



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE

Wednesday 19 May 2010

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**Wednesday 19 May 2010**

**CONTENTS**

|   | <b>Col.</b> |
|---|-------------|
| <b>SUBORDINATE LEGISLATION.....</b>   | <b>3605</b> |
| Rehabilitation of Offenders Act 1974  |             |
| (Exclusions and Exceptions) (Scotland) Amendment Order 2010 (SSI 2010) (Draft) .....                  | 3605        |
| Protection of Vulnerable Groups (Scotland) Act 2007   |             |
| (Removal of Barred Individuals from Regulated Work) Order 2010 (SSI 2010) (Draft) .....               | 3605        |
| Protection of Vulnerable Groups (Scotland) Act 2007   |             |
| (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161).....                         | 3605        |
| Protection of Vulnerable Groups (Scotland) Act 2007   |             |
| (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167) .....            | 3605        |
| Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) .....                   | 3605        |
| <b>“SUPPORTING CHILDREN’S LEARNING: CODE OF PRACTICE (REVISED EDITION) 2010” (DRAFT REPORT) .....</b> | <b>3625</b> |

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**EDUCATION, LIFELONG LEARNING AND CULTURE COMMITTEE**

**15<sup>th</sup> Meeting 2010, Session 3**

**CONVENER**

\*Karen Whitefield (Airdrie and Shotts) (Lab)

**DEPUTY CONVENER**

Kenneth Gibson (Cunninghame North) (SNP)

**COMMITTEE MEMBERS**

\*Claire Baker (Mid Scotland and Fife) (Lab)

\*Aileen Campbell (South of Scotland) (SNP)

\*Ken Macintosh (Eastwood) (Lab)

\*Christina McKelvie (Central Scotland) (SNP)

\*Elizabeth Smith (Mid Scotland and Fife) (Con)

Margaret Smith (Edinburgh West) (LD)

**COMMITTEE SUBSTITUTES**

Ted Brocklebank (Mid Scotland and Fife) (Con)

Hugh O'Donnell (Central Scotland) (LD)

Cathy Peattie (Falkirk East) (Lab)

\*Dave Thompson (Highlands and Islands) (SNP)

\*attended

**THE FOLLOWING GAVE EVIDENCE:**

Adam Ingram (Minister for Children and Early Years)

Andrew Mott (Scottish Government Children, Young People and Social Care Directorate)

Michael Proctor (Scottish Government Children, Young People and Social Care Directorate)

**CLERK TO THE COMMITTEE**

Eugene Windsor

**LOCATION**

Committee Room 5



# Scottish Parliament

## Education, Lifelong Learning and Culture Committee

*Wednesday 19 May 2010*

[The Convener *opened the meeting at 10:00*]

### Subordinate Legislation

**Rehabilitation of Offenders Act 1974  
(Exclusions and Exceptions) (Scotland)  
Amendment Order 2010 (SSI 2010) (Draft)**

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Removal of Barred  
Individuals from Regulated Work) Order  
2010 (SSI 2010) (Draft)**

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Prescribed Services)  
(Protected Adults) Regulations 2010 (SSI  
2010/161)**

**Protection of Vulnerable Groups  
(Scotland) Act 2007 (Fees for Scheme  
Membership and Disclosure Requests)  
Regulations 2010 (SSI 2010/167)**

**Police Act 1997 (Criminal Records)  
(Scotland) Regulations 2010 (SSI 2010/168)**

**The Convener (Karen Whitefield):** Good morning. I open the 15<sup>th</sup> meeting in 2010 of the Education, Lifelong Learning and Culture Committee. I remind all those present that mobile phones and BlackBerrys should be switched off for the duration of the meeting as they interfere with the sound system. We have received apologies from Margaret Smith and Kenneth Gibson. I welcome Dave Thompson, who is Mr Gibson's substitute. I remind members of the committee visit to the City of Edinburgh Council next Tuesday, 25 May. The visit starts at 10 am.

Under agenda item 1, we will take evidence on subordinate legislation under the Protection of Vulnerable Groups (Scotland) Act 2007. This batch of subordinate legislation comprises two affirmative instruments and three negative instruments. Members will recall that the Minister for Children and Early Years spoke to Scottish statutory instrument 2010/161 in evidence to the committee last week. Today, members can continue to question the minister and his officials on the instrument. I welcome Adam Ingram, the Minister for Children and Early Years, and his

officials Andrew Mott, protection of vulnerable groups implementation legislation manager; Michael Proctor, PVG programme manager; and Andrew Campbell from the Scottish Government legal directorate. I understand that the minister wishes to make an opening statement.

**The Minister for Children and Early Years (Adam Ingram):** Thank you, convener, for the opportunity to make an opening statement on the instruments, which are the second batch to come before the committee in respect of the protection of vulnerable groups scheme.

