

SOCIAL WORK COMMITTEE.....3 October 2000
 EDUCATION COMMITTEE.....10 October 2000

PROTECTING CHILDREN: SECURING THEIR SAFETY

JOINT REPORT BY THE DIRECTORS OF SOCIAL WORK AND EDUCATION

ABSTRACT

This report draws the attention of elected members to the Pre Legislative Consultation Paper on the Establishment of an Index of Adults Unsuitable to Work with Children.

A copy of the consultation paper has been placed in the Members' Lounge.

1 RECOMMENDATIONS

It is recommended that the Social Work and Education Committees:

- I. note the contents of this report;
- II. endorse the contents in the appendix to this report as the Council's response to Protecting Children: Securing their Safety;
- III. note the potential future implications of the proposals

2 INTRODUCTION

The Scottish Executive published the Protecting Children: Securing their Safety consultation paper in July 2000. The intention of the Executive being to identify and make known to prospective employers, people considered unsuitable to work with children either as paid employees or unpaid volunteers.

3 SUMMARY OF CONSULTATION PAPER

- a) The intention is to identify, and make known to prospective employers, people considered unsuitable to work with children either as paid employees or unpaid volunteers. These people would be identified in two ways. The first being through inclusion on a central list or Index.
- b) Names to be considered for inclusion on the Index would be those persons who had been dismissed or transferred from positions giving access to children by reason of misconduct which had caused a child harm or had put a child at risk of harm. The names of persons who resigned in such circumstances to avoid dismissal would also be considered for inclusion.
- c) Regulated employers in the fields of childcare, healthcare and education would be required to notify the index of those falling into one of the categories above. These employers would also be required to check with the Index the names of those they propose to employ in posts involving regular contact with children; and they would be prohibited from appointing any person included in the Index to such a position. Other employers would be permitted to notify names and to consult the index. (Voluntary sector employers would fall into both fields depending on the nature of their activities).
- d) The Index would be invited to submit observations and any such observations would be considered before a decision is taken (by the Scottish Executive) on whether or not to include that person's name on the Index.
- e) It would also be possible thereafter to appeal against inclusion on the Index. Anyone whose name is included on the Index would be able to ask for his or her inclusion on the list to be

reconsidered after a specified period.

- f) The arrangements would provide for information from the Index to be made available in due course through the Scottish Criminal Record Office (SCRO) as part of the "one-stop shop" arrangements provided for in the Police Act 1997 and in the Protection of Children Act 1999. In other words Index information will be obtainable at the same time as criminal record information. The arrangements would also provide for the sharing of information with the Criminal Record Bureau for England and Wales, once established, and the relevant body in Northern Ireland.
- g) The Index would be capable of being extended in due course to cover those who may be unsuitable to work with vulnerable adults.
- h) The second category of people considered unsuitable to work with children would comprise those who have a conviction for certain specified offences. Details of these people would be made available to eligible organisations by the SCRO as part of a criminal record check
- i) Persons whose names are on the Index and/or who have convictions, as described above, would be disqualified from working with children or from applying to work with children. Disqualified persons would commit an offence if they continued to work with children or if they applied to work with children.

4 PROPOSED RESPONSE

Appendix A outlines a proposed response to the consultation paper. Whilst in general the proposals are welcomed some points for clarification are highlighted.

5 POTENTIAL FUTURE IMPLICATIONS

Potential future implications for Angus Council arising out of the consultation paper are:

- Appropriate procedures will be required to be developed by Angus Council regarding referring to the Index and checking the Index. Such procedures will require to ensure that any decisions are taken at an appropriately senior level and that appropriate legal advice is sought.
- There will be resource implications if a cost is levied in respect of checks to the Index.
- Appropriate Angus Council employees will require to be informed that it will become a criminal offence to employ anyone whose name appears on the Index.
- Angus Council may have to review insurance cover to ensure protection against any legal action undertaken by an individual put forward for the index by the Council.

6 FINANCIAL IMPLICATIONS

There are no financial implications arising directly out of this report.

7 CONSULTATION

The Chief Executive, the Director of Law and Administration, the Director of Finance and the Director of Personnel have been consulted in the preparation of this report.

