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PROTECTION OF
VULNERABLE GROUPS
(SCOTLAND) ACT 2007

Consultation on Policy Options for
Secondary Legislation

November 2007

The Scottish Government Bichard Inquiry

- Recommendation 19 – “New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. This register would confirm that there is no known reason why an individual should not work with these client groups.”

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- To exclude unsuitable people
- To identify and exclude people who become unsuitable
- To streamline the whole process
- To connect with SVG scheme
- To be fair and proportionate

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Problems with the existing disclosure regime

- Point in time snapshot
- Repeat disclosures
- Inconsistent decision making
- Reactive process for barring
- No adult barred list

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What's different?

VETTING

- Scheme membership
- Vetting on joining
- New information sources
- Constant updating
- Different disclosure processes

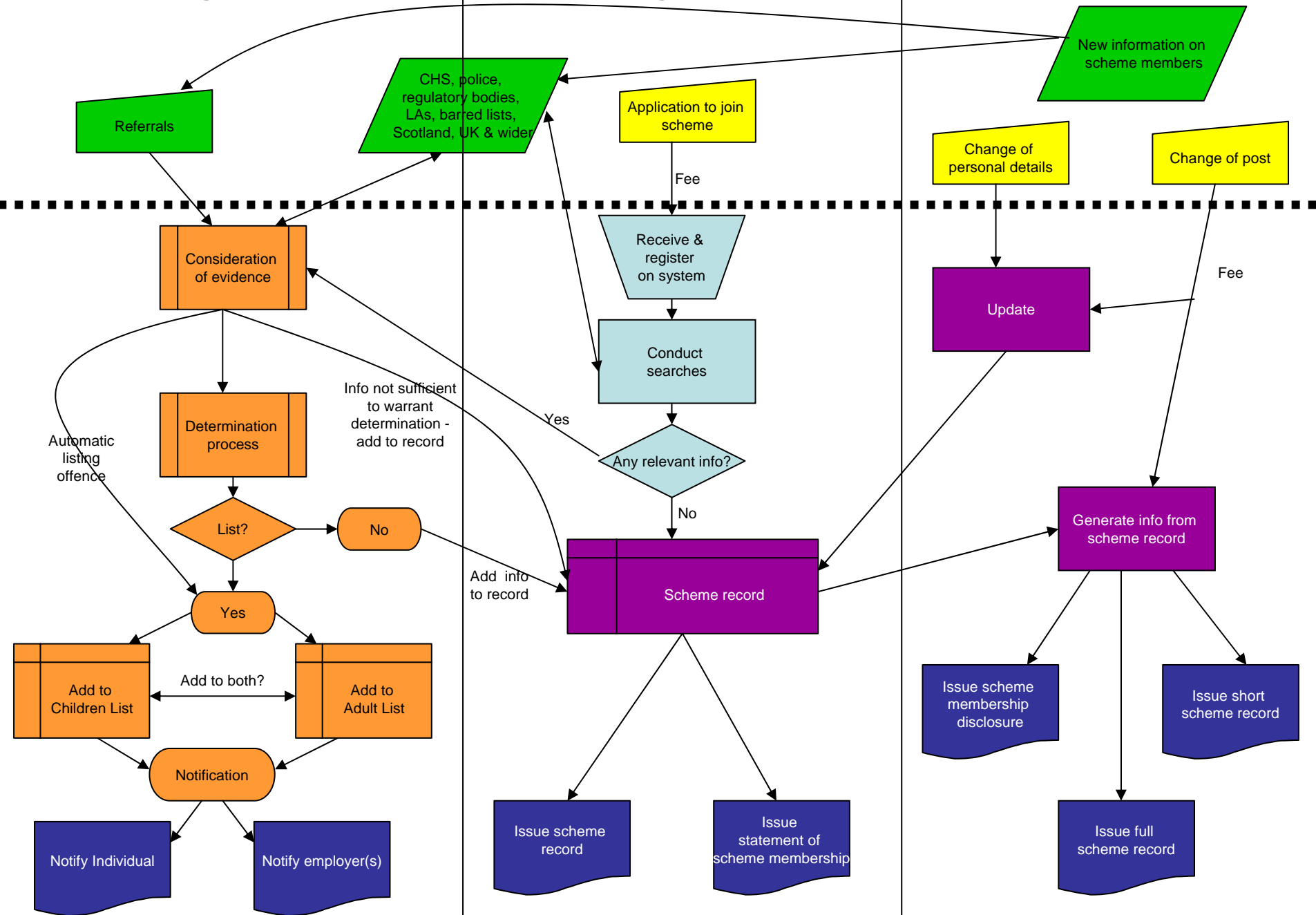
BARRING

- Adult list
- Automatic listing
- Referrals for listing
- Listing on vetting information
- Decision making processes