Members will recall the brief introduction to the scheme that I gave last week. I therefore turn immediately to the instruments that are before the committee today. I will speak first to the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Order 2010, the purpose of which is to ensure that organisations remove individuals from regulated work when they are told by Disclosure Scotland that the individual is barred. Although the PVG act makes it an offence for an organisation to offer regulated work to a barred individual, it does not require them to remove barred individuals who are already in the organisation's workforce. That is because the only way in which an organisation could be sure to comply with such requirements would be by undertaking retrospective checking of its existing workforce, a process that would take some time to complete. Indeed, the Scottish Government is proposing at least four years to complete retrospective checking, although the way in which that will be done is yet to be finally determined. The regulations in which the deadlines will be set out will be consulted on in full, in due course.

That said, there is no excuse for an organisation to retain an individual who is doing regulated work where Disclosure Scotland has told it that the individual has been barred, for example, as the result of an organisational referral by another organisation or a new criminal conviction. The regulations make it an offence for an organisation not to remove such an individual from regulated work.

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 makes consequential changes to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2003, which are required to give full effect to the PVG act. The PVG act defines regulated work with children—a definition that broadly replaces the child care position definition in the Protection of Children (Scotland) Act 2003—and such work with adults at risk that comes under the current criminal records regulations. The latter regulations will be revoked

and superseded by new regulations, to which I will turn in a minute. As well as making provision for the PVG scheme, the ROA amendment order makes adjustments reflecting revised provision in the new criminal records regulations. The order also makes a small number of other changes to the 2003 order, reflecting other policy developments.

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 consolidate and replace the existing Police Act 1997 (Criminal Records) (Scotland) Regulations 2006. The principal change is to remove access to enhanced disclosure for positions that will be covered by the PVG act and for which the new PVG scheme disclosures are available. The regulations provide for continued access to enhanced disclosure for positions that do not involve work with vulnerable groups. Examples include individuals who are seeking a licence under the Gambling Act 2005, and potential adoptive parents in situations in which the relationship is family rather than work, and where the adoption decision is irrevocable so on-going monitoring is inappropriate.

The criminal records regulations increase the fee for basic standard and residual enhanced disclosure from £23 at present to £25 from when the scheme goes live later this year. Much of the remaining provision in the criminal records regulations is carried over and updated where appropriate from the existing regulations. I am happy to take questions on anything that is not clear.

I turn to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010, which I am sure that the committee will want to discuss. As members are aware, the cost of joining the PVG scheme will be £59, with most subsequent checks costing £18. The regulations aim to preserve the current arrangements for volunteers working in the voluntary sector to receive free checks. I believe that the Scottish scheme fees compare favourably with those for the rest of the United Kingdom. I will return to that issue in a moment.

The PVG scheme fees regulations provide for duplicate disclosures to go free of charge to the General Teaching Council for Scotland and the Scottish Social Services Council in certain circumstances. The purpose of that is to minimise the burden of retrospective checking for those employers and regulatory bodies.

I realise that the headline fee change from £23 for enhanced disclosure to £59 to join the PVG scheme will be challenging for some organisations and individuals, especially in these difficult economic times. We are proposing a four-year period of retrospective checking in line with

responses to policy consultation. We will consult on the detail of those proposals in the summer, and a further consultation on the draft SSI will take place ahead of the laying of it in spring 2011. A balance needs to be struck between the financial interests of organisations and the protection of vulnerable groups.

Last week, I set out the key benefits of the PVG scheme. They include a streamlined disclosure process, which cuts the bureaucracy around multiple checks; continuous updating of scheme members' records, which means that subsequent disclosures are ready without delay and that immediate action can be taken if new information indicates that any individual may be unsuitable; the establishment of an adults-barred list for the first time in Scotland; effective barring, which means that vetting information will be assessed by Disclosure Scotland so that employers know that a PVG scheme member is not unsuitable to work; and access to disclosure for personal employers, so that they can ensure that the person they are employing is not unsuitable to do regulated work.

In the context of the PVG scheme fees regulations, I will expand on the direct and indirect financial benefits of the PVG scheme over the medium term. PVG scheme membership lasts for life, although individuals are free to leave at any point provided that they are not doing regulated work. As employers will be informed if anything comes to light that suggests that an individual may be unsuitable to work with vulnerable groups—for example, the beginning of a consideration-for-listing case—most employers will not need to do repeat checks. Once an individual is a PVG scheme member, subsequent checks will be cheaper than the current enhanced disclosure, at £18 rather than £23, in the vast majority of cases. Not only that, but the process will be faster and simpler, especially after the roll-out of online functionality in 2011. Individuals and organisations will be able to apply for all forms of check online, and the scheme record update will be viewable online.

The regulatory impact assessment sets out in detail how the one-off initial additional fee cost to the paid sector is offset over time by recurring savings. It is offset by fee savings after the period of retrospective checking and by administrative savings that begin as soon as the first PVG scheme member changes job.