8 CONCLUSION

The Consultation Paper sets out proposals for the establishment of an Index of adults unsuitable to work with children. Some thirteen distinct proposals are outlined within the report. A proposed response from the Council on each proposal is contained within the Appendix to this report.

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NOTE: The undernoted background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

Protecting Children: Securing their Safety. A pre-legislative Consultation Paper on the Establishment of an Index of Adults Unsuitable to Work with Children. Scottish Executive July 2000.

APPENDIX A

General Comments

The creation of an Index of Adults Unsuitable to Work with Children is welcomed as a positive contribution to the protection of children and young people in Scotland. However it is also important that appropriate safeguards are put in place to ensure that the rights of individuals are not infringed by such an index. It is essential that these issues be carefully thought out before any legislation is put in place.

1. Proposed checklist for parents regarding young people involved in youth activities.

It is recognised that parents have a key role to play in protecting children and young people and as such the draft checklist is welcomed. If however such a checklist is to be of use it will require to be widely circulated. The consultation document makes no mention as to how this will be achieved.

With regards to the content of the checklist it would benefit from an additional question around the organisation having clear procedures and guidance for staff and volunteers in respect of behaviour towards children i.e. physical contact with children, comforting children and accompanying children to toilets etc.

The checklist should also prompt parents to confirm with an organisation how relevant policies are maintained and reviewed.

2. The Index will be a list of people who have been dismissed or transferred from positions giving access to children as a result of misconduct which has caused harm to a child (or children) or put a child (or children) at risk or harm; or who have resigned or simply walked out in such circumstances.

This definition appears to miss out individuals about whom there may be significant concerns but who have not been dismissed or transferred from a position. Most paedophiles do not have convictions nor have they been dismissed from employment. Any proposals in this respect will require to be carefully thought out to ensure their compatibility with the Human Rights Act 1998 and the European Convention on Human Rights.

The definition should be expanded to include volunteers, foster carers, childminders and care home owners or managers who have been dismissed or deregistered as a result of misconduct which has caused harm to a child (or children) or put a child (or children) at risk of harm; or who have resigned walked out or who have asked to be reregistered.

It is also noted that the situation can exist where grounds of referral have been established through the Children's Hearing system yet the adult concerned may not have been convicted through the courts. It would seem appropriate that Scottish Children's Reporter Administration Staff and Procurators Fiscal be required to notify the Index. The new SCRA referral administration database would help facilitate this.

3. Employers of those working with children will have a duty to notify the executive of those people whom they judge to meet the criteria for inclusion on the Index.

Detailed guidance or criteria for the Index will be required to be issued in order to avoid variation across different agencies. Concern is also expressed regarding liability where an individual pursues legal action against employers for putting his or her name forward.

4. Registered organisations will have a duty to consult the Index when considering applicants for positions working with children. Other organisations (mainly voluntary) involved in working with children will be able but not obliged to consult the Index.

The consultation document distinguished between organisations that will be regulated and will be required to notify and consult the Index, and those that are not regulated but will be allowed to notify and consult the Index.

It is questioned why non-regulated organisations will not be required to consult the Index. It could be argued that such smaller organisations lack existing safeguards and would benefit all the more from such an Index. It is considered that all organisations which have adults working with children as

defined in proposal 5 should be required to consult the Index. In particular it is questioned why leisure activities where children are frequently changing clothes and are in states of undress should not be required to check the Index. Other posts that should fall under the scope of the Index are taxi drivers and bus drivers who may be on a school run or who otherwise have significant access to children.

An identified danger is that as larger organisations tighten up procedures individuals will target smaller local organisations.

Aligned to this issue is that of confidentiality. In order to safeguard the rights of individuals any information disclosed must be solely used for the purpose for which it was disclosed. Those accessing the Index should be required to sign a declaration to this effect. Consideration could be given to statutory measures for improper disclosure such as those discussed in proposal 12.

5. Working with children will include posts where normal duties involving caring for, training, supervising or being in sole charge of children; unsupervised contact with children; supervising working children aged under 16; positions likely to give access to children and positions involving the direct supervision and management of the above.

