Our view is that we are improving the current scheme, albeit through a new piece of legislation. That is against the background of the opportunity to introduce the vulnerable adults aspect.

Andrew Mott has been involved in the process, so perhaps he can add something on the considerations.

**Andrew Mott (Scottish Executive Education Department):** With regard to the provisions on working with children, we have built on the POCSA regime. For example, schedule 2 to POCSA defines what a “child care position” is and, although the bill uses the term “regulated work with children”, basically we have just improved the drafting in that schedule and made it much easier to read and to follow. We have included a few new aspects in the definition, such as work that involves providing advice or guidance to children, and made one or two other changes. The rationale was to build on the measures with which people are familiar, so we took the POCSA structure and built on it. In that sense, although technically we are not amending POCSA, in spirit, we are. The bill is a progression.

12:45

**Fiona Hyslop:** I have one final question. There is some expectation that a bill will be produced under the getting it right for every child agenda. Can you explain the scope of that bill? Some witnesses were concerned that section 3 of this bill, in particular, might sit better in that bill, but we will not know that until you tell us the scope of the getting it right for every child bill.

Child protection in general is an important issue about which we are all concerned. In the past, the Government has initiated a national debate on education. Do you not think that some of the concerns that have been raised by witnesses, as well as the concerns of the general public and voluntary organisations, would best be addressed through a national debate, led by the Government, on risk to children? If there were such a debate, might not people be more comforted that we are moving in the right direction?

**Robert Brown:** That is a separate issue. Ken Macintosh made pretty much the same suggestion in an earlier question.

There may well be cause for having such a debate, although how it would be conducted is another issue. There are quite a lot of other issues in the field that are worth considering more closely—I touched on those in my introductory remarks and in my responses to questions. The Education Committee also has the right to go into such issues, if it wants to do so. There is ample scope for discussion of the issues, and I do not have a closed mind about the way forward.
However, that is a different issue from what we are talking about in the context of the bill. Although the issues in the bill are quite broad in some ways, the bill is relatively narrow in its focus on child protection rather than on children generally.

As you are aware, a draft GIRFEC bill will be produced before the end of the session, and the legislation is likely to proceed—subject to the outcome of the election—in the next session. I think that all parties will sign up to that. The proposed bill will deal with various issues arising from the review of the children's hearings system, the review of children's services more generally, and things of that sort. It would be possible to include the information-sharing arrangements in that bill—that is what was originally contemplated when we thought that the GIRFEC bill would go forward in this session. However, we take the view, which I hope the committee will ultimately share, that the issue of information sharing is critical.

As you will be aware—the issue has been touched on many times before—the lack of information sharing has been at the heart of a series of tragic events that have been detailed in a number of reports of one sort or another over the years. I am not saying that the bill will sort the situation out immediately; there is no magic wand in such matters. However, we believe that it will give us a framework that will focus more substantially on what ought to be happening with information sharing. It will address the need for a code of practice and will engage with professional practice in the area. There are misconceptions in some quarters about how data protection fits in, so it is important to move forward as quickly as we can on that front.

Yes, we could have addressed the issue of information sharing differently. However, for the reasons that I have explained, section 3 of the bill is how we are seeking to do it. I hope that we will have the committee's support in taking matters forward in that way.

The Convener: I urge all members and the minister to keep questions and answers as brief as possible. We still have quite a lot to get through, and it is almost 10 to 1.

Robert Brown: I take the rebuke, convener.

Ms Byrne: Let us go back to the consultation with stakeholders and the issue of consulting children and young people. I feel that there is a huge gap there. That brings me on to the sharing of information, which is probably the key area for children and young people, and the concerns that we have heard from witnesses about the difficulties that that will create for children and young people. I am concerned about the speed with which the bill is being pushed through, given the number of issues that have been raised. Are we really tapping into the areas that we require to tap into in order to protect children better?

There have also been discussions about complacency and the fact that not everybody will be on a list. There will be areas in which we cannot cover everything, so education and training will be a key issue. Are we still going to commit to that and allocate the resources to it? All the evidence that we have heard is that that will be very important.

Robert Brown: I take both questions seriously. Your second point, about resources for child protection in general, addresses a very wide issue. As you know from the involvement that the committee has had with the issue, child protection has engaged a lot of attention in this session and previously—certainly, during the time in which I have been a minister or a member of the committee. It is at the heart of a lot of the work that we are doing on GIRFEC, on the 21st century social work review and on a series of other issues, such as the workforce reviews, to raise professional standards and deal with the issues that have been the cause of concern. The thrust will, undoubtedly, continue in all of that. None of that should take away from the importance of the bill, which deals with the slightly different issue of protecting young people and vulnerable adults—as Fiona Hyslop rightly says—against the deficiencies that there may be in the workforce and in voluntary sector organisations.

I will ask Maggie Tierney to say something about the work that her group has been doing on children and young people. Some useful points have been made on the issue. You will recall that, when we dealt with the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Bill, there was general agreement that consent issues involving young people were extremely important across the board. However, in discussion of the protection of children, the overriding concern was the best interests of children.

Reasonably clearly, a number of aspects relating to that come into the present discussion, including issues to do with sexual health and whether information that people who have been abused may or may not give to others will be affected by the duties under the bill. I suspect that some of what has been said about that is overanxiety about the response to legislation by individual children and young people. I would like to give the committee some reassurance by asking Maggie Tierney to tell you about the work of her group in working through that. I ask her to specify a bit about the stakeholder aspect as well.

Maggie Tierney (Scottish Executive Education Department): There are two groups
that might be of interest to the committee in that respect. One of the work streams that we have established to help us to implement the bill in a measured way is specifically about information sharing. The group is composed of all key stakeholders with an interest in sharing information better and in sharing best practice in how to do it. Its aim is to ensure that the code of practice that we build, which we will put to the committee before stage 2, puts flesh on the bones of the provisions. One of the members of the group is the children’s commissioner. We are actively aiming to hear the voices of children and young people as the code takes shape. The work of that group is on-going. It is seeking to ensure that we capture the interests and the voices of children in response to the code as it emerges.

The second group predates consideration of the information-sharing provisions in the bill and has been in existence for about a year. It is a short-life working group on disclosure of underage sexual activity. The group’s interest stems partly from Bichard recommendations 12 and 13. Sir Michael Bichard suggested that social services should report every instance of underage sex, except in exceptional circumstances. We felt that, in Scotland, we would have an equal interest in capturing the voices of children on issues to do with confidentiality and that we would want to have equal regard to the sexual health strategy that is described in “Respect and Responsibility”.

Part 3 of the bill tries to dovetail with the difficult issue of confidentiality in accessing information, particularly about sexual health. It ensures that the welfare of the child is paramount. When a child or young person seeks sexual health services, if the professional is concerned that the young person may withdraw from treatment if they disclose information about the young person and they judge that that would not be in the interest of the young person’s welfare, they will not have to disclose the information. Part 3 gives the professional the power to make such a choice about information sharing.

In respect of young people’s sexual activity, under the bill it is for professionals to make the determination as to whether there is a risk of harm. That will depend very much on the facts and circumstances of the cases that they deal with. For example, the short-life working group is considering how to develop a protocol that would establish the principle that it may not be a problem to have two 15-year-olds having consensual underage sex, although there may be a problem if it was a 15-year-old and a 29-year-old having sex. In that circumstance, the professionals are asked to balance the right of children to confidentiality, privacy and the ability to disclose in a safe way with the risks. The bill simply makes explicit the existing good practice in that regard, so that there is a greater consistency of understanding about the circumstances in which professionals agree that it is right to share information and who that information can be shared with. The code that you will have a chance to examine will attempt to articulate that more fully and consistently.

Robert Brown: We are happy to keep the committee in touch with the work of the short-life working group. That work will merge into the code of practice anyway but, if you are interested in knowing more about that and seeing the outcomes of it, we can arrange for that to be done in some suitable way.

Ms Byrne: I am still concerned that, although we have not seen the code and the consultation with the young people has not been carried out—it is now being carried out in a sort of side area—we have the bill before us and have to make a decision on it. I am also concerned that the power that the professional will have has also not been discussed openly in the sessions that we have had so far. There are a lot of grey areas that make me unsure whether we should proceed any further with the bill. I have a problem with the speed at which the process has moved and the lack of attention that has been paid to part 3.

Robert Brown: I do not altogether accept what you say. Part 3 has been available for perusal since the beginning of the process. It concerns fairly high-level powers and duties. It imposes duties that, in one view, do nothing more than restate current best professional practice and leave the details to be worked out through the code and, in terms of the voluntary sector, it creates a power rather than a duty. It is entirely right to make that distinction. I do not think that there are big issues to do with definitions and so on in the bill—the subordinate legislation is another matter. There is a legitimate concern about how the process will work in practice, given that we are dealing with different sorts of workers in different sorts of areas, all of whom have different sorts of issues. However, all that relates to the code of practice, which will be available before stage 2. It will give at least an idea of the direction of travel with regard to some of the issues that we are discussing. As I have tried to indicate, those issues are not new themes; they have been explored in a series of contexts by the Executive and the committee on a number of occasions.

We are keen to get our approach right and will ensure that we engage properly with stakeholders in order to make that happen. When the bill is passed, we will have some time in which to ensure that people—not only the professionals but young people’s groups and so on—are comfortable with the guidance.
Ms Byrne: Do you intend to consult young people's groups before the code is published?

Robert Brown: It has already been said that the children's commissioner is on the short-life working group, so that covers one aspect of the matter. It is intended that there will be ongoing consultation with a wider variety of children's groups before that.

Maggie Tierney: We will consult children's groups and other stakeholders as the code develops and evolves.

Ms Byrne: It is interesting that, as she told the committee a couple of weeks ago, the children's commissioner has concerns about the bill, particularly with regard to the lack of consultation on part 3 and the speed at which the process is moving. She said that taking a step back to examine and audit current legislation would not have been a bad idea.

13:00

Robert Brown: As I said earlier, the children's commissioner and others are perfectly entitled—indeed, are required—to make their views known on these matters. It is up to the committee—and, separately, for the Executive—to judge whether such views influence the bill's direction of travel and whether certain issues cannot be dealt with in the consultation on the important subordinate legislation matters and in the consideration of the bill. The big question in that respect is whether anything is likely to emerge in subordinate legislation that will influence the rather high-level definitions in the bill, and I have to say that it is not immediately obvious to me that that is the case. However, if people have particular concerns on the matter, I am happy to listen to them and see what we can do to match them.

I take the view that the primary area of importance is developing the content of the code with the involvement of all the stakeholders, children's groups and professional groups. There should be ample time for people to develop that as appropriate, in the context of the overarching duties—which, as I said are not new—that come in under the bill.

Ms Byrne: Could you give the committee in writing a list of the consultees for the code of practice and a timescale for that work to be carried out?

Robert Brown: Yes.

Marilyn Livingstone: I am new to the committee, but I have read the evidence that was given by the EIS and the Scottish Parent Teacher Council, who suggest that the bill encourages a focus on stranger danger. However, more than 80 per cent of young people who are abused are abused by people who are known to them—particularly in the home.

One of the things that has concerned the cross-party group on survivors of childhood sexual abuse, of which I am a member, has been the need to give young people the confidence to come forward and say what has happened to them. A lot of work has been done on that issue. From the evidence that the cross-party group has taken, it is clear that it can take three, four or even 10 years or more before a person says what has happened to them. In that time, many issues such as self-harm, alcohol problems and drug problems can develop. In the worst cases, there can be suicide attempts. We all agree that the sooner that someone can say what has happened, the better it will be for them, because they will be able to get support.

The representatives of the Scottish Child Law Centre said that, if part 3 contains nothing about consent, that could lead to people being reluctant to come forward and give the necessary information. There is a difficult balancing act to be done and we want to prevent bad things from happening to others, but we should not do anything that will discourage young people from coming forward. As the bill stands, there are reasons to think that that might happen. How will the rights of the child and the issue of consent be dealt with? Can you reassure the committee in that regard?

Robert Brown: I accept the seriousness of your point. In some ways, that issue has caused more anxious concern than anything else in the bill. However, as I said before, the legislation will not impose an absolute duty on anybody. Section 79 is entitled “Child’s welfare to be paramount consideration”.

As Maggie Tierney explained, the professionals who make the relevant judgments have to strike a balance all the time. If they take the view that disclosing particular information is not in the child’s best interests, they are 100 per cent entitled to ensure that it is not disclosed. Section 79(3), in particular, makes that quite clear. If there is a requirement for a ministerial statement to confirm that, I am happy to make one. I very much endorse what the bill does in that section to ensure that professionals are placed at the centre of the process.

The issue of children’s rights is slightly more complex. In our discussions on the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Bill, we accepted that there are circumstances in which it might not be in the best interests of young people—in particular, children who are, if you like, below the age of maturity, however that might be defined—to give them an absolute right to say, “No, I don’t
want that information to be disclosed.” I realise that we have to be very careful and ensure that children are taken along; that is why, in setting out the detail on this matter, the code of guidance will be very important. However, as I have pointed out, I do not think that the principle of overriding a child’s consent to disclose information in certain circumstances, and if doing so is in their best interests, is a new one either in legislation or in professional practice. I am sure that the issue has been the subject of much agonised discussion in the cross-party group on survivors of childhood sexual abuse.

We are not changing the law to a great extent. Instead, we are trying to put to one side certain data protection issues that have led to exaggerated concern in some quarters; to clarify the prevailing duties and rights; and to ensure that professionals are able to decide what is in the best interests of the child for whom they are responsible. I am sure that the code of practice will set out ways of approaching such issues with children—not least sexual health issues, which we have a long track record of addressing—and will be designed to reassure those who use the legislation of its workability.

I hope that people will be reassured by the fairly strong statements that I have just made—and, indeed, which are set out in the bill—on the intention behind and practicability of the legislation. It simply will not override children's interests. Section 79 expressly puts the child’s welfare right at the heart of things by using the phrase “paramount importance”. Can we attach any higher importance than that to this issue?

I accept that certain issues have to be worked through. I do not think that it is suitable to put any professional detail in the bill itself; instead, it should be set out in the code of practice. As I have said, it is important that everyone is involved in the formulation of that guidance and that there is wide consultation on its practical implications.

**Mr Ingram:** Ken Macintosh and others have mentioned the cultural impact of child protection legislation, particularly on men’s participation in voluntary activities with children. That whole area certainly needs to be examined.

However, I wonder whether the bill as drafted will do what it claims to improve child protection.

**Robert Brown:** In other words, whether it will do what it says on the tin.

**Mr Ingram:** Indeed. After all, no bureaucratic system, no matter how well intentioned it might be, protects children; people protect children, and alert and vigilant people must be on the look-out for the so-called stranger danger on which the bill focuses. Should it not focus instead on support for training for the professional workforce and voluntary agencies?

**Robert Brown:** I agree with almost everything that Adam Ingram has said. We must remember that the vetting and barring arrangements are not based on a person’s suitability for a position, but on their unsuitability. I said earlier that all voluntary sector and professional organisations must have in place robust recruitment, training and supervision arrangements for staff. To be fair, many organisations have such robust procedures.

People sometimes forget that when Thomas Hamilton sought to become involved with the scouts—I think, or a similar organisation—he was rejected as a result of the organisation’s recruitment procedures. That was before any of the current procedures had come into being. Certainly, anyone who recruits people to the child care workforce will have to take that fundamental point on board. Because they are aware of the concerns and of what has gone wrong before, many organisations have the right structures in place. People are very much at the heart of that.

Any system that requires access to public authority records could be described as bureaucratic. Nevertheless, the system is there to provide information on nasty people—or people over whom there is a question mark—to organisations that they might want to be involved with, such as organisations that work with children or vulnerable adults. As part of their recruitment process, such organisations should be able to access information that would allow them to reject unsuitable people—for example, people who have been barred under the listing arrangements.

Training is not an issue for legislation. As I said, we are working hard to improve and upskill people who work in child care and social work. We have also done a lot of work in education. Training is central to the work of many organisations in the voluntary sector. As the bill progresses, we will be more than happy to talk to voluntary sector organisations about any concerns that they may have.

Adam Ingram mentioned stranger danger, but most of the people whom we are concerned about in the bill are people who are known to the child. We are not talking about a stranger in the bushes grabbing a child who is walking down the street; we are talking about professionals and youth leaders who are known to the child. We want to offer comfort and support to groups in the voluntary sector and to parents who entrust their children to those groups for necessary and important parts of their upbringing.

**Mr Ingram:** A concern that has been raised is that people might be lulled into a false sense of security by the creation of a system. We cannot
allow that to happen. Alongside any system we will require some kind of programme to ensure that that does not happen.

Why will the scheme not be mandatory? Why have you taken a different approach from that which was taken in England and Wales? You have not created an offence associated with an individual’s failure to participate in the scheme.

Robert Brown: The answer to those questions has to do with unintended consequences. I will ask Andrew Mott to answer them.

Andrew Mott: The rationale behind the bill is that the employer must ensure that they are not employing a listed individual. The way to do that is to ask the individual to be a scheme member. In a way, scheme membership will be enforced through the employer.

Necessarily, we decided not to make participation subject to an offence, because we might be talking about 800,000 people. Regulated work is not defined in a list of posts; there are posts at the margins. If we make participation subject to an offence, there could be difficulties with people at the margins. In the bill, we have therefore focused the offences on listed and barred people participating in the workforce, because that is what we are trying to avoid. We wanted to focus on that rather than on marginal activity. We want to be proportionate.

Mr Ingram: I think I understood that.

Does the minister accept that, because the scheme will be relied on by personal employers, there are risks in not having an offence associated with an individual’s failure to participate? The example of piano teachers has been given.

13:15

Robert Brown: How the provisions relate to people who work with children and vulnerable adults more occasionally, such as piano teachers whose contact is much more incidental, is probably one of the more difficult areas in the bill. The multiple disclosure arrangements that I mentioned will help in such cases. Perhaps Andrew Mott will deal with your specific point.

Andrew Mott: It does not make sense to make a parent, for example, guilty of an offence if they do not ensure that a piano teacher whom they employ is subject to the scheme. Currently, if someone employs a piano teacher, they cannot do a formal check, whereas the scheme will enable the parent, or personal employer, to satisfy themselves that the individual they seek to employ is a scheme member and therefore not an unsuitable individual. However, it depends on parents being aware of the scheme. We have to raise general awareness.

Robert Brown: Any barred individual who puts themselves forward for such a position will also be committing an offence.

Mr Macintosh: I am conscious of a few specific issues that we do not have time to cover today. However, further to Adam Ingram’s point, the Mental Welfare Commission spoke last week about some voluntary groups that work with vulnerable adults and said that it is sometimes unclear in such self-help groups whether the protected adult, the vulnerable adult and the person on the barred list might be one and the same. It is a difficult area. There are issues to explore—for example, such groups that provide a useful service might operate from a health service property. There are concerns about who is regulated and who is not when it comes to vulnerable adults. Might we put some of those specific points in writing to the minister so that we may have a more detailed response?

Robert Brown: I would be happy for you to do that, particularly on the vulnerable adults side of the bill. I am less comfortable with my knowledge in that area because that side emerges from other departments’ areas of interest. If you have specific questions about that area, I will be more than happy to organise a reply.

The Convener: A number of specific issues that have arisen from the evidence we have received, including oral evidence, will need to be included in our report; they are probably for you to address in your response to our report, rather than taking up a great deal of time now.

Robert Brown: We are more than happy to provide detail on points for which there has not been time this morning, to help you in your report.

The Convener: We have not had much time to go into depth about the reports of the Finance Committee and the Subordinate Legislation Committee. I would be grateful if the minister would provide us with a written response to those reports before we produce ours.

Robert Brown: Which aspects are you particularly interested in—the numbers and the costings?

The Convener: Both committees raised a number of issues that they asked the lead committee to look into. Many of those issues are quite technical; therefore, we do not need to take up a great deal of time going into them at the moment given that you can probably respond to them in writing. If you could do so before we finalise our report, that would be helpful.


Dr Murray: I have a technical point about the direct payments scheme. When a vulnerable adult employs somebody who might be on the barred
list, is the vulnerable adult as the employer committing an offence?

Robert Brown: I think that I am right in saying that he is not. Is that right, Andrew?

Andrew Mott: The individual who offers his services would be committing an offence.

Dr Murray: What if somebody were not in the scheme?

Andrew Mott: If the work is regulated, the barred individual would be committing an offence.

The Convener: I have a couple of points that we need to cover today, the first of which is about age in the definition of a child. I am slightly uncomfortable about the age being 18, because it does not seem appropriate that all 16-year-olds should be covered by the bill when they can go to work, get married and do all sorts of other things. Vulnerable adults are included from the age of 16, so why is a child defined as someone up to the age of 18? We have heard evidence that several essentially adult groups are not allowing people who are defined as children to become members because of concerns that they will get caught by the bill. We heard today about mountaineering groups and art clubs.

Robert Brown: To some extent, I am open minded about the issues that might arise from that. There has been considerable discussion about that overlap. Many services that apply to young people straddle the ages that the convener identified. The overlap is probably not very significant except in a limited range of circumstances, because most protected adults would be older individuals. For example, there might be teachers working in the sixth form of schools. I am not sure that any difficulty would be created in practical terms, but we would be anxious to hear about any specific problems that have been identified in the evidence.

There was some discussion about whether there should be one list or two, and the committee has heard evidence that it would probably be an overreaction to bar someone automatically from both lists because there might be different circumstances. For example, someone who is trying to get access to an older person to defraud them of their money would not have anything to do with children. We therefore rejected the idea of having a single composite list, although there will be a fair degree of overlap between the two lists.

The age of majority is the cause of a lot of discussion. The ages of 16, 17 and 18 are used for all sorts of different things, probably because people do not suddenly grow up at the flick of a switch. The transition has to work with the types of organisation that we have to deal with. Again, we are more than happy to consider that issue afresh; it is not particularly a matter of principle for us. Rightly or wrongly, the decision was taken that there would be more advantage in fixing the age at 18 and keeping the overlap, because of the organisations that will be covered and that work on the fringes of different issues.

Fiona Hyslop: I would like the minister to reflect on the scenario that I will outline, which concerns how a young homeless person might be affected by the bill. Last week, the Cyrenians came to an event in the Parliament. A young homeless person could well be a vulnerable adult; they could also be a volunteer, because vulnerable adults take part in volunteering; and they could be volunteering to work with children or young people who are under the age of 18. Such circumstances would put quite a lot of pressure on an organisation that is already doing a great deal of work. We must protect and preserve that aspect of volunteering and working with self-help groups. For a variety of reasons, many homeless people have police records. How can the Cyrenians, as employers, ensure that their organisation can grow and flourish, and how can they be sure that the bill will not impact adversely on the organisation?

Robert Brown: That is a great example of an issue that sits on the fringe between several different areas. The question of volunteers in the homelessness context is complex. They deal with extremely vulnerable young people who might be more subject than others to abuse and exploitation. It is important to get this area right.

The primary objective is to protect young people and vulnerable adults who find themselves in that situation. The second is to ensure that we do not act as a deterrent to volunteers and organisations that deal primarily with adults and stop them dealing with young people who have become involved incidentally; we have to get to the bottom of that issue. Thirdly, there are the people who have moved from being service users to being volunteers. Many of the organisations are enabling and empowering, and part of the recovery process involves encouraging young people and people who are affected by their situations to take more responsibility for themselves.

There is a series of issues that are well worth pondering, and we will take up your invitation to have a close look at the situation in question.

The Convener: I seek some clarification. Westminster’s Safeguarding Vulnerable Groups Act 2006 defined regulated work as that which “is carried out frequently by the same person”.

That seems to imply that if someone’s work was occasional, they would not necessarily have to go through the disclosure system.
In part 2 of schedule 2, “Activities”, the definition of unsupervised contact with children implies that if “a responsible person, or … a person carrying out an activity mentioned in paragraph 2, 3 or 4” is also present, someone would not be subject to disclosure. Does that cover activities such as school discos or trips where parents would be assisting a teacher, who is covered by the definition of a responsible person? Those are occasional events when someone acts as an assistant to the responsible adult who is supervising the children and is therefore under supervision as well.

Robert Brown: I want to be cautious about making generalised statements that may not apply in particular situations. However, I will comment on the example of a school trip.

If the trip is overnight and people are supervising sleeping accommodation, one would imagine that it would be desirable for the parents involved to go through the disclosure arrangements. That is reasonably clear. However, I am not sure that the same issue would arise for a day trip to the theatre, for example. The issues need to be worked on at a local level. The CRBS can give advice to voluntary sector organisations, and schools are well able to equip themselves with the information.

However, there is an issue with different approaches by different local authorities across Scotland, and it probably bears some examination to see whether we can improve the guidance. It is probably a particular issue for schools rather than more generally, but it can be taken forward.

There are important aspects in the definition that relate to supervision and regularity of contact. There would probably be no problem in an unexpected situation, for example when someone is off ill and somebody else has to be brought in, because such events cannot readily be anticipated. If people are acting under the direction and supervision of other people, there probably is not an issue, which I guess covers the school disco situation.

However, I repeat that we must consider the circumstances of the particular event. The onus is on employers to consider the matters, which takes us back to the point that Adam Ingram made. The important point that underlines the bill is that disclosure is not a tick-box exercise but must be considered in the context of wider arrangements and protocols for what is done in particular circumstances. People at all levels have to be aware of that.

The Convener: The final question is more general. One concern is that the bill might result in people taking too cautious an approach. You may prescribe the barred list so that it is overcautious and information is shared at too low a level because people are frightened about not fulfilling their duty if they miss something. The concern is that the bill will result in risk-averse behaviour, which is not necessarily in the interests of children’s welfare even although it is seen as protecting them. How can we ensure that the bill will not result in a risk-averse society?

Robert Brown: That is a very important point, which links to the general points that were made earlier about risk averseness in relation to school activities. It is important that we are cautious about that.

I can understand why people are cautious in approaching legislation, and I do not blame anybody for doing that. We need to give people confidence in working with the legislation. We have to look to local authorities, because there have been some issues with them, as the owners of halls for example, gold plating legislation in terms of what they require from their users. Those are management matters, but we do not envisage or encourage situations in which people overegg the pudding by adding unnecessary restrictions to those in the legislation. I would like to make that clear as the ministerial view.

I take your point, and I have no doubt that issues will arise. We cannot deal with them all, but the combination of having improved legislation in place, some of the statements that have been made in the context of the bill and the continuing engagement with stakeholders on implementation should all help to bottom out the issues as effectively as possible and to put people’s minds at rest. If behind that there is a sensible approach to the protection of young people, it will help people approach the legislation.

The Convener: I thank the minister and his team for their evidence.

Members may have picked up detailed issues from the evidence to which they would like a response from the minister before we consider our report. If they tell the clerks about them as soon as possible, I will write to the minister on behalf of the committee to elicit those responses, preferably before we consider the final version of our report.

Dr Murray: What is the timescale for the report?

The Convener: We are not meeting next week. We will have the draft report to consider the following week, and then we have to finalise it the week after that because it has to be published before the Christmas recess.

Meeting closed at 13:31.
The meeting opened at 10.02.

**Decision on taking business in private:** The Committee agreed to consider its draft Stage 1 report on the Protection of Vulnerable Groups (Scotland) Bill in private.

**Protection of Vulnerable Groups (Scotland) Bill:** The Committee considered a draft report. Various changes were agreed to, and the Committee agreed to consider a revised draft at its next meeting.

The meeting closed at 12.19 pm
EDUCATION COMMITTEE

EXTRACT FROM MINUTES

28th Meeting, 2006

Tuesday 19 December 2006

Present:
Richard Baker (Committee substitute) Ms Rosemary Byrne
Lord James Douglas-Hamilton (Deputy Convener) Fiona Hyslop
Adam Ingram Mr Kenneth Macintosh
Dr Elaine Murray Iain Smith (Convener)

Apologies: Mr Frank McAveety, Marilyn Livingstone

The meeting opened at 1.36 pm.

1. **Protection of Vulnerable Groups (Scotland) Bill (in private):** The Committee agreed its Stage 1 report subject to certain changes.