Barring Function

Vetting Function

Scheme Membership



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Challenges

- Multiple data sources
- Complexity of design
- Decision making processes
- Range of stakeholder views
- Cross border integration
- Maintaining service delivery standards
- Making it simple to understand and use

The Scottish Government Consultation

- Focus on policy decisions to fill in detail of scheme
- Five main chapters:
 - Scope of regulated work
 - Referrals and listing
 - New types of vetting information
 - Retrospective checks and fees
 - Connecting with the rest of the UK

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Today's Event

Aims

- Stimulate thinking and discussion on key issues
- Seek immediate responses to issues

Format

- Presentation
- Round table discussion
- Voting

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Presentation 1 – Definition of regulated work
(children and protected adults)

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Chapter 2: Scope of regulated work

- This chapter focuses on the scope of regulated work with both children and protected adults, as well as limited circumstances where disclosures might be shared with third parties. It also considers possible new registration requirements for registered bodies.

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Regulated work - issues

- Regulated work with children
- Definition of protected adult/regulated work with adults
- Guidance
- *Guidance can interpret the law but not change it.*

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- Defined in schedule 2 of PoCSA
- Enhanced disclosure through Police Act regulations
- Offences under PoCSA

Further guidance to issue

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Regulated work with children

- In schedule 2 of PVG Act
- Development of PoCSA schedule 2
- Amendments needed to ROA exceptions
- Scheme disclosure through PVG Act
- Offences under PVG Act



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Children: key changes

- Greater clarity, some new positions
- 'Incidental test'
- New activities (eg advice and guidance, moderating chatrooms)
- New exception for 16 and 17 year olds who are themselves working
- Inclusion of Children's Commissioner & her staff, foster carer etc
- Narrowing of unsupervised contact with children

- *Guidance*



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Adult care position now

- ‘Adults at risk’ defined in Police Act regulations by 3-prong test:
 - in consequence of a condition
 - has a disability
 - receives a care service
- ‘Workers’ defined by
 - ‘position...of a kind which enables a person in the course of his or her duties to have contact with an adult at risk’
- Enhanced disclosure through Police Act regulations
- ROA exceptions
- No offences

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Future adult care position

- ‘Protected adult’ defined at section 94 of PVG Act
 - receives a care service/prescribed health service (NHS and independent)
- ‘Workers’ defined by
 - Regulated work at schedule 3: activities, establishments and positions

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Protected adults

- Section 94 defines 'protected adult' by receipt of services:
 - Registered care services
 - Prescribed health services (consultation)
 - Community care services
 - Prescribed welfare services (consultation)

New lower age of 16+

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Adults: key changes

- New barred list and offences
- Simpler ‘one-prong’ test for protected adult status
- Tighter definition of ‘workers’:
 - ‘normal duties’ replaces ‘in the course of his or her duties’
 - activities, establishments and positions replace ‘contact’
 - *Guidance*

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Regulated work with adults

- Defined in schedule 3 of PVG Act
- Development of Police Act regulation 10(2):
 - ‘position...of a kind which enables a person in the course of his or her duties to have contact with an adult at risk’
- Consistency with schedule 2
- Amendments needed to ROA exceptions
- Scheme disclosure through PVG Act
- Offences under PVG Act

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Third parties and disclosures

- Regulations – request by third party to see disclosure obtained by a contractor
- Advantages
 - reassurance to commissioners, expertise on protection, reassurance to service users
- Disadvantages
 - delays in appointment, not empowering service providers, potential for disputes over employee's suitability
- Q – when should a third party be able to ask to see a scheme record disclosure?

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Presentation 2 – Referrals and Listing

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Chapter 3: Referrals and listing

- This chapter considers a range of issues around the processes leading to an individual being added to the children's list, the adults' list or both lists. Inclusion in the list(s) means that an individual is barred from the relevant regulated workforce

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Triggers for consideration for listing

- Referral – Organisations
- Referral – Courts
- Vetting information (conviction)
- Relevant inquiry report names an individual

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- Identifying information that should be included in a referral – sufficient but not onerous
- Pages 29 to 32, Question 6



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Convictions and listing

- (1) Automatic listing
 - (2) Automatic consideration for listing (children's list)
 - (3) Court referral
 - (4) No court referral - new conviction information and existing information
 - (5) No court referral
- **(1) Listed**
 - **(2) Case considered**
 - **(3) Case might be considered**
 - **(4) Case might be considered**
 - **(5) Case not considered**



