EXECUTIVE NOTE

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (PRESCRIBED PURPOSES FOR CONSIDERATION OF SUITABILITY) REGULATIONS 2011

SSI 2011/411

Powers under which the Instrument is made

1. The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for the Consideration of Suitability) Regulations 2011 ("the Suitability Regulations") are made by the Scottish Ministers in exercise of powers conferred by section 73(g) of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act").

Parliamentary procedure

2. The Suitability Regulations are subject to the negative procedure in the Scottish Parliament.

Legislative background

3. Part II of the 2007 Act establishes a disclosure requests scheme known as "the PVG Scheme" and gives individuals who carry out "regulated work" (defined in section 91 of the 2007 Act) the right to apply to it. Section 73 of the 2007 Act makes explicit what constitutes considering an individual's suitability to do, or be offered or supplied for, any type of regulated work. Consideration goes beyond employment and employment agencies and businesses to include, for example, provision which enables the General Teaching Council for Scotland ("the GTCS") to request disclosure records in respect of registered teachers (section 73(c) of the 2007 Act). Section 73(g) of the 2007 Act, under which the Suitability Regulations are made, gives the Scottish Ministers the power to prescribe further circumstances in which disclosure records can be obtained.

4. The Scottish Government used legislative powers under the Public Services Reform (Scotland) Act 2010 to establish the GTCS as an independent, profession-led, regulatory body from 2 April 2012. To that end, the Public Services Reform (General Teaching Council for Scotland) Order 2011 ("the 2011 Order"), which was approved by Parliament on 17 March 2011, comes fully into effect on 2 April 2012.

Summary of policy objectives

5. The Government's policy is to enable the GTCS to require its members and persons who are committee or sub-committee members who undertake fitness to teach[1] work for the GTCS to become members of the PVG Scheme in respect of both children and protected adult workforces.[2]

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[1] Fitness to teach is the terminology adopted in the 2011 Order which covers references in earlier legislation both to conduct/misconduct and to competence/incompetence.

[2] While most registered teachers are normally employed to teach children, a proportion are employed as college lecturers which may entail teaching protected adults.

6. Section 73(g) of the 2007 Act provides the requisite power for the Scottish Ministers to make GTCS members, and committee and sub-committee members undertaking fitness to teach work for the GTCS, eligible to join the PVG Scheme. Under this power the Scottish Ministers can provide for the GTCS to obtain disclosure records for these individuals.

7. Under the PVG Scheme the Scottish Ministers will continue to keep a list of individuals who are considered to be unsuitable to work with children (the children's list). Under the 2007 Act the Scottish Ministers will, for the first time in Scotland, keep a list of those who are barred from working with protected adults (the adults' list). The Government also wishes to ensure that inclusion on a barred list is a prohibition against being a member of the GTCS or of a fitness to teach committee or sub-committee.

8. The GTCS will comprise 19 elected members, 11 nominated members and 7 appointed members. By virtue of Schedule 2 to the 2011 Order, the GTCS is required to publish an election scheme, a membership scheme and an appointments scheme related to the three categories of members. The GTCS will, through these three schemes, ensure that GTCS members are only drawn from the ranks of those not barred from working with children or protected adults.

Consultation

9. There is no statutory requirement to consult when using the enabling powers referred to above. However, all relevant organisations were written to by way of consultation. Only one stakeholder queried the policy objective on the basis that it is unlikely that GTCS members or committee or sub-committee members would have contact with children or protected adults, and that the proposal smacks of using the PVG Scheme as a 'badge of good citizenship' rather than to protect children and protected adults.

10. However, the Government believes that its policy objective is sound on the grounds that direct contact with children and protected adults is not a prerequisite required to justify access to the PVG scheme. Provision is made to extend PVG scheme cover to positions which, by their very nature, put the post-holder in a position of power and trust in respect of children and protected adults and those who work with children and protected adults, for example members of the Scottish Social Services Council and its committee members who are concerned with the registration or conduct of social workers or social services workers, have access to the PVG Scheme by virtue of the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2010.

11. The Government believes that it would be untenable for individuals to sit in judgement of a teacher in a misconduct case who themselves have not been PVG checked.

Impact assessments

12. The policy objective underlying the Suitability Regulations is to ensure that the GTCS has the means to require disclosure checks to be undertaken in relation to a person who is a GTCS member or a member of a committee or sub-committee of the GTCS considering a registered teacher's fitness to teach. There is no potential for discrimination or adverse impact on the nine protected characteristics in this policy and it does not lead to different consequences or outcomes for particular groups. There is also no evidence this could discriminate unlawfully directly, or indirectly, against people from particular groups. Therefore an Equality Impact Assessment is not required.

Financial effects

13. The only financial impact will be the modest cost to the GTCS of paying for relevant PVG checks. The GTCS is supportive of the policy intention of this instrument and is of the view that the safeguards implicit in these provisions far outweigh the modest financial cost that they will incur.

Scottish Government
Learning Directorate