The meeting closed at 3.33 pm.
WRITTEN SUBMISSIONS RECEIVED IN SUPPORT OF ORAL EVIDENCE¹

15 November 2006

Association of Chief Police Officers in Scotland
COSLA / Association of Directors of Education Scotland / Association of Directors of Social Work
Educational Institute of Scotland
General Medical Council
General Teaching Council Scotland
Nursing and Midwifery Council
Scottish Social Services Council
UNISON Scotland

22 November 2006

Children 1st
Children In Scotland
Dundee City Council
NHS Ayrshire and Arran
Prince’s Trust Scotland*
Quarriers*
Scotland’s Commissioner for Children and Young People
Scottish Council for Voluntary Organisations*
Scottish Council of the Scout Association*
Scottish Parent Teacher Council*
Scottish Women’s Aid
South Lanarkshire Council
West Dunbartonshire Council
Youth Scotland*

* Submissions from organisations represented in the roundtable discussion.

29 November 2006

Disclosure Scotland
Scottish Child Law Centre

WRITTEN SUBMISSIONS FROM OTHER ORGANISATIONS

Air Cadets – Aberdeen North East Scotland Wing
Angus Council
Barnado’s Scotland
Bishops’ Conference of Scotland
BMA Scotland
Brook
Childline Scotland

¹ All written evidence received is available at
Community Care Providers Scotland
Faculty of Advocates
Fairbridge in Scotland
Free Church of Scotland
General Dental Council
General Register Office for Scotland
Headteachers' Association of Scotland
Health Professions Council
Human Rights Scotland
Information Commissioner’s Office
Law Society of Scotland
LGBT Youth Scotland
National Autistic Society Scotland
NCH Scotland
NHS Dumfries and Galloway
NHS Forth Valley
NHS Grampian
NHS Greater Glasgow and Clyde
NHS Orkney
Quakers in Scotland
Renfrewshire Council
Royal College of Paediatrics and Child Health (Scotland)
Scottish Association for Mental Health
Scottish Children’s Reporter Administration
Scottish Churches Committee
Scottish Commission for the Regulation of Care
Scottish Council of Jewish Communities
Scottish Independent Advocacy Alliance
Scottish Out of School Care Network
Scottish Police Federation
Scottish Society For The Prevention of Cruelty to Animals
Scottish Youth Parliament
Stirling Council
Universities Scotland
Voluntary sector coalition²
West Lothian Council
Women’s Royal Voluntary Service
YouthLink Scotland

LETTER FROM THE CONVENER TO DEPUTY MINISTER FOR EDUCATION AND YOUNG PEOPLE

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20 December 2006

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL

At the Education Committee’s meeting on 29 November 2006 when you gave evidence on the Protection of Vulnerable Groups (Scotland) Bill, I undertook to write to you regarding any additional issues on which members would like clarification.

As I mentioned at the end of the meeting, it would be helpful if the Scottish Executive could respond to the issues raised by the reports of the Finance Committee and the Subordinate Legislation Committee. Members have suggested that it would also be helpful if you could respond to the following issues:

1. **The impact of the proposed legislation on support groups**

Fiona Hyslop MSP referred to this issue towards the end of last week’s meeting with reference to the Cyrenians. The experience of people who may have had past convictions in helping other children and young people and protected adults may be highly valuable. How will the new system ensure that this experience is not, at least discouraged, and at worst, lost?

2. **Malicious allegations**

What systems will be in place to guard against false and malicious allegations especially in the context of the use of ‘soft’ information?

3. **The definition of ‘protected adult’**

The Bill defines ‘protected adults’ in terms of the services that they receive. How will an organisation dealing with an individual know if an adult is ‘protected’ by virtue of the services provided to him or her by another organisation?
4. **Information contained within a scheme record**

Individual records could contain a large amount of non-relevant information (e.g. speeding convictions and minor, ‘youthful indiscretions’. How will the new system ensure that such matters are not taken into consideration by over cautious organisations to protect themselves?

At the meeting on 29 November, one of your officials explained how an individual could challenge the inclusion of non-conviction vetting information through an appeal to the Information Commissioner. It would also be helpful if you could explain this process would work and the rationale for not including an appeal process on the face of the Bill.

5. **Consultation on Part 3 of the Bill**

Given the concern that has been expressed over the scale of consultation on Part 3 of the Bill, it would be helpful if you could set out what consultation activities did take place on it prior to the Bill’s introduction?

6. **Points raised by the Faculty of Advocates written submission**

The Faculty of Advocates’ written submission (enclosed) made a number of points about the Bill. It would be helpful to the Committee if you could respond to the issues raised in the following paragraphs of their submission (1.1, 1.2, 1.3, 1.8, 2.1, 3.1, 3.2, 4.1, 6.1 and 14.1).

7. **European Convention on Human Rights compliance**

A number of witnesses raised concerns regarding European Convention on Human Rights. It would be valuable for the Committee if you could explain how the Bill was audited for its compliance with the European Convention on Human Rights.

8. **Short Scheme Records**

A number of organisations said that information contained in Short Scheme Records would be useless unless they indicated whether the initial full record had any vetting information.

9. **Vetting information**

Could you confirm whether inclusion on one of the barred lists would automatically be provided as vetting information?

I have also asked members about your offer from the Lord Advocate to give members a briefing on some of the “soft” vetting information. Rather than a verbal briefing, would it be possible to provide some form of written briefing for members on this subject?
I note that you also gave a commitment to share the draft code of practice with the Committee prior to Stage 2 and draft secondary legislation following the completion of the Bill.

It would be helpful to the Committee in considering its report on the general principles of the Bill if you were able to respond to this letter by the close of Monday 11 December 2006.

Iain Smith  
Education Committee  
Convener

Enc.
Dear Iain

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL: FOLLOW-UP TO ORAL EVIDENCE SESSION

Thank you very much for your letter of 6 December 2006 requesting further information in respect of the Protection of Vulnerable Groups (Scotland) Bill.

I am grateful to the Education Committee for their scrutiny of the Bill and for taking evidence from a wide range of organisations and representative bodies affected by the contents. The written and oral evidence has been insightful and identified a number of aspects of the Bill which could be improved at stage 2 of the Parliamentary process. The scrutiny process has also revealed some concern about the proportionality of having a system of disclosure for a large workforce to identify a small harmful minority and why we should proceed with these measures at the current juncture.

On proportionality, we know that almost everybody working with the vulnerable do so with the welfare and best interests of children and protected adults at heart. But we need to take all reasonable steps to ensure that the small number who would harm them can’t gain access to them through the workplace or that, worse still, our processes are not robust and that we make vulnerable people in Scotland a target. At its simplest, this policy is about ensuring that when we drop our children off at school in the mornings or when members of our family go into hospital or receive care services at home, we can have confidence that the people that they come into contact with do not have a history of behaviour (for example, sexual or violent) which indicates that they are not suitable to enjoy the trust we place in them.

Contrary to media coverage this policy is not about Stranger Danger. This is about people who have legitimate and regular contact with children and protected
adults through paid or voluntary work. The Bill is not a substitute or alternative to tackling risks of harm found in the home or posed by strangers. This is not an either/or situation and the Bill is an integral and important part of the package of protection offered to Scotland’s most vulnerable people.

It is also worth noting that the Bill does not significantly alter the scope of those falling within existing vetting regime (i.e. eligible for enhanced disclosure checks.) It is not the case that swathes of new people will be caught within the provisions. Most of the people and the organisations which the Bill affects are already familiar with disclosure processes and we are remedying the concerns which they have about existing operations.

The PVG Bill does not invent vetting and barring. Lord Cullen’s report into the Dunblane tragedy exposed critical deficiencies in employers knowledge about their workers. In the past decade, we have used Part 5 of the Police Act 1997 to establish a system of vetting the workforce (delivered through Disclosure Scotland since 2002) and the Protection of Children (Scotland) Act 2003 to establish a disqualified from working with children’s list which went live in January 2005 and now includes 115 names. Sir Michael Bichard’s Inquiry Report into the murder of Holly Wells and Jessica Chapman, and the consequent reform of vetting and barring throughout the rest of the UK, indicates scope for even more robust procedures in Scotland.

We are not starting with a blank sheet of paper and the Bill is not radical. It builds sensibly and proportionately on the strong foundations of our existing vetting and barring processes. But by strengthening these and minimising bureaucracy it provides more robust and more efficient safeguards and protections. We want parents and carers, as well as children and protected adults, to be confident that the individuals who work with them are safe. This Bill should make it easier for everyone (employers, employees, voluntary organisations, volunteers, parents and children) to ensure this is the case.

There has been comment that there must be an easier way of finding a few needles in a haystack other than subjecting every piece of hay to microscopic analysis. A magnet would do the trick if all that was required was to identify the needles. However, there are three key dimensions to robust protection:

- identifying the information, conviction and non-conviction, which is indicative of unsuitability and/or which may be relevant to a particular post working with vulnerable groups;
- linking individual members of the workforce to specific organisations and recognising that people may have more than one role (teacher and volunteer netball coach) and move around the sector over time; and
- continuous updating to remove the bureaucracy of multiple disclosures and ensure new information is reviewed.

Although one can identify some conviction information (e.g. schedule 1 offences) which would signal unsuitability this is not sufficient and it would be difficult to capture non-conviction information such as the police intelligence that existed on Ian Huntley but wasn’t taken into account in his appointment as a school janitor.
Organisations would still have to check all their employees against a list so there is no reduction in bureaucracy and the information couldn’t be continuously updated. The PVG vetting and barring scheme has been designed to offer the most streamlined and efficient way of delivering on all of these dimensions.

On legislative timing, the gaps with the existing system are well known and understood and the Bill implements the key recommendation of the Bichard Report which is underpinned by a solid and comprehensive analysis of the contributory factors which led to that tragic event. There seems little advantage in postponing action to address these factors when the safety of Scotland’s children and protected adults is at stake and when we have an opportunity to drive forward with improvements in protection and cutting bureaucracy.

We also need to make sure that Scotland does not fall behind. Just recently, Westminster passed the Safeguarding Vulnerable Groups Act 2006 which makes similar provision for England and Wales and, eventually, Northern Ireland. We cannot allow cross-border loopholes to develop, making Scotland a safe haven to those who would abuse vulnerable people. The Bill will ensure cross border integration, whilst ensuring Scottish Ministers are accountable for the new system. We need to progress the Bill now to ensure that Scottish stakeholders can help shape cross-border elements of the new systems to meet our specific needs.

The Bill will make a real difference. It will create, for the first time in Scotland, a list of individuals unsuitable to do care work with adults. It is hard to dispute the need for protection for our vulnerable individuals in Scotland whether children or adult. Once implemented, the Bill will bring an end to the excessive bureaucracy of multiple disclosure checks which have been the subject of so much criticism in the existing disclosure regime. Employees and volunteers will be able to move around the workforce and the voluntary sector with much greater ease and without the need for form filling at every turn. Employers and volunteering organisations will know that, once someone is a scheme member, the Central Barring Unit has reviewed any relevant information and considered that the person is not unsuitable. They will also have the reassurance that, if new information comes to light suggesting that there is cause for concern about one of their workers, they will be notified and issued with guidance about what steps to take. The public, and parents in particular, will know that more robust procedures are in place for ensuring that everyone who comes into contact with vulnerable friends and family through work does not have a history of behaviour which suggests they are unsuitable and that this information is kept continually updated. Overall, this is an advanced, flexible and streamlined vetting and barring system which offers advantages to everybody that comes into contact with the existing systems. The reduction in bureaucracy means that this can be achieved at no additional cost to the existing vetting and barring systems.

I know that there has also been concern about Part 3 of the Bill. The provisions to share child protection information reflect the fact that poor information sharing has been a contributory factor in a number of tragic child deaths. This is absolutely unacceptable. Anyone who disagrees with the need for this measure should read the enquiry reports into some of these tragic cases. The provisions
make explicit what is currently implicit good practice by most professionals. It puts beyond doubt that, when a child in Scotland is at risk of harm, professionals must respond to that risk and share the information to ensure that the necessary action is taken to protect the child. The permissive powers of existing legislation have not been enough to overcome concerns about data protection and professional codes and professionals being uncertain about how and when to share child protection information. Part 3 should help to bring that to an end and will be underpinned by a generic code of practice on sharing child protection information which will help generate consistency of understanding and practice for professionals dealing with children. I reiterate my undertaking that the Code of Practice will be available in draft before Stage 2 and will be widely consulted on with all the relevant stakeholders, as well as with the Committee.

You sought responses on a number of specific points and my response is set out in the attached annexes. I, and my officials, would be more than happy to provide any additional information or clarification of points which would be helpful to the Committee in compiling its Stage 1 report.

ROBERT E BROWN
Annexes

Issues relating to the Bill as a whole

Annex A  Response to the Finance Committee report
Annex B  Response to the Subordinate Legislation Committee report
Annex C  Points raised by the Faculty of Advocates' written submission (issue 6 in your letter)
Annex D  European Convention on Human Rights compliance (issue 7 in your letter)

Parts 1 and 2: vetting and barring scheme

Annex E  Impact on support groups (issue 1 in your letter)
Annex F  Further information on appeals against vetting information (issues 2 and 4 in your letter)
Annex G  The definition of "protected adult" (issue 3 in your letter)
Annex H  Short scheme records (issue 8 in your letter)
Annex I  Vetting information (issue 9 in your letter)
Annex J  Children aged 16 and 17 years old (discussed at 29 Nov evidence session)
Annex K  Arrangements for consulting on secondary legislation (discussed at 29 Nov evidence session)

Part 3: sharing child protection information

Annex L  Consultation and time scale (issue 5 in your letter)
Annex M  Draft framework for the code of practice on information sharing (discussed at 29 Nov evidence session)
Annex N  Update on Short Life Working Group on Disclosure of Underage Sexual Activity (discussed at 29 Nov evidence session)
RESPONSE TO THE FINANCE COMMITTEE REPORT

The Financial Memorandum sets out the anticipated costs of the Bill. This is a separate and distinct issue from how the costs are to be met. The fees associated with the vetting and barring scheme will be subject to consultation next year. Of particular note, the costs associated with introducing the vetting and barring scheme set out in the PVG Bill are expected to be neutral as compared with the costs of the existing multiple disclosure scheme. This is possible because of the streamlining of processes. The scheme therefore provides enhanced protection at no additional cost.

Detailed points:

**Paragraph 23. Number of individuals affected by the Bill**

**Paid workers**

1. Approximately 580,000 individuals will be scheme members through their paid employment. This figure is based on the following breakdown by sector. It is difficult to be precise about every sector because it is difficult to access sufficiently detailed information on specific job titles and responsibilities to gauge what proportion of work is regulated work.

<table>
<thead>
<tr>
<th>Sector</th>
<th>Scheme members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Further education</td>
<td>20,000</td>
</tr>
<tr>
<td>Healthcare</td>
<td>150,000</td>
</tr>
<tr>
<td>Paid voluntary sector workers</td>
<td>120,000</td>
</tr>
<tr>
<td>School teachers and support staff</td>
<td>70,000</td>
</tr>
<tr>
<td>Social work and social care</td>
<td>100,000</td>
</tr>
<tr>
<td>Miscellaneous (self-employed, emergency services, faith groups, transport etc)</td>
<td>120,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>580,000</strong></td>
</tr>
</tbody>
</table>

**Volunteers**

2. The financial memorandum estimates that 800,000 volunteers undertake some form of voluntary work in the child care / adult care sector. Of these, around 350,000 individuals are estimated to undertake regulated work through paid employment, leaving 450,000 volunteers not members of the scheme through paid employment. As outlined in paragraph 201(i) of the financial memorandum, approximately half of these individuals (225,000) are estimated to undertake voluntary work that is considered regulated work for the purposes of the Bill, with remainder undertaking activities such as fundraising. These 225,000, together with the 580,000 paid employees, comprise the 805,000 total number of scheme members on which the financial memorandum is based. The derivation of these figures is
explained in more detail in supplementary evidence to the Finance Committee provided by the Executive.

3. The financial memorandum stated that up to one million individuals could be affected by the new scheme. This figure would only be attained if 100% of volunteers in this sector required to be checked (580,000 + 450,000).

Numbers of scheme members and numbers of disclosure checks

4. At the Finance Committee on 8 November, there was some confusion between number of scheme members and number of checks. Officials apologise for any confusion in their evidence. In paragraph 22 of the report, the figure of 805,000 refers to the total number of individuals within the scope of the scheme at any one time whereas 450,000 is a reference to the total number of disclosure applications per annum.

5. In 2005, Disclosure Scotland received 490,000 applications for disclosure of which around half (i.e. 240,000) were estimated to be standard and enhanced disclosure for the purpose of working with children or vulnerable adults. By 19 November this year, Disclosure Scotland had carried out a total of 1.9 million checks, of which 1.17 million were enhanced or standard disclosures, since it began operating in 2002.

1. The Executive estimates that around 850,000 standard or enhanced disclosure checks have been carried out for posts involving work with adults at risk\(^1\) or children since Disclosure Scotland began operating in 2002. With around 30% applications being duplicates, this means that around 600,000 individuals have now been checked for posts that are likely to fall within the scope of the scheme since 2002. Therefore, almost 600,000 individuals have already been through the disclosure process in four years compared to the 805,000 individuals who we estimate will become scheme members. It follows that there are around 200,000 individuals in both the child care and adult care workforces who have not been disclosure checked to date. Some of these, especially those in the public sector, may have been checked by the non-statutory arrangements which were in place prior to the establishment of Disclosure Scotland.

6. The Protection of Children (Scotland) Act 2003 (POCSA) effectively made enhanced disclosure checks for new posts working with children a requirement from 10 Jan 2005 (because of the offence of employing a listed individual in a child care position). However, many organisations would have been undertaking checks before then and, similarly, many organisations are already checking posts for working with adults at risk now even though there is currently no qualified from working with protected adults list in Scotland. POCSA also envisaged retrospective disclosure checks of existing staff, although implementation of this was deferred and has not been brought into effect to date.

\(^1\) “Adults at risk” is the term used in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 for the category of adult contact with whom through work entitles an individual to an enhanced disclosure check.
7. The Executive's best estimate is around 330,000 applications for checks per annum by individuals joining or on the scheme once the whole workforce has been brought on stream. But only 60,000 of these will be full checks like enhanced disclosure (paragraph 207 of the financial memorandum) mainly for people beginning regulated work for the first time. This means the number of full checks required per year will fall to 25% of the 2005 value. The remainder of the 330,000 checks will be simpler "short scheme record" checks or "disclosure of barred status". The total number of checks will ultimately be higher (330,000 compared with 240,000 in 2005) because the whole workforce will be "on stream" but the work involved for the Agency should be less.

Paragraph 27. Value for money

8. An assessment of "value for money" looks at benefits as well as costs. The scheme offers the following benefits. The scheme will:

- Assist employers in recruiting and managing the vulnerable groups workforce and reduce the likelihood of unsuitable people working with them, thus increasing protection for vulnerable groups.
- Offer increased protection to protected adults by introducing a list of people unsuitable to work with them.
- Provide for consistent decision-making about unsuitability to work in the vulnerable groups workforce.
- Create mechanisms to prevent unsuitable individuals entering the workforce with strong deterrents for trying to circumvent the system (criminal offences).
- Establish arrangements for "continuous vetting" which removes much of the difficulty with enhanced disclosure only being valid on the day of issue and enables subsequent disclosures to be issued more quickly (because the vetting information has already been gathered).
- Allow individuals to become scheme members in anticipation of employment making it easier to start work quickly.
- Inform all those employing an individual to do regulated work of any decisions concerning consideration for listing and listing itself.
- Give personal employers the ability to check that an individual is not barred from regulated work before employing them.

9. Costs were estimated in the financial memorandum and these have been the subject of debate by stakeholders and the Finance Committee. Costs divide into three categories:

- start-up costs for the Scottish administration;
- transitional costs for other organisations; and
ongoing costs (incurred by the agency and passed on to individuals and organisations through fees).

10. The start-up costs for the Scottish administration were estimated at around £5 million. The ongoing costs were estimated to be marginally less than the cost of running Disclosure Scotland now (£10 million per annum). The Executive still contends that these two estimates are broadly correct, even taking account of evidence given to the Scottish Parliament by stakeholders. The transitional costs for other organisations are discussed under "additional administrative costs" in paragraphs 26 to 32 below.

11. There has been some suggestion that the scheme is a very cumbersome way of identifying a relatively small proportion of individuals who are unsuitable to work with vulnerable groups. But the current vetting system and future scheme do more than retrieve child/adult protection information.

12. The current vetting system discloses criminal conviction information, any police information that the chief constable considers might be relevant to the activity covered by the application and, for child care posts, whether or not the applicant is disqualified from working with children. In future, the scheme is expected to include additional information from regulatory bodies and local authorities; this information will be prescribed in regulations made under section 46(1)(d).

13. Under the current system, vetting information is provided to employers to assist them to determine suitability. The new scheme, by bringing together vetting and barring functions, will also filter out those individuals who are unsuitable, thereby providing some reassurance to employers.

14. For example, an individual with a series of dangerous driving convictions is not unsuitable to work with children on the basis of those convictions alone. But that individual would not be suitable to drive the school bus, although they may be suitable to assist at a nursery (where no driving is required as part of their work).

15. The financial memorandum suggests that for a relatively modest upfront investment of around half the annual turnover of Disclosure Scotland, a much better vetting service can be provided as well as providing the filter to prevent unsuitable individuals joining the workforce. This is achieved by improving the internal efficiency of Disclosure Scotland, in essence by giving the system "memory", cutting down on the effort required to produce vetting information. This also benefits external organisations and individuals by eliminating repeat requests for the same information (on repeat enhanced disclosure applications).

**Paragraph 28. Effect on volunteering numbers**

16. It is difficult to determine volunteering numbers, especially since there is confusion between the number of individuals and the number of volunteering opportunities: one individual may volunteer in more than one
context. The financial memorandum uses the best evidence available to make a reasonable estimate of numbers of volunteers in the child care / adult care sector and numbers of those within the scope of the scheme.

17. Any recent decline in volunteering, if indeed one has taken place, may not be linked to the disclosure system. (Volunteer Development Scotland in their evidence to the Education Committee suggested that they had no evidence of a decline.) For example, any decline may be due to an increased fear of litigation if anything goes wrong rather than the disclosure process.

18. Even if there is a decline in volunteering and the disclosure system is identified as a cause, it may be that this is based on a misrepresentation of the system or a misapplication of it; for example, requests for an enhanced disclosure certificate where this is not appropriate or, indeed, lawful. As part of the introduction of the new scheme, there will certainly be a need for guidance on when someone should/should not be a scheme member and monitoring to ensure disclosures are not being requested erroneously.

19. Finally, if there is a decline and it is due to the disclosure system, it may be due to the bureaucracy of the current system which the scheme will greatly reduce. For example, the Prince’s Trust suggested in their evidence that any decline may be due to the effort involved with repeat disclosure checks, which the new scheme dramatically reduces.

Paragraph 31. Funding concerns of SCVO and timescale for implementation

20. The Executive will work with the voluntary sector to ensure that the scheme is rolled out in such a way that it does not adversely affect voluntary organisations and the level of participation. The most important factor in costs for the voluntary sector (for whom there are no fees for volunteers) is the timescale for implementation. At one extreme, no requirement for retrospective checks would result in very little additional cost (but would lessen the protection for vulnerable groups until there was no one in the workforce whose appointment predated the commencement of the scheme).

21. The Executive will consult extensively on a timetable for implementation, see Annex K.

Paragraph 41. Significant financial information coming to light in subordinate legislation

22. It is entirely appropriate that fees are set in secondary legislation since it can be anticipated that they will need to be adjusted to take account of inflation and changes to the workforce. Although not part of the formal procedure at present, the Executive would be happy to involve the Finance Committee in the consideration of the regulations setting out fees made
under section 67(1). Again, the Executive will consult extensively on fees, see Annex K.

23. Fees relate to how the costs of the process are covered (i.e. how revenue is raised). The fee structure has little effect on the overall cost of the system, assuming that there is not a strong coupling between level of fee and demand for checks. A clear policy aim in setting fees will be to ensure that they are not so high as to suppress legitimate demand nor so low as to encourage an excessive frequency of checks. The fee structure does have some effect on the costs on each sector, for example a zero charge for nominal checks benefits high frequency users.

24. Whereas it is legitimate to question the assumptions in the financial memorandum, the Executive considers that, given those assumptions, as much information on the level of fees as is possible at this time has been provided.

Paragraph 43. Additional administrative costs

25. At issue here is the one-off additional administration cost of retrospection. However, once the transition has been made to the new scheme, administration costs should reduce from present levels because of the streamlined checking procedure for scheme members.

26. SCVO have suggested an administrative cost of £20 million to get the entire voluntary sector onto the scheme on the basis of a unit administration cost of £21.50 for 956,000 volunteers and paid staff in the voluntary sector. SCVO’s supplementary evidence to the Finance Committee suggested that this administrative cost derived from: time spent by the employee, administrative staff and management staff in completing and countersigning the application; ID checking; and postage, stationery, telephone and office overheads. For the purpose of the calculation following, this unit cost is used but the Executive will be seeking to explore this further with voluntary organisations as part of preparation for implementation.

27. The financial memorandum is based on 400,000 volunteers and 120,000 paid voluntary sector employees falling within the scope of the scheme. Although this will be the subject of consultation, it is likely that the statutory workforce will be brought onto the scheme before the voluntary sector. In which case, volunteers who also do paid regulated work will become scheme members through their paid work. The administrative cost to the voluntary organisation in respect of an individual who is already a scheme member should be very low: the short scheme record check should be much easier than an enhanced disclosure check (including being available on-line). Even a scheme record check will not require much more effort for someone who is already a scheme member (although the results will not be available on-line).

28. So, out of the 400,000 volunteers identified above, some 175,000 will be scheme members through their paid work. For them, the administrative
cost should be much less than at present. Therefore, the true number of individuals incurring administrative costs is therefore estimated to be 225,000 volunteers and 120,000 paid voluntary sector employees totalling 345,000. Using SCVO’s estimate for unit administration cost, this brings the administrative cost to the voluntary sector down from £20 million to £7.4 million. But how much of this cost is additional expenditure depends on how quickly these posts are phased into the scheme, the subject of further consultation.

29. Currently, the voluntary sector are making 50,000 applications for free disclosure checks per year and a further 7,500 paid disclosure checks per year. Applying a unit administration cost of £21.50, means these checks cost £1.2 million per annum. Assuming the statutory sector precedes the voluntary sector in moving to the new scheme, most of this current expenditure on administration will be diverted to bringing on the 345,000 individuals identified above onto the scheme.

30. Officials accept that, to be consistent with the assumption of a three year transition, the financial memorandum should have identified an administrative cost to the voluntary sector in making retrospective checks. Officials apologise for any confusion arising from the statement in paragraph 226 of the financial memorandum that “no additional cost will be incurred by employers” which neglects the costs of transition to the scheme. According to the above calculations, the cost would be around £7.4 million – (3x £1.2 million) = £3.8 million to the voluntary sector. This figure reduces for a longer transitional period.

31. In conclusion, SCVO have rightly raised the issue of transitional costs but, according to the Executive’s estimates, have significantly overestimated these. SCVO have also acknowledged that any additional administrative burden can be absorbed so long as the transitional period is sufficiently long. Further discussions with the voluntary sector (and others) will inform what constitutes a reasonable transitional period as part of the consultation process for the secondary legislation and implementation.

**Paragraph 46. Difficulty of interpreting “protected adult”**

32. This issue is included in the discussion on the definition of “protected adult” at Annex G.

**Paragraph 54. Clarity over how £1.1 million will be spent**

33. The financial memorandum allocates £1.1 million for training and guidance outside of the £320,000 allocated to the CRBS. The financial memorandum breaks down to figures into three elements: £200,000 for the development of training materials; £600,000 for the delivery of training events; and £300,000 for a three-year telephone helpline service.

34. The target audience for this training is primarily the bodies who are registered with Disclosure Scotland and therefore eligible to require scheme
membership of their employees. These are the people who will be very involved in administering the scheme and who need to be confident about the process. There are around 3,000 registered bodies/persons at present with a further 5,500 to 6,000 additional countersignatories. The level of awareness that actual scheme members require is different and will be covered by providing suitable guidance at the time of application to the scheme.

