POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (FEES FOR SCHEME MEMBERSHIP AND DISCLOSURE REQUESTS) AMENDMENT REGULATIONS 2015

SSI 2015/223

Powers under which this Instrument is made

1. The Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Amendment Regulations 2015 ("the Amendment Regulations") will be made by the Scottish Ministers in exercise of powers conferred by sections 70(1) and (2) and 97(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

Parliamentary procedure

2. This Scottish Statutory Instrument is subject to the negative procedure in the Scottish Parliament.

Summary of policy proposals

3. Under Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007, Disclosure Scotland administers the Protecting Vulnerable Groups Scheme ("the PVG Scheme") on behalf of Scottish Ministers. Section 70 of the 2007 Act gives the Scottish Ministers the power to charge fees in a wide range of circumstances, and to waive or refund fees in prescribed circumstances.

4. The fees charged are prescribed in the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010 No 167) ("the 2010 Regulations"). Among other things, the 2010 Regulations were intended to deliver Ministers' policy that the fees were to be waived for volunteers doing unpaid and voluntary work for a qualifying voluntary organisation ("QVO") as defined in regulation 7(2) of the 2010 Regulations.

5. Regulation 7(2) says, "In this regulation-

> "qualifying voluntary organisation" means an organisation which is not-
> (a) a further education institution, a school, a public or local authority, or under the management of a public or local authority; and
> (b) conducted primarily for profit, and any profit generated is used to further the objectives of the organisation and not distributed to its members; and
> "Further education institution" has the same meaning as in paragraph 15 of schedule 2 to the Act."

6. Because of that approach, a small number of voluntary organisations offering education for pre-school children (which now falls within early learning and childcare under the Children and Young People (Scotland) Act 2014) were unintentionally excluded from being a QVO due to them falling within the meaning of 'school' as defined in section 135(1) of the Education (Scotland) Act 1980. It can be seen from

regulation 7(2) above, that a school is excluded from the meaning of QVO. These Amendment Regulations resolve this unintentional consequence of the definition of "school" in relation to QVOs and extend the fee waiver to the voluntary organisations who fall within the general meaning of "school" by excluding them from that meaning of "school" where solely early learning and childcare is provided by the voluntary organisation in question. "Early learning and childcare" has the same meaning as in Part 6 of the Children and Young People (Scotland) Act 2014.

Effect of the policy proposals

7. The effect of these policy proposals will be that Ministers' policy with regard to the circumstances in which the PVG fee will be waived will be delivered. Any voluntary organisations which could for example be playgroups run with by parent volunteers and which solely provide early learning and childcare will not have to pay fees for any PVG checks for their unpaid and voluntary staff. In addition, the Amendment Regulations provide for a refund of any fee paid between 28th February 2011 and 30th June 2015 in connection with unpaid and voluntary work for an organisation which would have been a QVO, had the organisation not been excluded by virtue of being within the meaning of school. The refund will only be paid upon application for such a refund made to Disclosure Scotland before 1 January 2016. The application will need to show evidence that the scheme membership application or disclosure request had been made solely in relation to doing unpaid and voluntary regulated work in an organisation providing only early learning and child care in order to show that the organisation would fall within the meaning of QVO as revised by the Amendment Regulations.

Consultation

8. It has not been necessary to consult on the Instrument. It affects a small number of voluntary organisations who are aware that this change is being made.

Impact Assessments

9. There are no equality impact issues.

Financial Effects

10. The Minister for Children and Young People confirms that no BRIA is necessary as the instrument will have no financial effect on business in Scotland.

Scottish Government
29 May 2015