As the committee knows, a similar scheme is being established in England, Wales and Northern Ireland through the vetting and barring scheme—the VBS—which will be managed by the Independent Safeguarding Authority in partnership with the Criminal Records Bureau for England and Wales and Access Northern Ireland. The PVG joining fee compares favourably with the fee for

the vetting and barring scheme, which will cost £64 to join in England and Wales and £58 in Northern Ireland. Furthermore, subsequent disclosures, which employers are likely to require whenever an individual takes on a new job, will cost £36 in England and Wales or £30 in Northern Ireland.

I will outline how the Scottish Government has responded to stakeholders on the PVG fees regulations as a result of the recent consultation on the draft regulations. We have extended from 14 days to 30 days the time limit for upgrading from a scheme record update to a scheme record disclosure. We have removed the public benefit test from the definition of qualifying voluntary organisations and provided for duplicate disclosures to be provided to the GTCS and the SSSC free of charge. We have announced the registration fees and acknowledged the issue for students and colleges, a matter which we are actively considering.

I turn briefly to the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010. Members will recall that I explained the purpose of the regulations last week to facilitate committee consideration of the related Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Adults) Order 2010.

To recap briefly, relevant support and care services are set out in the PVG act, and these regulations complete the picture. They identify the health and welfare services receipt of which make an adult a protected adult. On health services, the regulations seek to ensure similar protection across the public and independent sectors. The definition of a welfare service is similar to that for a social care service under the existing disclosure scheme, so that little or no disruption should be involved in establishing procedures for the relevant organisations. In the consultation, stakeholders were overwhelmingly in favour of a service-based definition of "protected adult", as it avoids stigmatising an adult by reason of disability or personal characteristics. They were also very supportive of the health and welfare definitions in the regulations.

I commend the five instruments to the committee and am happy to answer any questions.

10:15

**The Convener:** Thank you for that opening summary of the implications of the instruments. You are right to suggest that the committee has some questions, particularly on the fees. I recognise the continuing discussions that you and

your officials have been having with the voluntary sector, but the committee remains concerned about the implications of the fees. Why has there been an increase in the cost from £23 to £59? You say that the cost compares favourably with the costs in other parts of the United Kingdom, but the increase is still considerable. What is the reasoning for that?

**Adam Ingram:** The £59 fee reflects the cost of maintaining a person's membership of the scheme throughout their working life. It does not reflect just the cost of one transaction, as we have in the current system of disclosure applications, under which a search is done and a certificate is produced that reflects a snapshot in time.

Paragraph 88 in the regulatory impact assessment sets out the reasons why the fee levels are much higher than was originally envisaged. The fact that scheme records have to be kept up to date continuously means that there is a daily checking of police systems. As you know, that does not come free of charge. There has also been a need to build resilience into the system with a disaster recovery scheme and business continuity arrangements, which add to the scheme's overheads. Also, it is more expensive to follow through on people who are under consideration for listing, and those costs need to be spread across the whole scheme membership.

Taking into consideration the size of the regulated workforce, the annual volume of applications, of which we have a fair idea after eight years' experience, and the work that is required to manage the scheme records of some 700,000 people, the fees have been set at a level that will ensure that the income meets the costs. Once the workforce has been taken into membership, however, employers should achieve significant savings, for example on administration costs and the cost of scheme updates, which are much lower than those of the current enhanced disclosure scheme. Of course, employers will also benefit from the extra protection.

That is an exposition of why we have jumped from £23 to £59 and why membership of the PVG scheme, which is for life and is dynamic, costs significantly more than taking a snapshot, which is what the enhanced disclosure does.

**The Convener:** The voluntary sector had reservations about the introduction of the scheme, but it went along with it on the basis that it thought that it could manage a cost in the region of £20 to £23. However, the difference in the cost of the scheme will be considerable for the sector. The Scottish Council for Voluntary Organisations, in particular, has been lobbying the committee because, in the current economic climate, there has been a downturn in the income that

organisations receive not only from local authority and Scottish Government funding but from charitable donations, which are becoming much harder to secure.

In light of the fact that the costs will increase for the organisations, they wonder why the Scottish Government is not willing to consider some absorption of the overall costs of the scheme, perhaps through half of each fee being paid by the Scottish Government and the remainder by the organisation. Did the Government consider that?

**Adam Ingram:** Some of the correspondence that the committee has received from the voluntary sector has asked why we adopted the full cost recovery model, which passes on all the costs of the disclosure checking of staff who are employed in voluntary organisations. Of course, we pick up all the costs of the disclosure checking of volunteers in such organisations, which is a significant help to those organisations.

From its inception, the PVG act was based on the premise of full cost recovery, as indeed was Disclosure Scotland when the service started up in 2002 under the Police Act 1997. There are three reasons why fees should be paid by applicants. The first and most important reason is that they are the beneficiaries of the scheme. Employers are assisted directly in the recruitment and risk management of their workforce, and individuals have the means of confirming their criminal history, or lack of it, and other relevant information when they are seeking jobs. There is also the significant risk of a free system leading to inappropriate overuse. Fees also act as a deterrent against disclosures being requested when that is not appropriate. For all those reasons, we argue that it is appropriate for employing organisations to pick up the fees for disclosure of their own staff.