This definition of "working with children" is welcomed. It does however require further clarification. It is suggested that individuals who have infrequent supervised contact with children would not require to be checked whereas those having unsupervised contact or regular supervised contact should be. This would allow schools and other organisation to make use of parental help on a one off basis but also protect children from individuals who would seek to groom children for abuse in the future.

It is noted that at present only social work and education are able to access SCRO checks in respect of prospective employees and volunteers (Circulars SED5/1989 and SWSG SW9/1989). Implementation of Part V of the Police Act 1997 will address this issue and also allow for SCRO check on people who will be working with vulnerable adults. However some concern is expressed as to how long SCRO retain information on Schedule 1 offenders. This information must be retained indefinitely. All the available research in this area shows that sex offenders continue to present risks to children and young people.

It is also noted at present that SCRO checks do not routinely identify Schedule 1 offenders or some offences where there has been a sexual element. There is a need for these checks to identify assault convictions where direct or indirect harm may have been caused to a child.

6. Details on the procedure for placing a person on the Index.

Again detailed guidance will be required to be produced to ensure that tight timescales are maintained. There must be an onus on employers to inform the Index timeously of any concerns and on the Index to respond quickly to enquiries. There is a danger that the whole employment process could be slowed up.

With regards to notification of the decision this should come to both the referrer and the individual concerned.

7. Timescales for an Appeal.

As a general point clarity is required throughout the document as to the age range the Index will apply to; namely only persons over the age of 16 yrs would be placed on the index. It is noted that a young person under 16 yrs of age may commit an offence against another child or young person and yet not be convicted and go on to apply for a position working with children at a later date.

With regards to the appeal timescales it is difficult to justify the distinction between those over and those under 18. Whilst it is recognised that for some types of behaviour change is unlikely to occur within a ten year period it is recommended that some form of appeal should exist if further evidence or information appeared which would help allay any concerns regarding an individual.

With regards to the question of whether appeals should be heard by a Sheriff or a Tribunal it is considered that risks to children or young people would best be determined by a Tribunal consisting experienced professionals and experts in this area. Any such Tribunal would of course have to be consistent with the Human Rights Act.

8. Registered bodies will be able to access Index information through the Scottish Criminal Records Office.

This "one-stop shop" approach is welcomed however systems will require to be put in place to cope with situations where access to the Index could be separate from any SCRO check. Many employees currently with access to children are not police checked (See comments under Proposal 5).

The facility for smaller local organisations to access the register will require to be developed if the comments made under proposal 4 regarding not distinguishing between regulated and those that are not are taken in account.

Appropriate safeguards will need to be put in place to ensure the accuracy of information requested and returned e.g. checking birth certificates to ensure the identity of the individual concerned. The comments made under proposal 4 regarding confidentiality are reiterated.

9. Separate Index to be established containing the names of the person deemed unsuitable to work with vulnerable adults.

This recommendation is welcomed although it is stressed that detailed guidance will be required as to what constitutes a vulnerable adult. This question should be part of a more detailed consultation exercise in the future.

10. Any custodial sentence, required following offences against children of a serious kind, should lead to disqualification.

The proposal is welcomed, however it is recommended that disqualification should be based on the nature of the offence rather than the sentence imposed. It is considered that repeated minor offences should also lead to disqualification. Further it is considered that any adults convicted of sexual offences or serious violent offences against adults should also be disqualified. An appropriate appeals process should allow for rehabilitation of offender issues to be considered.

11/12. Persons disqualified through being on the Index will be liable to a criminal sentence should they ignore this disqualification.

This proposal is welcomed. Any Index will only be successful if it has appropriate statutory powers to enforce it.

13. It will be an offence to give or offer work with children to a disqualified individual, despite training that the individual in question is disqualified.

This recommendation is welcomed. It is highlighted that the Index should cover those with access to children as well as those working directly with children. Likewise employers employing individuals or volunteers on the register knowingly to positions with access to children should also be liable to prosecution

As well as those working with children, immediate supervisors, managers and those in positions to take decisions to appoint or dismiss people working with children will themselves should be classed as working with children for the purpose of disqualification.

It is also suggested that consideration should be given to appropriate sanctions for employers who fail to notify the Index.