35. Officials have already acknowledged the need to give further attention to wider awareness raising and the Executive will be doing further work to scope that out.

36. The scheme is not being introduced against a zero baseline. It is estimated that 600,000 individuals of the 800,000 or so who will become scheme members have already been through the disclosure process, see paragraph 6 above. Furthermore, those in child care positions under POCSA are already familiar with the concept of a list and referrals etc. On this basis, the Executive considers that £1.1 million for training and guidance is a reasonable estimate.

Paragraph 56. Underestimate of cost of IT systems

37. The financial memorandum stated that it will cost £2 million to put in place the IT infrastructure for the vetting and barring scheme.

38. The Executive will be seeking to procure some of the necessary IT services from private-sector providers and it would not be appropriate to reveal very detailed costings too early in the procurement process in case this prejudiced the value for money from the contract. In any event, the precise costs of the IT infrastructure will be difficult to determine until the Bill is passed and the scope of secondary legislation is confirmed. The development of the fine detail of the scheme and the detail of the IT systems will need to inform each other.

39. The Executive considers that the cost estimates are reasonable and not an underestimate. The systems are not being developed from scratch. Disclosure Scotland already has a highly-developed IT system which copes with a very high throughput of applications and the police already have the Criminal History System which is a very large database holding not just criminal convictions (other data include firearm licences). Part of the development of the mechanics of the scheme can be built into the ongoing development of these systems. The principal cost is in modifying existing systems to incorporate new functions and work in a more integrated way. The financial memorandum includes a contingency of £1 million in the aggregate start-up costs (£4.75 million) for the vetting and barring scheme. This largely derives from the uncertainty around the IT procurement costs.

Paragraph 59. Cost of an NDPB difficult to quantify
40. Paragraph 58 states that "any legislation proposing a new body should be accompanied by a policy options paper detailing alternative structures which were explored...". It is important to emphasise that the agency is not established by the Bill. The legislation does not propose any new body. The Bill confers functions on the Scottish Ministers and it is for them to determine administratively how their functions are exercised. The policy intention is that their functions will be exercised by staff in the new agency and section 87 makes provision for the transfer of Disclosure Scotland staff to the Scottish Administration; Ministers can then allocate these staff to the agency.

41. In response to paragraph 59, which quotes the Executive’s supplementary evidence to the Finance Committee, the Executive maintains the position that the costs of an NDPB would have been very difficult to quantify at the start of the consultation in February 2006. The detail present in the financial memorandum could only be developed in summer 2006 as the policy was developed and the Bill instructed following the consultation in spring 2006.

42. Whatever the costs of an NDPB, it would have been more expensive than an agency because of the need for separate support structures (HR, IT etc). Since Ministers’ preference was for an agency, there was no need to cost a less attractive, more expensive option. In the reverse circumstance, where Ministers had preferred an NDPB it would have been necessary to make provision for it in the Bill and it would have been costed in the financial memorandum. In that case, it would have been reasonable to compare the cost of the NDPB with the lesser cost of the agency to see whether the additional cost was merited.

Paragraph 61. Cost implications of transferring staff to civil service terms and conditions

43. The cost of staff transfer can be divided into two categories: start-up costs and ongoing costs.

Start-up costs

44. One off costs will be associated with pension transfers. This includes Government Actuary costs to effect the transfer: this can be reliably estimated and is likely to be in the region of £50-100,000.

45. There will also be the cost of making up any pension shortfall at the point of transfer. This is harder to estimate as it depends on the financial health of the Strathclyde Pension Scheme on the day of transfer. The Executive will be required to make good any shortfall. Preliminary estimates suggest that this will be a small sum, as the Strathclyde scheme is buoyant and Disclosure Scotland staff have relatively few years of contributions to the scheme.

Ongoing costs
46. Two factors affect ongoing costs. The first is the difference in contributions to the pension scheme. This is predictable and will have the effect of adding 2.5% to the wage bill. The second is where on the salary scale staff will sit. This is dependent on formal job evaluation and the financial effects can not be predicted reliably.

47. In considering whether this represents good value for money, it is important to remember that some change would have happened regardless of the advent of the Bill. Disclosure Scotland staff are part of the Scottish Criminal Record Office and as such would have been due to transfer to the Scottish Police Services Authority (SPSA) in April 2007. The Central Barring Unit should not become part of SPSA as it would have been inappropriate for a police body to be making decisions about the unsuitability of individuals for employment. Ministers have concluded that any additional costs deriving from removing Disclosure Scotland from SPSA will be more than offset by the improved efficiency afforded by a single agency taking responsibility for both vetting and barring.

Scottish Executive Education Department
11 Dec 2006
Paragraph 44: section 46

1. The words in brackets at the end of section 46(1)(a) do not modify either of the terms "prescribed details" or "central records". The words in brackets ensure that the meaning of these terms is the same as their usage in sections 113A(3)(a) and 113A(6), respectively, of the Police Act 1997. The Executive is of the view that no amendment is required to section 46 at stage 2.

Paragraph 53: section 76

2. The Executive is preparing stage 2 amendments to provide that the code of practice must be laid before the Scottish Parliament.

Paragraph 56: section 81

3. The Executive confirms that it will bring forward amendments at stage 2 to remove the duplication of supplemental etc. order-making powers as between section 81(1)(b) and section 97(1)(a).

Paragraph 66: section 87

4. The Executive notes the Committee’s concerns regarding the specification of individuals by name. Section 87(2) provides that the staff transfer order may specify particular persons or types of person. The Executive will seek to provide the necessary specification by using the latter option and will only specify particular individuals by name if it is absolutely necessary in order to ensure full legal effect for the staff transfer order. However, this option cannot be ruled out and the Executive does not propose to amend section 87(2).

Paragraph 70: section 94

5. In light of the Committee's continued concern, the Executive will consider again whether any amendment should be made to clarify the scope of the power at section 94(2).

Paragraph 81: schedule 2, part 3 (paragraph 14)

6. The Executive is preparing stage 2 amendments to this effect.

Paragraphs 84, 87: schedule 2, part 5 (paragraph 26) and schedule 3, part 5 (paragraph 15)

7. The Executive notes the Committee’s continuing concern about these powers to amend schedules 2 and 3. The Executive does not agree that the extent of these powers is unclear.
8. The powers relate to the scope of regulated work with children and adults as provided for in section 91 and any such orders will modify the scope of such regulated work. These powers are wide, but clear. The Executive fully accepts the potential breadth of these powers but would reiterate that they are essential in order to ensure that future developments in the way in which services are provided to children and protected adults can be brought within the remit of the scheme, if necessary.

9. The Executive has already given the example of keeping pace with technological developments in paragraph 34 of the letter of 1 November to the Committee. Another example is as follows.

10. Before the Scottish Parliament at present there is a Members’ Bill to establish a Commissioner for Older People. If that Bill passed into law, it might be thought appropriate to include such a Commissioner in schedule 3 regulated work with adults (as the Children’s Commissioner and her staff are included in paragraphs 22 and 23 of schedule 2). In the absence of the order making power in paragraph 15 of schedule 3, it would be impossible to do this without primary legislation. This would result in the situation that the post of Older People’s Commissioner could be held by an individual who was actually barred from working with protected adults, all for the lack of the ability to amend schedule 3 by order.

11. The breadth of the order powers to modify schedules 2 and 3 is fully acknowledged and the Executive has given this matter lengthy and detailed consideration. Following this consideration the Executive remains of the view that these powers must be available so that the scope of regulated work with children and adults can be modified without resorting to fresh primary legislation.

Scottish Executive Education Department
11 Dec 2006
ANNEX C

POINTS RAISED BY THE FACULTY OF ADVOCATES' WRITTEN SUBMISSION

1. The Committee has asked for responses to several matters raised in the Faculty of Advocates' written submission (paragraphs 1.1, 1.2, 1.3, 1.8, 2.1, 3.1, 3.2, 4.1, 6.1 and 14.1 thereof).

1. The Faculty raises “the issue of whether to have two lists, one for working with vulnerable adults and one for working with children” and they contend that “a single list might also be more efficient.”² This is on the basis it is “hard to envisage a situation in which an individual would be deemed to pose a danger such as to merit inclusion on one list, without meriting inclusion on the other list.”³ The issue of a single list or two lists is discussed at paragraphs 118-122 of the Policy Memorandum. Paragraph 121 argues that two lists “provide greater flexibility because it would be possible to place someone on one or both lists whereas, with only one list, the CBU might not be able to respond proportionately to the less extreme cases”. In addition, “there will be cases where individuals’ propensity to harm is focussed on one group only” and a specific example – which the Faculty find “hard to envisage” - is given – that of “the abuse of trust in persuading elderly people into rewriting their will”, which is clearly unlikely to apply to children.

Para 1.1 The definition of “harm” for the purposes of the Act (section 2, section 93)

3. The Faculty suggests that the definition of “harm” in the Protection of Children (Scotland) Act 2003 (POCSA) should be inserted here instead of section 93. In that Act, “harm” is briefly defined, in section 18(1) as: “harm” includes harm which is not physical harm”. The definition of “harm” in section 93 of the Bill is significantly more substantial than that in POCSA. The Executive does not consider that adopting the much briefer POCSA definition would assist in providing greater clarification to the meaning of “harm”.

4. The Executive considers that reading section 93 to include within “harm”, for the purposes of this Bill, the situation of an individual smoking near a child, would not be a reasonable interpretation of that section. In addition, any such interpretation would be likely to be disproportionate and possibly incompatible with ECHR and consequently the section would be unable to bear such a meaning.

5. It is also considered that the combination of the referral ground in section 2 and the definition of “harm” in section 93 provides a clear indication of the types of behaviour which merit referral. In particular, organisations under a duty to refer in sections 3 to 5 must have taken action themselves (or would have done so) to remove the individual from regulated work on the referral ground before the test for making a referral is met. The citation of

² Faculty’s submission, Introduction.
³ Submission, Introduction.
examples of “psychological harm” in subsection 93(1)(b) are just that – examples and are not exhaustive of the scope of “psychological harm”.

Para 1.2 The definition of inappropriate conduct involving pornography (section 2(a)(iii) and 2(b)(iii))

2. The Faculty questions the link between “inappropriate conduct involving pornography” and risk to children and protected adults in relation to section 2(a)(iii) and (b)(iii). There is a need to cover conduct involving pornography which extends beyond child pornography. There is conduct involving non-child pornography which might suggest that a person should be referred to the CBU and “inappropriate conduct” will catch this. It is considered that the restriction suggested by the Faculty “to ensure that the specific concerns with which the Bill is concerned” is provided by the second element of the test for an organisational referral: the organisation must have taken action themselves (or would have done so) to remove the individual from regulated work on the referral ground; i.e. the employer will consider that the “inappropriate conduct involving pornography” is sufficiently serious to merit removing the individual from regulated work.

3. The Faculty also contends that: “In the event that these subsections are designed to make it a referral ground where an individual has been involved in pornography involving either children or protected adults, then we consider that these matters are already covered by the wide definition of “inappropriate conduct of a sexual nature involving a child/protected adult” in subsections 2(a)(iv) and 2(b)(iv).”

4. The Executive considers that pornography must be given a wider meaning than child / protected adult pornography. A person could engage in conduct involving non-child / protected adult related pornography that would still be inappropriate in a given context. Also, not all “inappropriate conduct involving pornography” would come within the remit of “inappropriate conduct of a sexual nature involving a child / protected adult” because the use of pornography might not involve any other person. There may be some overlap between the pornography and sexual conduct grounds but, in many respects, they will cover quite different conduct and both are necessary.

1.3 Definition of “child” and definition of “protected adult” (sections 2, 94 and 96)

5. The Faculty questions the definitions of child and protected adult particularly in relation to the age overlap. This issue is addressed in Annex J and only some particular issues raised by the Faculty will be considered here. It is not considered that difficulties will arise in relation to the interpretation of the list of relevant offences in schedule 1. Many of these relevant offences do specify the age of the child as being under 16 (although paragraph 1(d) refers to children under 17 and paragraph 1(j) refers to girls between 12 and 16). Relevant offences are listed in schedule 1 in a specific context, under sections 31 and 14 – that is, conviction of such an offence results in automatic listing. The fact that most of these
offences do not apply to conduct towards children over 16 does not impact on the definition of child in section 96(1).

6. The Faculty asks whether the issue of inappropriate medical treatment administered to a child in section 2(a)(v) applies in the case of a patient aged 16. The answer is yes it does – it will apply potentially to all individuals under the age of 18. The Faculty mentions that the law permits marriage at the age of 16 yet a married person would be deemed to be a child for the purposes of interpretation of this legislation. This is a policy question and any such perceived anomaly is hardly novel. A married 16 year old cannot drive a car, vote in elections or be served alcohol in a pub. It is considered, on a basic policy level, that individuals aged 16 and 17 should have the protection that the Bill provides for. This was under the situation under POCSA, section 18(1).

7. The Faculty also suggests that employers may have some difficulty addressing the question of whether or not a “child” had been harmed or is at risk of being harmed where the victim is between the ages of 16 and 18. The Executive does not agree that identifying harm, as defined in sections 2 and 93, to a 16-year-old will be significantly different from identifying harm to a 15-year-old, or indeed to a protected adult of 30 or 85.

1.8 Failure to refer: offence (section 9)

8. The Faculty notes that there is no provision clarifying when the offence of failing to refer is committed under section 9. The Executive is grateful to the Faculty for identifying this potential lacuna and will give careful consideration to whether a stage 2 amendment is necessary.

2.1 Organisational referrals, court referrals and vetting information (sections 10-13)

9. The Faculty notes that, in sections 10-13, Ministers must consider listing where they are satisfied that the information indicates that “it may be appropriate” for the individual to be included in the relevant list. The Faculty suggests that there should be a definition of “appropriate”. The Executive does not agree with this view. In our view the meaning of “it may be appropriate” is clear in this context. These words require only that it must appear to Ministers that there is a real and genuine prospect that after the full consideration has been conducted, they will confirm the inclusion of the individual in the list under sections 15 and 16. There is recent English case law confirming this interpretation of “it may be appropriate” and no definition is required in the Bill.

3.1 Automatic listing (section 14)

10. The Faculty questions the power of Ministers to define the criteria for automatic listing by order under section 14(3). Some of the issues raised by the Faculty were addressed in the Delegated Powers Memorandum and
subsequent correspondence with the Subordinate Legislation Committee (annexed to their report).

11. The Executive would not agree with the Faculty’s characterisation of this power as giving “Ministers the power to determine the entire scope and purpose of the listing system”. The Executive has previously acknowledged that this power gives significant discretion and that is why the power is subject to affirmative procedure, ensuring maximum parliamentary involvement. The Executive agrees with the Faculty’s comment that the listing system must achieve the legislation’s aims and, in our view, section 14 does that. Section 14(1)(a) provides that individuals convicted of a relevant offence, specified in schedule 1, are automatically listed. Section 14(1)(b) then provides that Ministers can specify criteria that also results in automatic listing.

12. The Faculty asserts that “There appears to be no point in section 14(4), which merely suggests listing criteria.” The Executive has previously noted that 14(4) gives useful examples of some types of criteria which may be specified by order and the contents of any such order are limited by 14(1)(b), (2) and (3). The Executive has said that this power would be used to: capture historic, serious offences where the court was not able to make a referral at the time of conviction; specify some civil orders imposed by a court on an individual; specify when individuals are subject to the requirement to register as a sex offender; and respond to amendments or innovations in criminal offences, including offences outwith the law of Scotland.

13. The Faculty is particularly concerned that “an individual could be automatically listed where cautioned in respect of certain specified offences” and that “a caution appears here to be treated as equivalent to a conviction.” The policy intention is to allow for criteria which might include that a series of cautions in respect of serious offences (possibly in conjunction with other convictions) accumulated by one individual could lead to automatic listing. There is also the need to provide flexibility to be as consistent with criteria for automatic listing in England, Wales and Northern Ireland (currently under development) as the Scottish Ministers and Scottish Parliament consider appropriate.

14. Any orders made under section 14(3) must, of course, be within devolved competence and therefore ECHR compliant in all aspects. The Executive notes the concerns of the Faculty re section 14 and we will continue to consider the details of the automatic listing provisions.

3.2 Inclusions in children’s list/adults’ list after consideration (sections 15 and 16 and 17) and
4.1 Information (section 17)

15. The Faculty’s comments in paragraphs 3.2 and 4.1 will be addressed together. The test for inclusion in sections 15 and 16 is that Ministers “are satisfied by information relating to the individual’s conduct that the individual
is unsuitable to work with” children / protected adults. To be satisfied of something is a normal legislative test and standard and does not require definition. It would bear its ordinary dictionary meaning of inter alia to be content with or to find it sufficient. Similarly “unsuitable” does not require further definition of its dictionary meaning of inappropriate, inadequate, not in accordance with.

16. Under section 17(1), Ministers must, before making a listing decision, give the individual an opportunity to make representations as to why he should not be listed and Ministers must consider any such representations. “Representations” is not defined to ensure that it is given as wide a meaning as possible. There is no restriction on the form of representations that the individual may wish to make.

17. Under section 17(3) the individual must be given the opportunity to make representations in relation to all of the information, wherever sourced, that Ministers intend to use when making their decision. Ministers will never make a listing decision under sections 15 or 16 using information that the individual has not seen or had the opportunity to comment on and rebut. All evidence and information received from organisations can be challenged by the individual under consideration. The only partial exception to this is in section 17(4) where under some findings of fact cannot be reopened. But it should be noted that the individual would have had the opportunity to contest the finding of fact when it was initially made by, for example, the criminal court or the General Teaching Council for Scotland.

18. On the specific issue of inquiries which the Faculty raises, the Executive thinks it appropriate that a matter of fact on which an inquiry has investigated, taken evidence and decided upon should not be reopened when Ministers are making a listing decision under sections 15 – 17. However, under section 24, all findings of fact can be reopened on appeal except for those on which any conviction is based. Therefore, an individual can challenge a finding of fact from an inquiry at appeal.

19. Section 17 establishes the basic procedure for determinations and Ministers intend to use section 39 (power to regulate procedure) to set out the detailed determination procedure. This replicates POCSA where the Determination Regulations (S.S.I. 2004/523) made detailed procedural provision.

20. The Faculty is correct that no provision is made for interim suspension of listing and the Executive does not intend to amend this. An individual, prior to listing, has a full opportunity to make representations on all the information on which Ministers base their determination. Following that considered determination it is appropriate, bearing in mind the supervening need to protect children and protected adults, that such individuals are listed while their appeal is ongoing. The alternative would be that such individuals were not listed and could presumably enter the regulated workforce until such times as they had exhausted all their appeal rights, which as the Faculty notes, could take some time to complete. The public
interest lies in the protection of vulnerable groups and against interim suspension of listing, whilst ensuring extensive rights of appeal for listed individuals.

21. It should also be noted that listing decisions under sections 15 and 16 are subject to extensive rights of appeal to the sheriff, the sheriff principal and the Inner House under section 21 to 24. Substantial consideration has been given to Article 6 ECHR in relation to listing determinations and the Executive are of the view that the system, bearing in mind the appeal provisions, is ECHR compliant.

6.1 Application for removal (section 25)

22. The Faculty is of the view that the application for removal should not require to be made in the first instance to a sheriff but, rather, to Ministers. This is a policy, rather than a legal or drafting question and the Executive thinks that applications for removal should be made in the first instance to the sheriff with appeal available to the sheriff principal and Inner House of the Court of Session.

23. The grounds for removal are wider than the Faculty notes. That the conviction which Ministers had regard to when listing the individual has been quashed is only one conceivable instance of an applicant’s circumstances having changed under section 25(3)(b). This is made clear by section 25(5) which states that 25(4) re quashing of convictions does not affect the generality of 25(3)(b) which provides an application for removal is competent if “the sheriff is satisfied that the applicant’s circumstances have changed”. Change of circumstances goes much wider than quashing of convictions and therefore it is appropriate that the sheriff hears the application and makes a decision in accordance with the test in section 26(1).

14.1 Child Protection Information (section 73)

24. The Faculty comments that “The provisions in Part 3 of the Bill should improve the effectiveness of the Bill considerably”. Obviously, the Executive believes that Part 3 is required to improve the protection of children in Scotland and augments Parts 1 and 2 in that regard. However, it is important to emphasise that Part 3 stands alone from Parts 1 and 2 and is not necessary in order for the vetting and barring scheme to be fully effective.

25. The Faculty are concerned that the definition of “child protection information” in section 73 being information “relating to a child” may be overly restrictive. The Executive’s policy intention is that “child protection information" includes a wider range of information, including information primarily about an adult but suggestive of harm or prospective harm to a child. The Executive agrees with the Faculty that the code cannot be used to expand a statutory definition and that it is important to get the scope of
the definition right in the Bill. The Executive will consider whether any amendment is necessary to achieve the policy intention.

Scottish Executive Education Department
11 Dec 2006
EUROPEAN CONVENTION ON HUMAN RIGHTS COMPLIANCE

1. The Committee has asked for an explanation of how the Bill was audited for its compliance with the ECHR. Every Bill presented to the Scottish Parliament by the Scottish Executive must be within the legislative competence of the Scottish Parliament, as defined by section 29 of the Scotland Act 1998. A seminal part of legislative competence is that every provision of a Bill is compatible with the ECHR rights.

2. ECHR issues were considered at every stage in the genesis of the Bill – during policy formulation, legal instruction and legislative drafting. After early drafts of the Bill were prepared the Bill was subject to ECHR scrutiny on a section-by-section basis. The policy memorandum discusses human rights issues at paragraphs 162 to 169 with particular reference to ECHR Articles 6 (right to a fair trial), 8 (right to respect for private and family life) and Article 1 of Protocol 1 (protection of property).

3. The member of the Scottish Executive in charge of a Bill must, on introduction, state that in his view the provisions of the Bill would be within legislative competence (section 31(1) of the Scotland Act). This is not an automatic, tick-box exercise. A Minister is only advised that he can make such a declaration after detailed consideration of all legislative competence issues arising, including ECHR compliance.

4. The Presiding Officer must also decide whether or not in his view the provisions of the Bill would be within legislative competence (section 31(2) of the Scotland Act). To do this the Presiding Officer will have received separate legal advice from Scottish Parliament officials. For this Bill, both the appropriate Scottish Executive Minister and the Presiding Officer have made statements of legislative competence which cover ECHR compatibility.

5. In addition, the Committee will be aware that Westminster has passed the Safeguarding Vulnerable Groups Act 2006 which implements the Bichard Recommendations in England and Wales. Under section 19 of the Human Rights Act 1998 the UK Government Minister in charge of that Bill also made a statement that the Bill was ECHR compliant. Consequently, the ECHR issues arising here have been assessed, in detail, by three different sets of lawyers and on each occasion a conclusion of ECHR compatibility has been reached.

6. The Scottish Executive is of the view that the Protection of Vulnerable Groups (Scotland) Bill is compatible with ECHR.

Scottish Executive Education Department
11 Dec 2006
IMPACT ON SUPPORT GROUPS

1. At the Education Committee on 29 November, the issue of service user to volunteer transition was raised. Fiona Hyslop MSP gave the particular example of a young homeless person being looked after by the Cyrenians: a 17-year-old in a hostel is a child, could be a protected adult and could be a volunteer, possibly undertaking regulated work themselves. This note aims to clarify how such an individual would be treated by the scheme. Fiona Hyslop MSP also referred to the fact that young homeless people often have criminal records which may make it difficult for them to volunteer if this information was disclosed.

2. There are three groups of people involved in this example:
   (a.) the paid workers and volunteers who work in the hostel;
   (b.) the 17-year-old who may be in receipt of care services and providing care to other clients; and
   (c.) other clients who receive care only (do not provide care).

Regulated work with adults

3. Assuming the hostel services are not provided under contract to the local authority, no residents will be protected adults simply by virtue of being resident at the hostel. They will only be protected adults if they are receiving services, directly or under contract, from the local authority or NHS set out at section 94. Some residents may be receiving such services, for example mental health or drug abuse services from the NHS or housing support services from the local authority. Therefore, whether (a) the hostel workers or (b) the individual should be scheme members will depend on whether their normal duties involve doing regulated work in relation to those residents in the hostel receiving such services. This is not markedly different from a strict application of the 2006 Regulations now, see Annex G.

Regulated work with children

4. Assuming the presence of individuals aged under 18 years are not exceptional, all paid workers and volunteers (a) would require to be scheme members in respect of regulated work with children. Clients receiving care only (c) would not require to be scheme members because they are not working with children, even if children are present in the hostel.

5. As for the 17-year-old individual (b) who is working with other clients, this individual would only need to be a scheme member if his activities came within the terms of schedule 2. If the children were friends of the individual (and the work was unpaid) or in the presence of their parents, the individual should not be a scheme member. Of greatest relevance would be paragraphs 2 to 5. In particular, if the individual was always supervised by a scheme member, the individual would not need to join the scheme himself.
6. In the event that the individual was given responsibilities which brought him within the scope of schedule 2, the usual procedures would be followed as with any other scheme member. Unless the individual had done something so serious in the past which resulted in him being listed, the Cyrenians would receive vetting information on a scheme record and it would be for them to decide, on the basis of that information and their personal knowledge of the individual, what duties were appropriate. The Executive anticipates that, in such situations, the Cyrenians and other similar organisations would be well equipped to interpret the individual's vetting information without undue prejudice.

Scottish Executive Education Department
11 Dec 2006
ANNEX F

FURTHER INFORMATION ON APPEALS AGAINST VETTING INFORMATION

1. The Committee raised 2 questions about non-conviction information on disclosures:

   (a.) what system is in place to guard against malicious or false allegations; and
   (b.) what measures are in place to appeal against non-conviction information.

(a) Assessment, review and disclosure of non-conviction information

2. The disclosure of non-conviction information has to be viewed within the context of how the police handle, retain and review information. The police use a model known as the 5x5x5 matrix to determine whether information should be retained.

Assessment: the 5x5x5 matrix

3. The 5x5x5 matrix is a national system of assessment applied to raw information prior to it being entered on police intelligence systems. It is assessed in three key areas–

   (a.) Reliability (evaluation of the source)
   (b.) Intelligence evaluation (how the source knows information)
   (c.) Handling code (any restrictions on further sharing)

<table>
<thead>
<tr>
<th>Reliability</th>
<th>A Always Reliable</th>
<th>B Mostly Reliable</th>
<th>C Sometimes Reliable</th>
<th>D Unreliable</th>
<th>E Untested Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intelligence Evaluation</td>
<td>1 Known to be true without reservation</td>
<td>2 Known personally to the source but not the person reporting</td>
<td>3 Not known personally to the source but corroborated</td>
<td>4 Cannot be judged</td>
<td>5 Suspected to be false</td>
</tr>
<tr>
<td>Handling Code</td>
<td>1 - Default Permits sharing with the UK Police and other Law enforcement agencies</td>
<td>2 Permits sharing to UK non-prosecuting parties</td>
<td>3 Permits dissemination to non-EU foreign law enforcement agencies</td>
<td>4 Permits dissemination within originating Force/Agency</td>
<td>5 Permits dissemination but receiving agency to observe conditions</td>
</tr>
</tbody>
</table>
4. The assessment is applied prior to information being entered into intelligence systems and no intelligence is stored or shared without a 5x5x5 grading being attached to it.

Review: weeding

5. ACPOS has published guidance on the review and weeding of records on the Scottish Intelligence Database. This can be found at:


6. Information held by the police is subject to regular review by Intelligence Officers. Reviews are made on a case by case basis using the 5x5x5 model and the ACPOS guidance. When reviewing information, the police consider the nature of the alleged crime, the character of the subject and the reliability of the intelligence itself.

Disclosure: the relevance test

7. Before intelligence is released to Disclosure Scotland, the police consider its relevance to the post to which the application relates. Only relevant intelligence should enter the current disclosure regime. This relevance test will be maintained in the new scheme although it will apply to the children's and/or protected adults' workforce as a whole, as opposed to the particular post in question.

(b) Appeals against vetting information

8. Turning to the Committee's second point, the Bill provides (section 48) that Ministers must correct inaccurate scheme records. An applicant can use this provision to appeal to Ministers about the inclusion of non-conviction information. If that happens, Ministers must ask a Chief Constable to review the relevance of that information and must issue a new scheme record, if the appeal to the Chief Constable is successful.

