

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Protection of Vulnerable Groups (Scotland) Bill introduced in the Scottish Parliament on 25 September 2006:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 73–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

REFERENCES AND KEY TERMS

4. Throughout the notes, certain expressions are used either as convenient abbreviations or as having the particular meaning given to them by section 96 of the Bill, or in other sections in relation to particular Parts or sections of the Bill. The most important of these expressions are as follows:

- (a) “the Bill” means the Protection of Vulnerable Groups (Scotland) Bill;
- (b) “the 1974 Act” means the Rehabilitation of Offenders Act 1974;
- (c) “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;
- (d) “the 1997 Act” means the Police Act 1997;
- (e) “the 1998 Act” means the Scotland Act 1998;
- (f) “the 2001 Act” means the Regulation of Care (Scotland) Act 2001;
- (g) “the 2003 Act” means the Protection of Children (Scotland) Act 2003;
- (h) “the 2005 Act” means the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005;
- (i) “ECHR” means the European Convention on Human Rights and references to Articles are to Articles of ECHR;
- (j) “the ASP Bill” means the Adult Support and Protection (Scotland) Bill;
- (k) “the Westminster Bill” means the Safeguarding Vulnerable Groups Bill;
- (l) “adults’ list” means the list of those individuals barred from regulated work with protected adults;
- (m) “child” means any person under the age of 18;
- (n) “children’s list” means the list of those individuals barred from regulated work with children;
- (o) “Central Barring Unit” means the unit with responsibility for determining, on behalf of the Scottish Ministers, whether an individual should be included on the adults’ list and/or children’s list and for maintaining those lists. The Central Barring Unit is expected to be part of an executive agency with Disclosure Scotland;

These documents relate to the Protection of Vulnerable Groups (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 25 September 2006

- (p) “Disclosure Scotland” means the unit responsible for undertaking disclosure checks on behalf of the Scottish Ministers. Disclosure Scotland is expected to be part of an executive agency with the Central Barring Unit;
- (q) “DWCL” means the Disqualified from Working with Children List as established by the 2003 Act;
- (r) “protected adult” means any person who has attained the age of 16 or over and who is in receipt of any of the services set out at section 94;
- (s) “regulated work” means work with children or adults of the type described in schedules 2 and 3, respectively. (Work itself is defined at section 95.);
- (t) “scheme member” means an individual who has successfully applied for scheme membership in respect of one or both of the children’s or adults’ workforces;
- (u) “scheme record” means the scheme member’s statement of barred status (see below) and all vetting information (set out at section 45);
- (v) “short scheme record” is a document which includes the scheme member’s statement of barred status, specifies the date of last disclosure of the scheme record, and indicates whether there is any new vetting information on that record since the last disclosure of it (set out at section 50); and
- (w) “statement of barred status” is a document which confirms an individual’s scheme membership (and consequently that the individual is not barred) in respect of one or both types of regulated work and whether the individual is under consideration for listing (set out at section 43).

SUMMARY AND BACKGROUND

5. The Bill follows the extensive review of child protection procedures in England and Wales carried out by Sir Michael Bichard and published as the Bichard Inquiry Report on 22 June 2004. Since that report was published, the Scottish Ministers and UK Government have accepted all the recommendations and have been working to implement them. This Bill substantially implements the proposals set out in the Scottish Executive’s consultation paper, *Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme*, published on 8 February 2006. The Bill also makes provision for sharing information for child protection purposes and to amend the definition of school care accommodation services.

6. It makes provision for the following matters concerning the protection of vulnerable groups:

- Establishing a list of individuals unsuitable to work with children and consequently repealing the 2003 Act (which established the DWCL), and establishing a separate list of individuals unsuitable to work with protected adults;
- Replacing enhanced criminal record certificates with new disclosure records for those working with vulnerable groups, whether paid or unpaid;
- Establishing a scheme for those working with vulnerable groups, membership of which enables the ongoing collection of vetting information and assessment for unsuitability to work with those groups;

- 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, supported by a code of practice;
- Amendments to the 1997 Act to ensure consistency with the provisions in this Bill and to make a number of technical changes to facilitate the operation of Disclosure Scotland;
- Transferring the staff of Disclosure Scotland to the Scottish Administration; and
- Amending the definition of school care accommodation.

7. The Bill requires amendments to orders made under the 1974 Act so that exempted questions may be asked in respect of regulated work. The Scottish Ministers intend to bring forward this, and other secondary legislation in support of the Bill, after enactment in 2007.

8. A section 104 order under the 1998 Act may be required, following enactment of this Bill, in order to implement cross-border and reserved provisions which are required to make the scheme provided by the Bill operate effectively.

Safeguarding Vulnerable Groups Bill

9. On 28 February, the UK Government introduced similar legislation, the Safeguarding Vulnerable Groups Bill to the House of Lords and that Bill is due to complete its parliamentary passage at Westminster later this year. The Scottish Ministers will bring forward amendments at stage 2 to make provision for the Westminster Bill. In addition, section 88 of the Bill provides a power to make further devolved provision by order for the purpose of giving full effect to the Westminster Bill.

Functions of the Scottish Ministers in the Bill

10. Many of the functions allocated to the Scottish Ministers will be undertaken on behalf of them by civil servants in an executive agency. The agency will be divided, administratively, into two separate elements: Disclosure Scotland and a new Central Barring Unit. The Central Barring Unit will exercise most of the functions allocated to the Scottish Ministers in Part 1 and Disclosure Scotland will exercise most of the functions in Part 2 as well as continuing with criminal record checks and other functions allocated from the 1997 Act. For the sake of clarity, these explanatory notes refer to the Central Barring Unit and Disclosure Scotland, where appropriate, instead of the Scottish Ministers.

OVERVIEW

11. Part 1 sets out the provisions for the operation of the lists of those individuals who are barred from working with children and protected adults respectively. It provides for the Scottish Ministers (as the Central Barring Unit) to maintain the lists and to determine an individual's unsuitability to undertake regulated work with children or protected adults. Part 1 also provides the courts with powers to refer individuals for consideration by the Scottish Ministers for inclusion on the relevant list(s) and the automatic inclusion of individuals on the children's list in respect of relevant offences. Part 1 makes provision for appeals and the process for removal from the list.

12. Part 2 sets out provisions for the vetting element of the new vetting and barring scheme, creating three new forms of disclosure certificate as well as making provisions for a scheme detailing all those individuals working in regulated positions with children and/or protected adults. Mechanisms for obtaining and reviewing new information in relation to individuals on the scheme are also set out.

13. Part 3 makes provision for sharing information for child protection purposes. It places duties on relevant public bodies and organisations to disclose information when a child is at risk of harm and to cooperate with such requests. It provides a general power for any individual to disclose child protection information. It places Scottish Ministers under a duty to produce a code of practice to support information sharing for child protection purposes.

14. Part 4 makes amendments to Part 5 of the 1997 Act other than for the immediate purposes of Parts 1 and 2. It provides for additional information to be included on criminal record (disclosure) certificates, allows application forms to be completed electronically, allows the Scottish Ministers to pay police forces for information provided and makes a number of technical amendments to provisions relating to registration with Disclosure Scotland.

15. Part 5 amends the definition of “school care accommodation services” in the 2001 Act.

16. Parts 6, 7 and 8 make supplementary and general provision, interpretation and short title and other supporting provision.

PART 1 – THE LISTS

Section 1. Duty of the Scottish Ministers to keep lists

17. This section establishes two separate lists, one concerning adults and one concerning children. In practice, these will be maintained by the Central Barring Unit.

Sections 2 – 6. Referrals by organisations, businesses, agencies and others

18. Section 2 sets out the grounds for a referral by an employer, employment agency, employment business or professional regulatory body to one or other of the lists. Sections 3, 4 and 5 place duties on organisational employers, employment agencies and employment businesses to make a referral when certain criteria are met. Unlike the 2003 Act, nurse agencies are not explicitly identified but they come within the scope of these provisions.

19. A referral can only take place if at least one of the grounds set out in section 2 has been met. An organisation can only make a referral in respect of the type of regulated work which the individual does. For example, a teacher who is undertaking regulated work with children can only be referred by the education authority, for consideration for inclusion in the children’s list, on a ground in section 2(a).

20. The referral grounds at section 2 are identical for both the children’s and adults’ lists and they have been extended from those set out in the 2003 Act. Referrals can now be made where there has been inappropriate conduct but no harm. A referral can be made on the basis of inappropriate conduct in relation to both pornography and inappropriate conduct of a sexual

nature involving a child or a protected adult. The conduct criteria ensure that a referral can be made where an individual has, for example, accessed child pornography. There is an additional criterion in respect of inappropriate medical treatment which would encompass, for example, the sedation of children or protected adults in order to make it easier to manage them, rather than for their own benefit.

21. Some of the grounds for referral rely on the meaning of “harm” and “risk of harm”. Section 93 defines harm and risk of harm. The definition of harm makes clear that harm goes wider than physical harm; for example, including threatening behaviour (one type of psychological harm) or harm to the interests of an individual. The definition of risk of harm ensures that the individual does not need to be the direct agent of harm nor does it matter if the individual’s actions are ineffective. For example, the firing of a gun at a child which the individual did not know was unloaded would be an attempt to harm under section 93(2)(a) and, therefore, would constitute placing the child at risk of harm.

22. The procedure for organisational referral under section 3 follows that of the 2003 Act. The intention is that the referral should be triggered by an organisation permanently removing an individual from regulated work. Provision is made at subsection (1)(b)(i) to accommodate referral grounds being identified after the individual has otherwise stopped doing regulated work for the organisation, for example of their own accord. A temporary removal, such as a suspension whilst circumstances are investigated, should not lead to a referral and this is made clear by subsection (3).

23. Sections 3, 4, 5 and 8 give the Scottish Ministers the power to prescribe the information which constitutes a referral. The Scottish Ministers will use this power to ensure that all necessary information is included in a referral to expedite the processing of a case and minimise the need to correspond with employers for clarification.

24. Section 6 gives employers and employment organisations the power to make referrals in respect of incidents which took place prior to the Bill being commenced.

Section 7. Reference by court

25. Section 7 gives the courts a power to refer an individual for consideration for listing where that individual commits an offence against a child (other than a relevant offence, see section 14 and schedule 1) or an offence against a protected adult (these offences are defined at section 31.) The court is required to be satisfied that it might be appropriate for the individual to be listed on one or other or both lists. The Scottish Ministers, as the Central Barring Unit, will consider the court referral (under section 11) as they would any other referral.

26. This is a significant departure from the 2003 Act. Section 10(1) of the 2003 Act gives courts the power to make a referral in the case of any offence against a child (for certain serious offences specified in schedule 1 to that Act the court *must* refer). Where the court makes such a referral, the Scottish Ministers *must* include the individual on the list, i.e. the Scottish Ministers have no discretion in the case of a court referral under the 2003 Act. The individual’s right of appeal is also a matter for the courts in the first instance; the individual may only apply to the Scottish Ministers for removal from the list after a time interval set out in section 14 of the 2003 Act, which depends on a number of factors, has elapsed.

27. The 2003 Act requires the court to assess the likelihood of the individual re-offending and applies different tests depending on the age of the individual. Section 10(3) of the 2003 Act provides that where the individual convicted of the offence was under 18 years of age, “*the court may propose to refer the case only if it is satisfied that the individual is likely to commit a further offence against a child*”. Note that the court is required to be positively satisfied that the individual will re-offend. Conversely, section 10(4) of the 2003 Act provides for criminals over 18 years of age, “*the court shall not propose to refer the case if it is satisfied that the individual is unlikely to commit a further offences against a child*”. The court is therefore required to be positively satisfied that the individual will not re-offend. Section 7 of this Bill, by contrast, requires the court to be satisfied that it may be appropriate for the individual to be listed. This is consistent with the other routes to listing and allows for the full circumstances of the case to be considered by the Central Barring Unit.

Section 8. Reference by certain other persons

28. Section 8 gives the professional regulatory bodies a power to make a referral. It is expected that any incident or behaviour which should trigger a referral will result in the employer, or employing organisation, making the referral. However, there are circumstances in which a proper referral might not be made, for example a negligent employer failing to refer or where an individual has a number of employers and no individual employer is in a position to make a referral. For example, if several education authorities raise concerns with the General Teaching Council for Scotland (GTCS) about a locum teacher, the GTCS may make a referral on the basis of the aggregate evidence. Section 8 is therefore designed to enable professional regulatory bodies to make a referral where the employer(s) could not, or negligently did not, make a referral in respect of a registered professional.

