EXECUTIVE NOTE

DRAFT SSI: THE PROTECTION OF CHILDREN (SCOTLAND) ACT 2003 (AMENDMENT OF THE DEFINITION OF CHILD CARE POSITION) ORDER 2008

Powers under which Instrument is made

1. The Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 is made by the Scottish Ministers in exercise of the powers conferred by paragraph 13 of schedule 2 to, and section 21(2) of, the Protection of Children (Scotland) Act 2003 ("the 2003 Act").

Parliamentary procedure

2. This Scottish Statutory Instrument is a class 1 instrument subject to the affirmative procedure at the Scottish Parliament.

Legislative background

3. Section 11 of the 2003 Act makes it an offence for any person who is disqualified from working with children to apply for, offer to do, accept or do any work in a child care position. Subsection 3(a) also makes it an offence for any organisation to offer work in a child care position to, or procure such work for, an individual who is disqualified from working with children. It is a defence, under subsection (5), for the organisation to prove that it did not know, and could not reasonably be expected to have known, that the individual was disqualified from working with children. One way for the organisation to check that the individual is not so disqualified is to request a disclosure from Disclosure Scotland.

4. Schedule 2 to the 2003 Act defines child care position and section 18 defines "organisation" and "work." The child care positions include a position whose normal duties include work in an educational establishment. Educational establishments (defined in section 135 of the Education (Scotland) Act 1980) include a school and any institution for the provision of any form of further education and the premises of such school or institution. They also include hostels mainly used by pupils attending school or further education and some Higher Education Institutions and other institutions.

5. The definition of child care position, where the normal duties include work in an educational establishment, includes within scope: members of Parent Councils regularly meeting in schools (as they usually do); those teaching classes primarily intended for adults and organisers of community activity such as councillors meeting their constituents in schools on a regular basis. Since "work" means "work of any kind" in the 2003 Act, the members of Parent Councils meeting in schools, the teacher or instructor of classes primarily intended for adults and the councillor organising regular meetings in schools, are all working.

Summary of policy objectives

6. The key purpose of this instrument is to remove from the definition of child care position a number of positions where individuals are not working directly with children to provide a more proportionate approach.

7. Specifically, the instrument will:

- Remove from the scope of work in a school, further education institution and hostel the work carried out by members of Parent Councils, Combined Parent Councils and other parental bodies. It is appropriate that all these parental bodies should be able to meet in these institutions without their members being in a child care position.

- Remove from the definition of child care position work done in schools to the extent that it involves an activity which is primarily intended for adults. (Any school teacher in a school will always be in a child care position even if they teach evening classes with adult participation) The instrument also removes from the definition of child care position work done in further education institutions, to the extent it involves an activity primarily intended for adults and is done by those not employed by the institution.

- Replace "educational establishment" with: a school, a further education institution and a hostel used mainly by pupils attending a school or further education institution. This mirrors the formulation used in the Protection of Vulnerable Groups (Scotland) Act 2007.

Consultation

8. There has not been a written consultation. But the proposals have been fully debated during four engagement events which attracted a wide range of interested stakeholders. The events were termed "engagement" rather than "consultation" in recognition of the Scottish Government's clear position that it would bring forward an amendment to Parliament as soon as possible. The Scottish Government wanted to bring the law into line with the policy intent. The engagement events were very useful in seeking peoples' views and in ensuring that the correct changes have been proposed. There has not been consultation or engagement on the draft Order itself. The stakeholders attending the engagement events were:

- 20 local authorities
- 12 colleges
- Association of Scotland's Colleges (ASC)
- Universities Scotland (US)
- 3 universities
- 3 parental representative bodies
- 6 members of the PVG Act Voluntary Sector Issues Group (VSIG)
- 1 other voluntary organisation
- Scottish Commission for the Regulation of Care
- 2 schools and 1 nursery (as part of a college)
- 5 others

9. In addition, a presentation was made to the Scottish Further Education Unit (SFEU) and discussions were held with others including CoSLA, ADES, and the Scottish Council of Independent Schools (SCIS).

10. There has been a positive response as the vast majority of stakeholders recognise that members of parental bodies and those taking classes primarily intended for adults should not

be in a child care position. They also believe that there will be no diminution in child protection.

Financial Effects

11. There will be no financial consequences other than a potential saving arising from not having enhanced disclosures for the members and individuals covered by the scope of the change.

Regulatory Impact Assessment

12. No Regulatory Impact Assessment has been prepared for this instrument because it does not have adverse financial effects or impose burdens on any individual or organisation.

The Scottish Government
Children, Young People and Social Care Directorate

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