**Elizabeth Smith (Mid Scotland and Fife (Con)):** Minister, you explained why there has been a substantial increase in the cost. You also mentioned that it would be possible for employers to make savings on costs later. Are you able to offset one against the other? It might allay employers' fears if they know what savings might be possible after they have made the extra payment, which is obviously double. Have you done some arithmetic on that?

**Adam Ingram:** Yes, and it is laid out in the regulatory impact assessment at table 3—I do not know whether you have that in front of you today. We calculate that the additional fee cost over the four years of introduction of the scheme, including the retrospective element, is in the area of £15 million. That is the whole workforce joining additional cost. Savings start to kick in in year 4. Thereafter, there is a saving of £2.5 million per annum as checks on the existing workforce in the

form of scheme updates at £18 come into play and are much more prevalent than scheme records. Savings in administration costs kick in right away.

**Elizabeth Smith:** I am sorry; I asked a slightly inaccurate question. Can you break down the costs for an individual? Are you able to give guidance to employers about what their individual savings will be for their organisation?

**Adam Ingram:** Essentially, we would have to disaggregate the figures, and it would depend on the numbers in a particular workforce. For example, the SCVO has told us that its admin costs for making an application and going through all the necessary bureaucratic procedures might be £21.50 per person. The new scheme will reduce that cost dramatically, and those cost savings will kick in from day 1 of the scheme.

**Elizabeth Smith:** Will local authorities be in a position to know what the costs and potential savings will be? Obviously, there are many institutions within each local authority. Are local authorities in a position to know all that?

**Adam Ingram:** They certainly should be able to work that out. During the four-year period of introduction, there will be a significant spike in the cost, as a result of getting all the workforce into the scheme. The additional cost will be £15 million, but there will be savings of about £11 million in administration costs, so the net effect over the four years is a £4 million additional cost. However, once that period is over and done with, the costs of operating the disclosure system for all organisations will fall from the current cost of about £13.5 million to just £5.9 million. There is no doubt that the scheme will be significantly cheaper in the medium to long term.

**Elizabeth Smith:** Do you envisage the costs being borne fairly equally on a per head basis by local authorities? Obviously, some local authorities have many more people who are likely to be disclosed. Do you envisage the burden being shared fairly equally?

**Adam Ingram:** Yes, I would say so. Obviously, some local authorities employ more people than others do, but the costs will work out in a per head way, if you like.

**Elizabeth Smith:** Do you anticipate a problem with local authorities that find the burden too great and which cut back the number of staff who require disclosure?

**Adam Ingram:** I do not see that. Perhaps Michael Proctor wants to comment.

**Michael Proctor (Scottish Government Children, Young People and Social Care Directorate):** A significant issue that is not taken account of in the figures is about how often employers recheck their existing staff. That varies



substantially between employers. Many local authorities recheck all their staff every two, three or four years, so they have significantly more potential to make savings than those authorities that carry out checks for people when they come into a post and do not do them again.

On the impact on organisations, one issue is how the retrospective checking process is managed. Disclosure Scotland is keen to ensure that it is done in a way that has the least impact on organisations. Disclosure Scotland has already held a series of workshops with some of its bigger customers on how to manage and minimise the impact. Proposals on how that might be managed will come out for consultation in the summer but, basically, the preferred option is to agree with each employer how many people it wants to join the scheme over time and how it wants to manage the phasing of that over whatever period is ultimately agreed, so that we minimise the impact.

The other part of Elizabeth Smith's question was about whether employers will decide to take a risk and not make people join the scheme. The answer is that membership of the PVG scheme is not compulsory, so employers could choose to do that if they wished, but they will then bear the risk that they could be employing someone who is barred. However, an employer could legitimately take a risk assessment decision that someone who has been employed for 30 years and who is well known will be at the bottom of the list of people whom it wants to join the scheme.

10:30

**Ken Macintosh (Eastwood) (Lab):** Minister, you used the word "saving". What do you mean by that? In recent years, the cost of disclosure checks has increased from £13.20 to £20 to £23. You are saying that, because in the long term you expect people to use the short scheme disclosure at a cost of £18, that is a saving. Having increased the cost of disclosure checks, you are saying that, in the long term, the new disclosure method is a saving for organisations that did not have to pay anything at all six years ago.

**Adam Ingram:** What I am saying is that there is a cost to join the scheme—a membership fee, if you like—of £59, but once that is paid the operation of the scheme will be much cheaper and it will be simpler to use. I do not envisage the demand for scheme updates being higher than the current incidence of requests for enhanced disclosure checks. In fact, I suggest that there is less likelihood of employers requiring that, on a regular or an ad hoc basis.