Section 9. Failure to refer: offence

29. Organisations, employment agencies, nurse agencies and employment businesses commit an offence if they fail to discharge their duty to refer. This offence replaces the same offence in the 2003 Act for failing to refer to the DWCL and attracts the same penalty, although the term of imprisonment on summary conviction has been increased from 6 months to 12 months in line with changes being made by the Criminal Proceedings etc. (Reform) (Scotland) Bill.

30. This is one of the more serious offences in the Bill because a failure to refer means that an individual, who might have been barred had their case been considered, can continue to undertake regulated work with children and/or protected adults.

Sections 10 – 13. Consideration whether to list

31. There are four triggers for consideration for listing by the Central Barring Unit. These are organisational referrals and inquiries, for which the 2003 Act made provision, and two new triggers, court referrals under section 7 and vetting information about an individual under section 12.

32. The term “provisional listing” used in the 2003 Act has been discontinued. A listed individual must not undertake regulated work. The term provisional listing is unhelpful because it logically implies that the individual may not undertake regulated work whilst provisionally included on the list. But this is not the case in the 2003 Act (the individual can continue to

work), nor is it the case in this Bill. In this Bill, no specific term is defined but the individual is regarded as under consideration for listing in the period between a competent trigger and a determination.

33. The mechanisms of the 2003 Act have been generalised to accommodate two lists and to provide flexibility for triggers in respect of an individual's conduct in one workforce to lead to consideration in respect of listing on the other. For example, a referral in respect of a health worker undertaking regulated work with protected adults could, depending on the facts and circumstances of the case, result in consideration for listing in the children's list.

34. Sections 10 and 13 are a development of provision in the 2003 Act.

35. The reference to prescribed information in section 10(1)(a) means that the referral must contain the information required by regulations made under sections 3-7. Section 10 replaces provision made at section 5(1) and (2) of the 2003 Act, which set out the test for provisional listing:

“The Scottish Ministers... on being satisfied...:

(a) that the reference is not vexatious or frivolous; and

(b) that the information submitted to the Scottish Ministers with the reference indicates that it may be appropriate for an individual to be included in the list...”

36. Section 13 has departed slightly from the 2003 Act test for provisional listing at section 6(1)(c), being:

“...it appears to the Scottish Ministers from the report-

(a) that the person who held the inquiry found that the individual has, at a time when individual was working in a child care position (whether or not in the course of the individual's work...) harmed a child or placed a child at the risk of harm; and

(b) that the individual is unsuitable to work with children.”

37. The test in section 13 is tied back to the referral ground defined in section 2 which is broader than the harm or risk of harm test.

38. Section 11 is a new provision linking back to a court referral under section 7. No such provision was required in the 2003 Act because the Scottish Ministers had no discretion to list following court referrals. Note that the Scottish Ministers must be satisfied as to the same matter as the court (compare section 7(1)(b) with sections 11(2)(a) and 11(3)(a)) and, additionally, that the individual does, has done or is likely to do regulated work. This latter element of the test before consideration for listing brings the focus onto the workforce but allows the Scottish Ministers to consider for listing individuals who are not scheme members.

39. The listing process is independent of any appeal against conviction. If the appeal against conviction is successful, it does not follow that the individual will be removed from the list, although the individual could make an application for removal under section 25 on the basis of change of circumstances. Where the individual had been a scheme member prior to conviction, there may be other information on the retained scheme record (retained by the Scottish Ministers using their power at section 58) which should be taken into account.

40. Section 12 connects with the scheme established by Part 2 of the Bill. This trigger is activated by vetting information, as defined at section 46. Where the Scottish Ministers become aware of vetting information about a scheme member in their capacity as Disclosure Scotland (under Part 2), they will consider whether this new information makes the individual unsuitable to work with children or protected adults in their capacity as the Central Barring Unit (under Part 1). (In practice, these decisions will be made by expert panels.)

41. Section 12 also makes provision for a determination relating to one list (whether or not the individual was listed) to lead to consideration for listing in relation to the other list. The intention is to allow the determination panel to refer a case for consideration in relation to the other list. It is expected that information which would lead to consideration for both lists would be identified earlier in the process but, in some cases, information may only emerge at a late stage or the need for referral to the other list may only become apparent when the determination panel considers specific information or aggregate vetting information.

Section 14. Automatic listing

42. Section 14 requires the Scottish Ministers to list an individual in the children's list because the individual has committed a relevant offence (as defined at section 31). Section 14 also allows the Scottish Ministers to prescribe criteria for automatic inclusion on either list. The order-making power is subject to affirmative procedure.

43. Section 10(1) of the 2003 Act requires a court to make a referral on conviction of certain serious offences against children set out in schedule 1 to that Act. Section 14(1)(a), read with section 31, makes similar provision. However, this Bill has moved some way from the 2003 Act making the process more consistent with other routes to listing. As with section 7, there is no re-offending test and no distinction based on the age of the offender. Indeed, there is no test for the court to apply at all: on conviction of a schedule 1 offence, the court must inform the Scottish Ministers of the conviction under section 14(4). Unlike the 2003 Act, there is no delay in listing pending the expiry of appeal deadlines or the determination of an appeal.

44. As with discretionary court referrals under sections 7 and 11, the listing process is independent of any appeal against conviction. As explained at paragraph 39 in respect of section 11, if the appeal against conviction is successful, it does not follow that the individual will be removed from the list.

45. There is no schedule of offences for protected adults corresponding to that for children.

46. The Scottish Ministers intend to use the regulation making power at section 14(1)(b) to capture historic, serious offences where the court was not able to make a referral at the time of conviction. This would prevent the need for a determination to stop an individual convicted of child rape, for example, in 1980 from undertaking regulated work with children.

Sections 15 and 16. Inclusion in the lists

47. Section 15 deals with inclusion in the children's list and section 16 deals with inclusion in the adults' list. There is one test no matter what triggered consideration for listing. The tests are therefore different from those in the 2003 Act. The test for listing an individual following an organisational referral (section 5(4) and section 5(5) of the 2003 Act) was that:

“the Scottish Ministers... are satisfied...

(a) that the organisation which, or person who, made the reference reasonably considered the individual to have (whether or not in the course of the individual’s work) harmed a child or placed a child at the risk of harm; and

(b) that the individual is unsuitable to work with children.”

48. The test for listing an individual following an inquiry (section 6(3)(a) and (4) of the 2003 Act) was that:

“the Scottish Ministers... are satisfied...

(a) that the person who held the inquiry reasonably considered that the individual has, at a time when individual was working in a child care position (whether or not in the course of the individual’s work) harmed a child or placed a child at the risk of harm; and

(b) that the individual is unsuitable to work with children.”

49. The tests in sections 15 and 16 take account of three developments in the listing process. Firstly, there is a wide range of triggers for consideration for listing, including the discretionary court referral (section 11) and vetting information trigger (section 12), neither of which exist in the 2003 Act. Secondly, the referral ground at section 2 goes wider than harm or risk of harm. Thirdly, the Scottish Ministers are to be able to consider listing an individual for unsuitability to work in one workforce because of an incident which took place in the other (as provided for by section 12(1)(a)(ii) and (2)(a)(ii)), so the final listing test is not linked uniquely to one vulnerable group.

Sections 17 – 20. Information relevant to listing decisions

50. The Central Barring Unit may use a number of sources of information as part of considering an individual for listing. The 2003 Act, and the 2004 Determination Regulations (S.S.I. 2004/523) made under section 8 of that Act, make detailed provision for the determination of cases. An important principle enshrined there and carried over to this Bill is that the individual being considered for listing should have the opportunity to comment on all information which will be considered by the determination panel. Section 17 of the Bill re-establishes the basic procedure and the Scottish Ministers intend to use section 39 to set out the detailed determination procedure.

51. Unlike the 2003 Act, section 17(2)(b) and (c) provide for the Scottish Ministers to consider information beyond that which led them to begin their consideration. Most importantly, the Scottish Ministers can now consider vetting information alongside any referral.

52. Section 18 effectively allows the Scottish Ministers as the Central Barring Unit to ask the Scottish Ministers as Disclosure Scotland to provide a scheme record (see section 45) for the purposes of making a determination. Subsections (1) and (2) give the Scottish Ministers access to relevant non-conviction information and subsection (4)(a) will, in practice, be used to access criminal convictions on the Criminal History System which will be operated by the Scottish Police Services Authority from 1 April 2007 and the Police National Computer.

53. The Scottish Ministers will no longer be able to receive sensitive information in their capacity as Disclosure Scotland for passing to employers only (for the purposes of this Bill). Under current arrangements, the police can provide Disclosure Scotland with a sealed envelope

to go to an employer, but not an individual, as part of the enhanced criminal record certificate check. This practice is not continued because the Scottish Ministers will now be using all the information they receive from the police when considering an individual for listing. The individual cannot make effective representation, or meaningfully appeal a decision to list, if he does not have access to all the information used in making that determination.

54. Section 19 gives the Scottish Ministers the power to obtain information from other public bodies when deciding whether to list an individual. For example, a referral about a teacher from an education authority might cause the Scottish Ministers to require further information from the General Teaching Council for Scotland. Subsection (2) gives the Scottish Ministers the flexibility to ask about the individual's performance of his or her duties (paragraph (a)) and to put that in the context of, for example, more general child protection policies (paragraph (b)), allowing benchmarking, for example.

55. Section 20 gives the Scottish Ministers the power to obtain information from employers and employment agencies with any involvement with the individual. There is an offence of failing to provide the required information.

Sections 21 – 24. Appeals against listing

56. These sections broadly reproduce provision made at section 15 of the 2003 Act and extend provision to the adults' list. They make provision for: appeal on being listed; the right to apply for removal from the list subsequently; and the mechanisms for doing so (sections 25 to 28).

57. Sections 21 and 22 provide for a three-month time limit for appealing to the sheriff after being placed on either list. Section 23 provides for appealing the sheriff's decision to the higher courts.

58. There are two significant departures from the 2003 Act. Appeal to the Court of Session is now restricted to points of law at section 23(2) of the Bill. Section 24(2) clarifies that any court proceedings in respect of these appeals may be heard in private.

59. Section 24(1) makes clear that no finding of fact on which a conviction is based may be challenged on appeal under the preceding sections. This means that the behaviour or conduct of the individual, as found by the convicting court, cannot be re-opened during an appeal against listing.

Sections 25 and 26. Removing individuals from the lists

60. Sections 25 and 26 reproduce provision made at section 14 of the 2003 Act. Section 25 gives the listed individual the power to apply to the sheriff for a review of his or her listing. Such an application is only competent if the individual has been listed for a prescribed period or if the individual's circumstances have changed. The Scottish Ministers intend to make regulations under section 25(3)(a) to broadly reproduce the effect of provision made at section 14(3) to (6) of the 2003 Act but with modifications to deal with individuals automatically listed under section 14 of the Bill. Under section 26, the sheriff must direct the Scottish Ministers to remove the individual from whichever list if satisfied that the individual is no longer unsuitable to undertake that type of regulated work.

61. The power to prescribe a minimum time period before an application for removal is competent may be used to allow individuals who were listed whilst under the age of 18 to apply for removal from the list after a shorter period compared to those listed when over the age of 18. The Scottish Ministers intend to use this power to prescribe time limits similar to those in the 2003 Act but taking account of the changes to the procedures for court referrals made in this Bill and the new vetting information route to consideration for listing (section 12).

62. The appeal procedure at section 26 mirrors that at section 23 except that points of fact and law may be appealed to the Inner House of the Court of Session.

Section 27. Late representations

63. Where an individual could not engage with the consideration for listing process because the Scottish Ministers could not locate him (and he thereby forfeited his right to make representation at the time, section 17(1) and (6)), the Scottish Ministers must consider late representations from that individual. The details of the determination procedures will be set out in regulations made under section 39.

Section 28. Removal from list

64. Subsection (1)(b) makes provision similar to that at section 1(3) of the 2003 Act. This power may be used to enable an administrative mistake to be corrected, for example including the wrong John Smith on the list.

Section 29. Notice of listing etc.

65. All individuals included on a list under this Bill are barred from undertaking that type of regulated work. However, an individual may be barred from regulated work because of inclusion on another list in a different jurisdiction deemed to be equivalent by the Scottish Ministers (see section 92). Section 29 requires the Scottish Ministers to notify an individual, all relevant employers and regulatory bodies of the fact that the individual is barred from undertaking regulated work (whether or not that barring originates from being included on a list under this Bill). The same duties apply to consideration for listing and any determination not to list the individual.