9. The information being disclosed by the police is held primarily for the purposes of preventing or detecting crime. As this relates to operational matters, it would not be appropriate for Ministers to be able to require a Chief Constable to remove such information from their systems. The police must comply with the Data Protection Act 1998 and an individual can ask the Information Commissioner to review information held by the police which they believe to be inaccurate.

10. In future, when the police pass non-conviction information to the Central Barring Unit a determination process begins. Ministers will consider if the information is sufficient to list the individual and as part of the determination process, the individual will have the opportunity to challenge the accuracy and relevance of that information.
11. Since Disclosure Scotland began in 2002, more than 84,000 enhanced disclosures out of 1.1 million have included non-conviction information. In 264 cases, individuals disputed the non-conviction information and 124 of the disputes have been upheld.

12. Scheme records will show convictions where the convictions are not sufficient to bar an individual. This information is disclosed to employers now. Some convictions, for example driving offences, would not be sufficient to bar an individual from the workforce but could be relevant if the person applied for a post driving vulnerable groups. It is for employers to determine the relevance of the information as part of their overall recruitment practices. The Executive will consider whether it would be helpful to provide employers with guidance on the issues to be taken into account when making these decisions.

Scottish Executive Justice Department
11 Dec 2006
THE DEFINITION OF "PROTECTED ADULT"

Introduction

1. There are two interlinked strands to deciding whether an individual should become a scheme member in respect of regulated work with adults. The first is to meet the service-based criteria described in section 94 which defines a protected adult. The second is to satisfy schedule 3 requirements which distinguish the types of normal duties and contact that constitutes regulated work with adults.

2. The intention is to tread the fine line between protecting adults whose level and type of contact with those who provide care and support services to them provides greater opportunity for harm but not to go so far as to bring all social exchanges in a work context within the scheme.

3. The consequence is that the coverage in terms of who should be a scheme member is sufficiently broad, but proportionate. It also means that organisations need to make reasonable judgements on whom they need to check as part of good employment practice and internal quality assurance.

4. The definition is necessarily more complicated than the definition of regulated work with children since a subset of all adults need to be identified who require protection whereas all children are regarded as inherently vulnerable. However, the Executive does not consider it to be any more complicated than the current assessment for enhanced disclosure set out at regulation 10 of The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96).

5. The present system requires employers to undertake a 2-step assessment in order to be able to ask for an enhanced disclosure check. Employers need to be satisfied that: (1) that the employee will have contact with adults at risk in the course of their duties; and (2) that the adult has a specified condition and a disability, and is in receipt of health or social care services. The scheme replicates this process, albeit with a more straightforward second element (i.e. the adult only needs to be in receipt of care services).

6. A range of education and training materials will be produced as part of the implementation programme to highlight any changes from current arrangements. This will ensure that practitioners and managers of services understand the scheme and their roles within it.

Regulated work with adults (schedule 3)

7. It is not possible sensibly and consistently to define specific posts as constituting regulated work because the workplace is dynamic and peoples' roles, and the descriptions of their roles, are constantly changing. But the Bill takes account of the increasing trend in adult care towards person-centred support. This means that the protected adult is actively involved in
designing the service to meet their specific needs and in contributing to who is employed to do this. Personal assistants are the most obvious one-to-one example of this way of working.

8. Efforts have also been made to make the adult approach as consistent as it can be with the approach for those working with children. Although some have commented that the "normal duties" formulation of POCSA can be difficult to interpret, no obviously better scheme has been proposed. Therefore, Ministers took the view that the best approach was to stick to a formulation with which the children's sector are already familiar and which has been tried and tested in that context.

9. This is why schedule 3 sets out the type of work with protected adults which is covered and reflects the structure of schedule 2 for work with children. Schedule 3 has the effect of tightening up the "have contact with" test in regulation 10(2) of the 2006 Regulations.

**Definition of protected adult (section 94)**

10. The definition of protected adult (section 94) is a service-based definition which includes those who are not normally vulnerable or at risk of abuse but who might be as a result of receiving certain care and support. Therefore, a protected adult is an adult who is provided with one of a number of prescribed community or healthcare services. The definition of services is similar to that at regulation 10(6) of the 2006 Regulations.

**Changes to scope**

11. In reality, the Bill doesn't significantly change the scope of disclosure for working with vulnerable groups. What it does do, by creating a list of individuals disqualified from working with protected adults, is move disclosure checks for working with "protected adults" from being good practice under current arrangements to being a requirement to be sure of avoiding employing an individual included on the newly-created adults' list.

**Stakeholder concerns**

12. Some stakeholders have expressed concerns that the definition of protected adults is service-based: it may be difficult to determine which workers and volunteers should be scheme members. The Women's Royal Voluntary Service are a good case to consider because they provide some services under contract to local authorities and health boards and work across the UK.

13. In Scotland, WRVS's work will divide into three categories:
   - work with protected adults by contract to local authorities or health boards;
   - work with protected adults outside of contract; and
   - work with adults who are not protected adults.
The first category presents no difficulties since these adults will be protected adults by virtue of the services the WRVS are contracted to provide. Work which is undertaken by WRVS staff in care homes and residential establishments also comes within the scope of the scheme by virtue of the fact that their normal duties include work undertaken in such establishments. At issue is distinguishing between the second and third categories.

14. WRVS would prefer that, by virtue of receiving services from them, an adult was a "protected adult" (requiring a change to section 94). Furthermore, they would prefer that all their activity was covered by schedule 3 to ensure that all work done by WRVS staff was considered regulated work. This would have the effect that, without too much further consideration, all WRVS staff would be eligible to become scheme members.

15. WRVS have been advised that the definition of vulnerable adult in the Safeguarding Vulnerable Groups Act 2006, with its reference to care services and vulnerability, brings all its staff in England and Wales into the scope of the Whitehall scheme. However, this does not obviate the need for WRVS to make an assessment of each individual's role in England and Wales and whether it falls within the scope of regulated activity, as defined by Whitehall. Therefore, any such changes made to the Scottish Bill may bring some consistency for the WRVS across the UK, but would still require them to assess the role of each staff member.

16. But, as stated earlier, an important policy aim is that the scope of the definition of "protected adult" is proportionate. This means organisations which provide a range of services will need to consider actively whether the work of their volunteers constitutes regulated work prior to applying for scheme membership rather than assume that any volunteer automatically comes within the scope of the scheme.

**Interface with Adult Support and Protection Bill**

17. Some stakeholders have suggested that the definition of "protected adult" should match the Adult Support and Protection Bill definition of "adult at risk", which is similar to "vulnerable adult".

18. The two Bills serve different purposes and the differences between the definition of "protected adult" in this Bill and "adult at risk" in the ASP Bill reflect those differences. The ASP Bill is significantly broader in scope to afford protection for those adults considered more at risk of harm arising from a variety of circumstances and settings, including abuse from family members. It allows for investigation of harm, and for a range of interventions to follow where appropriate. It focuses on the adult victim and taking measures to protect that individual. This Bill is, on the other hand, focused on keeping unsuitable individuals (including those who have committed harm/abuse) out of so-called regulated work with adults.
Scottish Executive Health Department
11 Dec 2006
SHORT SCHEME RECORDS

Current situation

1. Under the current system, there is no equivalent to a short scheme record disclosure.

2. Enhanced disclosure is the nearest thing to a scheme record disclosure. But enhanced disclosure certificates are not portable because they are only valid on the date of issue and for the post for which they were issued. Hence the current frustrations around repeat disclosures. An enhanced disclosure certificate is used once for the one purpose for which it was requested and, in many cases, individuals and organisations destroy them after their immediate purpose has been served.

3. The new scheme record disclosures, on the other hand, should be regarded rather more like membership certificates which should be kept in a safe place, like a passport. They have an ongoing relevance to the individual, original employer and subsequent employers. Since they have an ongoing life (expected to be 10 years), the issue arises as to whether there is a simple way of checking that they are still valid. That is the purpose of short scheme record disclosure.

Provision in the Bill for short scheme records

4. The purpose of the short scheme record disclosure is to provide a convenient way for individuals to validate a scheme record. It is intended that a short scheme record disclosure will be available online and at a reduced fee. This means that an individual who is already a scheme member should be able to validate their scheme record in a matter of minutes with the new employer or voluntary organisation with whom they are taking up regulated work.

5. A short scheme record is not a freestanding document since it does not contain vetting information. It needs to be used in conjunction with the last scheme record disclosure.

6. Section 50 of the Bill makes provision for disclosure of short scheme records and paragraph 80 of the policy memorandum describes what they contain. The short scheme record disclosure does not reveal any vetting information but simply indicates whether there is any new information since the last scheme record disclosure and when that information was included. The reason vetting information itself is not revealed on a short scheme record is to enable it to be available online without prohibitively expensive security measures.

7. The employer/voluntary organisation will ask to see the individual’s scheme record and will check the date of issue against the date of last disclosure of a scheme record revealed on the short scheme record. This means they
will have access to all vetting information prior to the date of last scheme record disclosure and know that there is no new information.

8. Where there is new information, the individual will normally know that this is the case prior to making any application for disclosure because, for example, they have been stopped by the police or appeared in court or been subject to disciplinary proceedings by their professional regulatory body. In such circumstances, the individual would be expected to advise the employer/voluntary organisation that this was the case so that a new scheme record could be obtained (saving the intermediate step of obtaining a short scheme record).

Possible developments

9. Some commentators have suggested that short scheme record disclosures should contain vetting information. But this is a scheme record disclosure.

10. It must be emphasised that anybody entitled to obtain a short scheme record disclosure is entitled to obtain a scheme record disclosure. Therefore, short scheme record disclosures are purely an additional facility and any individual or organisation requiring a new scheme record disclosure can obtain one at any time for legitimate purposes.

11. An issue for implementation is to ensure that scheme record disclosure certificates contain sufficient security measures to make forgery very difficult. Organisations must be confident in accepting a scheme record disclosure certificate which may be a few years old in conjunction with a short scheme record disclosure online. Enhanced disclosure certificates at present contain a number of security measures which make them difficult to forge and scheme record disclosure certificates would certainly be at least as secure.

12. Some organisations have suggested that short scheme record disclosures should contain more information, for example the fact that there is information on the scheme record disclosure certificate. This would make it easy to identify a blank scheme record disclosure certificate as a forgery. Going further, the short scheme record disclosure could identify the number of entries on the scheme record disclosure. The Executive is considering whether such provision would be advantageous. The real issue is, however, making it as difficult as possible to forge a scheme record disclosure. However much meta-information is revealed through a short scheme record disclosure, the whole foundation of short scheme record disclosure is that the paper scheme record disclosure certificate can be trusted.

13. An amendment more in line with the principle of short scheme record disclosure would be to allow for that disclosure to indicate that the scheme record disclosure was out of date in a positive sense: i.e. a conviction had been quashed or information previously included had been weeded from the system. The Executive are considering the degree to which such
provision would make a material difference to the operation of the scheme and provide any significant benefit to individuals or organisations.

Scottish Executive Education Department
11 Dec 2006
VETTING INFORMATION

Vetting information and barred status

1. There are some fundamental points of relevance:
   - The Scottish Bill and the Safeguarding Vulnerable Groups Act 2006, for England, Wales and Northern Ireland, each provide for two lists, one for working with children and one for working with vulnerable/protected adults.
   - An individual who is listed in Scotland or any other part of the UK will be barred in Scotland and across the UK in respect of that type of regulated work. So an individual included on the children’s list only by the Independent Barring Board in England and Wales is barred from regulated work with children in Scotland but not barred from regulated work with adults.

2. Listing will be shared between jurisdictions as follows:
   - when an individual applies to do regulated work in Scotland, lists in other jurisdictions will be checked to ensure that the individual is not barred from regulated work; and
   - when an individual is listed in one jurisdiction, the fact of listing will be notified to other jurisdictions and to all relevant employers.

3. As explained at paragraph 35 and 130 of the policy memorandum accompanying the Bill, an individual who is barred from one or both types of regulated work cannot be a scheme member in respect of the types of regulated work from which he is barred. Since scheme disclosures are only available to scheme members, a scheme disclosure will never reveal that an individual is barred because, if they were, they could not apply for a disclosure in the first place. Furthermore, being barred from regulated work is not “vetting information” for the purposes of section 46 since a barred individual cannot be a scheme member.

4. Being barred from one type of regulated work will not be revealed in respect of disclosures for the other type of regulated work. To do so, would be to create a de facto single list. The reasons for having two lists are discussed at paragraph 118 to 122 of the policy memorandum.

Written briefing on vetting information

5. Initial and continuous vetting of scheme members will involve the collation of not only conviction information from the police but also any relevant non-conviction information. Non-conviction information includes relevant police intelligence and inclusion on the Sex Offenders Register, inclusion of certain civil orders (defined by regulations) and relevant information held by local authorities and regulatory bodies through regulations.
6. Much of this is in keeping with existing practice in relation to the information currently included on an enhanced disclosure certificate. There are two primary differences:
   - The scheme will collect information from regulatory bodies and local authorities.
   - The relevance test applied by chief constables to ascertain whether information should be disclosed will change. Currently, a decision is made on whether the information is relevant to the specific post under consideration. In future, there will only be two tests: relevant for the children's workforce or relevant for the protected adults workforce.

7. Identical information will be disclosed on a scheme record disclosure to the individual and the employer. Additionally, any relevant information will be considered by the Central Barring Unit which will determine whether the individual should be considered for listing.

8. Importantly, all a personal employer will receive is confirmation that the individual is a scheme member (or that they are under consideration for listing). Personal employers will not have access to vetting information.

9. Currently, over 90% of enhanced disclosures don't reveal any information at all. Of those that do, a large proportion will not contain information relevant to unsuitability to work with vulnerable groups. However, the vetting information will still be of relevance to employers. For example, driving convictions are not relevant to whether an individual is unsuitable to work with children but are relevant to any consideration as to whether the individual is suitable to drive a school bus.

10. Where there have been no convictions, non-conviction information can be very important in identifying an unsuitable individual (e.g. as with Ian Huntley). It can be particularly difficult to secure a conviction for offences against vulnerable people and a series of pieces of non-conviction information can point to a pattern of behaviour, potentially indicating unsuitability. Of course, the police rigorously assess information for reliability and relevance before disclosing it, see Annex F.

11. Some commentators have said that the scheme is disproportionate given how few unsuitable individuals there are. But the scheme is not just about identifying "the needle in a haystack" (the few unsuitable individuals from the vast majority who are not unsuitable). It is also about streamlining disclosure procedures for all the other vetting information (e.g. driving convictions) which is also useful for employers when they make decisions about suitability.

Scottish Executive Education Department
11 Dec 2006
CHILDREN AGED 16 AND 17 YEARS OLD

Definition of "child" in legislation generally

1. Different pieces of legislation draw the line arcing the transition from childhood to adulthood at different ages. This is entirely understandable because it reflects the gradual morphosis to adulthood. There is no fundamental contradiction in having different ages for legal culpability, consensual sex, driving, marriage, sale and public consumption of alcohol, smoking etc.

2. Obviously, for any particular piece of legislation, the transition has to be well-defined. The age of transition has to be chosen not only on the basis of the development of the "average" individual but also on the basis of the effect on atypical individuals. In the case of child protection, it is necessary to consider not only what protection is necessary for the average 16 or 17 year old but also for the most vulnerable 16 or 17 year old.

Definition of "child" in this Bill

3. In the Bill as introduced, children are defined as individuals under the age of 18 and, for the purposes of the definition of "protected adult", an adult is an individual aged 16 or over. This means that an individual aged 16 or 17 will be a child but could also be a "protected adult", if they also receive the care services set out at section 94.

Overlap between "child" and "protected adult"

4. The overlap is deliberate but is only likely to be significant in a limited range of circumstances since most protected adults will be older individuals. Teachers working in sixth forms of schools specialising in teaching individuals with severe additional support needs, for example, may be working with individuals who are both children and protected adults (because they are over 16 and in receipt of care services).

5. Although some commentators have raised the overlap as an issue, it is hard to see what difficulty this creates. It means that an employee working with individuals falling into both categories may need to be a member of the scheme in respect of both types of regulated work. It is intended that this can be achieved through a single application to join the scheme: the only additional effort will be to tick both boxes, for regulated work with children and regulated work with adults. It is not proposed to charge a higher fee for applications to join both workforces.

Changing the definition of "child"

6. Ministers have indicated that they may consider a reduction in the age of majority from 18 to 16 years of age. This would be a straightforward amendment to make at Stage 2 if it was considered to be merited.
Ministers will wish to take account of the views of the Education Committee expressed in the Stage 1 report and the views of stakeholders before making any firm decision.

7. Ministers would need to be satisfied that the benefits to those groups working with young people in taking them outside of the definition of regulated work with children did not raise significantly the risk of harm to young people. Ministers would also need to take account of any adverse affect through having a lower age of majority than that set in the Safeguarding Vulnerable Groups Act 2006 for England and Wales and Northern Ireland. For the reasons given above, Ministers do not consider the overlap issue alone to merit any change in the age of majority in this Bill.

8. Finally, Ministers would need to take account of the fact that referrals to the DWCL under POCSA have included a few cases where the harm or risk of harm has been to a child who is 16 or 17 years old. In most of these cases, the vulnerability of the child has been noted. Ministers would need to consider the implications of having individuals working with teenagers (say in a youth justice project) where the individual is a scheme member in relation to the under-16s but not for the 16 and 17 year olds. This would apply in a whole host of settings, including schools.

Scottish Executive Education Department
11 Dec 2006
ARRANGEMENTS FOR CONSULTING ON SECONDARY LEGISLATION

1. The fine detail of the scheme, and the way it will be implemented, have been left to secondary legislation. This is right and proper and provides the necessary flexibility to respond to future developments.

2. Many of the legitimate concerns of stakeholders are actually issues for secondary legislation and implementation, for example the level of fees and the way in which the sectors are brought onto the scheme (retrospective checking). Almost all the cost issues for the voluntary sector, for example, are related to these two issues.

3. Ministers have committed to undertake a 3 month public consultation on all significant statutory instruments before laying them before the Scottish Parliament, in line with good practice. In particular, there will be extensive consultation on:
   - the draft regulations for fees;
   - any instruments which set out how the existing workforce is to be brought onto the scheme (retrospective checking); and
   - thresholds for barring and the use of conviction and non-conviction information.

Ministers will include the Education Committee in all such consultation exercises, highlighting any draft instruments which are published for consultation.

4. Ministers want to encourage the voluntary sector in the valuable work that they do in communities across Scotland and will be seeking to involve them at every stage of the development of the secondary legislation and plans for implementation to ensure that what is proposed works for them.

Fees

5. Fees for scheme membership and disclosures will be set by regulations made under section 67(1). This section provides a lot of flexibility for how fees may be charged. For example, instead of a fee per disclosure, an annual subscription could be charged to organisations. The way in which fees are charged is of principal concern to paid employees and paid workers in the voluntary sector, rather than volunteers for voluntary organisations who receive free checks. Of particular note, the financial consequences of the vetting and barring scheme established by the Bill are expected to be broadly cost neutral when compared with the existing multiple disclosure arrangements.

Retrospective checking

6. The way in which existing employees and volunteers are brought into the scheme is really a question about the commencement of section 34(1)(b) which makes it an offence to fail to remove a barred individual from regulated work. The policy intention is to commence this provision in a
phased way in order to make the transition manageable for both employers and the vetting and barring agency. It is important that the transition happens in a way which builds confidence in the reliability and improved efficiency of the scheme. Exactly how this phasing takes place, and over what period, will be the subject of extensive consultation with stakeholders.

Thresholds for listing

7. The thresholds for listing determine the boundary of “unsuitability” and what conduct will result in inclusion on the children’s or adults’ list. The thresholds will need to take account of the views of Scottish stakeholders and, because of the need for compatibility with the scheme for England, Wales and Northern Ireland, indirectly the views of stakeholders consulted by Whitehall.

8. The Bill sets out the basic criteria for the Scottish Ministers when listing an individual at sections 14, 15 and 16. Section 14 provides for automatic listing when various relevant offences (detailed in schedule 1) are committed and it also enables other criteria for automatic inclusion on either or both lists to be specified in an order under section 14(3). Such orders will be subject to maximum parliamentary scrutiny and will be consulted upon extensively.

9. Regulations made under section 39(1)(c) will set out the determination procedures to be operated by the Central Barring Unit when an individual is under consideration for listing under section 15 and 16. These regulations will serve a similar purpose to those made for POCSA4. As now, some minor matters will be left to administrative procedure rather than set out in the regulations. The consultation will encompass all these aspects.

Scottish Executive Education Department
11 Dec 2006

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ANNEX L
CODE OF PRACTICE ON INFORMATION SHARING: CONSULTATION AND TIMESCALE

Stakeholder Engagement

1. In relation to Part 3 of the Bill (Sharing of Child Protection Information), Scottish Executive officials have, since April 2006, attended and held a number of stakeholder engagement events. The purposes of this has been to (a) inform the development of the Part 3 provisions, (b) communicate and discuss the content of the provisions following Introduction, and (c) allow an opportunity for stakeholders to provide initial feedback on a proposed draft structure for the code of practice:

18 April: The National Data Sharing Forum
20 April: Meeting with Child Protection Committee Chairs

June: Stakeholder engagement events


September/November: Stakeholder engagement events

Attendees included: ACPOS, British Association for Adoption & Fostering, Children First, Children in Scotland, Church of Scotland, General Medical Council, Information Commissioner’s Office, Lothian and Borders Police, Quarriers, Royal College of General Practitioners, Scotland’s Commissioner for Children and Young People, Scottish Council of Independent Schools, Scottish Council for Voluntary Organisations, Scottish Parent Teacher Council, Scottish Social Services Council, Scottish Women’s Aid, Social Work Inspection Agency, South Lanarkshire Council, Stirling Council, UNISON.

4 October: Meeting with Assistant Commissioner, Information Commissioner’s Office
4 October: Meeting with Scotland’s Commissioner for Children and Young People
5 October: Joint meeting of the Cross-Party Groups on Sexual Health and Children and Young People
9 October: National Voluntary Children’s Forum, St Andrew’s House (chaired by Robert Brown, Deputy Minister for Education and Young People)
7 November: Voluntary Sector Bichard Event
Short Life Working Group

2. A short life working group has been established to advise the Scottish Executive on the drafting of the Code for the sharing of child protection information. The following organisations are represented:

   Association of Chief Police Officers in Scotland
   Association of Directors of Education
   Association of Directors of Social Work
   British Medical Association
   Children 1st
   Children in Scotland
   Convention of Scottish Local Authorities
   General Medical Council
   General Teaching Council for Scotland
   Information Commissioner’s Office
   Mental Welfare Commission for Scotland
   Royal College of General Practitioners
   Royal College of Nursing
   Scotland’s Commissioner for Children and Young People
   Scottish Child Law Centre
   Scottish Council for Voluntary Organisations
   Scottish Executive officials (Education Department, Finance and Central Services Department, Health Department, Justice Department, Office of the Solicitor to the Scottish Executive)
   Scottish Social Services Council
   Scottish Youth Parliament

Timescale for preparation

3. A consultant has been commissioned to begin work on developing the code of practice.

4. The working group first met on 17 November, where a draft structure for the code of practice was discussed. A further draft will be prepared for discussion at the next meeting in early January. Further stakeholder engagement will continue to be undertaken, including with children and young people.

5. A draft code of practice will be available for the Education Committee by 1 February 2007, in good time for Stage 2 discussion of Part 3.

6. Further engagement with stakeholders will continue thereafter, and a public consultation exercise will be held in summer 2007, prior to laying the final version before the Scottish Parliament (as required by the promised stage 2 amendment to section 76).

Draft framework for the code of practice on information sharing
7. The draft framework is included at Annex M. It is currently being revised in the light of comments from the Short Life Working Group. It has been developed with reference to a number of sources. These include:

- recent papers prepared within the Scottish Executive in relation to information sharing
- *Getting it Right for Every Child: guidance for the Highland Pathfinder*
- recent consultations on information sharing
- cross government guidance on sharing information on children and young people issued in England by the Department for Education and Skills in November 2005
- existing professional codes and guidance.

**Scottish Executive Education Department**

11 Dec 2006
ANNEX M

DRAFT FRAMEWORK FOR THE CODE OF PRACTICE ON INFORMATION SHARING

Introduction

~ Discussion on the term *child protection*
~ Who the guidance is for
  ▪ details of the professional and non-professional groups
~ What it covers
~ Who or what has informed it
~ Status of the guidance

Children's Rights

~ UNCRC
~ Children's Charter

Key principle of information sharing

~ Underpinning principles
~ Summary of policy position
~ Summary of new duties and new powers
  ▪ summary of the legal powers under the Children's Act and development of the Bichard provisions and Code of Practice
  ▪ information on what the bill allows and/or demands
  ▪ discussion about sanctions or the absence of them
~ Definitions

Issues about information sharing

~ Understanding the legal framework
~ Consent, confidentiality and disclosure
~ Role of professional bodies and codes of practice
~ Different priorities and values across professional groupings
  ▪ situations where concerns are less clear
  ▪ making professional judgements in absence of information
  ▪ understanding the wider picture of the child’s life and the role adults play in the child’s life
  ▪ consequences of information sharing
~ Specific issues related to sexual health

Consent, confidentiality and disclosure

~ Responsibility to share information
  ▪ individual responsibility
  ▪ line management responsibility
~ Power to share information
~ Duty of confidence
~ Obtaining consent
Disclosure by consent
~ Disclosing without consent

Role of professional bodies and links with other codes of practice

~ Implications for health professionals
~ Implications for the police
~ Implications for educational professionals
~ Implications for social work
~ Implications for housing
~ Implications for voluntary organisations
~ Implications for the Scottish and UK regulatory bodies who register and regulate these professional workforces

Process of information sharing

~ Asking for and providing information
~ Checklist for practitioners and managers of key questions to consider
  ▪ Is the request necessary, justified and appropriate?
  ▪ What is the purpose?
  ▪ What information is being shared?
  ▪ Who is the information about?
  ▪ What happens after information is shared?
  ▪ Feedback to colleagues
  ▪ Recording of decision-making process
~ Sharing information across professional groupings
  ▪ Situations where concerns are less clear
  ▪ Making professional judgements in absence of information
  ▪ Understanding the wider picture of the child’s life and the role adults play in the child’s life including people convicted of offences against children
~ Child Protection and concerns about handling information about specific categories of children
  ▪ Asylum seekers and refugees
  ▪ Children from drug-using families
  ▪ Trafficked children & young runaways & children exploited by prostitution?
  ▪ Young teenagers (e.g. to pick up explicitly on handling of sexual health info disclosed in confidence?)

Involving children, young people and families

~ Successful features
~ Gaining consent
~ Resistance and helpful approaches
~ Non-verbal communication
~ Consequences of sharing information
~ Toolkits to support information sharing

The legal framework (Annex 1)
The Children (Scotland) Act 1995
Data Protection Act 1998
Human Rights Act 1998
Local Government in Scotland Act 2003
Mental Health (Care and Treatment) Act 2003
Education (Additional Support for Learning) Act 2004
National Health Service Reform (Scotland) Act 2004
Primary Medical Services (Scotland) Act 2004
Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005
Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006

Glossary of Terms (Annex 2)

Implementation and Governance Framework (Annex 3)

Multi-agency training nationally, regionally and locally specifically on legislation and Code of Practice
Information about the legislation and code within pre- and post-qualifying training, induction course within organisations and training on continued professional development
External governance through HMIE multi-agency inspections; local child protection committees
Internal governance through audit and quality assurance procedures
Involving children, families and practitioners in developing local governance frameworks

Scottish Executive Education Department
11 Dec 2006
UPDATE ON SHORT LIFE WORKING GROUP ON DISCLOSURE\textsuperscript{5} OF UNDERAGE SEXUAL ACTIVITY

1. Balancing a child’s expectation of confidentiality and privacy against the need to disclose information about that child where concerns about their safety are raised is nowhere more difficult than in the area of sexual health services for young teenagers. In addition to this issue being tackled as a specific chapter within the statutory \textit{Code of Practice on Information Sharing} which is currently being drafted, officials in the Child Protection Reform Programme team have also been running for the last year a \textit{Short Life Working Group (SLWG) on Disclosure of Underage Sexual Activity}, to consider how to address Recommendations 12 and 13 of the Bichard Inquiry Report.