Along with the reduction in the cost of disclosure, there is a significant reduction in the cost of the administration of the scheme, with the

advent of online functionality. Administration will be significantly cheaper than it is now. You seem to be questioning whether we should have gone down the path of disclosure checking in the first place. As we discussed last week, the Parliament and society have stipulated that that is what we need to do, and we need to follow through on that. We are trying to put together a sensible, cost-effective scheme that gives the public the protection that it demands from a system but is as efficient and cost-effective as it can be.

**Ken Macintosh:** So you are saying that, although this is a dramatic increase in the short and medium term, in the long term you hope that it will be slightly less of an additional cost. I worry about and I query your use of the word "saving"—it is a bizarre use of that word. We are trying to find the cheapest way of imposing extra cost on a voluntary sector that is already feeling the burden. Your use of the word "saving" is based on the premise that all those organisations will use the short scheme update at £18. The voluntary sector has indicated forcefully its concern that not all organisations will use the short scheme update and will feel obliged to use the full disclosure at £59. Have you built that into your assumptions?

**Adam Ingram:** I disagree with that analysis. I think that it was Community Care Providers Scotland that sent the committee a submission to that effect. Essentially, CCPS is saying that when an applicant comes to it with a scheme record, CCPS will not necessarily trust what it has in front of it. As you know, a series of anti-fraud measures is built into scheme record disclosures. The scheme record update can be used to corroborate what is on the scheme record—what the individual has brought to the employer. A series of cross-checks can be made between the scheme update and the scheme record, such as the date of issue of the scheme record, and the disclosure number, address, date of birth and so on of the applicant. I suggest that the fears expressed by CCPS and others will not be realised.

**Ken Macintosh:** Not only CCPS but a number of other bodies have expressed concerns. They have laid out several examples of potential problems. The system seems to be predicated on people remaining in employment with the same organisation. However, if someone who is a member of one organisation applies for their full-scheme membership and then moves post or organisation, they might not bring the information with them, even though it is designed to be portable. They might bring their own paper copy with them, but some people will lose that. Even if the person has that paper copy, surely the new organisation will feel obliged to do a thorough check itself. That is what organisations are telling us.

**Adam Ingram:** It would not be obliged to do that. A scheme record is an important document, so people would require to keep it safe, just as we keep safe our driving licenses and other documents that we know that we will need. People will be well aware of the importance of the document, and that they will be expected to bring the document to be inspected by a prospective employer.

The employer needs to know only whether that person is a member of the scheme, because that makes them not unsuitable for regulated work. The scheme update would be the most important document for the prospective employer to seek. As you know, at £18, it is available at a significantly lower cost.

**Ken Macintosh:** Out of interest, why not make the scheme update access to the whole scheme? I do not understand why there would be a difficulty with that.

**Adam Ingram:** I do not quite understand what you mean.

**Ken Macintosh:** The short scheme update tells you if anything new has been added; it does not give you access to the initial information.

**Adam Ingram:** That is correct. Michael Proctor can give you more information.

**Michael Proctor:** The main reason why the full details of any conviction information will not appear on a scheme record update is so that it can be made available online, which is one of the benefits in terms of administrative savings.

The important point to note is that, even if you assume that every member will lose their scheme record and will therefore not take it to their next employer, currently only about 7 or 8 per cent of enhanced disclosures have any information on them at all, which means that more than 90 per cent of them have no information on them. The scheme record update will confirm the date on which the last scheme record was disclosed and whether there was any information on it. Therefore, for 90 per cent of applicants, an employer will get as much information from a scheme record update as they would from the full scheme record. Why would any employer choose to pay £59 for that rather than £18? If the employer determines that the scheme record update shows that there is some information on the full scheme record, and they do not trust what the individual has brought along with them, they can pay the additional £41 and see the full record.

That is probably the most fundamental misunderstanding that I picked up on from what CCPS has presented to you. We have had this discussion with other employers and have seen that the light goes on in their heads when they

understand that they will likely get as much information from the scheme update as they would from the full scheme record.

We are planning a session with CCPS members in the coming months that will help them to plan their preparation and give us an opportunity to explore those issues with them.

**Ken Macintosh:** I hope that those talks are successful and reassuring. However, I think that the biggest concern is not the long-term implications but the short-term impact of the £59 costs.

College and university students are a sub-group of the workers with whom the scheme is concerned. From the Government's response, it seems that, although you are not making any allowance for other groups, just as you are not making any allowance for voluntary organisations, you are keeping the students under active consideration. That seems to mark them out as slightly separate, or am I misreading that? You seem be saying that, given the impact of the £1 million to £2 million that you have estimated and the £3.9 million that the colleges have estimated for the cost of repeated checks on each cohort of students as they go through university, you will review the need to have those checks done. What does that mean, and will you do that this year or next year?

**Adam Ingram:** Given the pattern of the need for disclosures in the academic year, we are talking about having a considered answer by the academic year 2011-12. So we will go live without having fully worked through what we will do with students and colleges. We have undertaken to come up with a considered solution and we are talking to the colleges on that front. I hope that we will come up with such a solution.