66. Subsection (4) gives the Scottish Ministers the power to publish guidance to organisations as to what steps they should take to protect children or protected adults when informed that one of their employees is under consideration for listing.

Section 30. Relevant inquiries

67. This section sets out the inquiries that are deemed relevant under section 13 and is a reproduction of section 6(6) of the 2003 Act. (Note that the Tribunals of Inquiry (Evidence) Act 1921 has been superseded by the Inquiries Act 2005.)

Section 31. Offences against children and protected adults

68. Section 31(1) defines "relevant offence", "offence against a child" and "offence against a protected adult" for the purposes of Part 1. A relevant offence is one included in schedule 1. Under section 14, a court is required to inform the Scottish Ministers when an individual is convicted for a relevant offence and the Scottish Ministers are required to list that individual. Under section 7, the courts have a power to make a referral in respect of an offence against a child or protected adult.

69. Section 31(2) provides the Scottish Ministers with an order-making power to amend these definitions.

70. Section 31(3) and (4) makes provision similar to that at section 10(11) and (12) of the 2003 Act, which provides that a referral should be made even if the court acquitted the individual on the grounds of insanity, makes a finding under section 55(2) of the 1995 Act or makes an order mentioned in section 57(2)(a) to (d) of the 1995 Act. An order under section 57 would include, for example, compulsion orders made under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Section 32. Duty to notify certain changes

71. Individuals on either list are required to provide the Scottish Ministers with any change in the individual's name, address or gender within one month of such change taking place. It is an offence to fail to do so. There is no equivalent provision in the 2003 Act. This is intended to help to prevent a listed individual from changing their identity and attempting to re-enter the workforce. (Section 47 creates a similar duty on scheme members but with a longer timeframe and a lower penalty.)

Sections 33 – 36. Offences relating to regulated work

72. Sections 33 to 36 reproduce provision from section 11 of the 2003 Act covering offences committed by individuals, organisations and personnel suppliers in respect of barred individuals undertaking regulated work. The term of imprisonment on summary conviction has been increased from 6 months to 12 months (section 36). These are the most serious offences in relation to the scheme since they concern unsuitable individuals accessing vulnerable groups through their work which is what this legislation is designed to prevent.

73. Section 33 deals with offences committed by the barred individual. It is an offence for them to undertake any regulated work. It is a defence for that individual if they did not know, and could not reasonably know, that they were barred. This defence existed in the 2003 Act and covers scenarios such as the individual never receiving notification of being barred. There is a new defence of not knowing that the work was regulated work. In some situations, especially in respect of working with protected adults, it may be quite complicated to determine whether the work is regulated work or not and an employer might falsely reassure the individual that the work was not regulated work.

74. Sections 34 and 35 deal with offences committed by organisations and personnel suppliers in using or supplying barred individuals for regulated work. As in the 2003 Act, it is a defence for them not to know that the individual was barred from undertaking regulated work.

Such a defence might be used if an individual presented them with a forged certificate and ID, perhaps impersonating a different individual. Note that the defence of not knowing that the work was regulated work does not apply here.

75. Section 35(1)(b) protects a personnel supplier from being misled by the organisation to which it is supplying workers. For example, if an events organiser asks a personnel supplier to provide kitchen staff for a conference, those positions would not normally be considered regulated work. If the events organiser then diverts one of the people provided by the personnel supplier to work in the creche (normally regulated work with children), then the personnel supplier is not responsible for the consequences if it transpires that the individual is barred from regulated work with children. This is provided, of course, that the personnel supplier did not know, or have reason to believe, that the individual supplied would be used for regulated work with children.

76. Note that personal employers do not commit an offence by employing a barred individual to do regulated work but, under section 33, the barred individual would be committing an offence by accepting such work.

Section 37. Police access to lists

77. Section 37 gives the police access to the lists. Prescribed information is likely to be information which helps confirm the identity of the individual included on the lists. The police might, for example, store information about the addition or removal of an individual from either list on the Criminal History System. It is intended that police access to the lists will make it easier for them to investigate suspected offences under this Bill.

Section 38. Protections from actions for damages

78. Section 38 ensures that the decision to list, or not to list, an individual or information provided for such consideration cannot be the subject of proceedings for loss or damage. This section builds on section 9 of the 2003 Act which makes provision for protection from actions for defamation. This means, for example, that a teacher who loses his job after being listed cannot sue the Scottish Ministers for loss of earnings, whether or not the decision to list is upheld on appeal. However, an information provider who, knowingly or recklessly, provides untrue or misleading information is not protected from actions for damages. For example, an employer who makes malicious claims in support of a referral is not protected under section 38(1).

Section 39. Power to regulate procedure etc.

79. This section allows for the details of the determination procedure that will be undertaken by the Central Barring Unit to be set out in secondary legislation. This provision is broadly equivalent to the powers at section 8 of the 2003 Act. Subsection (1)(b) enables the regulations to deal with the maintenance of the lists (e.g. the updating of the lists in consequence of information received under section 32).

Section 40. Transfer from 2003 Act list

80. This section provides for all individuals currently listed on the Disqualified from Working with Children's List under the 2003 Act, to be transferred to the children's list

established in section 1 without any further determination. However, any listed individual can make an application to the sheriff under section 25(3) to the effect that their circumstances had changed, if they considered that the transfer made a material difference. The only individuals who would be immediately affected by such a transfer are those currently in a post which is not regarded as a child care position under the 2003 Act but is regulated work with children under this Bill. There were 84 individuals listed as at 9 June 2006 (after 17 months of operation) and it is unlikely that many will be so affected.

81. The time limits for applications for removal from the lists (previously specified in section 14 of the 2003 Act) can be prescribed by regulations made using the power in section 25(3)(a). The Scottish Ministers intend to make regulations, as necessary, which will ensure that no individual has to wait longer for their first opportunity for appeal after commencement of this Bill than they would have had to wait had they not been transferred from the DWCL under the 2003 Act.

PART 2: VETTING AND DISCLOSURE

Sections 41 and 42. The scheme and participation in it

82. Section 41 establishes the scheme and section 42 gives individuals the right to apply to the Scottish Ministers to join the scheme. In practice, Disclosure Scotland will administer the scheme on behalf of the Scottish Ministers. It is important to note that being a scheme member in relation to regulated work with children or protected adults is mutually exclusive to being barred from working with that same group. An individual cannot simultaneously be a scheme member and barred in respect of the same workforce. However, an individual can be barred from one workforce and a scheme member in respect of the other.

83. Participation in the scheme is not mandatory. There are no offences for undertaking regulated work whilst not a scheme member. However, the only way an employer can be sure that an individual is not barred from regulated work (and therefore be sure that he is not committing an offence in employing that individual) is by requesting a disclosure record. Note that an enhanced disclosure or other check will not reveal barred status. Enhanced disclosure checks will no longer be available for those undertaking regulated work with children or protected adults. The only way a disclosure record can be generated is through the individual applying to join the scheme or already being a member of the scheme.

Section 43. Statement of barred status

84. It is intended that application to join the scheme will be linked to an application for a disclosure request (either a disclosure of scheme record under section 49 or a disclosure of barred status under section 51). This can be achieved by combining the applications on one form.

85. The only exception is where an individual joins the scheme without any employer, for example in anticipation of taking up regulated work in the near future. In that case, the individual will receive a statement of barred status and no other person will receive any information.

Sections 44 – 46. Scheme members, records and vetting

86. Application by an individual to become a scheme member will lead the Scottish Ministers, as Disclosure Scotland, to make enquiries to see whether any vetting information exists about that individual. Section 46 sets out what constitutes vetting information. Subsections (1)(a) and (c) relate to police information: conviction information from the Criminal History System and the Police National Computer and relevant non-conviction information from chief constables. Unlike the present situation where the test for relevance for non-conviction information is made against each post, under the Bill there will only be two relevance tests: one for each type of regulated work. Subsection (1)(b) provides that whether an individual is on the sex offender's register will also constitute vetting information.

87. Section 46(1)(d) provides a power for the Scottish Ministers to prescribe other information as vetting information. The Scottish Ministers intend to use this power to prescribe certain information held by regulatory bodies and local authorities. For example, registration or de-registration with the General Teaching Council for Scotland may be vetting information.

88. Any vetting information which is found by Disclosure Scotland will be passed to the Central Barring Unit for consideration. It is anticipated that in over 90% of cases no information will be found at all. In cases where vetting information is found, it will be included on the individual's scheme record. However, in many cases it will not be relevant for the Central Barring Unit and it will not be necessary to begin a formal consideration for listing. For example, a driving conviction would be classed as vetting information and would appear on the scheme record under section 45. However, in many circumstances, it will not be relevant information and would be discounted without any consideration for listing.

89. Section 44(2) requires the Scottish Ministers to make arrangements for the ongoing monitoring of vetting information for scheme members. As far as possible, this will be automated. The expectation is that the Scottish Ministers, as Disclosure Scotland, will be reactive rather than proactive because the information provider will trigger action. For example, any change to an individual's record on the Criminal History System will trigger a search of the register of scheme members held by Disclosure Scotland to see whether the individual is also a scheme member. It is planned to make similar connections with the registers of members held by professional regulatory bodies so that any individual struck off will be checked against the register of scheme members. In the longer term, local authorities will notify Disclosure Scotland of vetting information. For example, when a child is added to the child protection register, the parents' names could be checked on the register of scheme members. This section allows the Scottish Ministers to make arrangements in this way.

90. Any new vetting information will be added to the scheme record. New relevant information will trigger a consideration for listing.

91. Section 44(4), among other things, provides protection against any breakdown in procedures or communications. If information does not show up when it should, it can be considered later. For example, if there is a delay in entering conviction information on to the Criminal History System, it can be treated as new vetting information when it is discovered.

Section 47. Duty to notify certain changes

92. This section makes it an offence for a scheme member to fail to notify the Scottish Ministers that they have changed name, address or gender within 3 months of these changes taking effect. Section 32 makes similar provision for listed individuals. Paragraph (1)(c) gives the Scottish Ministers the power to prescribe other information.

93. Applications for a disclosure certificate under the 1997 Act require the applicant to provide address information for the five years preceding the application, as well as information on names and gender. This information allows the identity of the applicant to be verified and the address information enables the appropriate police forces to be contacted for relevant information. This is particularly important where the applicant has lived outside Scotland for any length of time.

94. For the scheme to work effectively, this information needs to be provided on an ongoing basis so that the Scottish Ministers can be sure of the individual's identity and continue to collect vetting information from the appropriate sources.

Section 48. Correction of inaccurate scheme record

95. This section places a duty on the Scottish Ministers as Disclosure Scotland to correct any scheme record where they are satisfied that the information included in it is inaccurate. A corrected scheme record should subsequently be provided to the individual that is the subject of the record as well as any organisation for which the individual is doing regulated work to which a copy of the inaccurate record has previously been disclosed.

96. This duty will apply where, for example, information about the wrong John Smith was included in a scheme record or where John Smith changes his name to Joe Bloggs and notifies the Scottish Ministers under section 47.

Sections 49 – 52. Disclosure records

97. The mechanism for disclosure of scheme records and short scheme records is designed to operate in much the same way as the disclosure of enhanced criminal record certificates under the 1997 Act. Organisational employers are to be able to request either a scheme record or a short scheme record provided that all the disclosure conditions (A-D) set out at section 52 are met. Personal employers are to be able to ask for a disclosure of barred status as at section 51. This is a new provision which is not provided for in the 1997 Act.

98. In all three cases (disclosure of scheme record, short scheme record and barred status), the scheme member must authorise the disclosure (condition A). In all cases, there is an employer who will receive a copy of the disclosure. Condition A prevents unauthorised disclosure (i.e. a request by an employer without the permission of the scheme member).

99. The scheme member must participate in the scheme in relation to the type of regulated work to which the disclosure request relates (condition B). For example, a scheme member cannot obtain a disclosure in respect of the children's workforce if he is only a scheme member in respect of the adults workforce (unless he applies to join the scheme in respect of working with children).

100. The employer must declare that the disclosure is for employment in the relevant workforce (condition C). The involvement of the employer in the process is a deterrent to employers outside the regulated workforce coercing an individual to join the scheme. They would be making a false declaration and committing an offence under section 65. Amendments will be required to the Exclusions and Exceptions Order (S.S.I. 2003/231) made under the Rehabilitation of Offenders Act 1974 to ensure that all posts within the definition of regulated work are exempted from the provisions of that Act.

