EXECUTIVE NOTE

THE SCOTTISH SOCIAL SERVICES COUNCIL (APPOINTMENTS, PROCEDURE AND ACCESS TO THE REGISTER) AMENDMENT (No. 2) REGULATIONS 2010

SSI 2010/379

Powers under which Instrument is made

1. The Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment (No. 2) Regulations 2010 ("the SSSC Appointment Regulations") are made by Scottish Ministers in exercise of powers conferred by paragraph 7 of Schedule 2 to the Regulation of Care (Scotland) Act 2001 ("ROCA").

Parliamentary procedure

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

Summary of policy proposals

The Protection of Vulnerable Groups (Scotland) Act 2007

3. Under Part 5 of the Police Act 1997 ("the 1997 Act"), the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks are carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. Since then, over 5 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year[1], 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.

4. Since 10 January 2005, Scottish Ministers have kept a list of individuals who are considered unsuitable to work with children - the Disqualified from Working with Children List - introduced by the Protection of Children (Scotland) Act 2003 ("POCSA"). It is an offence for anyone on the list to work in a child care position in Scotland. In the first five years of operation, 393 individuals have been listed on DWCL.

5. The Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act"), when it is fully commenced, will provide for a new vetting and barring scheme. This means that the use of disclosure checks under the 1997 Act for work with children and protected adults will end. They will be replaced by new types of disclosure requests under the

[1] This is the financial year on which the RIA is based. The figure for the 2009/10 financial year is 350,000 enhanced disclosures.

2007 Act. For ease of reference, the Scottish Government is referring to this as the PVG Scheme. The PVG Scheme will ensure that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of abusive behaviour. It will exclude people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detect those who become unsuitable while in the workplace. 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 PVG 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").

6. The PVG Scheme will be managed and delivered by Disclosure Scotland as an executive agency, which will also continue to deliver the other types of disclosure (which will still be available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). A new team within Disclosure Scotland will receive and consider referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The team will gather and assess all relevant information to make listing decisions.

7. For more information about how the PVG Scheme will work, see the guidance document[2] and training materials published on the Disclosure Scotland website which can be accessed through:
www.infoscotland.com/pvgscheme

The SSSC Appointment Regulations

8. The Scottish Social Services Council ("the SSSC") was established under ROCA. The policy intention in setting up the SSSC was to regulate the social service workforce, to strengthen and support the professionalism of the workforce, raise service standards and practice and protect the users of social services.

9. The Scottish Ministers appoint the convener and Council members through open competition. Through regulations, the Scottish Ministers may make provision for amongst other things disqualification for appointment and termination of appointment.

10. One of the SSSC's main objectives is to set up and maintain registers of social workers and other social service workers, as prescribed by Scottish Ministers. The groups have been prescribed based on the role they are employed for, in each particular 'care service' as defined in section 2 of ROCA.

11. Applications for registration must meet criteria set by the SSSC and includes competence, character and conduct. Once registered, applicants must continue to meet standards set by the SSSC. Any complaint that calls into question a worker's suitability or allegation of misconduct investigated by the SSSC and sanctions may be imposed.

[2] *Protecting Vulnerable Groups Scheme: Guidance for Individuals, Organisations and Personal Employers*, The Scottish Government, June 2010.

12. As part of their responsibilities, the convener and members may be part of sub-committees dealing with complaints that call into question a worker's suitability to remain on the registers.

13. The SSSC Appointment Regulations provide that where a person is barred from regulated work with children or adults under the 2007 Act (through being listed on the children's list or the adult's list or any corresponding list in England, Wales or Northern Ireland) they will be disqualified from appointment as convener or member of the SSSC. This provision prevents the Scottish Ministers appointing a barred individual as convener or member of the Council. The SSSC has control over its appointments to its (sub-)committees and will use the PVG Scheme to prevent the appointment of barred individuals.

Access to disclosure records

14. To ensure that potential conveners or members of the Council are not barred, the Scottish Ministers will ask them to participate in the PVG Scheme. The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2010 make provision to allow access to disclosure records in respect of:
    (a.) the convener or members of the Council itself; or
    (b.) the convener or members of a committee or sub-committee of the SSSC which is concerned with the registration or conduct of social workers or social services workers.

15. Those Regulations means that disclosure records may be sought in respect of the lay members of the Council or these (sub-)committees in the same way as section 73 already provides for registrant members.

Consultation

16. A Scottish Government consultation "*Protection of Vulnerable Groups (Scotland) Act 2007 Scottish Vetting and Barring Scheme -Consultation on Policy Proposals for Secondary Legislation"* took place between 1 November 2007 and 12 February 2008. The purpose of the written consultation was to allow respondents to inform the detail of policy proposals for secondary legislation. It set out a number of options for each major issue as well as seeking general comments on the proposals. The Scottish Government received 199 responses to the consultation.

17. The consultation was supported by seven PVG consultation events in cities across Scotland attended by 875 people and nine events provided by the Central Registered Body in Scotland (CRBS) attended by 176 people from November 2007 through to January 2008. The CRBS events were not formal consultation events, but were supported by the Scottish Government and intended to complement the PVG consultation events. The CRBS events reached rural communities and delegates were primarily from the voluntary sector.

18. The analysis of the consultation was published in the "*Protection of Vulnerable Groups (Scotland) Act 2007, Scottish Vetting and Barring Scheme, Analysis of*

consultation on policy proposals for secondary legislation" on 27 June 2008 and the Scottish Government's response was published in the "*Scottish Government response to the analysis of consultation on policy proposals for secondary legislation*" on 6 October 2008.

19. In June 2009, the Scottish Government hosted a series of eight information events to bring organisations up to speed with implementation activities and provide an opportunity to consider and discuss aspects of the PVG Scheme. The events were attended by around 1300 people from organisations that are registered with Disclosure Scotland, have a regulatory role, or that represent groups and/or organisations that work with vulnerable groups. Although not part of a formal consultation exercise, the opportunity was taken to seek feedback on policy developments around regulated work and the structure of the guidance.

Issues specific to the SSSC Appointment Regulations

20. The SSSC Appointment Regulations have not been subject to public consultation. Paragraph 7 of schedule 2 to ROCA obliges the Scottish Ministers to consult such persons as they consider appropriate prior to making Regulations such as these. The SSSC Appointment Regulations have been made at the request of the SSSC and the Scottish Government has consulted the SSSC on the SSSC Appointment Regulations and they are content.

Financial effects and Regulatory Impact Assessment

21. The *Protection of Vulnerable Groups (Scotland) Act 2007 - Secondary Legislation - Partial Regulatory Impact Assessment (RIA No. 2007/40)* was published on 15 November 2007 to accompany the consultation on secondary legislation. Although comments were invited, no specific comments were made in respect of the RIA. A revised draft RIA (RIA No. 2009/03) was published to accompany the significant draft SSIs published for consultation on 10 November 2009. Responses to the consultation exercise have been taken into account in finalising the RIA. The final RIA (also RIA No. 2009/03) can be found at: www.scotland.gov.uk/pvglegislation.

22. The SSSC Appointment Regulations have not been subject to a separate impact assessment but only impact on the Scottish Ministers in appointing the convener and members of the Council.

Scottish Government
Children, Young People and Social Care Directorate