**Andrew Mott (Scottish Government Children, Young People and Social Care Directorate):** The key difference between colleges and other employers is the fact that colleges are always picking up the joining fee without any of the benefit of the cheaper disclosure when people move around. For example, once a scheme is up and running and we are through the period of retrospective checking, when a new person is recruited for a post, that person is often already a scheme member and the employer benefits from the £18 fee. The problem with colleges is that, because new people are always joining, there is a high year-on-year cost without any of the benefits. Therefore, there is a legitimate argument that colleges are a special case and are different from the other sectors, and we are looking into what can be done about that.

The issue came out of the 2009 consultation. Since 2008 it has been widely known that there

will be a two-tier fee structure, but it was only when the fees were published in November 2009 and we had the consultation that the colleges told us that that would be a problem for them. It is a legitimate issue that needs to be resolved, but it has come onto the radar only fairly recently.

**Ken Macintosh:** I have a couple of questions about portability. The short scheme record is supposed to give greater portability to the Scottish system. Will there be any portability between the system in England and Wales and the system in Scotland?

**Adam Ingram:** Obviously, we must ensure that the two systems are compatible and that we have that functionality.

**Michael Proctor:** There are two parts to the answer to that question. We have agreed with our counterparts south of the border that we will have an integrated approach to the barring process so that a person who is added to a barred list in one Administration cannot work anywhere else and that it will not be possible for someone who has been considered for listing in one Administration to be considered for listing in another Administration on the basis of the same information. That part of the system is integrated. However, the rules governing scheme membership in the two Administrations are quite different, reflecting a different approach in Scotland from the approach in England, Wales and Northern Ireland, where it is compulsory to be a scheme member to undertake regulated activity. An individual who worked in both Administrations simultaneously would need to comply with the law in both Administrations at the same time, which could mean that they would have to be a member of both schemes.

**Ken Macintosh:** In general, are you confident that the two schemes are harmonised efficiently?

10:45

**Andrew Mott:** There are many aspects to it. On the draft Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010, which came before the committee last week, colleagues have worked with people in the Independent Safeguarding Authority to ensure a broad consistency of approach throughout the UK.

There is a lot of discussion between the teams here and those in the Independent Safeguarding Authority about the listing thresholds—what would lead a person to be included on a barred list after a consideration case—to ensure that there is sufficient compatibility.

The situation is similar regarding the sort of information that will be included on disclosures. I guess that those are the three main touch points.

There are different schemes for different administrations, with different stakeholders who have different needs. The differences are significant. In Scotland, there is a greater, more proportionate focus on who needs to be in the scheme. Having that difference of scope is not a cross-border issue; the schemes do not need to be tied together in the same way as, for example, the protocols with the ISA governing who leads on a barring case—those do need to be tied up. Does that make sense?

**Ken Macintosh:** Yes, thank you.

**Christina McKelvie (Central Scotland) (SNP):**

Can you confirm for us, minister, that the huge group of employees who already hold enhanced disclosure will automatically become members of the new scheme? Has the impact of that been included in the costs that organisations have worked out relating to people moving within them? Sometimes, people who change job need a new disclosure. Can people who move outwith an organisation and go to a similar one just transfer the disclosure?

**Adam Ingram:** No. Basically, we have to go through the process of getting the whole workforce into scheme membership. As I said, an enhanced disclosure is just a snapshot in time. It says what vetting information is available at that particular point. It becomes out of date immediately. We are trying to move to a system where there is a dynamic. There is daily updating of information on every single membership record. People who currently have an enhanced disclosure will have to join the scheme and get a new record under it.

**Christina McKelvie:** I will take up an issue around college students, and I refer to Ken Macintosh's questions about the cost to organisations. When college students with an enhanced disclosure who have been working for local authorities or other organisations use their qualification to go and work in a new organisation, do they just need the update if they are members of the scheme now?

**Adam Ingram:** That is what the argument is about. Who actually picks up the cost of scheme membership? If a student's membership fee has been paid for by the college, the employer gets a significant benefit out of that. Is that fair? We need to work out what we will do about that. One suggestion was that colleges should pay the equivalent of a scheme update—£18—and that the first employer should pay the full membership fee. We have not worked all those options through yet, but that question will be discussed, and a robust option will, I hope, be presented.

**Ken Macintosh:** I take it that registration fees will come up for our consideration next week or the week after—they are not under consideration today. I believe that the organisations themselves have to pay fees.

**Andrew Mott:** The registration fees will come before the committee in the autumn, and the instrument will be subject to negative procedure.

**Ken Macintosh:** I am conscious that that will be another cost for organisations.

The current disclosure cost of £23 is being increased to £25 in the on-going scheme. I was a little bit confused about the numbers. Why is the cost increasing at all? What is the purpose of that? How many people are affected? How much use will be made of the old scheme if people move across to the PVG scheme?