2. That report recommends that social services should report every instance of underage sex other than in exceptional circumstances (Recommendation 12) and national guidance should be produced drawing on a local protocol and criteria already in use, at the point when Sir Michael Bichard was drafting his report, by Sheffield Social Services (Recommendation 13). Ministers charged the SLWG with realising Recommendations 12 and 13 in a way appropriate to Scottish interests and policies, and in light of the Executive’s sexual health strategy, \textit{Respect & Responsibility}.

3. The SLWG has been assessing existing information-sharing practices between agencies, and is considering procedures for handling disclosures of inappropriate sexual activity. In coming months, the SLWG will produce a report for Ministers, setting out recommendations on:
   - circumstances that might be evaluated as giving rise to child protection concerns which should be shared;
   - defining the responsibilities of the different agencies involved; and
   - setting out how to ensure that young people’s confidence in approaching services for (confidential) advice is respected.

These recommendations will be consistent with the emerging detailed terms of the \textit{Code of Practice on Information Sharing}.

\textbf{Scottish Executive Education Department}

11 Dec 2006

\textsuperscript{5} N.B. "disclosure" in this context has its common meaning of \textit{revealing something} and does not refer to disclosure checks.
The Committee reports to the Education Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a Bill must consider and report on the Bill's financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the financial memorandum (FM) of the Protection of Vulnerable Groups (Scotland) Bill, for which the Education Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 3 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by it, then taking oral evidence from the Scottish Council for Voluntary Organisations (SCVO) and from the Executive Bill Team. The Committee took evidence from both groups on 7 November 2006.

4. The Committee received submissions from SCVO, COSLA and the Scottish Commission for the Regulation of Care (the Care Commission). All of this evidence is set out in the Annexe to this report.

5. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

6. The Bill follows on from the Protection of Children (Scotland) Act 2003 and from the Bichard Inquiry Report 2004. It creates a vetting and barring scheme covering those working with children and protected adults and a list of individuals unsuitable for working with these groups will be maintained. The vetting functions will be carried out by Disclosure Scotland and the barring functions will be carried out by a Central Barring Unit. This Central Barring Unit
will be combined with the relevant part of Disclosure Scotland into a new Executive Agency.

7. The total start-up costs associated with the Bill are estimated to be £5.65m with total net ongoing costs in years 1 - 3 of between £10.3m to £12m. These costs are broken down in the FM as follows:

<table>
<thead>
<tr>
<th>TABLE 1</th>
<th>NET ONGOING COSTS</th>
<th>COST £,000</th>
<th>Over period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Administration</td>
<td>£5.5m - £8.3m</td>
<td>£0m</td>
<td>Years 4+</td>
</tr>
<tr>
<td>VBS. Cost of subsidising free checks</td>
<td>£5.5m - £8.3m</td>
<td>£0.0m</td>
<td>Years 4+</td>
</tr>
<tr>
<td>Local Authority</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other bodies, individuals and businesses</td>
<td>£2.0m to £4.7m</td>
<td>(£1m)</td>
<td>Years 0-3</td>
</tr>
<tr>
<td>Voluntary sector organisations</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other employers</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Regulatory Bodies</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Individuals</td>
<td>£2.0m to £4.7m</td>
<td>(£1m)</td>
<td>Years 0-3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>£10.2m to £12.0m</td>
<td>(£1m)</td>
<td>Years 0-3</td>
</tr>
</tbody>
</table>

**Table 1.** Start-up costs in 2006/07 prices. VBS means vetting and barring scheme. IS means information sharing provisions.
Table 2. Ongoing costs in 2006/07 prices. VBS means vetting and barring scheme. The running cost of the Central Barring Unit will be met through revenue from fees. The cost of subsidising free checks only materialises if they are not cross-subsidised. Note that the gross ongoing cost to employers and individuals is greater during the first three years, but this is offset by later reductions. The net cost over 10 years is expected to be broadly neutral (with a lower cost per employee, offset by the larger number of employees covered by the scheme). Current turnover of Disclosure Scotland is around £10m per annum. The total cost of continuing Disclosure Scotland's activity and all new vetting and barring activity is expected to be around £100m over the 10 year period.¹

8. The level of fees are to be set at a level whereby the scheme can be self-financing. Three possible fee structures are detailed in the FM but the final structure has not yet been agreed. It is assumed that fees will cover the total cost of operating the scheme but will be set at a level that most accurately reflects the true cost of providing a check. The details of the level of fees for varying levels of checks and the overall fee structure will be provided within subordinate legislation.

Summary of evidence

Current situation

9. Wider access to criminal record checks was introduced through Part V of the Police Act 1997 and non-conviction information considered by a chief constable to be relevant to a position involving access to children can be included in the highest level certificates ("enhanced disclosure") under Part V. The Protection of Children (Scotland) Act 2003 established a list onto which people would be placed who are deemed unsuitable to work with children and details of a person's inclusion on the list must be included in standard and enhanced disclosures where the position involved is a childcare position.

10. People can be referred to the list, firstly, if they have been dismissed, transferred from or would have been dismissed from a position with access to children because they have harmed a child or put a child at risk of harm. Secondly, they can be referred to the list if they are convicted of an offence against a child.

11. This Bill establishes a separate list of individuals unsuitable to work with protected adults, replaces enhanced criminal record certificates with new disclosure records for those working with vulnerable groups and establishes a vetting and barring scheme which would apply to those working not only with children but also "protected adults".

12. When someone applies for scheme membership, they will go through a full disclosure check which will include information on spent and unspent convictions, non-conviction information that a Chief Officer or Chief Constable deems relevant and information on any referral made by an organisation. A person's scheme record will contain a statement of barred status and vetting information.

¹Protection of Vulnerable Groups (Scotland) Bill: Financial Memorandum
13. Once a person is in scheme membership, then their membership record will be updated when their circumstances change or when any new conviction or non-conviction information comes to light.

14. Currently, a new disclosure check is required each time a person moves from one job to another (whether paid or unpaid). Under this Bill, once a person becomes a scheme member, then they will only require to go through a nominal check when moving jobs. Scheme membership would expire after a set period of time (the period has not been finalised yet, but it is assumed to be 10 years). Scheme membership will be for an individual person and not for individual posts.

Number of people affected
15. The SCVO raised serious concerns over the financial implications of the Bill. They estimate that the Bill could cost the voluntary sector £3m for accessing disclosure checks; £1m for training and £20m in administrative costs. In evidence, SCVO explained that they currently access around 7,500 paid disclosure checks, but that under this Bill, all staff would require to be brought into the system which would result in 106,000 paid checks and this is the basis upon which SCVO has estimated £3m.

16. In addition to the 106,000 staff who work for voluntary organisations, the SCVO also assumes that 850,000 volunteers would require to be checked. This would mean that 956,000 people in the voluntary sector alone would come under the auspices of this Bill. If staff employed by local authorities etc are added to this figure, then this represents a huge number of people. The Committee therefore attempted to seek clarification from Executive officials as to how many people are currently subject to checks and how many would be expected to be scheme members under this Bill.

17. Paragraph 200 of the FM states that the new vetting and barring scheme will cover up to 1 million individuals who come into contact with children and/or protected adults through work, either in paid employment or as volunteers. Paragraph 201 (i) then states that the proportion of volunteers whose posts require them to be checked is assumed to be 50%, thereby implying that the figure of 1 million incorporates only 50% of volunteers.

18. In evidence, officials stated that under the current disclosure regime there are around 450,000 checks\(^2\). In response to the SCVO’s assumption that 850,000 volunteers would be included in the new scheme, the Executive reiterated that they assumed that 50% of volunteers will require to be in the scheme but of that 50% (which they deemed to be 800,000) they estimated between 300,000 and 400,000 are already doing regulated work and therefore there would be a substantial overlap. They also stated that there was a need to distinguish between the number of volunteer posts and the number of individual volunteers, as some people will volunteer for more than one post.\(^3\)

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2 Monaghan, Official Report, 7 November 2006, Col 4116
3 Mott, Official Report, 7 November 2006, Col 4128
19. As officials consistently talked about potentially vetting 1 million people, and as this figure is not caveated in the FM, it was assumed that 1 million would be the total number of people to be within the ambit of the scheme, across all sectors. However, in supplementary evidence, Executive officials further clarified the figures as follows:

- 800,000 individuals undertake voluntary work in sectors affected by the scheme. This does not necessarily mean they need to be scheme members;
- 580,000 individuals undertake paid (i.e. not voluntary) work which will be regulated work and, therefore, they will be required to be scheme members;
- there is significant overlap between these two categories of people, we assumed 60% of the 580,000 individuals (= 350,000) undertaking paid work would also volunteer;
- therefore, 450,000 volunteers would not be scheme members through any paid work they may do; and
- the financial memorandum further assumes that only 50% of these 450,000 volunteers (= 225,000) actually need to be scheme members (for example, a volunteer fundraiser for Barnardos is in the sector but not doing regulated work).

<table>
<thead>
<tr>
<th>Involvement with scheme</th>
<th>Number of individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals paid to do regulated work who don’t volunteer</td>
<td>230,000</td>
</tr>
<tr>
<td>Individuals paid to do regulated work who also volunteer</td>
<td>350,000</td>
</tr>
<tr>
<td>Volunteers who don’t do paid regulated work who need to be scheme members on basis of 50% assumption</td>
<td>225,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>805,000</strong></td>
</tr>
</tbody>
</table>

4 According to the Scottish Household Survey, there are 1 million volunteers in Scotland. From the Scottish Council of Voluntary Organisations, we know that 80% of all volunteers volunteer in sectors which would be covered by the Bill. Combining these two sources suggests 800,000 volunteers will be working in sectors affected by this scheme.

5 Assembled from official Government employment statistics in relevant sectors.

6 The Scottish Household Survey indicates that around 30% of adults in any employment also volunteer. We have assumed a much greater propensity to volunteer amongst individuals undertaking paid regulated work. We have assumed that 60% of this workforce will volunteer.

7 This 50% assumption was explained by officials at Col 4126 of the official report. For the sake of clarity, I will repeat the argument here. Data from Volunteer Development Scotland, while not directly supporting this assumption of 50% of volunteers requiring checking, provides crude upper and lower bounds for the proportion of 75% and 32% respectively. The bounds come from the (overlapping) breakdown of volunteering in Scotland by activity. Some 68% of volunteers spend at least part of their time raising money, which implies that the 32% who do not are likely to require to be checked as their volunteering is likely to involve contact with vulnerable groups. Adding up the 31%, 19% and 24% (= 74%) who are listed specifically as taking part in volunteering activities of one sort or another that involve contact with vulnerable groups gives the upper bound figure. Taking the mid-point of this range gives 53%, which is comfortably close enough to the assumed value to give a degree of confidence to the assertion.
Table showing summary of workforce coverage.

The figure of up to one million individuals (paragraph 200) is attained if 100% of volunteers in the sector need to be covered (the total in the table above rises to 1,030,000 individuals). The Financial Memorandum illustrates the effect of this on costs and fees in the final two rows of table 3.8

20. While the Committee welcomes this clarification, it would have been more helpful if such explanations had been given in the FM as both the information in the FM and the oral evidence given by officials was confusing in the extreme. If the figure of 1 million individuals was predicated on the assumption that 100% of volunteers in the sector would need to be covered then that should have been set out in the appropriate paragraph.

21. However, although it has now been stated that the number of individuals likely to be affected is 805,000 there is no explanation given of the categories of employees who will need to become scheme members. COSLA raised concerns over the number of checks authorities would need to seek and pay for and there is no estimate given of the numbers of local authority employees who would be affected. Given that there could be disagreement over whether certain jobs should come within the scope of the Bill, then it seems almost impossible to determine the numbers of people to whom this Bill will apply.

22. Even allowing for this lower global figure of 805,000, if this is compared with the 450,000 disclosure checks that are currently carried out, this still represents a 79% increase in the numbers involved. The Committee therefore wished to ascertain why there would be such a substantial increase. The Executive explained that as a result of this Bill there would be two new categories of people – those who work with protected adults and also personal employers (such as piano and dance teachers). However, the Executive could not provide a breakdown of these figures. Added to this is the lack of clarity around the total figure as outlined above.

23. Therefore, although we now have a limited breakdown of the number of individuals anticipated to be covered by the scheme, the Committee believes it is still unclear as to the total number of people who would be affected by the Bill and recommends that the lead Committee investigates this further with the Minister.

24. Adding to the confusion over numbers is the Executive’s statement that local authorities and other organisations already do enhanced disclosure checks on people who work with vulnerable adults.9 Therefore, it could be assumed that such people will already be included in the figure of 450,000. The Committee believes therefore, that it is completely unclear as to why the vetting and barring scheme will apply to such a significant number of people.

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8 Supplementary evidence from the Scottish Executive
9 Mott, Official Report, 7 November 2006, Col 4125
25. The Executive, however, did imply that the figure of 1 million was an upper limit (although it would appear that, according to supplementary evidence from the Executive, this figure will be 805,000). They pointed out that although it will be an offence for someone to work with children or protected adults when disqualified and an offence for an employer to employ someone in those circumstances, it is not an offence for someone to undertake this work who is not a scheme member. However, the Executive stated that “[organisations] would be committing an offence if they had someone who was disqualified undertaking regulated work. The only way in which they will know that will be by scheme membership.” Therefore, it seems disingenuous to suggest that not everyone will be required to be members of the scheme, given that organisations will be committing an offence if they employ someone who is disqualified and, in the Executive’s own words, the only way they can find that out is through a person’s scheme membership.

26. The Committee appreciates the importance of having systems in place to protect vulnerable groups and supports the intention behind the Bill. However, given the significant numbers of people that will require to be checked and that there is no requirement on an individual to become a scheme member and scheme membership will be relatively easy to avoid if an individual chooses to, then questions need to be asked as to whether this Bill represents a proportionate response.

27. In supplementary evidence, the Executive stated that the current disclosure system costs £100m over ten years and “this scheme is estimated to be less expensive through increased efficiency.” However, as is shown in this report, there is confusion around the numbers involved, no clarity within the FM and concerns have been raised by organisations working in the field that costs could be significantly higher than estimated. Therefore, the committee is not convinced that this Bill represents value-for-money and also questions whether it has been properly costed. The Committee therefore recommends that the lead committee pursues these issues with the Minister and considers the value-for-money issue when making its recommendations on the Bill.

28. Quite apart from the proportionality and value-for-money debate, the Committee was also very concerned by the SCVO’s evidence on the potential impact of this Bill on the number of people who will choose to become volunteers in the future. While SCVO admit that there can be a number of reasons deterring volunteers, anecdotal evidence is that the current disclosure environment has had an impact. Given that the net will be cast much wider as a result of this Bill, then the Committee remains extremely concerned that the levels of volunteers will continue to decline and this could have a severe impact on the sector.

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10 Monaghan, Official Report, 7 November 2006, Col 4127
11 Supplementary evidence from the Scottish Executive
**Overall costs**

29. The overwhelming message coming from SCVO’s evidence is that the cost of implementing the provisions of this Bill could have a detrimental impact on the voluntary sector. They stated that:

“If we take into account the cost in the phasing-in period – we will assume that it is three years – and calculate the savings made in the longer term when there is turnover of staff, we estimate that it would take 15 years or longer for a break-even point to be reached.”

30. According to SCVO, what is crucial is a longer phasing-in period to help the sector cope with the additional costs. When asked how long this phasing-in period should be, SCVO indicated this was a matter for debate particularly because issues of resourcing had to be balanced with having a system which will protect children and adults and that “stretching the scheme as far as 10 years might not achieve anything, whereas a phasing-in period of three years, unless it is properly resourced and supported, will be very hard on the voluntary sector. We are looking at somewhere inbetween – perhaps a four, five or even six-year phasing-in period would make the administrative costs more bearable.”

31. Executive officials stated that although the FM has assumed that everyone will need to be checked within 3 years, it is not a legal obligation in terms of the scheme. The Committee believes, as with so much of the detail of this Bill, that these differences of interpretation need to be resolved as a matter of urgency and that the Executive must address the funding concerns and timescale for implementation raised by the SCVO. The Committee recommends that these issues be raised with the Minister.

**Fees**

32. While financial models are given in the FM for differing fee structures, the levels of fees will not be known until the relevant subordinate legislation is drafted. The Committee appreciates that the Executive has followed its own guidance in that it has given a range of costs where definitive costs are not known because the provisions are not in the primary legislation. However, it signals its discontent that once again, the Committee is being asked to scrutinise the costs of legislation when significant financial information will be contained in secondary legislation.

33. The fees are to be set at a level whereby the scheme will be largely self-financing as was the case with the Protection of Children (Act) 2003. However, experience of that Act has shown that fees have increased by 47% and the Committee is extremely concerned that fee levels under this Bill could similarly increase.

34. The Executive acknowledged that there had been flaws in the implementation of the 2003 Act and indicated that much more detailed work had been

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12 McTernan, Official Report, 7 November 2006, Col 4101
13 McTernan, Official Report, 7 November 2006, Col 4102
undertaken in relation to the implementation of this Bill. However, as the level of fees is one of the key determinants of the way in which the costings of the Bill have been arrived at, the Committee remains concerned that fees could be set at levels which are prohibitive.

35. This concern was shared by the SCVO who have proposed that the fees should be capped for the voluntary sector. The Committee notes that generally, fees for volunteers will be paid by the Executive and voluntary organisations will be responsible only for paid staff, although there was some confusion in the wording of the FM.

36. While the Committee appreciates the considerable financial burdens likely to be placed on the voluntary sector, it is concerned that if a cap were placed on the fees for one sector, that another sector might have to pay more to make up for the shortfall. The Committee believes that it is more important to have clarity around the operation of the scheme, a consensus over the cost to the voluntary sector and a thorough examination of the financial resources currently available.

37. Paragraph 224 of the FM states that “while it is expected that many local authorities will continue to pay the costs of the fees, no additional cost will be incurred by local authorities as a result of the introduction of the new vetting and barring scheme.” In written evidence, COSLA described this paragraph as “naïve” and that “it may well be that in the longer terms costs will equalise or indeed decrease, but that will not be the case in the short-term….in the most recent 6 months, around 46,000 [disclosures] have been processed. This represents a cost of £920,000 at current fee levels…given the higher fee level for initial checks and the projected increase in volume in the first 3 years of the scheme.”

38. In responding to this and to other matters raised by the Committee, Executive officials spoke of the need to consider the total costs over a 10 year period and the savings which they claim will arise from having a less bureaucratic system. However, these organisations are outlining significant financial implications in the first three years and it is simply not acceptable to say that costs will be neutralised over the longer-term. The Executive operates on a three-year spending review cycle and if organisations are claiming that there will be a financial impact within the first three years of the Bill’s implementation then this needs to be examined.

39. When pressed on why additional costs for local authorities resulting from the payment for fees were not shown in paragraph 224 of the FM, the Executive responded that:

“The costs are in the financial memorandum. We place the costs on individuals, because the legislative requirement for the payment of the disclosure fee falls on the individual.”

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14 Protection of Vulnerable Group (Scotland) Bill: Financial Memorandum
15 Submission from COSLA
16 Storrie, Official Report, 7 November 2006, Col 4124
40. Although the Committee is well aware that, technically, payment requires to be made by the individual it is a matter of fact that local authorities pay the cost of these fees and given that the FM acknowledges this will continue to be the case, it is disingenuous at best and misleading at worst, for the Executive to list this as a cost to individuals.

41. The Committee is extremely dissatisfied with the responses it has received on disclosure fees. While it acknowledges that a range of costs have been given in the FM, it is deeply disappointing that yet again, the Committee is being asked to scrutinise the financial implications of a Bill when significant, relevant financial information will only come to light through subordinate legislation.

Administrative costs

42. While the Scottish Executive pays the disclosure check fees of volunteers and will continue to do so under this Bill, the SCVO raised serious concerns over the administration costs which would be incurred by voluntary organisations which they estimated to be in the region of £20m. In supplementary evidence the SCVO explained that this figure was arrived at on the basis of administration costs of £21.50 per check multiplied by 956,000 (volunteers and paid staff). Even taking on board the Executive’s point that some volunteers are already in regulated employment (and therefore would be a scheme member through that employment), and the figures they have subsequently given for the number of volunteers, it is clear that there could be significant administrative costs.

43. The FM does not make any specific allowance for such administrative costs. When questioned on SCVO’s estimates, the Executive appeared to concentrate on the cost of fees and costs arising from a duty to refer. However, the SCVO’s evidence states that the administration costs which they quote refer to the work done from application to receipt of disclosure check. Although the Executive has highlighted that a number of volunteers are already in regulated work and therefore, will not require to be “processed” by the voluntary sector, there appears to be no recognition that there will be any additional administrative costs. The Committee appreciates that checks need to be undertaken at present, but given the significant increase in the numbers caught by this Bill, then it cannot be presumed that additional costs will not arise. The Committee recommends that the lead Committee pursues these issues with the Minister.

Definition of “protected adult”

44. The SCVO also expressed concern over the definition of a “protected adult” which is essentially a service-based definition. SCVO explained that for regulated organisations, most of their clients will be protected adults. However, their concern is for organisations outwith the regulated setting who will come into contact with adults who are “protected” at some times but not at others as this will depend on what services those adults are receiving.
45. The SCVO gave an example of the WRVS where the overwhelming majority of the client group will be vulnerable adults but a certain proportion are likely come into the category where their status will change. According to the SCVO:

“we fear that it will be an administrative treadmill for those organisations to keep up with who is and who is not a protected adult at a particular point and therefore, which of their staff can and cannot be a scheme member at a certain point in time.”

46. The Committee recommends that the lead committee raise this issue with the Minister.

Training and awareness raising

47. The other area of concern to the SCVO was the amount of money allocated to training in the FM. The FM estimates that approximately £1.4m will be required to ensure that adequate training and guidance is developed and delivered in relation to the new vetting and barring scheme. Additionally, £140,000 is estimated as the cost of training for staff in the voluntary sector to prepare for information sharing.

48. However, £320,000 of the £1.4m is allocated to developing the systems of the Central Registered Body for Scotland which leaves £1.1m for developing training materials, delivering training events and operating a telephone helpline service. SCVO noted that in the first year of implementation of the Protection of Children (Scotland) Act that they had “managed quickly and effectively to use £360,000 in three months to get messages and resources out to voluntary organisations.”

49. On that basis, the Committee questioned whether the estimates were reliable. The Executive explained that:

“the thinking behind the figures in the financial memorandum is that the strategic people in the organisations will be trained as part of the roll-out of the scheme. There will not be a big bang on day one but a phased implementation, so the operational training can be embedded in the annual training, biannual training or whatever it is that organisations give their staff.”

50. In supplementary evidence, the Executive stated that a grant of £360,000 had been awarded to the voluntary sector for development of a support package to assist the sector in implementing the Protection of Children (Scotland) Act 2003 and that the Executive recognised the need for similar support mechanisms under this Bill and are therefore suggesting that on the basis of a like-for-like comparison, the equivalent figure for this Bill would be £800,000 (being the sum of the first two rows in the table in paragraph 215).

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17 Gunson, Official Report, 7 November 2006, Col 4102
18 McTernan, Official Report, 7 November 2006, Col 4104
19 Mott, Official Report, 7 November 2006, Col 4136
51. However, as the SCVO stated they spent £360,000 within 3 months under the previous legislation, they clearly do not believe that the money provided under this Bill will be sufficient. It is deeply worrying that there is such a level of disagreement over so many of the estimates in the FM.

**Awareness raising**

52. For this Bill to be successful, it appears that there will need to be significant awareness raising. This Bill, unlike previous legislation, will cover personal employers (eg, piano teachers). The Policy Memorandum cites an example where a new piano teacher arrives and because the parents do not know him or her, they log onto the Disclosure Scotland website and learn that the teacher’s disclosure statement is out-of-date. The Committee suggested that unless there was significant awareness raising, then many parents simply would not know about the legislation and how checks can be carried out.

53. The Executive responded that while it would be an offence for the piano teacher to undertake regulated work if listed, it was not an offence for a parent to employ him or her (although it would be an offence if an organisation were to employ the teacher) and therefore, this Bill would provide an additional tool for parents in checking the reputation of an individual. When asked how parents would know about that additional tool, the Executive responded that “we will have to disseminate that.” However, while financial provision has been made for awareness raising among employers, the Executive confirmed that there is no provision for more general awareness raising. In supplementary evidence, the Executive stated that the general population would benefit from the development of the training and guidance pack principally through awareness raising methods rather than formal training.

54. Therefore, it would appear that some of the money allocated for training will be required for awareness raising. As outlined earlier, there is only £1.1m allocated for training and £200,000 of this total amount is set aside for developing training materials. The Committee believes therefore that further clarity is required as to how the £1.1m will be spent. In addition, given the concerns raised by the SCVO, the Committee questions whether the money will be sufficient and recommends that the lead Committee raise this issue with the Minister.

**IT Costs**

55. Of the £1.4m allocated for training, £320,000 is for developing the systems of the Central Registered Body for Scotland. In addition, the FM states £2m will be required to set up the IT infrastructure to support the vetting and barring scheme. It would appear that significant IT will be required (eg, paragraph 89 of the Bill’s explanatory notes sets out various connections and triggers that will be required) and there is also an expectation that online disclosure requests can be made.

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20 Mott, Official Report, 7 November 2006, Col 4138
21 Supplementary evidence from the Scottish Executive
56. As has been shown in this report, it is still unclear as to the exact number of people who will be brought into the scheme but it will be a very large number. Within the period of scheme membership, there are also likely to be a number of changes which need to be recorded for each person (e.g., job, address and further relevant information regarding suitability) and therefore, it can be assumed that an extremely large database will be required. Given this and the cost of other IT systems within the public sector, the Committee is not convinced that the estimated costs will be sufficient and the Committee recommends that the lead committee raise this issue with the Minister.

Creation of an Executive Agency

57. As a result of this Bill, a new Executive agency will be created. This will comprise of staff transferred from Disclosure Scotland who are currently employed by the Strathclyde Joint Police Board to deal with vetting and a Central Barring Unit with 30 staff to maintain the list of disqualified people.

58. In its Accountability and Governance inquiry report, the Committee recommended that any legislation proposing a new body should be accompanied by a policy options paper detailing alternative structures which were explored, the cost of all such options and the reasons why any less expensive options were not selected. The Committee appreciates that consultation on this Bill was underway before the Committee published its report.

59. The Executive had consulted on options for the Central Barring Unit but officials were asked whether the costs of the options had also been sent out. In supplementary evidence, the Executive confirmed that costs had not been set out and that it would have been difficult to do so meaningfully mainly because the cost of a Non-Departmental Public Body (NDPB) would be very difficult to quantify. The Committee is surprised by this response given that fully costed options have been provided for NDPBs in the past (e.g., the Scottish Civil Enforcement Commission) and the Executive has agreed in principle with the Committee’s recommendation in its Accountability report. The Committee recommends that the lead committee seek further clarification on this from the Minister.

60. The supplementary response from the Executive provides answers to various questions regarding the Executive agency which the Committee indicated it would raise through correspondence. The Committee asked whether the costs of transferring staff from Disclosure Scotland had been factored into the overall costs of setting up the new agency. The Executive replied that such costs had not been included because “a transfer of some sort would have happened regardless of the advent of this Bill. Disclosure Scotland staff are part of the Scottish Criminal Record Office and, as such, would have been due to transfer to the Scottish Police Services Authority in April 2007.”