101. Condition D applies only to scheme record disclosures and short scheme record disclosures because only they contain or make reference to vetting information. Condition D is rather like the requirement to countersign an application for an enhanced criminal record certificate.

102. It is expected that those individuals working for organisational employers (e.g. a teacher working for an education authority) will apply for scheme membership and a scheme record disclosure simultaneously. For any subsequent employment with any organisation, that individual can request a short scheme record which will identify whether there is any new information since the scheme record was disclosed. If that individual also wanted to do private work for personal employers (e.g. one-to-one language classes in the evenings), that individual could request disclosure of barred status for that purpose.

103. Any individual working for personal employers can only request disclosure of barred status.

Section 53. Crown work

104. This section allows disclosures to be made for Crown work.

Section 54. Disclosure restrictions

105. There are no restrictions on disclosure of information provided by the police to the Scottish Ministers since they will only provide information which they are content to be disclosed to the individual and any employer. All police information provided to the Scottish Ministers (as Disclosure Scotland) will be used in any consideration for listing (by the Scottish Ministers as the Central Barring Unit).

106. Section 54(1) provides the Scottish Ministers with the flexibility to limit the content of scheme records and to exclude from the disclosure of a scheme record certain types of information which may be contained on it. This power enables the Scottish Ministers to keep sensitive information on the scheme record without disclosing it to employers. Such sensitive information would, of course, have to be disclosed to the individual as part of any consideration for listing.

107. Section 54(2) restricts the disclosure of information on a scheme record to information provided for the purpose of assessing the individual's suitability for that type of regulated work. In many cases, information will be relevant to both types of regulated work. However, there may be information, for example released by the police when applying the relevance test for

working with protected adults which they would not have released when applying the relevance test for working with children.

Sections 55 – 58. Removal from scheme

108. Section 55 places a duty on the Scottish Ministers (as Disclosure Scotland) to remove an individual from the scheme where that individual has been placed on the relevant list or is barred as a result of being listed in another jurisdiction. Section 55(2) provides a possible sanction for failing to pay an annual subscription, or other fee, if such arrangements were made under section 67.

109. Section 56 places a duty on the Scottish Ministers to remove an individual from the scheme if an individual asks to be removed and is no longer carrying out that type of regulated work. As a matter of administrative practice, the Scottish Ministers will remove individuals from the scheme on being informed of their death and satisfied that this is so.

110. Section 57 concerns notice of removal. If an individual is listed or barred they will already be notified under section 29. If they have withdrawn from the scheme at their own initiative under section 56, they will know about it. However, this section covers other possible reasons for being removed from the scheme such as non-payment of fees, expiry of membership, or an irregularity which later comes to light concerning the application to join the scheme. In some circumstances, an individual might be removed from the scheme (but not listed) whilst still undertaking regulated work, in which case section 57(1)(a) allows for employers and regulatory bodies to be informed.

111. Section 58(1) gives the Scottish Ministers the power to retain scheme records in relation to individuals after removal from the scheme.

112. Section 58(2)(a) prevents the Scottish Ministers from continuing to make enquiries in relation to vetting information about an individual or disclosing the retained record.

Sections 59 – 61. Evidence of identity

113. In order to join the scheme or request disclosures, it will be necessary for Disclosure Scotland to verify an individual's identity. If sufficient evidence is not provided, Disclosure Scotland will not be obliged to consider such requests.

114. Section 60 allows the Scottish Ministers to use fingerprints to check an applicant's identity. This provision replicates current provisions in Part 5 of the 1997 Act. It does not mean that every applicant will have to submit fingerprints in support of their application.

115. Under the current provisions, fingerprints have only been required around 400 times since Disclosure Scotland began in 2002 (out of just over 1.5 million applications for disclosure certificates). Disclosure Scotland carry out checks to ensure that the applicant is the person they claim to be. However, there are occasions where somebody might give another person's details when arrested or where the applicant has a very similar name, date of birth and address history as an entry on the criminal history system. In these circumstances, a criminal record may potentially be attributed to the wrong person during a disclosure check. The criminal history system uses fingerprints to link a criminal record to the individual. Disclosure Scotland can

therefore use fingerprint identification to confirm whether or not the applicant is the same person as the one with the criminal record, thereby ensuring that a criminal record is not wrongly attributed.

116. Section 60(2) gives the Scottish Ministers the power to prescribe how and where fingerprints may be taken. It also gives them the power to prescribe who must destroy any such fingerprints and the circumstances in which they must be destroyed. The Scottish Ministers intend to make regulations which will replicate those currently in force under Part 5 of the 1997 Act. Those regulations require the fingerprints to be destroyed as soon as possible after the Scottish Ministers are satisfied as to the identity of the applicant.

117. Section 61 gives the Scottish Ministers the power to use information held by: the UK Passport Agency; the Driver and Vehicle Licensing Agency; and the Department for Work and Pensions (National Insurance numbers) for the purposes of checking evidence of identity. Section 61(2) gives the Scottish Ministers the power to prescribe other persons holding data.

Sections 62 – 66. Offences relating to vetting information

118. These offences are designed primarily for the purpose of protecting personal and sensitive information about individuals rather than the exclusion of barred individuals from the regulated workforces. Therefore, they attract an intermediate level of penalty as set out at section 66. They build on already existing penalties and offences for disclosure information under Part 5 of the 1997 Act, but focus on misuse of scheme information, i.e. information about individuals working or intending to work with children or protected adults.

119. Section 62 creates the offence of falsifying a disclosure record. It mirrors the offences relating to falsifying criminal record certificates in the 1997 Act. Where a barred individual falsifies a disclosure record to access regulated work, that individual would be committing this offence *and* the offence at section 33. Reasons why an individual might attempt to falsify a disclosure record include to avoid the fee or because of embarrassment over some historic incident or conviction.

120. Section 63 makes it an offence for a person to disclose to others disclosure records which have been disclosed under section 49, 50 or 51. These offences are needed to ensure that the sensitive information contained in the scheme record is not shared unnecessarily. The section also recognises that it may be necessary to share the record with other employees, members and office holders within an organisation or where the disclosure has been requested on somebody else's behalf, and the section exempts such sharing from the scope of the offence.

121. Section 65 provides further clarification of the section 63 offence by setting out in subsection (1) the circumstances in which it is not an offence to disclose disclosure information. Subsection (2) makes clear that the record should only be shared for the purposes of enabling the employer to determine suitability for regulated work. This is an important safeguard to ensure that employers only share disclosure information for legitimate purposes.

122. Section 65(1)(a) makes clear that a scheme member may disclose their own disclosure record. So, for example, a disclosure of barred status obtained under section 51 by a scheme member in respect of one personal employer may be shown by that scheme member to other personal employers. For example, a private dance teacher who is teaching a class of 20 children

each Wednesday evening might be asked to obtain a statement of barred status by one of the parents. There is nothing to prevent that dance teacher showing the statement of barred status to every parent; there is no requirement to generate 20 disclosures of barred status, one for each parent, although this would be permitted.

123. Section 64 makes it an offence for anyone to attempt to see a disclosure record, or to use such a record other than for the purpose of checking an individual's suitability for regulated work. Section 64(1) creates an offence designed to prevent employers who cannot legitimately ask for a record because they are not engaged in regulated work from requiring an individual to share the information on the record. For example, it would normally be an offence for a garage owner to ask mechanics in his garage if he could see their disclosure records, if they had obtained them for other purposes, since car repair work is not (normally) regulated work. Section 64(4) limits the offence to the disclosure record itself and not the information contained on the record.

Section 67. Fees

124. This section provides the Scottish Ministers with a flexible power to charge fees in respect of the scheme. The Scottish Ministers could charge different levels of fee for joining the scheme, scheme records, short scheme records and statements of barred status. Different levels of fee could be charged for the children's workforce, the adults' workforce and applications in respect of both workforces. Fees can be charged as application fees or as an annual subscription. The power at subsection (2)(b) could be used to provide free checks for volunteers in voluntary organisations. (An alternative is for the fee to be charged and then explicitly reimbursed as now.) Section 67(3) allows Disclosure Scotland to refuse to deal with applications unless and until the fee is paid.

125. The Scottish Ministers intend to make regulations distinguishing two levels of fee to be payable only when requesting a disclosure record (not for scheme membership itself). A higher level of fee is likely to be payable for any scheme record and any statement of barred status issued on joining the scheme. Short scheme records and subsequent statements of barred status are likely to attract a lower level of fee. Scheme membership will expire 10 years after the later of (a) joining the scheme or (b) the last scheme record disclosure.

Section 68. Forms

126. This section allows Disclosure Scotland to set out the forms for applications for scheme membership or a disclosure record administratively. Under the 1997 Act, the Scottish Ministers are required to make changes to the application form for criminal record certificates and enhanced criminal record certificates in regulations. Section 83 brings the 1997 Act into line with section 68.

Section 69. Procedure

127. This section gives the Scottish Ministers the power to make regulations governing the administration of the scheme. This power could be used, for example, to set the lifetime of scheme membership at 10 years.

128. The power at section 69(2)(c) is expected to be used to enable online disclosure requests. For example, the individual might log on to the Disclosure Scotland website using their own password to begin the process of a disclosure request and generate a 16 digit PIN which they pass to the employer to authorise the employer to have once-only access to the disclosure information. This provision would allow the Scottish Ministers to specify that a 16 digit PIN generated by a scheme member constituted a request by the member as required by Disclosure Condition A in section 52.

Section 70. Delegation of vetting and disclosure functions

129. This section allows the Scottish Ministers to delegate their vetting and disclosure functions (as Disclosure Scotland) in respect of Part 2 of the Bill. The Scottish Ministers may not delegate their listing functions (as the Central Barring Unit) under Part 1. Ministers may not delegate any order or regulation-making functions, the specification of forms under section 68 nor the power to determine the appropriate fee for information from police authorities under section 71(4). This section provides the flexibility to make contractual arrangements for routine information gathering functions but not any determinations in respect of individuals (because those are functions under Part 1 not this Part). The Scottish Ministers' intention is that the majority of their functions in both Parts 1 and 2 will be carried out by civil servants in the new executive agency which does not require any formal delegation of functions.

Section 71. Sources of information

130. Subsection (1) has the effect of requiring the Scottish Police Services Authority to give the Scottish Ministers access to the Criminal History System. Subsection (2) requires police forces to provide non-conviction information as requested. Subsection (3) prevents vetting information (under section 46) from the police including information which should not be disclosed to the scheme member because it would be contrary to the interests of the prevention of detection of crime. Subsection (4) obliges the Scottish Ministers to pay police authorities for information. Section 71(5) ensures that the Scottish Ministers are not liable for erroneous information provided to them by the police.

131. This section may be extended by a section 104 order, under the 1998 Act, to cover police forces in England and Wales and Northern Ireland in respect of the Police National Computer and other police information from non-Scottish forces.

Section 72. Statements of barred status: disclosure of whether individual under consideration for listing

132. Section 72 places a 6-month limit on the disclosure of the fact that an individual is under consideration for listing.

133. A statement of barred status (defined at section 43) normally includes whether the individual is subject to consideration for listing in respect of the type of regulated work to which the disclosure request relates. This is similar to the current position where, under article 13(1)(a)(ii) of the Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (S.S.I. 2006/96), an enhanced disclosure will include whether an individual is provisionally listed.

134. The 2003 Act (section 7) requires the Scottish Ministers to apply to the sheriff for an extension of a period of provisional listing beyond 6 months but does not limit the time taken to reach a decision. If the period expires without extension, the individual is removed from the list and the individual's enhanced disclosure will no longer state that he or she is provisionally listed. In practice, this has the effect of ensuring that cases are determined within this period.

135. Section 72 therefore has a similar effect to section 7 of the 2003 Act in relation to the disclosure of whether an individual is being considered for listing.

PART 3: SHARING CHILD PROTECTION INFORMATION

Section 73. Child protection information

136. This section defines child protection information as any information which relates to a child and which the holder of the information reasonably considers relevant for the protection of a child, or any child, from harm. Harm is defined in section 93 and includes physical and psychological harm.

Sections 74 and 75. Duties on relevant persons to share information and co-operate

137. Section 74 places a duty on a 'relevant person' (as defined in section 80) that holds child protection information to report the information to the relevant council. The relevant council is defined as the one for the area in which the relevant person considers the child, for whom the disclosure is being made, to be in. Thereby, it accommodates instances where it is unclear where the child to whom the information relates normally resides.