**Adam Ingram:** The establishment of the new PVG scheme has cost implications, not least because of the volumes involved, so there must be an adjustment of the enhanced disclosure costs. Costs will also be brought into line with the costs in other United Kingdom jurisdictions, in which the standard cost is £25. It is also important to note that there is increased functionality associated with the cost increase. Perhaps Michael Proctor will tell us what extra we will get for the money.

**Michael Proctor:** Absolutely. The reason for the increase is that we have been able to take the opportunity to develop the information technology system for the PVG scheme to replace the whole of Disclosure Scotland's IT functionality. That allows for a number of additional features and benefits, which will be offered to other disclosure users. Obviously, it would have been inappropriate to have reflected those costs in PVG fees. For example, an external authentication service will be used, which will be an additional benefit to employers in ensuring that the applicant is not claiming to be someone else. The external URU service will check that a number of details that the individual has provided actually belong to that individual. There is a cost per usage of that service, which is included and reflected in the fee increase. Obviously, PVG scheme users will benefit from the additional resilience, disaster recovery and business continuity functions, which have not existed to date in Disclosure Scotland's operation.

The other significant benefit will be a business-to-business service. There are a number of large users of basic disclosures in particular, the largest of which is the Royal Mail. We have piloted that service with it. The service allows it not to have to fill in forms, but to extract the details of forms from its human resources system and send them in bulk files to Disclosure Scotland. That will mean

huge savings for it. The new system will allow the process to be extended to other large users of non-PVG disclosure types.

There will be a number of significant benefits from the new IT system, which are reflected in the cost increase. Obviously, it would have been inappropriate to have reflected those in PVG fees.

**Ken Macintosh:** What numbers are involved in the on-going use of the disclosure system?

**Michael Proctor:** I do not have the specific numbers to hand, but we have provided somewhere in the region of 650,000 to 750,000 other disclosures, the vast majority of which are basic disclosures and non-Scottish, because England and Wales do not provide a basic disclosure service.

**Ken Macintosh:** It is a whole industry.

**Michael Proctor:** Yes.

**Adam Ingram:** We wondered whether the new UK Government might cancel its scheme and we could offer it ours.

**Ken Macintosh:** That is the new Liberal Government.

I want to give a little example. I want to check what would happen in a case that has come to my attention. I believe that, at the moment, colleges ask staff to undergo repeat checks; I am not sure whether that is the law, but they certainly feel obliged to do so. Obviously, once somebody joins the scheme, they will not have to undergo a check, because if they stay in the job the employer will be automatically notified of any issues. They would have to get an enhanced disclosure check only if they moved.

You have talked about introducing retrospective checking. At the moment, if someone is in post, will they continue to be asked to undergo repeat checks until the retrospective catch-up has been introduced?

**Michael Proctor:** Once the PVG scheme is introduced, organisations will not be able to apply for enhanced disclosure checks for people who do regulated work, so the point at which they would have repeated an enhanced disclosure check for someone will be the point at which many organisations will choose to get that person to join the scheme. The work that Disclosure Scotland has been doing with those organisations has been about identifying the easiest way for organisations to do that. The favoured option seems to be to agree a certain volume of applications per month over whatever period suits the organisation and allows the process to be managed.

You are right to say that there will be no need for employers to carry out repeat enhanced disclosure checks on existing staff because they

will be notified if something significant comes up that leads to someone being considered for listing.

**Ken Macintosh:** I want to check on the legal status of someone who works for a college who does not wish to join the scheme. Do they have the right to refuse to join it?

**Adam Ingram:** There have certainly been one or two cases in which people have alleged that they were turned down for employment because they refused to undergo a disclosure check or to send on a disclosure certificate to the college. I know that that happens under the current system.

**Ken Macintosh:** I was thinking of someone who is in employment who refuses to fill in a disclosure form and to join the new scheme. I assume that once the legislation on retrospective checking is put in place, it will become obligatory to join the scheme, but I take it that at the moment it is not.

**Michael Proctor:** Under the PVG legislation, it will never become compulsory for any individual to join the scheme. That is different from the situation under the safeguarding vulnerable groups legislation. Scheme membership is not compulsory. The issue lies with the employer, in the sense that if someone does not join the scheme, the employer will have no way of knowing whether that person is barred. If an employer is prepared to bear the risk that they may employ a barred person, there is no need for them to require the person to join the scheme. In those circumstances, the employer would bear the risk.

**Adam Ingram:** The employer could, of course, be prosecuted for employing a barred person. Although, ostensibly, someone could refuse to become a member of the scheme, the employer could take the logical view that they could not afford to take the risk of continuing to employ that person.

**Ken Macintosh:** The argument that is used is that if someone has been in employment for some time, the employer knows what they are like, they are well known and they have never been any problem, why should the employer fear anything about them? Some people still think that they are innocent until proven guilty—but maybe that is not the case any more.