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22 Supplementary evidence from the Scottish Executive
23 Supplementary evidence from the Scottish Executive
61. However, the fact remains that these staff are being transferred into the main civil service and the presumption is that they will need to be transferred onto civil service terms and conditions and there could be a cost implication as a result of this. **The Committee recommends that the lead committee pursues this issue with the Minister.**

Conclusion

62. **While the Committee recognises that this is a complex Bill, it is extremely dissatisfied with the information provided in the FM. Much of the information is confusing and assumptions are not clear.**

63. **The Committee is extremely concerned that there appears to be such a level of disagreement over the financial implications of the Bill between the SCVO and the Executive and believes this needs to be addressed as a matter of urgency.**

64. **Much of the disagreement is centred on the number of people who will need to be scheme members as a result of this Bill. As outlined earlier in this report, it has been extremely difficult to ascertain the number of people involved given the lack of detail in the FM and the lack of clarity in the evidence of officials. Although the Committee has now received a limited breakdown of the number of individuals involved, this information should have been set out clearly in the FM. The Committee believes it is still unclear as to the total number of people who would be affected by the Bill and recommends that the lead committee investigates this further with the Minister.**

65. **In supplementary evidence, it is stated that the current disclosure scheme will cost £100m over 10 years and that this Bill will cost less. However, there is confusion around the numbers involved, no clarity within the FM and concerns have been raised by organisations working in the field that costs could be significantly higher than estimated. Therefore, while the Committee appreciates the importance of having systems in place to protect vulnerable groups and supports the intention behind the Bill, it is not convinced that the Bill represents value-for-money and also questions whether it has been properly costed. The Committee therefore recommends that the lead committee pursues these issues with the Minister and considers the value-for-money issue when making its recommendations on the Bill.**

66. **While the FM provides a range of costs in relation to fees, the Committee wishes to signal its discontent that once again, the Committee is being asked to scrutinise the costs of legislation where significant financial information will be contained in secondary legislation. Under the system that has been proposed to the Subordinate Legislation committee, the Committee signals that it intends to scrutinise these pieces of subordinate legislation when they are laid.**

67. **The Committee has also questioned why administrative costs have not been factored into the FM, whether the funding earmarked for training and**
education committee, 11th report, 2006 (session 2) – annexe e

Awareness raising and the funding for IT will be sufficient, why it is not deemed possible to cost the NDPB option and why the cost of transferring staff onto new terms and conditions is not mentioned in the FM and recommends that the lead committee pursue these issues with Ministers.

Submission from Scottish Council for Voluntary Organisations

About SCVO

SCVO is the umbrella body for the voluntary sector in Scotland. Our 1300 members represent a large constituency covering the majority of charitable activity in Scotland. Many of these members are themselves intermediary bodies representing the interests of many thousands of voluntary organisations locally and with respect to specific types of work. Through them we maintain a further contact with the sector at large and the issues that affect it.

The elected SCVO Policy Committee represents large and small, local, national and international organisations, covering many different fields of activity. The Committee’s experience and knowledge is instrumental in informing our policy positions.

Background

The protection of vulnerable groups is a very important issue for the voluntary sector. Voluntary organisations work with a disproportionate number of vulnerable groups.

We estimate that there are up to 106,000 paid staff, 850,000 volunteers and tens of thousands of voluntary organisations that will come within the scope of this proposed legislation. Any legislation on the issue will therefore have a very large impact on the work we do as a sector.

The proposed Vetting and Barring scheme will be the third major upheaval relating to working with vulnerable groups in recent times, following only a year after the (as yet incomplete) implementation of the Protection of Children (Scotland) Act 2003 (PoCSA) provisions. We therefore hope that this legislation will create a system that will work successfully for many years to come and we will work enthusiastically to make this happen.

However on the basis of the explanatory notes and financial memorandum accompanying the bill as introduced we are far from convinced that sufficient consideration has been given to the realities of implementation. We are appreciative of the opportunity presented by the Finance Committee to identify some serious omissions in these documents. These points have been raised directly with Scottish Executive officials since the Bill’s introduction.
Key Points

Start up costs

- The new scheme will bring additional start-up costs to the voluntary sector of up to £3 million, deriving from disclosure costs for paid staff. Under the current system only new staff and staff moving position have been compelled to be checked. While volunteer checks are free (and will seemingly remain so), checks for paid staff are currently charged at £20 each. This has led the sector to spend around £150,000 per year, accessing 7500 paid disclosure checks. The proposed scheme will bring all staff (new and existing) into the system. Disclosure costs are likely to rise to £26 for each full check. (according to the Financial Memorandum of the Bill) Therefore, in accessing up to 106,000 paid checks, the new scheme will see new costs for the voluntary sector to up to £3 million over the phasing-in period, a period which the financial memorandum indicates will be three years. This is new cash which is not currently in the system.

Training Costs

- The Financial Memorandum makes £600,000 available to train the whole of the adult/childcare workforce. This is – we believe - insufficient to adequately provide suitable training. Under PoCSA, £360,000 was made available to the voluntary sector for one year only. With the addition of adults into the protection system for the first time, and the substantial changes to the children’s protection system proposed by the Bill, we believe that £1 million will be required to train the voluntary sector alone. This resource should provide training in the lead up to the commencement of the legislation and over the phasing-in period.

Administration Costs

- We estimate that the administration costs from checking all paid staff and volunteers across the voluntary sector will be up to £20 million. Bringing up to 106,000 paid staff and 850,000 volunteers into the protection system will incur significant additional administrative costs over the phasing-in period. Under the current system only new staff or staff moving positions have been required to be checked, leading to the voluntary sector accessing around 60,000 checks a year (including 7500 paid staff checks). Based on figures supplied by organisations deploying significant numbers of volunteers of this is estimated to have cost already the equivalent of £2 million which would aggregate up to some £20 million to bring all affected staff and volunteers into the system. This is in addition to the £3m start-up costs, and £1 million training costs mentioned previously.

i) Consultation – Questions 1 – 3

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

3. Did you have sufficient time to contribute to the consultation exercise?
SCVO was disappointed overall with the consultation process for the Bill.

On the plus side - we were happy that the Executive gave sufficient time for responses and we were happy that information events, focus groups, and interviews took place to supplement the written responses given by organisations. The voluntary sector took full part in all of these ways.

However, we were very disappointed that many of the Executive’s proposals to which organisations were asked to respond were less than fully worked up. We believe that the consultation occurred too late in the process to influence the principles of the proposed legislation and too early in the Executive’s thinking to comment on many of the specific proposals for action. Follow-up dialogue to the consultation relating to implementation and resource issues which we expected during the summer did not materialise. We believe it would have been better to have focused on the financial implications more intently before now as this will have a significant bearing on the effectiveness of any scheme.

Many in the sector have the impression that the general approach from the Executive to this piece of legislation has been to pass primary legislation at great speed and work out the details later, in secondary legislation. We believe that it is crucial that implementation of this complex legislation must be considered at this stage, side by side with the Bill itself by both the Education and Finance Committee. We also believe that more certainty is required in the primary legislation regarding some of the details of the proposals, especially those with financial implications.

There were very few financial details given in the consultation paper. However SCVO’s own submission, and many of the voluntary organisations separately responding, commented on the financial implications of the proposals during the consultation process. We do not see that these have been addressed in the face of the Bill and accompanying explanatory notes and financial memorandum as introduced.

**ii) Costs – Questions 4 – 6**

4. *If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.*

5. *Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?*

6. *Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?*

**Financial Implications**

We do not believe that the true costs to voluntary organisations have been accurately reflected in the financial memorandum and some of the figures do not appear to be based on hard evidence but are ‘guestimates’. More worrying, those
with the necessary expertise or knowledge were not consulted on their derivation or basis.

**Funding**

It is unrealistic to expect the vetting and barring scheme to be self financing. The voluntary sector cannot write a blank cheque for these proposals. We believe a cap on disclosure costs for the voluntary sector should be placed in the face of the Bill. If the Executive are serious about protecting vulnerable groups then substantial additional resources will be required. These are not currently contained in the Financial Memorandum.

**Start up costs of the scheme**

The new scheme will bring additional start up costs of up to £3million for voluntary organisations.

Under the current PoCSA legislation only new staff, or staff moving positions, have been compelled to be disclosure checked. However, under the Bill, as introduced, all staff (existing and new) will need to join the scheme within a prescribed period. This will be a significant additional cost to the sector, currently not acknowledged in the Bill or accompanying documents.

Under PoCSA, the voluntary sector has accessed a total of around 60,000 disclosure checks annually. Of these, around 7500 per year have been for paid positions, incurring a charge for voluntary organisations (overwhelmingly in practice organisations pay for checks rather than pass these on to individuals). This has amounted to a financial commitment from the voluntary sector of £100,000 2005/06 and £150,000 this year. However, with 106,000 paid staff in the sector, at the proposed fee level of £26, the new system will see additional start-up cost of around £3million to the sector over the phasing-in period.

We believe that unless the Executive finds funds to cover, or more practically, waive, this start-up cost, over the phasing-in period, a significant number of voluntary organisations will see a real reduction in frontline activity benefiting vulnerable groups or could even risk closure. There simply is not the financial slack in the voluntary sector to absorb an additional cost of this size.

**Disclosure Costs**

The proposed legislation is likely to see an initial rise in the cost of a disclosure check, from their current £20 to £26 (an increase of 30%). Due to inaccurate estimates of what the system requires to be ‘self-financing’ disclosure fees have already increased from £13.60 to £20 (an increase of 47%), only a year after commencement of PoCSA. While subsequent, nominal checks are likely to be charged at £10, the upfront costs of an increase in the cost of a disclosure could have a real impact across the sector. We believe the Executive must ensure disclosure fees from paid checks in the voluntary sector are capped at their current £20 level to avoid inhibiting frontline activity, benefiting vulnerable groups.

**Training costs**

We estimate that the voluntary sector will require up to £1million for training over the lead up to, and phasing in of, the new Scheme.
The voluntary sector will require a great deal of preparation for the new scheme. Once the secondary legislation has been drafted and passed we believe there should be a 12 month period before commencement. It is essential that awareness-raising and training takes place in the sector, many months before the legislation comes into force and over the phasing-in period to the new Scheme.

The Financial Memorandum accompanying the Bill allocates £600,000 for training to the ‘care/children workforce’ in relation to the new scheme. This figure is insufficient. In implementing the current PoCSA regime, the Executive made £360,000 available to the sector for training for one year. With the inclusion of protected adults into the new system for the first time, and with the significant changes to the children system, we believe that the voluntary sector alone will need at least £1million in training prior to and over the phasing-in period. Faith groups, public and private organisations will need equivalent funding for training.

**Administration costs**

**Organisations**

We estimate that the administration costs across the sector from checking all paid staff and volunteers will amount to up to £20million.

It is crucial that the phasing-in period of the new Scheme is long enough to avoid irreparable damage to voluntary groups and organisations working to the benefit of vulnerable groups in Scotland. The additional administrative burden faced by voluntary groups could be very large indeed. We estimate that the total administrative cost faced by voluntary organisations over the phasing-in period of the new scheme will be up to a value of £20million – an increase of over £18million on the sector’s current administrative burden from the PoCSA legislation.

This scale of additional bureaucratic burden, cost of staff and management committee time, paperwork and postage, could be catastrophic for voluntary organisations. We believe that more must be done to reduce the potential red tape stemming from the proposed legislation. An extended phasing-in period may contribute to the sector’s ability to absorb these costs, as should the proper implementation of full cost recovery in grants and contracts, at least to those delivering formal public services.

We are very concerned that the service-led definition of a ‘protected adult’ could lead to unintended additional costs for some organisations. A ‘protected adult’ is defined, in summary, as someone over the age of 16 in receipt of certain services delivered by an organisation registered with the Care Commission, an organisation delivering NHS or other clinic/hospital-based services or finally a community care service provided by a council or body acting on behalf of a council. This definition will mean a protected adult could be a fairly fluid and transient term.

For organisations delivering non-regulated services to adults this definition could have very serious costs. For these organisations it will be an administrative
treadmill to keep up with which clients are and which are not protected adults, and therefore which staff members can and cannot be scheme members.

**Individuals**

The Bill as introduced will also increase the administrative burden on individuals volunteering or in paid employment. For example, we are very worried about the requirement in the Bill that members of the Scheme must update their address within 3 months of it changing. We believe that this is an unnecessary burden on individuals, and could also mark a change in the relationship between volunteer and voluntary organisation. Furthermore we question whether those that are actually likely to generate vetting information are likely to update their personal details. This could therefore paradoxically place the heaviest burden on those least likely to be a risk.

We would suggest one solution could be to ask, and compel, scheme members to update their address each time they request a full scheme, short scheme, or statement of barred status rather than within three months of a change. This would be an easy way to reduce the red tape stemming from this legislation without harming the Bill's intentions.

**Uncertainty**

Despite the Bill's length we believe that inappropriate levels of detail have been left for secondary legislation. The Bill enables powers for Ministers that, depending on how they are used, could cause serious problems for the voluntary sector. This has led to a great deal of uncertainty as to how this legislation will look in practice, and makes it very difficult to quantify likely costs for the voluntary sector.

We believe amendments to the primary legislation, or at least public statements of policy intention, must be made to reduce this damaging uncertainty and allow Parliamentarians to accurately consider the likely costs of the new system.

In the absence of reassurances of this kind the following uncertainties exist:

1. **Calculations the Financial Memorandum is based on.**
   
   As far as we are aware the Executive has not made contact with the key voluntary sector bodies regarding the costs of the proposed legislation. We would be very interested to see the Executive calculations on which the Financial Memorandum is based.

   For example, the Financial Memorandum states that the workforce covered by the proposed Scheme will be up to 1million individuals across all sectors. We are unsure from where the Executive obtained these figures. SCVO estimate that in the voluntary sector alone, up to 106k paid staff, and up to 850k volunteers, will be included in the Scheme. We'd assume significant numbers of additional staff exist in the faith, public and private sector.

   There is some allowance in the Financial Memorandum for new costs for the voluntary sector’s Disclosure agency – the CRBS – but it is unclear how this figure was arrived at, whether it includes all relevant system and capital costs, and therefore whether future costs are likely.
2. Ongoing disclosure costs
If the Scottish Executive has incorrectly estimated the numbers of checks going through the new scheme, the projected fee levels will be inaccurate and could rise substantially from their likely initial £26. Under PoCSA we have seen a 47% increase in disclosure fees, due to inaccurate estimates, after only 12 months of the system being operational.

3. Cost of reduction in volunteering
The Executive assumes rates of volunteering will remain constant following the introduction of this proposed legislation however we believe that the Bill could seriously inhibit voluntary activity. Volunteering contributes £2.52 billion to Scotland. Even a small decrease in volunteering could therefore have serious financial implications for Scotland’s economy, disregarding the harm to vulnerable groups in Scotland.

4. Turnover rates
We are unsure what calculations the Executive has made to determine the turnover rates of staff. Staff turnover rates – i.e. the rate at which individuals would, under the current system, be brought into the scheme by virtue of moving posts, will be very important in determining additional costs to the voluntary sector when setting the length of the phasing-in period. Through figures obtained from Disclosure Scotland/CRBS turnover of paid staff in this part of the voluntary sector can be calculated at around 7%, which is understood be less than the Executive’s estimates of the wider affected workforce.

5. Employers will not ask for a full check if a nominal check is all that is required
We have received concerned feedback from voluntary organisations regarding the Scheme’s reliance on prospective employees to provide their original full vetting and barring disclosure certificate. Many organisations have stated that they could not trust the integrity of a further check that relied on the original certificate, seeing potential for fraud. If the system creates a weak link, because organisations feel they cannot ‘trust’ the nominal checks, then a greater number of full checks will be accessed by organisations. This will increase costs to individuals and organisations from Executive estimates.

iii) Wider Issues – Question 7 and 8
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

Wider Policy Initiative

Funding for vulnerable groups’ services
A vetting and barring scheme will form only one part of a fully functioning protection system. With funding for children’s services reported to be in shortfall at the local level by up to £160 million, with the children’s hearing system in shortfall
by a reported £20 million, we query whether the financial implications of this Bill have been thought through properly. It is an open question as to the logic of spending many millions of pounds on a vetting and barring scheme when other services that do so much to protect vulnerable groups, and to benefit vulnerable groups, are under-funded.

Volunteering
There is a growing body of evidence that the Disclosure system is proving a barrier to volunteering. The exact value of which to organisations, to the individuals themselves, and to wider society is hard to quantify, yet undisputedly significant. One formula places the value of current rates of volunteering at £2.52 billion. The Executive’s National Volunteering Strategy and policy of promoting volunteering, which is widely supported in the sector and wider public, is jeopardised by this legislation if implementation is not seriously considered and resourced.

Future costs

1. Fee structure
The Bill provides powers for Ministers to charge a fee to join the Scheme, an annual subscription fee for remaining in the scheme, and even a fee to be removed from the scheme, in addition to fees for disclosure requests. Whether Ministers will use these powers and if so at what fee level is a clear outstanding uncertainty.

2. Phasing-in period
If the phasing-in period is too short it could create unmanageable front-loaded costs for voluntary organisations. With administration costs estimated to be up to £20 million over the phasing-in period, we believe the voluntary sector will need longer than the three years indicated in the financial memorandum in order to absorb these costs without threatening a great deal of voluntary activity. Equally, if the phasing-in period creates too big a spike in numbers of disclosure checks (and associated direct and indirect costs), then costs will be repeated at the expiration of scheme membership.

3. Scheme membership expiration
The Executive are proposing that membership of the Scheme would expire after a period of time. The length of this ‘lifetime’ will impact on the costs faced by individuals and organisation in the voluntary sector. The longer the lifetime the lower the costs will be (assuming the new system reduces administration costs in the long term).

4. Tracking ‘current’ organisations
In giving notice of listing an individual, Ministers will need to know which organisations an individual is currently working for. We understand regulations will set out the system by which Ministers will keep track of ‘active’ organisations on a scheme record. If Ministers opt for an administratively burdensome method, such as an annual return for organisations, then this could bring further additional administrative costs to voluntary organisations. We would recommend
consideration be given to strategic data-sharing between the sector itself and associated regulators.

5. Costs from the ‘duty to refer’
Regulations will determine what information an employer will need to hold in order to satisfy the duty to refer relevant staff behaviour to the Scheme. This duty could bring large administrative costs for voluntary organisations, particularly the smallest.

6. Sharing Child Protection Information
The Bill assigns duties and powers to employers in order that they share ‘child protection information’. A code of practice will be outlined in secondary legislation. Until regulations are set outlining the code, what ‘child protection information’ is, and what duties are placed on employers and employees, it will be impossible to quantify the costs of this part of the Bill. However it is clear that this part of the Bill will bring additional costs to a number of voluntary organisations.

SUBMISSION FROM COSLA

Further to your request for evidence, I am happy to enclose COSLA’s written evidence on the Financial Memorandum for the Protecting Vulnerable Groups Bill.

As you will see, the main thrust of our evidence is that it is impossible to assess the financial impact of the bill at this stage as there are too many elements which remain to be determined. Given that the oral evidence session is intended to allow the Committee to further explore the costs and other financial matters associated with the Bill, there seems little benefit in attending when we have nothing to add to our written submission. I therefore confirm that we will not be attending Committee on Tuesday, 7 November.

We would, of course, be very happy to provide the Committee with information which might be relevant when there is greater clarity around those aspects of the bill which are likely to have financial implications.

I will be happy to hear from you at any time in the future to discuss this matter.

Yours sincerely

Anna Fowlie
Team Leader – Children & Young People

Background

The Convention of Scottish Local Authorities (COSLA) is the umbrella body representing 31 of Scotland’s 32 councils. We welcome the opportunity to give evidence to the Finance Committee on the Protection of Vulnerable Groups (Scotland) Bill from a strategic perspective in relation to local government’s role as the key delivery agent of services to children and vulnerable adults, and as the Employer’s Organisation for local government. Individual local authorities will, of course, have their own distinct views. We would, however, question the timing of
consideration of the financial memorandum as there are many aspects of this Bill and its implementation which are still very much in development and therefore it is difficult to determine what costs will result.

Detail

Much of the financial memorandum relates to the establishment of the new Vetting and Barring Unit. We will not comment on those costs as that is a matter for the Scottish Executive. Our comments therefore relate to those aspects which directly impact on local authorities, or points of general principle.

Summary of Costs

• In relation to the third bullet point, it is too early to make an assumption that costs will decrease and certainly too early to give a specific figure.
• Our views on the fifth bullet point will be covered later in relation to the fuller paragraph within the memorandum – it is naïve to say categorically at this stage that there will be no additional ongoing costs.

Basics of the Vetting and Barring Scheme

201  (b) we agree that there should be two fee levels
201  (c) we agree with a flat fee regardless of which part of the workforce is being checked
201  (d) while we acknowledge that the operating costs should be covered, we do not believe that it is possible to assess what those will be at this stage.
201  (e) we agree that the Scottish Executive should continue to meet the costs of volunteers working in the voluntary sector. However we believe that this should also apply to volunteers working in the statutory sector particularly in the instances where a statutory agency vets volunteers to benefit its community rather than direct services – for example a local authority handling vetting on behalf of Parent Teacher Associations or School Boards. We believe that all checks for volunteers ought to be free regardless of where they work. This would represent a relatively small number but would be significant to councils and would send a more consistent message regarding the Scottish Executive’s support for volunteering.

207  The term “personal employers” will include carers employed under Direct Payments. This is an area of activity which will only increase but the level of increase is impossible to assess at present. We do not believe that this has been taken into account. In addition, we understand that there are a variety of views on who should be responsible for meeting the costs of vetting relating to Direct Payments and if it is to be local authorities then that must be addressed within the financial memorandum.

219  We would opt for the first element of Model 2 as that gives the minimum disruption/fluctuation in costs.
223  This paragraph should stop at the first sentence – it is dangerous, and unnecessary, to try to project volume ten years hence. After all, who would have predicted 10 years ago that the current activity would be at the level it is? We should avoid creating hostages to fortune, but should build in a review after, for example, five years.
Costs on Local Authorities

224 This paragraph is naïve. Local authorities do pay for Disclosures and there is an expectation amongst the public and indeed within the Executive (see paras 229 and 231 below) that this will continue to be the case. It may well be that in the longer term costs will equalise or indeed decrease, but that will not be the case in the short-term. Local authorities are responsible for three quarters of the disclosures processed by Disclosure Scotland. In the most recent 6 months around 46,000 have been processed. This represents a cost of £920,000 at current fee levels, includes very little retrospective checking of existing staff. Given the higher fee level for initial checks and the projected increase in volume in the first 3 years of the scheme, which is likely to coincide with the next Local Government Settlement, councils would require transitional funding to ensure that the entire childcare and social care workforce is brought into the scheme.

225 As mentioned briefly above, the work has hardly commenced to determine what exactly will be involved for local authorities or indeed other bodies who will have a new duty to provide information to the Vetting and Barring Unit. On that basis, it is impossible to quantify any associated costs and it is naïve of the Scottish Executive to assume that it will not result in significant additional costs.

Costs on Employers

226 This paragraph merely duplicates paragraph 224 but covering the wider range of employers rather than only local authorities. The same comments as above (224 and 225) therefore apply.

Costs on professional regulatory bodies

227 Regulatory bodies will also incur costs from fee increases as they carry out checks on all new registrants. That does not appear to have been taken into account. As the duty to provide information to the Vetting and Barring Unit is new for these bodies too, the comments on para 225 (above) will also apply.

229 The purpose of this paragraph is unclear – employers in the adult sector will have no different an experience than employers in the children’s sector and there are just as many regulatory bodies covering the children’s workforce. In cross-reference to the comments made at 224 above, this paragraph actually states that employers carrying out checks is a “matter of good recruitment practice.”

Costs on Individuals

231 This paragraph states that there is an expectation that employers will continue to meet the costs of checks, therefore there will be no additional costs to individuals. The Scottish Executive cannot have it all ways; the Financial Memorandum creates an illogical circle of responsibility for the costs – the employer won’t incur additional costs because the individual is required to pay, but the individual won’t incur additional costs because the employers generally pay. The facts are that there will be additional costs, at least in the short-term, and someone will have to meet them. If current practice continues then that someone will be the employer and in 75% of cases that is a local authority.
Sharing Child Protection Information

234 – 239 This part of the bill is so new and the potential impact of its implementation so unclear that it is impossible to assess what costs will be involved. It is correct that there will be training costs and the figures given seem a little light, considering the extent of the workforce covered. The financial memorandum is right to state that information sharing should be part of all professionals’ work in any event, but at this early stage it is not possible to assess whether the specifics of the legal duty will have an impact on resources. For example, it is likely that parallel policy developments such as Getting It Right For Every Child which facilitate information sharing for child protection reasons will require significant investment in IT. We would expect these developments to dovetail.

Costs on the voluntary sector

243 We would expect there to be an opportunity to revisit this paragraph if anything should change in relation to the expectations on the voluntary sector.

Conclusion

It is too early in the process to be able to cost the impact of this Bill, however, there will be transitional costs for all employers, most significantly for local authorities. The duty to provide information to the Vetting and Barring Unit in particular is impossible to cost as we have no clear idea about what it will involve. Any additional costs to local authorities should, in accordance with COSLA policy, be funded in full by the Scottish Executive.

SUBMISSION FROM THE CARE COMMISSION

Dear Ms Duffy

I refer to your letter of 18 October in relation to the above and would respond as set out below on behalf of the Care Commission.

Consultation

1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

The Care Commission was invited to take part in the consultation exercise for the Bill. A formal response was submitted as requested on 27 March 2006.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Care Commission commented in relation to ensuring that costs of vetting and barring disclosures are kept at reasonable levels. In particular we were keen to ensure that disclosures for volunteers should be free. We are pleased to note that the current proposals are in tune with the Care Commission’s view. We also
welcome the passportability of checks as a means of reducing cost whilst maintaining protection for vulnerable people. We also agree with the proposed phasing.

3. Did you have sufficient time to contribute to the consultation exercise?

We were satisfied that there was sufficient time to respond to the original consultation.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

The Bill has no specific financial implications for the Care Commission in regard to vetting and disclosure. Paragraphs 224-249 contain proposals in relation to School Care Accommodation Services which if agreed, would potentially have financial impact on the Care Commission.

It is proposed that some school guardians, currently classified as Childminders and charged heavily subsidised fees would be included with the School Care Accommodation service definition, which bear full cost recovery level fees. The Care Commission fully supports this recommendation.

It has been pointed out, however, that some guardians, due to the nature of their service, will still be classified and registered as Childminders. We are currently carrying out a scoping exercise to estimate numbers which fall into this category. For these guardians it will still be necessary to separately regulate them, charge Childminder fees, and received the appropriate early years subsidy via the Sponsor Department.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes, as long as the issues outlined in 4 above are satisfactorily funded by our Sponsor.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

It is obvious that significant work has gone into compiling the various cost estimates provided. The Care Commission is not able to comment on the detail of the figures provided, however, in general terms they would seem to provide a reasonable overall cost projection. We would point out that there seems to be an arithmetical error in table 2, the totals in the column ‘Cost YR 1-3’ would appear to be incorrect.
Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

We have no reason to believe otherwise.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

We are not able to comment.

Yours sincerely
Mr Thomas Waters
Director of Finance and Administration

Mr Ronnie Hill
Director of Children’s Services Regulation

SUPPLEMENTARY SUBMISSION FROM SCOTTISH COUNCIL FOR VOLUNTARY ORGANISATIONS

Following our evidence session to the Finance Committee on the Protection of Vulnerable Groups (Scotland) Bill, SCVO would like to submit further information on the calculation used for our estimates of £20million administration costs. We have also provided further information on disclosure checks as a barrier to volunteering together with an idea of the potential costs to Scotland through lost volunteering.

Admin costs calculations

SCVO estimates that from application to receipt of disclosure check the administration costs faced by voluntary organisations are £21.50 per check. This includes time spent by the employee, by administration staff, and by management staff in filling out the application, ID checking, countersigning applications etc as well as postage, stationery, phone and office overheads.

At £21.50 per disclosure check, this amounts to over £20million (£20,554,000) for the up to 956,000 paid and unpaid staff in the voluntary sector within the scope of the proposed legislation.

Our estimate does not include travel costs/time. However it should be noted that some organisations are spread over a large geographical area. For these organisations this will be a significant further cost over and above our estimates here.
These estimates correspond with a number of our members’ own estimates including the example quoted in verbal evidence of WRVS £250,000 for 12,000 volunteers (around £20.80 a check).

Volunteering statistics

We have received a great deal of anecdotal evidence that disclosure is a major barrier to volunteering, particularly volunteering to work on management committees. This is confirmed by research conducted by Youth Scotland and VDS.