138. As at present, the relevant council is expected to take necessary and appropriate steps in response to information relating to child protection issues. To assist councils in considering whether to take action in order to protect a child from harm, section 75 places a duty on relevant persons to co-operate with a council which is making enquiries. The duty is limited to circumstances where such co-operation is likely to help the relevant council. Section 75(b) also places a duty on relevant persons to co-operate with each other in that situation.

Section 76. Code of practice about child protection information

139. This section requires Scottish Ministers to prepare and publish a code of practice containing guidance about child protection information. It specifies that the code of practice may include guidance, recommendations, advice and information on a number of areas, including the types of information to be treated as child protection information and the ways in which relevant persons and their workers (defined in section 95) should share that information.

140. Subsection (3) empowers the Scottish Ministers to alter or replace the code of practice. Subsection (4) requires the Scottish Ministers to consult with relevant persons, their representative bodies and other persons as they think fit before publishing the code of practice or any significant alteration to it.

141. Subsection 76(5) provides that relevant persons must have regard to the code when deciding whether information is child protection information, and how to comply with the duties to share information and/or to co-operate.

Section 77. Duty to enable, encourage and help workers to share child protection information

142. This section places a duty on relevant persons to take reasonable steps to enable, encourage and support workers to share child protection information. Reasonable steps include the promotion and awareness of the code of practice, and ensuring that its workers have regard to the guidance in carrying out their duties. “Worker” is defined by section 95 and includes those carrying out unpaid work, working under a contract for services and those caring for or supervising individuals participating in any organised activity. It is also to be noted that child protection information may be acquired other than by workers dealing directly with children and could include information acquired through working with an adult whose behaviour may for example suggest a child may be at risk of harm.

Section 78. Lifting of restriction on sharing child protection information

143. This section, unlike those preceding, applies to any person. It operates to lift legal restrictions on the disclosure of child protection information. It provides that any person who does not have the power to disclose child protection information to a relevant person, or who would be susceptible to a sanction or remedy for doing so, is to have that power and to be relieved of the sanction or remedy. This power to disclose is only for the purpose of protecting a child from harm and will only permit disclosure to a relevant person as listed in section 80. Subsection (3) provides that where the discloser holds the child protection information subject to a duty of confidentiality and informs the relevant person to that effect the information must not be further disclosed unless permitted or required by law. A person disclosing information and relying on this provision will have to consider other potentially relevant rules of law.

Section 79. Child’s welfare paramount consideration

144. This section allows for relevant persons not to comply with the duties to share child protection information and co-operate in certain circumstances. This safeguard is to enable relevant persons to override the duty to disclose where the disclosure would put another child or children at greater risk of harm than that of the child for whose protection the disclosure might be made. In considering what is in a child’s interests, the child’s welfare throughout childhood will be the paramount consideration.

Section 80. Relevant persons

145. Relevant persons are mainly public bodies and other large organisations which can reasonably be expected to come across child protection information in the normal exercise of their functions. This section gives the Scottish Ministers the power to extend the definition of relevant persons.

Section 81. Enforcement etc.

146. This section gives Scottish Ministers the order-making power to make further provision to ensure that relevant persons comply with the duties. The section also empowers Ministers to, in future, make further provision (including provision to modify any enactment, instrument or document) to ensure Part 3 is given full effect.

PART 4: AMENDMENTS TO PART 5 OF THE POLICE ACT 1997

Section 82. Information in criminal conviction and record certificates

147. Section 82 requires Disclosure Scotland to state on certificates that are issued under Part 5 of the 1997 Act whether or not a person is subject to the notification requirements under Part 2 of the Sexual Offences Act 2003. Under the existing provision, this information can only be included as additional information on enhanced certificates at the discretion of the Chief Constable. Under this provision, there will be no discretion and this information will always be included on the face of a disclosure certificate whilst the notification requirements remain live.

148. In addition, the Scottish Ministers are given a power to prescribe civil orders that should be included routinely on standard and enhanced certificates. It is expected that this will be used for Sexual Offences Prevention Orders and Risk of Sexual Harm Orders in the first instance. Chief Constables will retain the discretion to disclose information about other civil orders on enhanced certificates (which will continue to be available for purposes other than regulated work).

Section 83. Form of Part 5 applications

149. Section 83 allows the Scottish Ministers to determine the application form for disclosures under Part 5 administratively. This brings procedures into line with those for disclosure records under Part 2 of the Bill. It also allows standard and enhanced disclosure certificates (which require a countersignature) to be processed electronically which is in line with the wider policy for e-Government.

Section 84. Payment of fee for information from certain police forces

150. Section 84 amends Part 5 of the 1997 Act to make it clear that when Disclosure Scotland make requests under subsection 113B(4) or (5) to: the States of Jersey Police Force; the salaried police force of the Island of Guernsey; the Isle of Man Constabulary; or a body outside the British Islands who are a police force and whom the Scottish Ministers prescribed for the purposes of Part 5, that Disclosure Scotland must pay a fee in respect of information received.

Section 85. Regulations about registration

151. Section 85 makes further amendments to Part 5 of the 1997 Act in relation to the conditions that apply to the register held under section 120 of the 1997 Act. Firstly, Disclosure Scotland can refuse to include a person on the register if they believe that that person is likely to countersign less than a minimum number of applications each year and, secondly, to remove a person who is already on the register if he or she countersigns less than a minimum number of applications each year. The figure for each circumstance will be prescribed in regulations.

PART 5: MEANING OF “SCHOOL CARE ACCOMMODATION SERVICE”

Section 86. Meaning of "school care accommodation service"

152. Section 86 makes amendments to the 2001 Act to change the definition of “school care accommodation service” as defined in that Act. Section 2(4) of that Act currently reads,

- (4) A "school care accommodation service" is a service which is provided to a pupil by an education authority or the managers of an independent or grant-aided school, or by any person under arrangements made by any such authority or managers-
- (a) for the purpose of the pupil being in attendance at a public, independent or grant-aided school; and
- (b) which consists of the provision, in a place in or outwith the school, of residential accommodation,
- but a service may be excepted from this definition by regulations.

153. The effect of the changes is twofold. Firstly, where arrangements are made by an education authority or managers of an independent or grant aided school for the pupil to stay in someone's home, the service will be regarded as being provided by the authority/managers. It will therefore be for the education authority/managers to register the service rather than the individual providing the accommodation. Secondly, the new definition makes clear that accommodation provided only in the holidays will also be covered by the definition, if it is provided for the purpose of, or in connection with, the pupil's attendance at school.

PART 6: SUPPLEMENTARY AND GENERAL

Section 87. Transfer of Disclosure Scotland staff etc.

154. Disclosure Scotland is currently staffed by a mixture of employees from Strathclyde Joint Police Board and contractors for BT plc. This section sets out the arrangements for the transfer to the Scottish Administration of those staff employed by Strathclyde Joint Police Board who currently work in Disclosure Scotland. Under this section the Scottish Ministers may make a "staff transfer order" to effect this transfer. This section could be used to transfer other staff of the Strathclyde Joint Police Board (other than constables) but there is no intention to do so.

155. Subsections (4) to (9) concern employees of Strathclyde Joint Police Board who are subject to a staff transfer order. Subsections (4) to (6) provide that contract rights and obligations transfer from the former employer to the Scottish Ministers on the transfer date. Subsection (7) provides that employed staff may object in advance of their contract being transferred to the Scottish Ministers, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person. Subsection (8) provides that an employee can terminate their contract of employment if they can show that a substantial detrimental change has been made to their working conditions.

156. Previously, it had been intended that Disclosure Scotland staff would transfer to the Scottish Police Services Authority on 1 April 2007, together with the remainder of the Scottish Criminal Records Office. Paragraph 37 of schedule 4 repeals the provisions in the Police, Public Order and Criminal Justice (Scotland) Act 2006 that would have transferred the Scottish Ministers' functions under Part 5 of the 1997 Act (the functions carried out by Disclosure Scotland) to the Authority.

Section 88. Power to give effect to the Safeguarding Vulnerable Groups Act 2006

157. The power provided in section 88 can be used to make provision, including amendments to devolved legislation, to ensure that the equivalent scheme for England and Wales functions properly. It is the Scottish Ministers' intention that most of the necessary provision will be made

through stage 2 amendments to this Bill. However, given the complexities of this Bill and the Westminster Bill, it may be necessary to make further provision subsequently.

Section 90. Offences by bodies corporate etc.

158. Where an offence is committed by an organisation, this section provides that the organisation and, in some cases, a senior individual in that organisation are both to be held responsible. On the whole, the more junior member of staff whose conduct may have given rise to the offence is not criminally liable. The member of staff may still be disciplined by the organisation and, if one of the referral grounds at section 2 is met, he or she can be referred for consideration for listing.

PART 7: INTERPRETATION

Section 91. Regulated work

159. Section 91 introduces schedules 2 and 3 which define regulated work with children and regulated work with adults, respectively. Schedule 2 to this Bill replaces schedule 2 to the 2003 Act; regulated work with children is the new term for “child care position” in that Act.

Section 92. Meaning of references to being barred from regulated work

160. There is a difference between being listed and being barred. Being listed means being included in the children’s or adults’ list. Being barred from regulated work in Scotland is a consequence of being listed, included in certain other lists in the UK or subject to a prohibition or disqualification in any other jurisdiction which the Scottish Ministers deem to correspond to being listed.

161. Subsections (1) and (2) mean that being included in the equivalent list in England and Wales or Northern Ireland, will result in being barred from regulated work with children and adults, respectively, in Scotland. Subsections (3) and (4) give the Scottish Ministers an order-making power to regard any other list abroad as being equivalent to a Scottish list and therefore leading to being barred from regulated work in Scotland. Subsections (5) and (6) make allowance for developments in England and Wales or Northern Ireland and enable the lists in subsections (1) and (2) to be updated accordingly.

162. The effect of section 92 is that a teacher working in England who is referred to the Independent Barring Board (established under the Westminster Bill) and included on their children’s barred list would be *listed* in England and Wales and *barred* from regulated work with children in Scotland and equivalent work across the UK. Although barred, the individual will not be *listed* in Scotland; it is expected that the Independent Barring Board will retain that information and provide it to Scottish police forces and Disclosure Scotland as necessary.

Section 93. Harm

163. This is discussed in the context of referral grounds under section 2, paragraph 21 of these Notes.

Section 94. Meaning of “protected adult”

164. Section 94 defines a “protected adult” for the purposes of the Bill. A protected adult is defined as an individual aged 16 or over who is provided with (and thus receives) a type of care and support service as set out in this section. Section 94(1)(b) allows for the Scottish Ministers to prescribe healthcare related services, whether provided by the NHS or by private suppliers. Section 94(2) gives the Scottish Ministers an order-making power to amend the definition of “protected adult” in subsection (1).

165. The equivalent term in the Westminster Bill is “vulnerable adult” and applies to persons who have attained 18 years of age or over.

Section 95. Meaning of “work”

166. Section 95 defines the meaning of work, of which regulated work is a subset defined through section 91 and schedules 2 and 3. Section 95(1) clarifies that work includes paid or unpaid work and other types of work. Work does not come within the scope of the Bill if it is done for an individual in the course of a family relationship or in the course of a personal relationship with no commercial consideration. This means that a mother employing her brother to look after her child (a family relationship) does not constitute work for the purposes of this Bill, whether or not she pays her brother. However, a mother employing a friend to look after her child would not constitute work if there was no payment but, if the friend received payment, it would constitute work. In this latter case, therefore, it would be an offence for a barred individual to accept payment from the mother for babysitting (because it is regulated work) but not for the mother (because she is a personal employer) to employ the barred individual.

Section 96. General interpretation

167. Section 96 makes provision for general interpretation. Some of these terms were highlighted at paragraph 4 of these Notes. Some terms which appeared in the 2003 Act have changed their meaning, e.g. “harm” which is defined at section 93 and discussed at paragraph 21 of these Notes.

PART 8: FINAL PROVISIONS

Section 97. Ancillary provision

168. Section 97 provides the Scottish Ministers with the power to make supplementary, incidental, consequential, transitional, transitory or saving provision in order to give full effect to the Bill and this may include modifying any enactment, instrument or document.

Section 98. Saving: disclosure of information

169. This section clarifies, for example, that the Bill does not affect the police’s common-law powers to disclose information for the purpose of preventing or detecting crime.