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Automatic listing

Advantages

- Exclude the obviously unsuitable
- Consistent UK-wide approach
- Avoids cost of determination procedure where outcome is known

Disadvantages

- **Eliminates discretion to take account of the particular circumstances in which the individual committed the offence**

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Automatic consideration for listing

- Court makes referral (serious offence against child)
- The relevant offences are in schedule 1 of Act
- Test – if individual is unsuitable
- Issue – whether to add other offences to schedule 1 (serious sexual offences, mostly against children not already in schedule 1 OR this and offences such as murder and culpable homicide where the victim is usually an adult)

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Other issues

- Decision-making process (rules, caseworker assessment, expert consideration) – pages 38-39, Q 9
- Listing procedures – page 40
- Removal from lists – pages 40-41
- Age threshold for shorter minimum no-review period – pages 41-42, Q10
- Start of minimum no-review period – pages 42-43, Q 11

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Presentation 3 – Vetting Information

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Vetting Information

- Information in section 49 of the Act that underpins listing decisions
- Vetting information currently includes:
 - all convictions
 - police non-conviction information
- Referrals
- Must be disclosed to the applicant

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Vetting information - PVG Act

- Consultation considers expanding scope to include information from:
 - regulatory bodies
 - Councils
- Civil orders
- Other types?

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Regulatory Bodies

- Regulate individuals (sometimes services)
- Can take action against those registered
- May be of interest to the CBU where
 - harm was caused
 - children/protected adults are involved
- Not negligence

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Councils - Background

- As employers they must refer
- Councils also work with vulnerable groups:
 - Education
 - Social Work
 - Housing
- Gather potentially useful information

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Councils - Information

- Very sensitive area
- Not based upon regulated work
- Information of a different nature
- Use Child/Adult protection committees?

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Handling Sensitive Information

- Must be disclosed to the person being considered
- Act would allow some information to be withheld from employers
 - Only in relation to newly prescribed information
- Information not related to the workplace?
- No decision taken on use of this power

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Vetting Information - Timetable

- Councils and Regulatory Bodies - Not expected to be in place for go-live
 - agree and prescribe the information
 - systems for sharing
- Civil orders should be in place

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Presentation 4 – Retrospective Checking and Fees

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Introduction

- Retrospective checking
- Fees
- Both major issues historically and for implementation
- Why fees and retrospective checking together?

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Retrospective Checking

- An offence to offer a barred individual work
- This does not cover those already working
- Act allows for regulations to be made setting a time when those in the workforce can become scheme members

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Natural Turnover

- Individuals join the scheme through moving post or pro-actively applying
- Benefits: allows organisations to plan change at their own speed
- Challenges: scheme does not work as intended, hard to manage, risks increased

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Managed Process 1

- Manage the process through regulations
- Benefits:
 - Clear timetable
 - Comprehensive coverage
 - Managed burden
 - Similar to UK approach
- Challenges: administrative burden

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Managed Process 2

- Stratify the workforce into sections by:
 - by date of last disclosure
 - by sector / profession / geography
 - by random personal characteristics
- Delay the start of checking process

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Fees

- There will be a fee to access disclosure information under the PVG Act
- Costs of the scheme will be covered by fees
- Checks for volunteers in the voluntary sector remain free of charge
- Two-tier or subscription model

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Two-tier model

- Fee would be paid to join the scheme
- Subsequent short scheme record disclosures available at reduced fee
- Subsequent scheme records at full fee
- Possible variant – all subsequent disclosures at reduced cost
- Estimate c. £20-30 and £10-15.

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Benefits/Challenges of Two-tier

Benefits

- most checks at lower tier
- prevents over-use
- avoids initial high payment
- steady income

Challenges

- high initial fee may be off-putting
- short-scheme records must be used

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Subscription

- Annual subscription paid to maintain scheme membership
- All checks are free after paying subscription
- Option 2 estimate that annual subscription would cost c. £10-15 per annum



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Benefits/Challenges of Subscription

Benefits

- predictable costs
- steady revenue
- low upfront cost

Challenges

- who pays?
- complex administration
- potential excessive use

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NEXT STEPS

- Consultation ends 12 February 2008
- Further consultation events November – January
- Full analysis published Spring 2008
- Secondary legislation 2008/9
- Go live spring/summer 2009

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Further Information

www.scotland.gov.uk/pvglegislation

Responses to consultation

www.scotland.gov.uk/consultations

Consultation ends 12th February 2008