- Disclosures, red tape and compliance consistently cited as barriers to youth volunteering in recent Youth Scotland research
- Those unwilling to work with vulnerable groups increased from 6% in 2004 to 9% in 2005 (VDS)

Youth Scotland

As part of the National Youth Work Strategy consultation: “Youth work – Opportunities for All” the Scottish Executive invited Youth Scotland to consult volunteers in the youth work sector and to gather their views.

Disclosures were consistently cited by respondees as a barrier to volunteering and as an area where support is required. Paper-work, red tape and compliance issues were separate but related issues also highlighted as barriers throughout the research document.

One respondent stated:
“Paperwork takes up too much time. Legislation is difficult to navigate. Difficult to get volunteers as it is. Disclosure and fear of litigation is enough to deter people who need some persuading in the first place”.

VDS

The Annual Digest of Statistics on Volunteering in Scotland 2006 brought together by VDS is the most recent research into volunteering. The Digest shows that the number of adults unwilling to undertake a disclosure check to volunteer with children, young people or vulnerable adults has increased from 6% in 2004 to 9% in 2005. Based on 2001 Census figures this represents a further 122699 potential volunteers now stating that they are unwilling to work with these client groups, and a total of 368095.

Financial worth of lost volunteering

A financial equivalent to the additional 122699 people now unwilling to volunteer with vulnerable groups is very difficult to accurately and realistically calculate.

VDS estimate the notional worth of volunteering to be £2.52 billion which would equate the financial ‘value’ of these 122699 people as volunteers to just under £200 million (£198,947,839) for all sectors and just over £150 million (£151,200,047) for those volunteering in the voluntary sector. If 38% (current rate
of volunteering) of these people volunteered it would equate to a financial ‘value’ of volunteering in Scotland of around £75 million (£75,600,178) and just over £57 million (£57,456,017) for volunteering in the voluntary sector.

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<thead>
<tr>
<th>Volunteering across all sectors</th>
<th>Volunteering in voluntary sector</th>
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<tr>
<td>Cost of lost volunteers – 100% volunteer</td>
<td>£200 million</td>
</tr>
<tr>
<td>Cost of lost volunteers – 38% volunteer</td>
<td>£75 million</td>
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It is impossible to say how many of the 122699 people would actually volunteer but for the barrier of the disclosure system, however these calculations show the potential scale of the damage being caused by the current system and the further damage that could be caused by the proposed Scheme.

I trust you will find this further information useful.

For further enquiries:

Russell Gunson
Policy & Communications Officer
SCVO

SUPPLEMENTARY SUBMISSION FROM SCOTTISH EXECUTIVE

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL: FOLLOW-UP POINTS FROM FINANCE COMMITTEE EVIDENCE SESSION ON 7 NOVEMBER 2006

Thank you for your e-mail of 8 November seeking clarification of a number of points following the oral evidence session on 7 November 2006.

I attach a response to the points you raised in your e-mail. I hope this is helpful to the Committee. Please do not hesitate to be in touch if there is any further clarification which we can provide to you or if the Committee requires any further briefing.

Yours sincerely,

Andrew Mott
Bill manager, Protection of Vulnerable Groups (Scotland) Bill
Annex A

Protection Of Vulnerable Groups (Scotland) Bill: Additional Information On Costs

Clarification of the costs for training the workforce

1. In recognising the concerns surrounding the burden that the Protection of Children (Scotland) Act 2003 would place on certain voluntary organisations, the Executive awarded a grant of £360,000 to a voluntary sector consortium for the development of a support package to assist the sector in implementing the legislation. This grant was to be used to support the achievement of a number of objectives:

   • development of a training and guidance pack;
   • support mechanisms for the raising of awareness in relation to the legislation and its implications; and
   • the delivery of a number of training seminars.

2. It is clear that training was merely one component of the intended support package. When considering the new scheme, the Executive recognised the need for similar support mechanisms to those identified above and reflected this in the Financial Memorandum. On the basis of a like-for-like comparison, we would suggest that the equivalent figure for this Bill would be £800,000, being the sum of the first two rows of the table at paragraph 215 of the Financial Memorandum.

3. Broadly speaking, both children's and adults' workforces are already familiar with the enhanced disclosure regime and the children's workforce is familiar with the requirements of the Protection of Children (Scotland) Act 2003. The new scheme builds on these structures whilst reducing some of the bureaucracy with the result that it should be easier for users. Therefore, it is not anticipated that scheme members would require formal training and the resources have been allocated on a pro rata basis on the assumption that only managers and practitioners would be required to understand all the scheme details.

4. It was acknowledged in the Committee session that awareness-raising for non-practitioners had not been separately identified in the Financial Memorandum. Parents and non-practitioner members of the scheme would benefit from the development of the training and guidance pack principally through awareness raising mechanisms rather than formal training.

   When consulting on the options for the Central Barring Unit, were the costs of each option provided so that consultees could consider value for money as well as the principle of each option?

5. The consultation specifically sought views around appropriate governance arrangements for the Central Barring Unit. In particular, it sought to explore the extent to which those arrangements should separate Ministers from the
decision making process around individuals. No information was provided on the costs of each option but value for money for the scheme as a whole was explored through seeking consultees’ views on an acceptable level of fee. Consultees welcomed the proposals for streamlined vetting and barring but only if the additional cost was modest: the Bill should not increase the overall cost to all users at all.

6. The paper highlighted three possible options for the Central Barring Unit – an executive agency; a core civil service; or a Non Departmental Public Body. It also identified a possible single organisation encompassing Disclosure Scotland and the Central Barring Unit. George Street Research's Analysis of the Consultation identifies a single organisation as the most popular choice (page 46). This model has the benefit of ensuring that Ministers are distanced from decision making, while the organisation is held directly accountable for the delivery of services to a specified standard. It meets the three tests set out in the consultation: it ensures effective flow of information with an end to end process managed by a single organisation; it has a clear and appropriate line accountability; and it is transparently more cost effective than having two separate organisations and associated overheads. This was the option ultimately favoured by Ministers and reflected in the Financial Memorandum.

7. The likely costs of the three options were not set out in the consultation paper. Indeed, it would have been difficult to do so meaningfully. The costs for an executive agency and for core civil service would be essentially the same since staff would be on the same terms and conditions and make use of the same core SE functions. The costs for an NDPB would be very difficult to quantify as they would be dependent on terms and conditions of employment, which would need to be established by the NDPB itself.

If the decision-making structure is likely to be similar to that which is in place now, why has it been determined that the Central Barring Unit will require 30 staff?

8. The financial memorandum identified that the costs of operating the current DWCL are £240,000 per annum to process around 75-80 organisational referrals per annum (paragraph 209). Under current arrangements, it is the organisational referrals which require the effort: court referrals are automatically included on the list. We estimate that the total manpower dedicated to this task is around 4.5 members of staff (including IT support and admin services). We estimated some 2200 to 2500 cases will be referred each year to the Central Barring Unit (paragraph 210), the increase being due to the creation of the adults' list and the continuous vetting of the workforce. Allowing for some modest economies of scale in scaling up operations, 30 staff was the best estimate for the number of staff required.

What is the breakdown of the £1.5 million required for total running costs?

9. The £1.5 million (paragraph 212 of the Financial Memorandum) is the anticipated additional running costs for the barring functions to be added onto
the existing functions of Disclosure Scotland. The £240,000 per annum costs
of the current DWCL cover approximately 4.5 members of staff (including IT
support and admin services). Scaling this up to around 30 staff takes the
cost up to around £1.5 million.

10. The figure is equivalent to a cost of £50,000 per head per annum for each of
the 30 posts. The £50,000 figure is consistent with experience of previous
organisations and includes all overheads such as accommodation,
equipment, stationery etc as well as salary and employment costs.
Recognising that there will be a range of grades covered, from the chief
executive to junior administrative grades, we are satisfied that it represents a
reasonable working estimate.

11. The total running costs for the Central Barring Unit, were it being established
as a separate entity, would be likely to be significantly higher.

The start-up costs are estimated to be £3.35 million including £400,000 for
recruitment and relocation and £600,000 for premises. Where will the
agency will be located and how have these figures being arrived at?

12. As a new agency, location will need to be reviewed as part of the Executive’s
relocation policy. Any such review will need to take account of:
• business continuity and the need not to disrupt unduly Disclosure
Scotland’s ongoing business;
• the terms of the Public Private Partnership with BT plc;
• the overcrowding of current accommodation for Disclosure Scotland;
• the need for additional staff during the transition onto the new scheme and
a reduced requirement thereafter; and
• the establishment of the Scottish Police Services Authority (into which the
rest of the Scottish Criminal Record Office will go) and their own review of
their accommodation requirements.

13. The figure of £400,000 for recruitment and relocation was intended to cover
the costs associated with recruitment of new staff, relocation of civil servants
moving to the agency and the cost of employing staff in the months prior to
the scheme going live, in order to provide training for their new roles. The
estimate was based on the 30 staff required for the Central Barring Unit, not
currently part of Disclosure Scotland, some of whom would need to be
recruited externally with the remainder being recruited from the civil service.

14. The figure of £600,000 is based on estimates of £400,000 +VAT to fit out any
new accommodation and £125,000 to furnish it. These are based on the
total staff of the new agency to furnish and equip any new premises that the
agency ultimately occupy. In the short term, it is proposed to use the existing
Disclosure Scotland office space as well as temporary additional
accommodation. This would allow space to undertake the increased activity
required for the first three years of operation.

Staff currently working for Disclosure Scotland will be transferred into the
main civil service. What will this cost (assuming employees will be
transferred onto civil service terms and conditions) and has this been factored into the overall costs of setting up the new agency?

15. The cost of staff transfer onto civil service terms and conditions have not been included in the Financial Memorandum because a transfer of some sort would have happened regardless of the advent of this Bill. Disclosure Scotland staff are part of the Scottish Criminal Record Office and, as such, would have been due to transfer to the Scottish Police Services Authority in April 2007.

16. There will be one-off costs associated with pension transfers. This includes Government Actuary costs to effect the transfer, estimated to be in the region of £50,000 to £100,000. There is also the cost of making up any pension shortfall at the point of transfer, which depends on the financial health of the Strathclyde Pension Scheme on the day of transfer. The Executive will be required to make good any shortfall. Preliminary estimates suggest that this will not be significant, as the Strathclyde scheme is very buoyant and Disclosure Scotland staff have relatively few years of contributions to the scheme.

**Numbers of individuals in the scheme**

17. There was some confusion at the Committee hearing as to the number of individuals who would require to be scheme members. The Financial Memorandum is predicated upon the following numbers and assumptions:

- 800,000 individuals undertake voluntary work in sectors affected by the scheme\(^1\) This does not necessarily mean they need to be scheme members;
- 580,000 individuals undertake paid (i.e. not voluntary) work which will be regulated work and, therefore, they will be required to be scheme members\(^2\);
- there is significant overlap between these two categories of people, we assumed 60% of the 580,000 individuals (= 350,000) undertaking paid work would also volunteer\(^3\);
- therefore, 450,000 volunteers would not be scheme members through any paid work they may do; and
- the financial memorandum further assumes that only 50% of these 450,000 volunteers (= 225,000) actually need to be scheme members\(^4\) (for

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\(^1\) According to the Scottish Household Survey, there are 1 million volunteers in Scotland. From the Scottish Council of Voluntary Organisations, we know that 80% of all volunteers volunteer in sectors which would be covered by the Bill. Combining these two sources suggests 800,000 volunteers will be working in sectors affected by this scheme.

\(^2\) Assembled from official Government employment statistics in relevant sectors.

\(^3\) The Scottish Household Survey indicates that around 30% of adults in any employment also volunteer. We have assumed a much greater propensity to volunteer amongst individuals undertaking paid regulated work. We have assumed that 60% of this workforce will volunteer.

\(^4\) This 50% assumption was explained by officials at Col 4126 of the official report. For the sake of clarity, the argument is repeated here. Data from Volunteer Development Scotland, while not directly supporting this assumption of 50% of volunteers requiring checking, provides crude upper and lower bounds for the proportion of 75% and 32% respectively. The bounds come from the (overlapping) breakdown of volunteering in Scotland by activity. Some 68% of volunteers spend at least part of their time raising money, which implies that the 32% who do not are likely to require to be checked as their volunteering is likely to involve contact with vulnerable groups. Adding up the
example, a volunteer fundraiser for Barnardos is in the sector but not doing regulated work).

<table>
<thead>
<tr>
<th>Involvement with scheme</th>
<th>Number of individuals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals paid to do regulated work who don't volunteer</td>
<td>230,000</td>
</tr>
<tr>
<td>Individuals paid to do regulated work who also volunteer</td>
<td>350,000</td>
</tr>
<tr>
<td>Volunteers who don't do paid regulated work who need to be scheme members on basis of 50% assumption</td>
<td>225,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>805,000</strong></td>
</tr>
</tbody>
</table>

Table showing summary of workforce coverage.

18. The figure of up to one million individuals (paragraph 200) is attained if 100% of volunteers in the sector need to be covered (the total in the table above rises to 1,030,000 individuals). The Financial Memorandum illustrates the effect of this on costs and fees in the final two rows of table 3.

19. The modelling to calculate the number of full and nominal checks required by sector is complicated but the table above shows that we believe the number of volunteers needing to join the scheme only because of their volunteering activity is very much less than the 800,000 total volunteers in the sector. When natural volunteer turnover is factored into an extended transition period, the number of "retrospective checks " required rapidly diminishes.

Other points

47% rise in disclosure fees

20. On more than one occasion, it was suggested in the Committee session, and recorded in the official report, that the recent 47% increase in disclosure fees was a consequence of the Protection of Children (Scotland) Act 2003. For the record, the fee increase in April 2006 was a reflection of fewer than expected disclosure applications in the first four years of operation of the system, therefore yielding a much lower revenue than anticipated. We now have a much better understanding of the volume of requests for disclosure checks which has informed the development of this Financial Memorandum. The fee increase was not connected to the commencement of the 2003 Act on 10 January 2005.

£100m additional costs

21. In Column 4138 of the official report, Wendy Alexander MSP asks whether there was a cheaper way of obtaining the same policy effect rather than spend £100 million over ten years. Paragraph 193 of the financial memorandum is clear that the current disclosure system costs £100m over ten years and this scheme is estimated to be less expensive through increased efficiency. It is therefore important to note that there is no £100 million additional expenditure but rather a slight reduction on planned

31%, 19% and 24% (= 74%) who are listed specifically as taking part in volunteering activities of one sort or another that involve contact with vulnerable groups gives the upper bound figure. Taking the mid-point of this range gives 53%, which is comfortably close enough to the assumed value to give a degree of confidence to the assertion.
expenditure of £100 million over 10 years. The overall effect of the scheme should be to reduce the total amount of disclosure fee revenue collected.

Protection of Vulnerable Groups (Scotland) Bill Team
16 November 2006
Subordinate Legislation Committee

Report on Protection of Vulnerable Groups (Scotland) Bill at stage 1

1. The Committee reports to the lead Committee as follows—

Introduction

2. At its meetings on 24 October and 7 November, the Subordinate Legislation Committee considered the delegated powers provisions in the Protection of Vulnerable Groups (Scotland) Bill at stage 1. The Committee submits this report to the Education Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

3. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill.

4. The Committee’s correspondence with the Executive is reproduced in Annexes 1 and 2.

Delegated Powers Provisions

5. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections: 30, 37, 39, 47, 61, 65, 67, 69, 82, 84, 85, 86, 88, 92 and 100.

Delegated Powers Memorandum

6. The Committee notes that, in its response to the Committee on points raised, the Executive has accepted that there are a number of inaccuracies in the Delegated Powers Memorandum (DPM). A comprehensive DPM is vital to allow the Committee to aid consideration and scrutiny of a Bill. Consequently, where a DPM is inaccurate, incomplete or fails adequately to explain the delegated powers in a Bill, this adds greatly to the work of the Committee and the Executive itself.

7. Matters covering sections 17, 19 and 80 in the DPM contained inaccuracies which necessitated the Committee seeking clarification. Relevant correspondence is reproduced in the Annexes to this report. Any points on these sections, over and above those concerning the DPM, are detailed below.

1 Delegated Powers Memorandum
Prescribed information and prescribed type

Sections 3, 4, 5, 6, 7, 8(1), 10(1)(a), 11(1) and 54

55. The Committee questioned the drafting of these sections, in particular the references to “prescribed information”. The Committee was unclear whether the reference was a descriptive noun or a distinct power to make regulations. The Executive was therefore asked to clarify the drafting of the relevant provisions.

56. The Executive referred to the definition of "prescribed" in section 96(1) and confirms that the references to "prescribed information" in these sections are, therefore, distinct regulation-making powers. The Executive stated that using "prescribed" in this way is a standard plain language drafting technique which is adopted regularly throughout the statute book. Consequently, it does not consider that any amendment is necessary to these provisions.

57. The Committee considered that it was not always clear that the term is in every case a distinct regulation-making power and not a reference to information prescribed, but on balance the Committee simply notes the Executive’s response in relation to these references.

58. Separately, in relation to section 8, the use of the term “prescribed information” was not referred to in the DPM as a delegated power. In its response the Executive confirmed that it intended to confer a separate power and that this was omitted in error from the DPM.

59. Any further points on these sections, other than those on prescribed information, are detailed below.

Other specific powers in the Bill

Section 6 – Reference relating to matters occurring before provisions come into force

60. The Committee had some difficulty in understanding the purpose of this provision and why it should be necessary for Ministers to prescribe the information that organisations may provide, unless there were some legal prohibition on an organisation disclosing that information.

61. The Executive explained that this section makes it explicit that employers and employment organisations have a specific statutory power to make referrals in respect of matters which took place prior to the Bill being commenced. The Executive consider that this provision is necessary to enable organisations to make referrals about historic incidents, but it would be impossible to enforce any duty on them to do so. The purpose of prescribing information which the organisation may provide is to clarify what constitutes a competent referral.

62. The Committee accepts and notes the Executive’s response and draws it to the attention of the lead committee.
Section 8 – Reference by certain other persons

63. The Committee asked the Executive if the power in subsection (2) is sufficient for the stated purpose and to clarify the drafting of this provision.

64. The Executive agreed that the power is not broad enough to remove or make alterations to references to bodies listed. It can only be used to add new bodies. However, the Executive considers that such a power is not necessary because any name changes can be made only by primary legislation, which could consequently amend this Bill and all other relevant enactments.

65. The Committee notes the Executive’s response and draws it to the attention of the lead committee.

Section 14 - Automatic Listing

66. The Committee was concerned that this section allowed Ministers a considerable degree of discretion when specifying criteria for automatic inclusion on either the adult or children’s lists. It asked the Executive for further information on how it intends to exercise this power.

67. The Executive explained that it would intend to use this power to, for example, respond to amendments or innovations in criminal offences, including offences outwith the law of Scotland; or specify criteria, such as being subject to the requirement to register as a sex offender, which would lead to automatic inclusion on one or both lists. The Executive acknowledged that this power does give significant discretion to Ministers and explained that this is why affirmative procedure is provided for.

68. The Committee is content with the Executive’s explanation.

69. The Committee also asked the Executive for clarification of the term “specified description” in subsection (4).

70. The Executive considered that this does no more than give an example of criteria which may be specified by order under subsection (3) and it cannot therefore be referring to anything else.

71. Although the Committee does not consider the drafting of subsection (4) to be entirely clear, it does reflect similar drafting in the UK and the Committee notes the Executive’s response and draws this to the attention of the lead committee.

Section 17 – Information relevant to listing decisions

72. The Committee asked the Executive if the power in subsection (5)(f) is sufficient for the stated purpose and to clarify the drafting of this provision.

73. The Executive agreed that the power is not broad enough to remove or make alterations to references to bodies listed. It can only be used to add new bodies.
However, the Executive took the view that no power is needed because any name changes can be made only by primary legislation.

74. The Committee is not entirely clear that a finding in fact would be strictly construed and would not be extended to cover more informal “findings” than those outlined in the Bill and DPM. Despite these concerns, the Committee is content with the power and agrees that negative procedure is appropriate.

Section 25 – Application for removal from list

75. This section gives the listed individual the power to apply to the sheriff for a review of their listing but an application is only competent if the individual has not made an application within a prescribed time period. Subsection 3(a) allows Ministers to identify the period for which an individual must have been listed prior to them applying for removal from the list.

76. The Committee asked the Executive to explain its rationale for proposing that the power here should be subject to negative procedure, rather than affirmative procedure.

77. The Executive considered the power to be appropriate as it relates to the setting of minimum time periods for an application for removal from the list to be competent. The power is limited to that specification of minimum periods, and follows on from the principle of enabling individuals to apply for removal from the list. Furthermore, the more likely grounds for an application for removal are a change of circumstances under subsection (3)(b), to which no time constraints apply.

78. The Committee is content with the Executive’s response and with the power as drafted.

Section 29 – Notice of listing etc.

79. The Committee noted that subsections (4) and (5) authorise Ministers to publish guidance. It further notes that there is no statutory obligation on an organisation to follow or have regard to the guidance. As the guidance will not be made as an SSI, it will not be published.

80. The Executive stated that the guidance will be issued to the relevant organisations and that it will be publicly available. It is therefore satisfied that the guidance will be available to those who need it, or may be interested in it, despite the fact that it will not be published as an S.S.I.

81. The Committee is content with the Executive’s response and draws this to the attention of the lead committee.

Section 31 – Offences against children and protected adults

82. This section defines "relevant offence", "offence against a child" and "offence against a protected adult"; and provides Scottish Ministers with an order-making power to amend these definitions.
83. The Committee were concerned about the width of this power and asked the Executive to clarify its intentions on how this power will be used.

84. The Executive accepted that this is a broad power but considers that it is necessary to “future proof” the Bill in case offences in other legislation or in the common law change, or if new offences are introduced or if existing offences are removed. The Executive stated that to reflect the broad power affirmative procedure is provided for.

85. **The Committee draws the attention of the lead Committee to this power on the grounds that clarification was requested from and provided by the Executive.**

**Section 32 – Duty to notify certain changes**

86. The Committee considered that the DPM does not give any indication of how the power here might be used.

87. The Executive points to paragraph 50 of the DPM which refers to the flexibility to respond to future developments in methods of confirming identity or location as the reason for taking this power. The Executive suggested that a hypothetical example might be making connections with any UK-wide ID card scheme, for example the re-issuing of an ID card with a different number following theft or fraud.

88. **The Committee draws the attention of the lead Committee to this power on the grounds that clarification was requested from and provided by the Executive.**

**Section 46 – Vetting information**

89. The Committee asked the Executive to explain what is meant by the term “prescribed details” in subsection (1)(a).

90. The Executive drew the Committee’s attention to the definition of "prescribed" in section 96(1) which excludes section 46(1)(a) from that definition. “Prescribed details” in subsection (1)(a) refers to the usage of that term in section 113A(3)(a) of the Police Act 1997. Consequently, there is no distinct power to make regulations under subsection (1)(a).

91. The Committee considers that the meaning of the term is still unclear, particularly as to whether the words modify “central records” or “prescribed details”. However, it notes the Executive’s response and draws this to the attention of the lead committee.

92. The Committee also noted that failure to comply with an obligation imposed by regulations under subsection (2) does not appear to carry any sanction and asked the Executive if this was its intention.
93. The Executive explained that the prescribed information will be limited to that held by public bodies that are subject to remedies under administrative law.

94. The Committee notes the Executive’s response and draws this to the attention of the lead committee.

Section 60 – Power to use fingerprints to check applicant’s identity

95. The Committee asked the Executive why, if, as stated in the DPM, it is the intention that fingerprints should be taken at a police station, it is necessary for this to be prescribed by subordinate legislation rather than simply set out in the Bill.

96. The Executive indicated that although its intention is for fingerprints to be taken at a police station, it is considered more appropriate to specify detailed arrangements, such as exact locations, in secondary, rather than primary, legislation. The Executive believes that future technological developments will also mean that attendance at places other than a police station may be possible, and the power ensures that future arrangements could be detailed without the need for further primary legislation.

97. The Committee notes the further information requested from and provided by the Executive and is content with the power as drafted.

Section 76 – Code of practice about child protection information

98. The Committee noted that this section obliges Ministers to publish a code of practice on which they must consult before publication. It was concerned that such a publication does not need to be laid before Parliament.

99. The Executive concurred that the Code of Practice is of sufficient importance to lay before Parliament and a Stage 2 amendment to that effect will be laid.

100. The Committee welcomes the fact that the code is to be laid before Parliament and draws the attention of the lead committee to the proposed amendment.

Section 81 – Enforcement

101. The Committee noted that section 97 contains the customary provision allowing Ministers by order to make supplemental etc provisions. The Executive is asked what additional purpose is served by section 81(1)(b).

102. The Executive agreed that sections 81(1)(b) and 97(1)(a) confer duplicate powers and will bring forward Stage 2 amendments to remove the duplication.

103. The Committee welcomes this intention and draws the attention of the lead committee to the proposed amendments.

104. The Committee asked the Executive for further information in relation to a provision to ensure that relevant persons comply with their duties under part 3.
105. The Executive stated that most of the relevant persons are subject at present to regulation and the power is intended to allow Ministers to add to the regulatory regimes if necessary, in order to ensure that relevant regulators can take action in the event of breach of any of the new duties.

106. The Committee notes and is content with the information provided by the Executive and accepts the power as drafted.

107. The Committee asked the Executive to clarify whether the reference in subsection (2) to “any enactment” covered the Bill itself.

108. The Executive confirmed that the word "enactment" includes the Bill itself when read in the context of these provisions, including section 99(4). It goes on to explain that in its view the best way to exercise powers of this type may often be to insert text into the relevant Bill provision. Doing so can help make the law clearer for persons operating the resultant legislation. Allowing a power to be used to amend other enactments, including the Bill itself, does not affect the breadth of the power.

109. The Committee is content with the Executive’s response.

Section 87 – Transfer of Disclosure Scotland staff etc.

110. The Committee noted that there is no provision requiring prior consultation with staff before making an order under this power and asked the Executive to clarify why there is no such provision.

111. The Executive explained that as this is a relatively small transfer of staff working in a discrete area for one employer and that there is already consultation with the staff. Adding a statutory duty to consult would add yet another consultation which is felt unnecessary.

112. The Committee is content with the Executive’s response and draws the attention of the lead committee to the clarification was provided by the Executive.

113. The Committee raised a further point in relation to subsection (2) which confers power to make an order specifying particular persons. It felt it was inappropriate to include names of individuals in Scottish statutory instruments as they are published on the web. The Committee considered that individuals should be specified by some form of definition or classification rather than by name and draws this to the attention of the lead committee.

Section 94 – Meaning of protected adult

114. This section defines “protected adult” and confers power on Ministers to amend the definition as they see fit. The Committee noted that the power goes beyond simply updating the lists in the Bill and asked the Executive to clarify how it is envisaged that the power will be used.
115. The Executive commented that the intention behind this power is to retain as much flexibility as possible, as health and community care services, and how they are provided, are constantly changing. It did not consider the power to modify subsection (1) is a blanket power allowing Ministers to make whatever provision they wish. The section requires “protected adults” to be defined by reference to the provision of a service, and so the power does not allow Ministers to depart radically from the definition already contained in section 94, even if Ministers intended to use it that way.

116. However, the Committee considered that if the power is intended to be restricted as the Executive suggested in its response, then the drafting of subsection (2) should be adjusted to reflect this policy intention.

117. The Committee draws the attention of the lead committee to this section on the grounds that the drafting of subsection (2) should be amended at stage 2.

Section 96 – General interpretation

118. The Committee asked the Executive why the term “care service provider” is left entirely to delegated legislation, and why there is no indication in the Bill of the type of provider envisaged, or a list of providers with a power to amend by order.

119. The Executive indicated that “care service provider” refers to a person providing a care service as defined in the Regulation of Care (Scotland) Act 2001 Act. The power is intended to allow Ministers to narrow down the organisations defined in the 2001 Act to those most relevant to the protection of children. For this purpose the Executive considered that a negative procedure is most appropriate as it would be reducing, not increasing, the list of relevant organisations.

120. In the light of the explanation supplied by the Executive, the Committee is content with the power and agrees that negative procedure is appropriate.

Section 97 – Ancillary provisions

121. The Committee noted that somewhat unusually, the power in this section extends to amending the provisions of the Bill itself. The Executive was asked to explain its rationale for this.