Section 99. Orders and regulations

170. Subsection (3) provides that orders and regulations are to be made by negative resolution procedure except for those listed in subsection (4). Subsection (4) provides that the following matters require affirmative procedure:

- criteria leading to automatic listing, as set out in section 14;
- amending section 31(1)(b) or (c) or schedule 1 to change the meaning of "offence against a child", "relevant offence" or "offence against a protected adult";
- any powers to modify the provisions of this Bill or any other enactment, as given at section 81, 88 or 97;
- any change to the meaning of protected adult in section 94; and
- any modification to the definition of regulated work with children or regulated work with adults using the order making powers in schedules 2 and 3 respectively.

Section 100. Commencement

171. Section 100 provides flexibility for the Scottish Ministers to commence the various provisions of the Bill at different times. Subsection (3) makes clear that the Scottish Ministers could bring the provisions into force on an area by area basis.

SCHEDULE 1: RELEVANT OFFENCES

172. Schedule 1 lists those offences for which the court must refer an individual to the children's list following conviction. It replicates schedule 1 of the 2003 Act, updated to include new offences created by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 and other offences under the Civic Government (Scotland) Act 1982 and the Sexual Offences (Amendment) Act 2000.

SCHEDULE 2: REGULATED WORK WITH CHILDREN

173. This schedule is a replacement for schedule 2 to the 2003 Act. It has been restructured: some positions have been added; some existing definitions have been narrowed; and others, which were child care positions under the 2003 Act, have been removed.

Part 1: Preliminary

174. Schedule 2 defines regulated work with children for the purposes of this Bill. Paragraph 1 applies the normal duties test to the activities set out in Part 2 and the positions set out in Part 3. Part 4 explicitly identifies a number of positions which fall within the definition of 'regulated work with children'.

Part 2: Activities

175. Paragraphs 2-5, read with paragraph 1(a), are designed to have broadly the same effect as schedule 2 to the 2003 Act. Paragraphs 2-5 reproduce paragraphs 1(c) to (g) in schedule 2 to the 2003 Act and subsequent paragraphs which qualify them.

176. Paragraph 6 is a new provision (not in the 2003 Act) covering positions such as workers on telephone advice lines and children's magazine agony aunts. The provision does not cover general broadcasting to children, such as children's television or radio programmes.

177. Paragraph 7 is a new provision (not in the 2003 Act) covering positions such as those involved in moderating Internet chat rooms intended for use by children where the individual has a role in protecting those children from harm. It does not cover incidental use by children of chat rooms intended for use by adults. It does not cover staff involved in maintaining and supporting such services whose function is not related to child protection, e.g. engineers.

178. Paragraphs 8-9 represent a development of paragraph 1(b) of schedule 2 of the 2003 Act but are now qualified to limit the positions covered to those involving contact with children. A cleaner, for example, in the head office of an organisation providing care home services would now no longer be regarded as doing regulated work with children.

Part 3. Establishments

179. Paragraphs 11-12 replicate paragraphs 2(a) and (b) in schedule 2 of the 2003 Act.

180. Paragraphs 13-15 are broadly equivalent to the reference to "educational establishment" in paragraph 2(c) in schedule 2 of the 2003 Act.

181. Paragraph 16 replicates paragraph 2(d) in schedule 2 of the 2003 Act, updating the reference to the residential accommodation for persons with mental disorder to the Mental Health (Care and Treatment) (Scotland) Act 2003 which replaced the Mental Health (Scotland) Act 1984.

Part 4. Positions

182. Paragraphs 17-25 replace provision made at paragraph 6 of schedule 2 of the 2003 Act. New positions include the Commissioner for Children and Young People in Scotland, the Commissioner's staff (paragraphs 22-23) and the Registrar of Independent Schools in Scotland (paragraph 24). The only other changes are minor and technical.

Part 5 : Power to amend Parts 1 to 4

183. This permits the Scottish Ministers to amend schedule 2 by order.

SCHEDULE 3: REGULATED WORK WITH ADULTS

184. Schedule 3 of the Bill (read with section 94) defines "regulated work with adults".

Part 1: Preliminary

185. Part 1 sets out that it covers work in:

- a position whose normal duties include carrying out an activity mentioned in Part 2 or (if not already covered by Part 2) work in an establishment mentioned in Part 3;
- a position mentioned in Part 4; and
- a position whose normal duties include the day to day supervision or management of an individual working in one (or more) of the above positions.

186. Paragraph 2 of Part 1 makes provision to exclude from the scope of regulated work with adults work which is with children only and in respect of which the presence of protected adults is merely incidental. This would prevent, for example, teaching at a secondary school becoming regulated work with adults merely because a few of the sixth form students were receiving care services. Parts 2 to 4 of schedule 3 are discussed in more detail below.

Part 2: Activities

187. These are certain types of activity carried out by individuals in the course of performing their normal duties (e.g. caring, teaching, supervising, advising and guiding etc.), or carried out where the performance of an individual's duties in particular establishments permits or requires them to have contact with protected adults.

Part 3: Establishments

188. These are places in which individuals will do regulated work by virtue of performing their normal duties in a place providing accommodation for adults. Paragraph 8 clarifies the meaning of a care home by reference to the accommodation being occupied mainly or exclusively by adults in order to distinguish this from accommodation which is provided mainly for children.

Part 4: Positions

189. These are individuals whose positions of management responsibility, trusteeship of a charity, or membership of a Council Committee whose functions concern the provision of education, accommodation, social services or health services to protected adults, mean they will undertake regulated work.

Part 5: Power to amend Parts 1 to 4

190. This permits the Scottish Ministers to amend schedule 3 by order.

SCHEDULE 4: MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

191. This schedule is introduced by section 89. It makes amendments to the 1995 Act and 1997 Act. Importantly, the Protection of Children (Scotland) Act 2003 is largely repealed.

FINANCIAL MEMORANDUM

INTRODUCTION

192. The Bill makes provision for three distinct, but related, policies: a new vetting and barring scheme covering those working with children and/or protected adults, whether paid or unpaid; information sharing about children at risk; and changes to the definition of school care accommodation service.

Summary of costs

193. The net changes to costs (compared with the existing costs of checking relevant staff through Disclosure Scotland and operating the Disqualified from Working with Children List) resulting from the Bill are estimated as follows:

- The cost of setting up the new vetting and barring scheme will be £4.75m (\pm £1.0m) which will be met by the Scottish Ministers (see paragraph 213 and table 1).
- In the first three years of operation, while all the relevant workforce is being brought into the scheme, the total costs of operating the scheme are likely to **increase** by around £10m to £12m (i.e. £3m to £4m per annum), assuming 50% of volunteering posts are judged to be within the scheme (see paragraph 222 and table 3). This will be raised through fee income arising from the greater number of checks being carried out, and continued subsidy by the Scottish Ministers of the fees for volunteers working in voluntary organisations.
- Once the new vetting and barring scheme is fully established, the disclosure system (including the cost of all existing Disclosure Scotland work) will **reduce** by around £1m per annum, again depending on how many volunteering posts are included within the scheme. (See table 3. Assuming 500,000 applications for disclosure, Disclosure Scotland's turnover for 2006/07 will be around £10m and estimates for future costs for the whole scheme are in the range £8.6m to £9.2m for 50% of volunteers being in the scheme.)
- The average costs associated with checking each individual employee, volunteer and self employed worker over a 10 year period are expected to fall, although the impact on particular individuals depends on how often they move to a new post and on the fee structure that is adopted.
- The additional cost of the information sharing provisions will be £0.9m (\pm £0.1m) for the provision of guidance and training. These costs will be met by the Scottish Ministers. There are no additional ongoing costs.
- The amendments to the 2001 Act will not result in any increased costs.

194. Each of these changes is considered in more detail in the subsequent sections. Start-up costs are summarised in table 1, running costs are summarised in table 2, and possible fee options are shown in table 3 at the end of the memorandum.

Wider context

195. This expenditure needs to be seen in the context of overall spending in terms of services to children and protected adults in Scotland. In 2004-05, approximately £4.5 billion was spent by the Executive and local authorities on children's services in Scotland, delivering care and education services for young people (excluding health services).

196. In 2005-06, approximately £1.7 billion was spent delivering care and support services to meet the needs of adults.

197. The voluntary sector received around £390 million in direct grants from the Executive in 2005-06, much of which was for provision of adult care and a wide range of children's services.

198. In England and Wales, a vetting and barring scheme is being established by the Safeguarding Vulnerable Groups Bill, which was introduced to the House of Lords on 28 February 2006. It was accompanied by a financial memorandum which included a budget of over £16 million for the establishment of the new scheme. That financial memorandum also estimated that annual operating costs will be in the range of £16 million to £18 million per annum over the first five years of the scheme on top of current Criminal Record Bureau activity. The additional manpower requirement to manage and administer the scheme was estimated at approximately 200 additional staff.

VETTING AND BARRING SCHEME

199. The Bill includes the following provisions with financial implications for the Scottish administration, local authorities and other bodies, individuals and businesses:

- Section 1. Duty of the Scottish Ministers to keep lists of individuals unsuitable to work with children or protected adults.
- Section 41. The Scottish Ministers to administer the scheme for vetting and disclosing information about individuals undertaking regulated work.
- Section 46. The Scottish Ministers' power to prescribe vetting information.
- Section 67. The Scottish Ministers' power to prescribe fees.
- Part 3. Powers and duties in relation to information sharing.
- Schedule 2. Definition of regulated work with children (which is expanded compared with the definition of child care position in the 2003 Act).
- Schedule 3. Definition of regulated work with adults.

Basics of the vetting and barring scheme

200. The new vetting and barring scheme will cover up to one million individuals, who come into contact with children and/or protected adults through work, either in paid employment or as volunteers. There are three types of checks under the scheme, which are explained at paragraphs 56 to 58 of the Policy Memorandum. There are two types of check which organisational employers can request: a 'scheme record check', for example when an individual is employed for the first time; and a 'short scheme record check', for example when they move to a new

employer in the same sector. In addition, personal employers can request a 'statement of barred status'. In this Financial Memorandum, full check/full fee refers to a scheme record check (organisational employment) or application to join the scheme and first statement of barred status (self-employment). Nominal check/nominal fee refers to a short scheme record check (organisational employment) or subsequent statements of barred status (self-employment), where the individual is already a scheme member.

201. This financial memorandum is based on the following assumptions, although none have been made about efficiencies or inflation:

- (a) *The entire workforce, including volunteers, will be brought into the scheme through a full check, and this will be phased over the first three years of operation.* These are referred to below as Year 1, Year 2 and Year 3. So at the start of Year 1 there will be no scheme members whereas by the end of Year 3 all relevant individuals should be scheme members. (Year 0 is the year prior to going live and Year 4 the first year of a full scheme.) Such phasing will enable the transition to the new scheme to be managed, while bringing all relevant individuals into the scheme as quickly as possible.
- (b) *There will be two levels of fee: a higher level of fee when joining the scheme and for any subsequent full check and a lower level of fee for a nominal check.* (The Policy Memorandum explains the different types of disclosure check available as part of the vetting and barring scheme.)
- (c) *The fee charged will not depend on the workforce to which the application relates.* It will be the same, whether the individual is applying to work with adults, or children or both.
- (d) *The fee structure is still to be decided. It will be designed to cover the total cost of operating the scheme.* The average cost of carrying out a full check (including setting up the updating system and paying for listing decisions) will be slightly more than the average cost of carrying out an enhanced disclosure¹. The average cost of carrying out a nominal check will be less than the average cost of a basic disclosure, since all the relevant information is already available.
- (e) *Ministers will continue to pay the costs of fees for volunteers working with voluntary organisations.* It is assumed that this will have minimal impact on the number of people who volunteer, although it does create an incentive for people to volunteer before they enter employment (to get a 'free' check).
- (f) *Membership of the scheme will expire 10 years after the most recent full check.* A full check will be required after the 10 years has elapsed. This starts the next 10 year period.
- (g) *Employers will not ask for a full check if a nominal check is all that is required to show that the individual is not barred and there is no relevant information held about them that would be disclosed through a full check.* (If employers request unnecessary full checks, this will increase the total cost of operating the scheme - offset by the additional fee income).

¹ Enhanced disclosure is the current mechanism for checking an individual for a care/childcare position. See paragraphs 20-24 of the policy memorandum and paragraph 97 of the explanatory notes.