There is one last thing that I want to check. You will introduce retrospective checking over four years. Do you have any more details on that? Will the process be staggered over four years or will retrospective checking be introduced at the end of the four years? What is the thinking on that?

**Adam Ingram:** We hope that the scheme will go live later on this year. The intention was that there would be a year's grace and that retrospective checking would be implemented over the following three years. However, as the convener mentioned,

some of the smaller voluntary organisations might struggle with that, so we intend to continue to discuss with them the best way to progress retrospective checking. The longer the period that we give, the more natural turnover there will be in organisations and the lower the costs are likely to be in the long run. Therefore, we will continue to talk, particularly with the smaller, more financially fragile organisations, to see whether we can come up with a scheme that suits them.

11:00

**The Convener:** That exhausts our questions to you, minister, so we will move to the second item on our agenda, which is formal consideration of motion S3M-6282.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 be approved.—[*Adam Ingram.*]

**The Convener:** Committee members now have an opportunity to debate the order. I remind members that they should make contributions; they can no longer ask questions of the minister, although he will be able to respond to the points that are made in the debate in his closing remarks.

Do members wish to make any points?

**Ken Macintosh:** I simply make the point that, no matter that in the long term the imposed cost may be less expensive, the amount of money that the Government expects to be found by voluntary organisations that carry out duties and public services on behalf of the whole community is substantial and could have a detrimental effect. The minister seems to have made up his mind about this group. I am pleased to hear that he is open minded about the college group, so I ask him to rethink his approach on this instrument and to review the impact on services. The new system will be a serious burden at a particularly difficult time in the financial cycle.

**The Convener:** I see that no other member wants to contribute. Minister, do you have any closing remarks?

**Adam Ingram:** I obviously have sympathy with the position of small voluntary organisations, which is why we want to continue to talk to them about retrospective checking. We might be able to reduce the financial burden on them if we can come up with a suitable solution. Ultimately, however, we are duty bound to follow through with this system.

It is worth saying that the Scottish Government has picked up the tab entirely for the development costs of the new system, which could reach somewhere in the region of £53 million. None of

that cost has been passed on. We have come up with a scheme for users that is simpler to use and cheaper in the longer term—although I acknowledge that there is a spike in costs initially—and which builds in significant added protection to the PVG scheme. Everyone will benefit from that investment by the Scottish Government, although we acknowledge the vulnerability of some of the organisations and we want to work with them to help them to get through this stage.

**The Convener:** Thank you for those closing comments, minister.

The question is, that motion S3M-6282 be agreed to.

*Motion agreed to,*

That the Education, Lifelong Learning and Culture Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2010 be approved.

**The Convener:** We move to agenda item 3. I invite the minister to move motion S3M-6283.

*Motion moved,*

That the Education, Lifelong Learning and Culture Committee recommends that the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 be approved.—  
[Adam Ingram.]

*Motion agreed to.*

**The Convener:** Item 4 covers the negative instruments. I invite members to comment on the instruments on which evidence was taken under agenda item 1. I point out that no motions to annul have been lodged.

Members may be interested to learn that the Subordinate Legislation Committee highlighted a number of issues in relation to the instruments, which were detailed in the paper that was circulated by the clerk. However, I do not think that any of them were substantive enough for us to consider further.

As members have no comments to make, does the committee agree to make no recommendation on the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 (SSI 2010/161)?

**Members indicated agreement.**

**The Convener:** Does the committee agree to make no recommendation on the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167)?

**Members indicated agreement.**

**The Convener:** Does the committee agree to make no recommendation on the Police Act 1997

(Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168)?

**Members indicated agreement.**

**The Convener:** I suspend the committee to allow the minister and his officials to leave. I thank the minister for his attendance.

11:06

*Meeting suspended.*

11:14

*On resuming—*

**“Supporting Children’s Learning:  
Code of Practice (Revised  
Edition) 2010” (Draft Report)**

**The Convener:** The fifth and final agenda item is consideration of a draft report on the code of practice in relation to the Education (Additional Support for Learning) (Scotland) Act 2004 and the Education (Additional Support for Learning) (Scotland) Act 2009. I invite members to comment on the report.

**Ken Macintosh:** I am happy.

**The Convener:** I am glad to hear that you are happy, but I must still ask: are members content with the draft report?

**Members** *indicated agreement.*

**The Convener:** I am glad that members are content. The next step in the process is for the Parliamentary Bureau to timetable a short chamber debate, which will be on a motion that I lodge on the committee’s behalf. The motion will read:

“That the Parliament agrees that the Education, Lifelong Learning and Culture Committee’s 3rd Report, 2010 (Session 3): Report on supporting children’s learning code of practice ... together with the Official Report of the Parliament’s debate on the report, should form the Parliament’s response to the Scottish Government on its revised code of practice, supporting children’s learning.”

Are members content with that course of action?

**Members** *indicated agreement.*

**The Convener:** That is great—I am grateful for that.

The committee’s next meeting will be on Wednesday 26 May.

*Meeting closed at 11:15.*





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