122. The Executive considered that the ability to use the ancillary power to amend the Bill does not extend the limited scope of that power and, in particular, does not allow the power to be used to reverse or subvert a substantive Bill provision.

123. Secondly, the Committee noted that the power is subject to affirmative procedure but only when it amends the text of an Act. It asked the Executive to comment on the fact that an instrument could be made under the power that has a substantial effect on primary legislation, without actually making textual amendment to that legislation. In such circumstances, the instrument would be subject only to negative procedure.
124. The Executive agreed that the choice of how to exercise the ancillary power will affect the procedure. The status of primary legislation means that changes to it are, as in this case, commonly made subject to the greater level of scrutiny which the affirmative procedure provides.

125. The Committee notes the Executive’s response and accepts the power as drafted.

**Schedule 2, Part 3, paragraph 14 - further education institutions**

126. The Committee asked the Executive to provide further clarification of the drafting in relation to the phrase “and any other body added to that schedule as Ministers may by order specify”. It was not entirely clear whether the phrase was an order-making power or a reference to an order under the 2005 Act adding to the list in schedule 2 to that Act, given that section 7 of the 2005 Act confers a power to modify that list by order.

127. The Executive explained that the words “and any other body added to that schedule as Ministers may by order specify” are intended to create a discrete order-making power and are not a reference to an order under section 7 of the Further and Higher Education (Scotland) Act 2005. However, it accepted that there may be some ambiguity in relation to modifications to the schedule and will therefore bring forward an amendment at Stage 2 to clarify matters.

128. The Committee welcomed the Executive’s response and draws the proposed Executive amendment to the attention of the lead committee.

**Schedule 2, Part 5, paragraph 26 - power to amend schedule**

129. The Committee noted that this is one of the most significant powers in the Bill. The power given to Ministers is unlimited and its exercise could affect the way in which the Bill operates and the protection provided to children under it. It would allow Ministers not only to extend the scope of regulated work but also to restrict it. The Executive was asked to clarify its intentions in relation to the exercise of this power.

130. The Executive concurred with the Committee that the power is wide and could affect the extent of protection provided to children under it. However, they did not consider the power to be unlimited because modifications made using it must have sufficient similarity with the existing contents of schedule 2. Nevertheless, because of the significance of this power, affirmative procedure was considered appropriate. While they have no current intention to use it, without such a power the only way to modernise regulated work with children would be through primary legislation.

131. The Committee is concerned at both the width of the power and the lack of legal argument from the Executive. It draws the attention of the lead committee to this power on the grounds that the extent of the power is unclear.
Schedule 3, Part 5, paragraph 15 - power to amend schedule

132. The same points arise with this power as in Schedule 2, Part 5, paragraph 26. The Executive was asked to clarify its intentions in relation to the exercise of this power.

133. The Executive gave the same response as with the previous power. In addition, it considered it to be a pragmatic and sensible power.

134. The Committee is again concerned with both the width of the power and lack of legal argument from the Executive. It draws the attention of the lead committee to this power on the grounds that the extent of the power is unclear.
ANNEX 1

Correspondence between the Subordinate Legislation Committee and the Scottish Executive

1. The Subordinate Legislation Committee considered the above Bill on Tuesday 24 October and seeks an explanation of the following matters.

Sections 3, 4 and 5 – References by Organisations, Agencies and Businesses

2. The Committee considered that the drafting of sections 3, 4 and 5 is ambiguous. It was unclear to the Committee whether the reference to “prescribed information” in these sections is a noun or a regulation-making power. The Executive is asked to clarify the drafting of these provisions.

Section 6 – Reference relating to matters occurring before provisions come into force

3. The Committee had some difficulty in understanding the purpose of this provision and why it should be necessary for Ministers to prescribe the information that organisations may provide (or indeed why subsection (2) is necessary at all), unless there is some legal prohibition on an organisation disclosing that information. The Executive is asked to explain its rationale for this provision.

4. The Committee also notes the use of the term “prescribed information” in this Section. It is not clear whether this is a reference to information prescribed under other sections or a separate regulation making power. The Executive is asked to clarify the drafting of this provision.

Section 7 – Reference by court

5. The Committee noted that this section also uses the term “prescribed information.” It is not clear whether the phrase is a descriptive term or a regulation-making power. The Executive is asked to clarify the drafting of this provision.

Section 8 – Reference by certain other persons

6. The Committee questioned whether the power in subsection (2) is sufficient for the stated purpose. The Committee doubts whether, even if read with section 99(2), the power would be wide enough to remove or make alterations to references to bodies listed in the Bill. (The same problem arises in relation to sections 17 and 19 below.) The Executive is asked to clarify the drafting of this provision.

7. The Committee noted the references in subsection (1) to the term “prescribed information”. The DPM does not comment on this as a power therefore it appears to the Committee that in this context the Executive is treating the term as a descriptive noun. The Executive is asked to clarify the drafting of this provision.
8. This same issue arises in relation to sections 10(1)(a) and 11(1). In each case the term “prescribed information” appears to be a descriptive noun rather than a power to prescribe information. The Executive is asked to clarify the drafting of these provisions.

Section 14 - Automatic Listing

9. The Committee noted that this section allows Ministers to specify criteria (and indeed further criteria) for automatic inclusion on either list. It considers that these powers leave a considerable degree of discretion to Ministers. The Executive is asked to provide further information on how it intends to exercise these powers.

10. It is not clear to the Committee that references in subsection (4) to the term “specified description”, mean of a description specified in an order under subsection (3). The Executive is asked to clarify the drafting of this provision.

Section 17 – Information relevant to listing decisions

11. The Committee noted that Ministers intend to use the power to extend “a relevant finding of fact” to those made by the professional regulatory bodies identified in relation to section 8. It observed that although the Executive states that one reason for the power is to take account of changes in the name of any of the bodies listed, the power in subsection (5)(f) alone would not be sufficient for this purpose. Furthermore, it is not entirely clear that the general power in section 97(1) to make consequential provisions would be sufficient, as it is doubtful whether the power as expressed in the Bill would extend to amending the text of the Bill itself.

12. The Executive is asked whether it is satisfied that the power in subsection (5)(f) is sufficient for all the purposes outlined in the DPM, in particular the possible need to alter the list to take account of changes in the any of the bodies listed in the Bill.

13. The Committee also observed that although the DPM states that the power is intended to be exercised in relation to regulatory bodies, it is not so limited in the Bill. It might be possible for Ministers to extend the ambit of subsection (5) to any other person or in any other circumstances. The Executive is asked to clarify the drafting of this provision.

Section 19 – Information held by public bodies etc.

14. The Committee noted that the power here is similar to the power in section 17 referred to above, and raises the same issues. The Executive is asked to clarify the drafting of the provision.
Section 25 – Application for removal from list

15. The Executive is asked to explain its rationale for proposing that the power here should be subject to negative procedure, and not affirmative procedure.

Section 29 – Notice of listing etc.

16. The Committee noted that the power here is required for purposes similar to the powers in sections 8, 17, 19 and 25, and raises the same technical issues identified on these. The Executive is asked to respond to these issues as they relate to this section.

17. The Committee also noted that subsections (4) and (5) authorise Ministers to publish guidance. It further notes that there is no statutory obligation on an organisation to follow or have regard to the guidance. As the guidance will not made as an SSI, it will not be published. The Executive is asked to explain why the guidance is not to be made as an SSI, and to comment on how this is intended to be publicised.

Section 31 – Offences against children and protected adults

18. The Committee is concerned about the width of this power which allows the modification of the list of offences, and could radically alter the effect of the Bill. The Executive is asked to clarify its intentions with regard to how this power will be used.

Section 32 – Duty to notify certain changes

19. The Committee noted that the DPM does not give any indication of how the power here might be used. It is noted that failure to comply with a requirement under the section renders an individual liable to criminal prosecution and a substantial fine or imprisonment. The Executive is asked for further clarification on how it envisages using this power.

Section 46 – Vetting information

20. The Committee noted that the term “prescribed details” is used in subsection (1)(a). It notes also that under subsection (2), the regulations under subsection 1(d) may place an obligation on persons holding information of the type prescribed to disclose it to Ministers for the purpose of the Bill. If the reference to “prescribed details” is a delegated power, it is not clear that subsection (2) would apply to that power. The Executive is asked to clarify the drafting and intended use of this power.

21. The Committee also noted that unlike other requirements to be imposed under the Bill, failure to comply with an obligation imposed by regulations under subsection (2) does not appear to carry any sanction. The Executive is asked if this is its intention.
Section 54 - Disclosure restrictions

22. There is a reference to the term “prescribed type” in paragraphs (a) and (b) of subsection (1). The Executive is asked to clarify the drafting in both instances.

Section 60 – Power to use fingerprints to check applicant’s identity

23. The Committee questioned why, if it is the intention that fingerprints should be taken at a police station, as stated in the DPM, it is necessary for this to be prescribed by subordinate legislation rather than simply set out in the Bill. In this respect, the Committee also questioned whether it is intended that fingerprints can only be taken at a police station. The Executive is asked to provide further information.

Section 76 – Code of practice about child protection information

24. The Committee noted that this section obliges Ministers to publish a code of practice on which they must consult before publication. However, it noted that such a publication does not need to be laid before Parliament. The Committee is of the view that the code of practice may be of sufficient importance to be laid before Parliament. The Executive is asked to explain its rationale here.

Section 80 – Relevant persons

25. The Committee noted that this section gives Ministers the power to extend the definition of “relevant persons”. It was noted that Ministers cannot remove from the list, nor can they take into account changes to the names of the bodies listed; they can only add to the list. The Committee considers that this does not appear to meet the policy objective in the DPM. The Executive is asked to comment.

Section 81 – Enforcement

26. The Committee noted that section 97 contains the customary provision allowing Ministers by order to make supplemental etc provisions. The Executive is asked what additional purpose is served by section 81(1)(b).

27. The Executive has stated in the DPM that it may need to make provision to ensure that relevant persons comply with their duties under part 3, but it gives no indication of what this provision might be. The Executive is asked to provide further information.

28. The Committee noted the reference in subsection (2) to “any enactment”. It has discussed previously whether a reference to an enactment in a Bill includes the terms of the Bill itself. The view that the Committee has taken in the past is that a power to amend the terms of the Bill must be expressly conferred. Although there is no such direct provision in the Bill, the wording of section 99(4) in relation to sections 81(1), 88(1) or 97(1) suggests that in those provisions at least, the term is intended to cover the Bill itself. The Executive is asked to clarify the position.
Section 87 – Transfer of Disclosure Scotland staff etc.

29. The Committee noted that there is no provision requiring prior consultation with staff before making an order under this power. The Executive is asked to clarify why there is no such provision.

Section 94 – Meaning of protected adult

30. The Committee noted that there will be a need to amend the list of services from time to time to reflect changes in how those services are organised. However, the Committee noted that this power goes beyond simply updating the lists. The Executive is asked to clarify how it is envisaged that this power is to be exercised.

Section 96 – General interpretation

31. The Committee questioned why the term “care service provider” is left entirely to delegated legislation, unlike any other term used in the Bill. This means that the operation of Part 3 as it applies to such persons or bodies is left entirely to Ministerial discretion. The Committee also considered that it could not comment on the use of the negative procedure until clarification on this issue was received. The Executive is asked why the definition of the term is left to delegated legislation, and why there is no indication in the Bill, for example, of the type of provider envisaged, or a list of providers with a power to amend by order.

Section 97 – Ancillary provisions

32. The Committee noted that somewhat unusually, by virtue of section 99(4), the power here extends to amending the provisions of the Bill itself. The Executive is asked to explain its rationale for this.

33. The Committee also observed that the power is subject to affirmative procedure but only when it amends the text of an Act. It was apparent to the Committee therefore that it would be possible to make an instrument under the power that has a substantial effect on primary legislation without actually making textual amendment to that legislation. In these circumstances, the instrument would be subject only to negative procedure. The Executive is asked to comment.

Schedule 2, Part 3, paragraph 14 - further education institutions

34. The Committee noted that it is not entirely clear whether as drafted the words “and any other body added to that schedule as Ministers may by order specify” is an order-making power or a reference to an order under the 2005 Act adding to the list in schedule 2 to that Act. Section 7 of the 2005 Act empowers Ministers to modify that list by order. That power extends to adding to, removing from or varying an item in that list.

35. If the policy intention of the Bill is, as stated in the DPM, to reflect changes made to the list in schedule 2, then the Committee does not think that it is
necessary to confer a power to that effect in the Bill. All that is necessary would be to add the words “from time to time” after the word “body” in the definition of “further education” in paragraph 14 of schedule 2 to this Bill and delete the words mentioned above. This would give the definition ambulatory effect.

36. Even if the Executive intends the words to confer an order making power, the Committee does not think that it achieves the policy intention since the power is only to add to the list not to reflect other modifications to the list. The suggested wording in the immediately preceding paragraph on the other hand would ensure that all modifications to the list would be reflected (if that is the policy intention).

37. The Executive is asked to comment and to provide further clarification of the drafting of this provision.

Schedule 2, Part 5, paragraph 26 - power to amend schedule

38. The Committee noted that this is one of the most significant powers in the Bill. The power given to Ministers is unlimited and its exercise could affect the way in which the Bill operates and the protection provided to children under it. It would allow Ministers not only to extend the scope of regulated work but also to restrict it. The Executive is asked to clarify its intentions in relation to the exercise of this power.

Schedule 3, Part 5, paragraph 15 - power to amend schedule

39. The same points arise here in schedule 2, discussed above. The Executive is asked to comment.

40. Please email your response to the shared e-mail address above by 5.00pm on Wednesday 1 November 2006.

24 October 2006
ANNEX 2

Response from the Scottish Executive

68. Thank you for your letter of 24 Oct 2006 concerning the Protection of Vulnerable Groups (Scotland) Bill at Stage 1. The Committee's points will be answered in turn.

Sections 3, 4 and 5

2. The Executive would highlight the definition of "prescribed" in section 96(1) and confirm that the reference to "prescribed information" in these sections is, therefore, a regulation-making power. This also applies to sections 7(2), 8(1), 10(1)(a) and 11(1). Using "prescribed" in this way is a standard plain language drafting technique which is adopted regularly throughout the statute book. Consequently, we do not consider that any amendment is necessary to these provisions.

Section 6

3. This section makes it explicit that employers and employment organisations have a specific statutory power to make referrals in respect of matters which took place prior to the Bill being commenced. This provision is necessary to enable organisations to make referrals about historic incidents, but it would be impossible to enforce any duty on them to do so. The purpose of prescribing information which the organisation may provide is to clarify what constitutes a competent referral. A similar argument applies here as for sections 3, 4 and 5 in paragraph 2 above. Paragraphs 12 to 14 of the Delegated Powers Memorandum are also relevant here.

4. The term "prescribed information" in subsection (2) is a distinct regulation-making power and could be used separately from powers in other sections. In practice, the "prescribed information" is likely to be very similar in all instances that it occurs because it serves the same purpose: to ensure all necessary information is included in a referral to expedite the processing of the case and minimise the need to correspond with employers for clarification.

Section 7

5. Our response is the same as in paragraph 2 above for sections 3, 4 and 5.

Section 8

6. In response to paragraph 6 of your letter, we concur with the Committee that the power is not broad enough to remove or make alterations to references to bodies listed. The power can be used to add new bodies only. However, no such power is needed because all the listed bodies are statutory creations established by legislation so any name changes can be made only by primary legislation. That legislation could consequentially amend this Bill and all other enactments which refer to the body by its old name.
7. In response to your paragraph 7, "prescribed information" is a regulation-making power which will be exercised in a very similar way to the power in sections 3, 4 and 5. We apologise for not drawing the Committee’s attention to this in the Delegated Powers Memorandum.

Sections 10 and 11

8. In response to your paragraph 8, our response is the same as in paragraph 2 above.

Section 14

9. In response to your paragraph 9, the Executive would intend to use this power to, for example: respond to amendments or innovations in criminal offences, including offences outwith the law of Scotland; or specify criteria, such as being subject to the requirement to register as a sex offender, which would lead to automatic inclusion on one or both lists. This power does give significant discretion to Ministers which is why affirmative procedure is provided for.

10. In response to your paragraph 10, subsection (4) does no more than give an example of criteria which may be specified by order under subsection (3) and it cannot therefore be referring to anything other than something which may be contained in the order under subsection (3). Further background information re automatic listing can be found at paragraphs 42 to 46 of the Explanatory Notes.

Section 17

11. In response to your paragraphs 11 and 12, we concur with the Committee that the power at section 17(5)(f) is not sufficient to modify or remove any of the bodies listed in paragraphs (c), (d) and (e). The final sentences in paragraphs 29 and 30 of the Delegated Powers Memorandum are incorrect, for which the Executive apologises. Our comments in paragraph 6 above apply here also and we are satisfied that the power is sufficient for its intended purposes.

12. In response to your paragraph 13, we concur with the Committee that the power at subsection (5)(f) is not limited to regulatory bodies, which were mentioned as an example in paragraph 29 of the Delegated Powers Memorandum. Although the primary intention is to use this power for regulatory bodies, the power could be used, in the course of time, to apply to other findings of fact made by, for example, the civil courts, tribunals or children’s hearings.

Section 19

13. In response to your paragraph 14, our answer is the same as in paragraphs 6 and 11 above. The final sentence in paragraph 32 of the Delegated Powers Memorandum is incorrect, for which the Executive apologises. Any person added to the list in subsection (3) can only be required to provide information held by them “which Ministers think might be relevant".
Section 25

14. In response to your paragraph 15 the Executive considers negative procedure to be appropriate for the power at subsection (3)(a). This power relates to the setting of minimum time periods for an application for removal from the list to be competent. The power is limited to that specification of minimum periods, and follows on from the principle of enabling individuals to apply for removal from the list. Furthermore, the more likely grounds for an application for removal are a change of circumstances under subsection (3)(b), to which no time constraints apply. This is because there are only limited circumstances where the passing of time alone makes an individual no longer unsuitable to undertake regulated work. An example of application for removal on the basis of change of circumstances is where a workplace incident took place because of a mental disorder which is now under proper medical supervision. An example of application for removal on the basis of time having elapsed is where an individual forms a sexual relationship with a 15 year old which becomes permanent and, 10 years later, they have married and there are no other instances of other inappropriate relationships.

Section 29

15. In response to your paragraph 16, our answer is the same as in paragraphs 6 and 11 above. The power in subsection (7) is to add other persons as being relevant regulatory bodies rather than to change those already specified so, as previously, the final sentence of paragraph 40 of the Delegated Powers Memorandum is incorrect.

16. In response to your paragraph 17, the power for the Scottish Ministers to publish guidance is intended to be used to provide guidance to those organisations employing individuals under consideration for listing. The Scottish Ministers will know who these organisations are because their details will be taken as part of any application for disclosure in respect of a scheme member. The Scottish Ministers will send a copy of any guidance to the organisation at the time of notifying that organisation that one of their employees is under consideration for listing. The guidance will also be made publicly available. Therefore, we are satisfied that the guidance will be available to those who need it, or may be interested in it, despite the fact that it will not be published as an S.S.I.

Section 31

17. In response to your paragraph 18, the Executive accepts that this is a broad power which is why affirmative procedure is provided for. This power is necessary to “future proof” the Bill in case offences in other legislation or in the common law change, or if new offences are introduced or if existing offences are removed. There is no immediate intention to use this power because such provision as is considered necessary has been included in the primary legislation.

Section 32

18. In response to your paragraph 19, paragraph 50 of the Delegated Powers Memorandum refers to the flexibility to respond to future developments in methods
of confirming identity or location as the reason for taking this power. Any further elaboration is essentially speculative, but a hypothetical example might be making connections with any UK-wide ID card scheme, for example the re-issuing of an ID card with a different number following theft or fraud.

Section 46

19. In response to your paragraph 20, the Committee's attention is drawn to the definition of "prescribed" in section 96(1) which excludes section 46(1)(a) from that definition. “Prescribed details” in subsection (1)(a) refers to the usage of that term in section 113A(3)(a) of the Police Act 1997. Consequently, there is no distinct power to make regulations under subsection (1)(a) which is why no reference was made to this provision in the Delegated Powers Memorandum. The reference to “prescribed details” in subsection (1)(a) is not a delegated power so subsection (2) does not apply to it. Subsection (2) applies only to subsection (1)(d).

20. In response to your paragraph 21, the Committee notes that there is no sanction for failure to provide information prescribed under subsections (1)(d) and (2). This is because the prescribed information will be limited to that held by public bodies (such as regulatory bodies and councils) that are subject to remedies under administrative law.

Section 54

21. In response to your paragraph 22, our comments in paragraph 2 above, re the use of “prescribed”, are relevant here. The powers in subsection (1) can be used to protect individuals so that sensitive information, of a prescribed type, which is contained in scheme records, will not be disclosed to employers.

Section 60

22. In response to your paragraph 23, the wording of subsection (1) reflects that of section 118(2)(a) of the Police Act 1997. Although it is the Executive’s clear intention that fingerprints should be taken at a police station, it is considered more appropriate to specify detailed arrangements, such as exact locations, in secondary, rather than primary, legislation. This is the practice currently adopted in regulation 16 of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (S.S.I 2006/96) and it is intended that similar regulations will be made to cover detailed provisions for the taking and destroying of fingerprints under this Bill. It is possible that future technological developments will mean that attendance at places other than a police station will be possible, for the taking of fingerprints, and this power ensures that future arrangements could be detailed without the need for further primary legislation.

Section 76

23. In response to your paragraph 24, the Executive concurs that the Code of Practice is of sufficient importance to lay before Parliament and a Stage 2 amendment to that effect will be laid.
Section 80

24. In response to your paragraph 25, our answer is the same as in paragraphs 6 and 11 above. The final sentence in paragraph 90 and the latter half of paragraph 89, of the Delegated Powers Memorandum is incorrect, for which the Executive apologises.

Section 81

25. In response to your paragraph 26, we agree that sections 81(1)(b) and 97(1)(a) confer duplicate powers. The Executive will bring forward Stage 2 amendments to remove the duplication.

26. In response to your paragraph 27, most of the relevant persons are subject at present to regulation, and the power is intended to allow Ministers to add to the regulatory regimes if necessary in order to ensure that relevant regulators can take action in the event of breach of any of the new duties.

27. In response to your paragraph 28, we agree that the word "enactment" includes the Bill itself when read in the context of these provisions, including section 99(4). The best way to exercise powers of this type may often be to insert text into the relevant Bill provision. Doing so can help make the law clearer for persons operating the resultant legislation. For example, if the power were to be used to add a minor supplementary procedure, placing the new procedure beside the substantive provision in the Bill to which it relates would save readers and users of the legislation from having to look at more than one instrument to obtain the complete picture. Allowing a power to be used to amend other enactments (including the Bill itself) does not affect the breadth of the power. Section 99(4) is drafted to ensure that the intention is that orders under sections 81(1), 88(1) and 97(1) can amend the Bill itself. It does so by providing explicitly that any amendments to the Bill are to be subject to affirmative procedure. That provision would be meaningless in the absence of intent to allow such an amendment to be made and is therefore considered sufficient to put the matter beyond doubt.

Section 87

28. In response to your paragraph 29, this is a relatively small transfer of staff working in a discrete area for one employer. It is therefore difficult to see what useful purpose a formal consultation on the powers to transfer staff would offer. Instead, staff of Disclosure Scotland, their representatives and their current employer, Strathclyde Joint Police Board, are already involved in consultation about the transfer and the implications for them collectively and as individuals. A staff consultative group is being formed to allow their active participation in planning for the transfer. Adding a statutory duty to consult would require another consultation after enactment of the Bill and this seems unnecessary given that a consultation is already ongoing.
Section 94

29. In response to your paragraph 30, we note that the Committee has observed that there will be a need from time to time to amend the list of services in subsection (1) to reflect changes in how those services are organised. The intention behind this power is to retain as much flexibility as possible in doing that, as health and community care services, and how they are provided, are constantly changing. As the scheme evolves, it may be necessary to modify the existing definitions of service to address changes in the way services are provided, and to add new services. We do not consider that the power to modify subsection (1) is a blanket power allowing Ministers to make whatever provision they wish. The section requires “protected adults” to be defined by reference to the provision of a service, and so the power does not allow Ministers to depart radically from the definition already contained in section 94, even if Ministers intended to use it that way. Given that the power is limited in this way, and given the need for flexibility, we consider it is appropriate to be able to amend the definition by order.

Section 96

30. In response to your paragraph 31, section 96 defines “care service” as having the same meaning as in the Regulation of Care (Scotland) Act 2001. “Care service provider” consequently refers to a person providing a care service as defined in the 2001 Act. The power is intended to allow Ministers to narrow down the organisations defined in the 2001 Act to those most relevant to the protection of children. For this purpose, we consider that a negative procedure is most appropriate as it would be reducing, not increasing, the list of relevant organisations.

Section 97

31. In response to your paragraph 32, we agree that this power can be used to amend the Bill itself. This is particularly apt in the case of powers which can be used to make provision which is ancillary to a substantive Bill provision. As explained in paragraph 27 above, placing a minor ancillary provision next to the Bill provision to which it relates may be of great assistance to the users of the legislation. The ability to use the ancillary power to amend the Bill does not extend the limited scope of that power and, in particular, does not allow the power to be used to reverse or subvert a substantive Bill provision.

32. In response to your paragraph 33, we agree that the choice of how to exercise the ancillary power will affect the applicable parliamentary procedure. The status of primary legislation means that changes to it are, as in this case, commonly made subject to the greater level of scrutiny which the affirmative procedure provides.

Schedule 2, Part 3, paragraph 14

33. In response to your paragraphs 34-37. The words “and any other body added to that schedule as Ministers may by order specify” is a discrete order-making power and is not a reference to an order under section 7 of the Further and Higher Education (Scotland) Act 2005. A separate order-making power is necessary to
allow Ministers to select which of the bodies added to the schedule (by virtue of an order under section 7) are to be treated as further education institutions for the purposes of the Bill. Such bodies may be added under a heading other than “Institutions formerly eligible for funding by the Scottish Further Education Funding Council”. However, we accept that there may be some ambiguity in relation to modifications to the schedule and will therefore bring forward an amendment at Stage 2 to clarify matters.

**Schedule 2, Part 5, paragraph 26**

34. In response to your paragraph 38, we concur with the Committee that the power in paragraph 26 is wide and could affect the extent of protection provided to children under it. The Committee correctly notes that the power could be used to extend or limit the scope of regulated work. We do not consider the power to be unlimited because modifications made using it must have sufficient similarity with the existing contents of schedule 2. However, because of the significance of this power affirmative procedure is considered appropriate. The Executive has no current intention to use this power but its existence is essential to ensure that developments, in the way in which services are provided to children, can be regulated under this Bill. For example, paragraph 7 of schedule 2 brings interactive communication services within the scope of regulated work while such activities were not child care positions under schedule 2 to the 2003 Act because internet chatrooms etc were not as prevalent in 2002 as they are now. One potential reason for the power in paragraph 26 is to ensure that regulated work with children is able to keep pace with technological developments. Without such a power the only way to modernise regulated work with children would be through primary legislation.

**Schedule 3, Part 5, paragraph 15**

35. In response to your paragraph 39, our reasoning in paragraph 34 above also applies. In addition, the Executive considers this to be a pragmatic and sensible power. While care has been taken to devise as comprehensive a list of activities and positions as possible to afford protection for those who will receive care, we recognise that the categories of person requiring the protection of the Bill, and services provided to them, will be constantly changing. As with the power in section 94(2) to amend the definition of “protected adult”, paragraph 15 of schedule 3 allows Ministers to respond more speedily and flexibly than primary legislation would permit in addressing such developments. The main purpose envisaged for the power will be to widen the scope of “regulated work with adults” where gaps emerge through experience. Ministers recognise however that a measure of proportionality within the Bill is also required. While care has been taken to balance the competing interests of those requiring protection against the burden on providers expected to carry out the relevant checks, only experience will determine whether this has been achieved. Should experience highlight unintended consequences for individuals or employers, it is considered prudent to have power also to restrict the scope of the schedule speedily and flexibly. We consider amendment by S.S.I. is appropriate to do that.

1 November 2006
Scottish Executive Education Department
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