- (h) *The size of the relevant workforces, the rate at which people move between posts, and the level of volunteering stay broadly constant. If any of these change significantly as a result of other factors, this will have an impact on costs and revenues, but not as a result of introducing this Bill.*
- (i) *The proportion of volunteers whose posts require them to be checked is assumed to be 50%, since that generates a level of activity broadly consistent with current levels of subsidised disclosure checking (taking account of the expansion of the system to cover volunteering with adults. If that assumption is wrong, the total volume of activity will change, as will the cost of subsidy to the Scottish Ministers, although the sensitivity of fee levels to such errors is minimal.*
- (j) *The proportion of people in the children and adult care workforces about whom there is ‘relevant information’ – either convictions or police intelligence, is broadly the same as it is across the full range of workforces subject to disclosure checks. Thus the offence profile is assumed constant across the working population and is not influenced by age or the nature of employment.*
- (k) *The number of basic, standard and enhanced checks for people not working in the adult or child care sectors will be unaffected by the introduction of the scheme. Thus the costs associated with running the unaffected parts of Disclosure Scotland activity will be unchanged. This is a best estimate but a simple approximation since, in practice, Disclosure Scotland’s costs are not easily disaggregated by disclosure type.*

202. A decision has yet to be made in relation to fees for full and nominal checks. For illustrative purposes, we have calculated the fee levels that would be required using three models (elaborated at paragraphs 218 to 220 and table 3):

- (a) Model 1. Basic, Enhanced, Standard, Full and Nominal fees all set to the same value.
- (b) Model 2. Basic, Standard and Enhanced unchanged / Nominal set to zero / Full set to balance costs.
- (c) Model 3. Basic, Standard and Enhanced unchanged at £20 / Full set to £26 / Nominal set to balance costs.

203. The current intention is to adopt a fee structure that has no impact on the fees charged for basic, standard and enhanced checks, and most accurately reflects the true cost of providing each of the full and nominal checks. This will achieve the twin objectives of being neutral to users of Disclosure Scotland who remain outside the new scheme, and minimising the financial impact should any of the figures in this memorandum prove to have been over or under-estimates.

Vetting functions of the Scottish Ministers

204. Part V of the Police Act 1997 put in place a statutory framework to allow for criminal record checks for employment for people working with vulnerable groups and other workers in sensitive positions. The intention of Parliament was that implementation of the 1997 Act should be self-financing through income received through disclosure fees. Since April 2002, the Scottish Ministers and BT have worked in partnership as “Disclosure Scotland” to provide criminal record checks for Scotland. In the first four years of operation, 1.5 million disclosures were issued and, until 1 April 2006, the fee for disclosure was £13.60. Checks for volunteers in

the voluntary sector are paid by the Scottish Ministers, a cost of £700,000 for 50,000 such applications in 2005/06.

205. Because of the lower than expected numbers of applications, it was necessary to increase the fee on 1 April 2006 from £13.60 to £20.00 so that both BT and the Scottish Ministers could cover the future costs of the operation and recover their support to date. The Scottish Ministers are continuing to pay the full fee costs of volunteers in the voluntary sector, and intend to do so once the new system is established. With the same number of applications as in 2005/06, the cost to the Scottish Ministers of checks for volunteers in the voluntary sector in 2006/07 would be £1.0m.

206. In 2005, some 490,000 applications for disclosure were made. Around 330,000 were standard and enhanced checks of which an estimated 240,000 applications were for individuals applying to work in either the adult care or child care sectors. Around 30% of applications for disclosure to work in the child care or adult care sectors have been duplicates, i.e. at least two applications from the same individual, since the system began in April 2002.

207. Once the scheme is fully operational, and the existing adult and child care workforces have been checked (the start of Year 4 as described in paragraph 201(a) above) we anticipate that the new agency will process approximately: 160,000 basic checks (all of which will be outside the new scheme); 90,000 standard and enhanced checks (outside the new scheme); 60,000 full checks at the higher level of fee; and 271,000 checks at the lower level fee for nominal checks. Statements of barred status will be provided to allow personal employers to establish that someone (e.g. a piano tutor) is not barred. We have no strong basis on which to estimate the scale of this activity and have merely included it within the general estimates of the number of update checks. If this is an underestimate, a fee model that ensures the cost of issuing these checks is covered will mean that any increased volume would be self-financing.

208. The number of full checks is projected to be significantly less than the current number of standard and enhanced disclosure checks for the vulnerable groups' workforces. This is because scheme members can apply for a nominal check instead of a full check if they take up another post in the same workforce. At present, 90% of enhanced checks currently reveal no relevant information, and it is expected that a very high proportion of repeat checks will reveal no new information. A nominal check confirming no change to that status should, therefore, be sufficient in most cases when someone already in the scheme moves jobs or takes up a volunteering opportunity. The 60,000 full checks would be required for new entrants to the workforce, and in cases where new relevant information had emerged and employers wished to access that information.

Barring functions of the Scottish Ministers

209. The Disqualified from Working with Children List became operational when the 2003 Act was commenced on 10 January 2005. Over the first 17 months of operation to 9 June 2006, 65 referrals were received from courts and 106 from organisations. Court referrals are automatically added to the DWCL whereas organisational referrals require active consideration. After 17 months, of the organisational referrals, 19 individuals had been listed and 37 were pending consideration with the remainder having been dismissed. No appeals have been made

against any decisions to list. The costs of operating the DWCL are approximately £240,000 per year.

210. For each check revealing relevant information, the Central Barring Unit will need to determine whether the individual should be listed. Currently, around 10% of all disclosure certificates contain any information about the applicant. Of these, only a proportion will contain relevant information for these workforces. In future an even smaller proportion would be expected to accrue new information for consideration. On the basis of the frequency of different types of offences, we estimate that between 2,200 and 2,500 cases will be referred each year to the Central Barring Unit for decision from Year 4 onwards, comprising 400 organisational referrals and around 1,800 to 2,100 as a result of full checking or updating. The number of cases requiring decision in Years 1 to 3 will be significantly greater, given the increased volume of new individuals being processed as part of the implementation phase. It is estimated that up to 8,000 decisions may be required per year as the entire workforce and volunteer community is brought into the scheme.

211. Further analytical work is required, and is ongoing, to improve our understanding of the intensity of work involved in each of these checks. It is expected that many of these decisions will be easy to make, since barring will often be automatic or obviously not appropriate. The cases incurring the greatest cost will be those requiring a detailed determination process. Work has still to be done to establish what proportion of decisions will fall into each of these three categories and thus what intensity of work will be involved in an 'average' decision. For the purposes of this memorandum, it is assumed that the majority of these decisions will be straightforward, but that a significant minority will require detailed consideration.

212. It is therefore estimated that, including the existing costs of operating DWCL, the Central Barring Unit will require a staff of around 30 people, with total running costs of £1.5m per annum, after the transition phase. (I.e. this £1.5m replaces the £240,000 cost of running the existing system, described in paragraph 209 above.) These costs will be covered through fee revenue: see paragraph 201(d) above. Additional staffing will be required during the transition phase. The fee models shown below generate a small contingency during the transitional phase to cover these or other transitional costs.

Costs (and revenue) to the Scottish Administration

Set up costs

213. The direct additional cost to the Scottish administration associated with the new Bill will be approximately £4.75m to cover start-up costs for the scheme. This includes the following:

214. The start-up costs for the agency are estimated at £3.35m: with £400,000 for staff recruitment and relocation, £350,000 for standard office ICT and £600,000 for premises. Finally, there is £2.0m to meet the cost of developing IT infrastructure to maintain the barred lists and developing Disclosure Scotland's IT infrastructure.

215. It is estimated that approximately £1.4m will be required to ensure that adequate training and guidance is developed and delivered. In total, £950,000 was spent on training and guidance

to assist those bodies and individuals affected by the Disqualified from Working with Children List, established by the 2003 Act. Taking account of the increase in the workforce that is to be affected by the new scheme, costs are estimated as follows:

£200,000	Development of training materials for the adult care/child care workforces
£600,000	Delivery of training events to practitioners and managers in the care/childcare workforces
£300,000	Operation of a telephone helpline service for a three year period, offering best practice guidance to those using the system
£320,000	The Central Registered Body for Scotland (CRBS) currently undertake a countersignatory function for all free checks and for paid checks for those smaller voluntary organisations not registered directly with Disclosure Scotland. This additional grant will allow CRBS to develop their systems to provide this service to voluntary organisations delivering service for protected adults

Running costs

216. After Year 3, the annual cost of covering the fees of volunteers in the voluntary sector are expected to be in the range £1.0m to £2.1m (see last column of table 3). The best estimate is around £1.0m, assuming 50% of volunteers need to be checked. During the transition phase, the total subsidy over the three years will be in the range £5.5m to £12.8m (see table 3). The best estimate is in a narrower range of £5.5m to £8.3m, assuming 50% of volunteers need to be checked. Looking at table 3, subsidy of £5.5m corresponds with costs of £40.2m (model 2), i.e. additional costs of £10.2m, leaving individuals to cover the remaining £4.7m. Similarly, subsidy of £8.3m corresponds with costs of £40.3m (model 1), i.e. additional costs of £10.3m, leaving individuals to cover the remaining £2.0m. Therefore, the range of costs to individuals is £2.0m to £4.7m. (Additional costs are over and above the £30m turnover for three years that Disclosure Scotland would have otherwise generated assuming 500,000 applications per year, see paragraph 193.)

Fee levels

217. Three options have been considered for fees. All figures relating to fees are presented in real terms.

218. Model 1 assumes the costs of all checks, including basic, standard, enhanced, full and nominal were the same. Retaining the fee for every check at the current level (£20) allows total costs to be just covered during the transition phase. The fee can then be reduced to £15 for every check after the end of year 3.

219. Model 2 assumes that the existing basic standard and enhanced fees were unchanged at £20 throughout, and that the nominal fee was set to zero. That requires a full fee of £38 over the full 10 year period. Alternatively, transition costs could be covered with a full fee of only £28, but that would then need to rise to £62 to cover costs thereafter (because of the relatively small number of full checks required after the transition phase).

220. Model 3 assumes that the basic, standard and enhanced fees stay at £20, that the full fee is set slightly higher (to reflect the extra costs of setting up the updating system and carrying out barring checks), and that the nominal fee is set at the level required to cover costs. Model 3 satisfies the criteria outlined in paragraph 202. On the basis of the initial estimates made in this paper, and for illustrative purposes only, setting the full fee at £26 would require a nominal fee of approximately £10 over the 10 year period. More detailed calculations would have to be carried out before firm fee levels were proposed.

221. At this stage, the calculations have not given any detailed consideration to variations in fee levels associated with fluctuations in volumes (for example if the shape and size of the workforce changes) or developments associated with information sharing and/or ICT. While not necessarily an explicit consequence of this legislation, such economies of scale and technological improvements would be anticipated to lead to a more efficient process that could potentially lead to a reduction in the required fee level over time.

Uneven profile of activity and revenue

222. Under the assumption of a three-year phasing with a 10-year lifetime for scheme membership, the costs and revenue from fees will fluctuate on a 10-year cycle with higher costs / income in the first three years of the cycle and lower costs / income for the remainder. Including continuing disclosure checks, aggregate costs in Years 1-3 are likely to be in the range £40.2m to £42.0m giving a range of £13.4m to £14.0m per annum, assuming 50% of volunteers need to be checked. This range falls to £8.6m to £9.2m in Years 4+ (see table 3). This compares favourably with the £10m turnover of Disclosure Scotland now, resulting in the likely saving of £1m suggested at paragraph 193. In setting up the new system, and the agency to operate it, and making specific proposals on the fees to be charged, the Scottish Ministers will consider how this uneven distribution of revenue, and significant short term increase in activity, can best be managed.

223. Volumes have not been projected beyond Year 10 of the new scheme. It is envisaged that there will be an increase in the number of full checks in Years 11, 12 and 13 given that the entire existing workforce will be required to have a full check undertaken in the first three years of the scheme and their membership will last 10 years. However, this effect will be dampened by significant numbers of individuals checked during the implementation phase having left the workforce and being continuously replaced by individuals entering the scheme for the first time. In other cases, individuals working for organisational employers may have had a subsequent full check, which renews their membership. (A later full check may be required because information has become available since the last full check).

Costs on Local Authorities

Changes to Fees for Disclosure

224. Responsibility for paying for checks rests with the individual, as now. As a result, 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. Indeed, it is expected that the new scheme will streamline the disclosure process and provide an online facility for requesting nominal checks which should cut administration costs for employers.

Providing information to Disclosure Scotland

225. Local authorities will need to be in a position to volunteer vetting information to Disclosure Scotland and comply with requests for further information in respect of any particular case. For example, where children have been put at risk of harm by a parent and have subsequently been placed on the Child Protection Register and/or moved from their home, it may be appropriate that the agency is notified. If the parent was a member of the scheme, or applies to join the scheme in future, an assessment could be made by the Central Barring Unit. While the detail has not yet been fully developed, we do not believe that placing this requirement on local authorities will result in significant additional costs.

Costs on Other Bodies, Individuals and Businesses

Employers

226. Responsibility for paying for checks rests with the individual, as now. As a result, while it is expected that many employers will continue to pay the costs of the fees no additional cost will be incurred by employers as a result of the introduction of the new vetting and barring scheme. Indeed, it is expected that the new scheme will streamline the disclosure process and provide an online facility for requesting nominal checks which should cut administration costs for employers. It is expected that training in the use of the scheme will be integrated into ongoing recruitment training and existing child/vulnerable adult protection policies.

Professional regulatory bodies

227. Regulatory bodies might incur a cost in fulfilling the information sharing requirements of the vetting and barring scheme. Information sharing with Disclosure Scotland is not one of their existing functions. However, registration information is already readily accessible within many regulatory bodies, for example the General Teaching Council for Scotland's website enables a hierarchy of users to check a teacher's registration. The Scottish Ministers will work with regulatory bodies to automate information sharing building on existing systems as much as possible. Action will be taken at Stage 2 to ensure that legislation being taken through Westminster and this Bill are consistent in terms of the interaction with regulatory bodies across the UK, not least to minimise the burden placed on them.

Voluntary sector organisations

228. All checks for volunteers working with children and protected adults in the voluntary sector will continue to be provided free, whether or not the individual also has paid employment in the sector. This will be achieved through continuing subsidy from the Scottish Ministers: see paragraph 216 above. As employers, they will benefit from the efficiencies described in paragraph 226 above. Voluntary sector bodies will receive training and other support to ensure they can carry out the obligations placed on them proposed in the Bill: see paragraph 215 above.

Employers within the adult care sector, including statutory bodies

229. In terms of obtaining the disclosure checks, the comments made for employers in general apply here. Many workers in the adult care sector are already subject to standard or enhanced criminal record checks as required by the Care Commission, the NHS, the professional registering bodies for medical staff or the Scottish Social Services Council. Additionally, many employers already carry out these checks as a matter of good recruitment practice.

230. Unlike employers in the child care sector who are already familiar with duties under the 2003 Act, adult care sector employers have not previously had a duty to refer employees for any consideration for listing. All large or moderately-sized organisational employers should have codes of conduct and disciplinary procedures in place and the duty to refer should be integrated into these existing practices. However, there may be an administrative impact on some employers, particularly smaller firms and those in the voluntary sector. Although these costs are not expected to be significant, they may include administrative time and resources needed to collate and prepare the necessary evidence and paperwork required to support the referral for inclusion on the list and any subsequent correspondence which may arise as the case proceeds. As indicated above, training and guidance will be provided to the sector.

Individuals

231. Volunteers in the voluntary sector working with children and protected adults will continue to receive free checks. There are a total of just under 500,000 individuals in paid employment working with either protected adults or children who would need to pay the new fees, although it is assumed that many employers would continue to meet these costs. The higher initial costs, and lower ongoing costs, of operating the scheme were identified at paragraphs 193, 216 and 222 and are summarised in table 2. Over the first three years, the scheme will cost individuals an additional amount in the range £2.0m to £4.7m in total, after that the scheme should reduce the overall costs on individuals by around £1.0m per annum. These costs will be met through revenue from fees charged to individuals corporately (including fees paid by the Scottish Ministers), but it is the level of fee set (see table 3) rather than this cost profile which is material to any given individual.

232. The cost of disclosure to an individual over a 10-year period under the current system is simply the £20 fee multiplied by the number of disclosures requested. On average, it is estimated that individuals who are part of the scheme will typically undergo one full and two or three nominal disclosures over the 10 year period, costing £60 - £80 under the current arrangements. Again, for illustrative purposes, this would reduce to £46 - £56 under the new arrangements if a £26 / £10 fee model was chosen. However, there will be some individuals who

do not require checks at present but who will do so as a result of this Bill and, for them, these will be new costs.

233. While long term costs are less, this fee model assumes a higher initial fee than the current Disclosure Scotland fee. The Executive will work with stakeholders to consider how best to mitigate the effects of any higher, upfront fee for the low-paid.

SHARING CHILD PROTECTION INFORMATION

234. Part 3 of the Bill makes provision in respect of the information sharing.

235. The following sections have financial implications:

- Section 74 – duty to share information
- Section 75 - duty to cooperate
- Section 77 – duty to enable, encourage and help workers to share child protection information

236. This Bill will formalise activities that organisations and agencies should be performing as a matter of course as part of their existing responsibilities. The provisions explicitly require and empower the sharing of data where currently it may be implied or identified as best practice. Because information sharing is already an intrinsic and continuous function for most professionals, it would be unfeasible and misleading to separate out the proportion of working time spent on this.

237. Statutory agencies would not be expected to incur any additional costs through this duty due to their existing responsibilities. The same would be true of private and voluntary agencies that have Service Level Agreements (SLAs) with statutory agencies. It is assumed that services with SLAs will be subject to the same rules and regulations as the statutory agencies themselves. Private and voluntary sector agencies without such agreements would potentially incur additional financial costs.

238. However, there will be some associated costs in relation to the development and delivery of the one-off training that will be required to ensure that existing workers are able to comply with the provisions in the Bill. It is estimated that the costs of producing the content of the training and delivering it to the relevant existing workers will be in the range of £900,000 (with a potential variance of £100,000 in either direction).

239. It is anticipated that the training of new workers will in future always include coverage of workers' responsibilities in relation to the provisions of this Bill and that there will therefore be no additional costs associated with this.

Costs on the Scottish Administration

240. The Scottish Ministers will be responsible for producing the code of practice in relation to the information sharing provisions. It is not envisaged that this will be an excessive additional

cost on the Administration and will be produced as part of its general responsibilities in this area. Costs are estimated at between £36,000 and £45,000, with a central estimate of £40,000.

Costs on Other Bodies, Individuals and Businesses

Costs on 'relevant persons'

241. As already stated, there will be some costs associated with the delivery of training to comply with the regulations but, for the majority of the workforce, the act of making an existing responsibility an explicit duty would not be expected to result in significant additional costs. Training would be added to existing programmes as part of workers continuing development.

242. The same assumptions in relation to the number of workers were used as in the costing for the vetting and barring scheme. Based on estimates of workforce numbers and the time required to train these numbers, it is estimated that the cost of training would be £720,000 (with a variance between £640,000 and £810,000).

Costs on the voluntary sector

243. Because the duties in relation to information sharing will only fall on those voluntary organisations contracted to supply a service to a public body, the same assumption is made in relation to information sharing already being a core part of the functions of the relevant workers in those voluntary agencies. Therefore, future workers will be trained in the provisions as a matter of course, but a one-off cost for training existing workers is estimated to be around £140,000 plus or minus 10 per cent.

MEANING OF "SCHOOL CARE ACCOMMODATION SERVICE"

244. Part 5 of the Bill amends the definition of school care accommodation.

245. The financial implications of achieving a change in the definition of school care accommodation services to allow a variety of guardianship arrangements to be regulated within the school care accommodation services are as follows.

246. Currently the 2001 Act requires these arrangements to be registered and inspected as childminders. This would attract a fee of £28 per registration and £17 continuation annually. However, in line with current policy, the Scottish Executive heavily subsidises the regulatory costs associated with the regulation of all early years services to the amount of £13 million per annum because these services include childminders and small day care services.

247. Without the change of definition proposed in the Bill, these various guardianship arrangements would require to register as childminders with the Scottish Executive continuing to subsidise the costs. Under the proposed amendment the monitoring of these services will be included as part of the inspection and regulation of individual school care accommodation services, the costs of which are not subsidised and are charged to the individual service provider, (currently at the level of £4340 for registration and £3472 annual continuation fee).

Costs on the Scottish Administration

248. It is assumed that the cost of the small amount of increased activity by the Care Commission will be absorbed within the more proportionate approach being adopted by the Commission to its regulatory activity.

Costs on Local Authorities, Other Bodies, Individuals and Businesses

249. It is proposed that the current fee structure will not be amended following this change, so there are no cost implications for the schools or for those providing accommodation services.

Table 1. Start-up costs in 2006/07 prices. VBS means vetting and barring scheme. IS means information sharing provisions.

START-UP COSTS	COST £,000	Over period	Paragraph
Scottish Administration (total)	£4,790	Years 0-3	
Scottish Administration (VBS)	£4,750	Years 0-3	213
VBS. Agency: staff recruitment and relocation	£400	Year 0	214
VBS. Agency: premises	£600	Year 0	214
VBS. Agency: office ICT costs	£350	Year 0	214
VBS. Training and guidance	£1,400	Years 0-3	215
VBS. IT infrastructure	£2,000	Year 0	214
IS. Preparation of code of practice	£40	Year 0	240
Local Authorities and other statutory bodies	£720		242
IS: Training of staff to prepare for information sharing	£720	Years 0-3	242
Other bodies, individuals and businesses	£140	Years 0-3	243
IS: Training for staff in Voluntary Sector Organisations to prepare for information sharing	£140	Years 0-3	243
TOTAL	£5,650	Years 0-3	

Table 2. Net ongoing costs in 2006/07 prices. VBS means vetting and barring scheme. Second column shows *total* cost over three years (not annual cost). Note that the cost to employers and individuals is greater during the first three years, but this is offset by later reductions. ¹The cost of subsidising free checks only materialises if they are not cross-subsidised. ²The best estimate of ongoing subsidy is £1.0m which is the expected cost for 2006/07 (see paragraph 205). ³The total cost to other bodies and the Scottish administration combined is in the range £10.3m to £12.0m. 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.

NET ONGOING COSTS	COST YR 1-3	COST YR 4+	Paragraph
Scottish Administration	£5.5m - £8.3m¹	£0.0m²	216
VBS. Cost of subsidising free checks	£5.5m - £8.3m	£0.0m	216
Local Authority	-	-	224, 225
Other bodies, individuals and businesses	£2.0m to £4.7m³	(£1m)	193, 222
Voluntary sector organisations	-	-	228
Other employers	-	-	226, 229-230
Regulatory Bodies	-	-	227
Individuals	£2.0m to £4.7m	(£1m)	231-233
TOTAL	£10.3m to £12.0m	(£1m)	193

Table 3. Costs, revenues and subsidies associated with the three models as set out at paragraph 202. The three models propose different fee structures but all balance costs. For models 1 and 2, the scenario shown is for 50% of volunteers requiring to participate in the scheme. For model 3, two scenarios are presented: 50% participation (as for models 1 and 2) and 100% of volunteers participating, to illustrate the difference this would make. (The ranges quoted in the memorandum assume 50% participation.) Each scenario has two rows: the first shows aggregate data for the transitional three years and the second shows annual data thereafter. Subsidy in the final column is included in the fee income in the penultimate column.

Model	Basic, Standard & Enhanced fee	Full fee	Nominal fee	Volunteers in scheme	Time period	Costs in £m	Fee income in £m	Subsidy by Ministers for vols in £m
1	£20	£20	£20	50%	Transition – over 3 years	40.3	41.5	8.3
1	£15	£15	£15	50%	Ongoing – per annum	8.6	8.7	1.2
2	£20	£28	£0	50%	Transition – over 3 years	40.2	40.7	5.5
2	£20	£62	£0	50%	Ongoing – per annum	8.6	8.7	1.0
3	£20	£26	£10	50%	Transition – over 3 years	42.0	43.0	7.3
3	£20	£26	£10	50%	Ongoing – per annum	9.2	9.3	1.0
3	£20	£26	£10	100%	Transition – over 3 years	50.6	51.8	12.8
3	£20	£26	£10	100%	Ongoing – per annum	10.8	10.8	2.1

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

250. On 25 September 2006, the Minister for Education and Young People (Peter Peacock MSP) made the following statement:

“In my view, the provisions of the Protection of Vulnerable Groups (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Protection of Vulnerable Groups (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 25 September 2006

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

251. On 21 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Protection of Vulnerable Groups (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Protection of Vulnerable Groups (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 25 September 2006

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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