

## **Protection of Children (Scotland) Act 2003 (POCSA)**

### **Frequently Asked Questions**

**Q: Can any organisation register to get checks done under the new legislation?**

A: No the organisation must be able to ask the 'exempted question', as defined in the Rehabilitation of Offenders Act 1974. The 'exempted question' is a question which employers are not normally allowed to ask in relation to a person's criminal history. There is a list of exempted professions published in the Exclusions and Exceptions (Scotland) Order 2003. Organisations also have to be employing people in Childcare positions as defined in Schedule 2 of the Protection of Children (Scotland) Act 2003. Both of these publications can be obtained from HMSO.

**Q: What does the new legislation mean?**

A: The Protection of Children (Scotland) Act 2003 allows for the creation of a list of individuals Disqualified from Working with Children (DWCL). Those employing people whether paid or unpaid in Childcare positions will be able to check the list to ensure the individual is not disqualified from working in such a position. At the same time, the legislation facilitates access to similar lists that are held in England and Wales and these will be checked at the same time as the Scottish list.

**Q: If my organisation satisfies the criteria, do I need to register to get access to information provided by the new legislation?**

A: Yes. The only way to access the list is via a disclosure check from Disclosure Scotland. This information will be shown on a Standard or Enhanced Disclosure. The test is whether the position is a Childcare one or not.

**Q: What is Disclosure Scotland's role following the introduction of POC(S)A?**

A: Disclosure Scotland will carry out additional checks required by the POC(S)A legislation. The legislation states that anyone employed in a childcare position, as defined in the Act must be checked against the Disqualified from Working with Children List (DWCL).

The DWCL will be created as of the 10<sup>th</sup> of January, however compulsory checking of new employees has been deferred until 11 April. Disclosure Scotland will still carry out checks as of the 10<sup>th</sup> of January if it is stated on the application form that the position applied for is a Childcare position.

It is the same application form and same process as before.

**Q: How does Disclosure Scotland identify applications for Childcare positions?**

A: The application forms will be redesigned to seek clarification on this using a checkbox. In the meantime a letter has been sent to every Countersignatory asking them to put the word "Childcare" in the "Position Applied For" field (C2) on the application form.

**Q. When will the revised Disclosure form be available?**

A: The Disclosure Application is prescribed in regulations and has to be approved by Scottish Ministers. The redesign of the form is a complex task, as all processes have to be considered in order to ensure the changes can be accommodated within our existing systems. Thereafter there has to be a consultation period with customers, which will normally take a minimum of 12 weeks. The new form then has to be laid before the Scottish Parliament and the timescale for this is 42 sitting days. Once the new form has been approved the Disclosure System will have to be redesigned to accept it and new stocks will have to be ordered and delivered to our customers. It is unlikely therefore that the new form will be in use before the end of 2005.

**Q: Why haven't application forms been changed prior to the Act being implemented to include a section to highlight Childcare positions?**

A: The redesign of the Application Form did actually commence in 2003 but had to be suspended pending the outcome of the Bichard Inquiry into the Soham murders as it was anticipated there would be recommendations that had implications for Disclosure and the type of information requested on the form. Disclosure Scotland felt it would be prudent to do all the changes at once rather than have three versions of form issued in the space of a year.

We have however made changes to our procedures in order to deal with applications for Childcare positions in the meantime. Every application form that we receive will now be checked manually to determine the type of position applied for. If it is for a Childcare position it will then be checked against DWCL, as required by POC(S)A.

**Q: What is the age limit of The Protection of Children (Scotland) Act 16 or 18?**

A: 18

**Q: What is a Childcare position?**

A: These are defined in Schedule 2 of the Protection of Children (Scotland) Act. The schedule is available from the Scottish Executive by calling 0131-244-1567 or on the HMSO website [www.hmso.gov.uk](http://www.hmso.gov.uk).

**Q: Does the new legislation mean that all people with contact with children require to be checked against the lists?**

A: Only if they are working in a Child Care position as defined by the Act (see above).

**Q. What is the position regarding those who only work with children on an ad-hoc basis e.g. a nurse who does not normally work with children but may be required to do so at short notice?**

A: Again the organisation would have to refer to Schedule 2 of the Act to determine whether such positions meet the definition.

**Q: Do we need to put the word Childcare on our Disclosures immediately or is there a lead in period for this?**

A: Disclosure Scotland has access to the lists as of 10<sup>th</sup> January 2005 and if a Registered Body wants us to check the lists for a particular application at any time after that date then the word child care will have to be entered in C2 as this is our trigger for checking. There is no legal requirement, however, for organisations to check the lists from 10<sup>th</sup> January 2005. Section 11(3)(a) of the Act will be commenced on 11<sup>th</sup> April 2005 and from that date Employers will have a legal obligation to check the lists for new recruits into Child Care positions.

**Q: Do we need to re-disclose for current staff?**

A: There is no legal requirement for you to do so immediately although similarly there is nothing to stop you doing so if you so wish. The commencement of Section 11(3)(b) of the Act, which makes it an offence for an organisation to continue to employ someone who is on one of the lists, has been delayed indefinitely.

**Q: Will this extra check affect the time it takes to process Disclosures?**

A: Undoubtedly these checks are an additional task in our processes. We are, however, trying to automate the checks as much as possible in order to minimise the time the extra processing incurs. Ultimately it is still our aim to process all Disclosures, including those that require List checks well within our target of 10 working days. Our current average processing time is 3 days. This has risen slightly from 2.5 days before we had to check the lists so the impact has been minimal.

**Q: How does this new legislation affect cross border organisations?**

A: The 2003 Act is the Scottish equivalent of legislation that has existed in England and Wales since 1999. The implementation of the Act on 10<sup>th</sup> January 2005, not only facilitated the creation of a Scottish List of individuals Disqualified from Working with Children, but it also allowed Disclosure Scotland access to the lists already held in England and Wales. This means that a Disclosure produced for a Child Care position by Disclosure Scotland will disclose the fact that an individual is listed on any of the lists held in Scotland, England and Wales if appropriate. This closes the loophole that existed previously which encouraged people who were disqualified in England and Wales to move to Scotland to obtain a Child Care position.

**Q: For those staff who are employed in childcare positions as defined by Schedule 2 of POC(S)A and who have completed checks that did not mention "Childcare" are we expected to reapply?**

A: There is no legal requirement for you to reapply until Section 11(3)(b) of the Act is commenced. There is no date set for that yet. You can of course do so if you wish.

**Q: Will we be expected to identify those workers who work with children and contact you to check the lists since Enhanced Disclosures have been done? Is there a cost involved?**

A: The only access to the lists is via a new Disclosure submitted with the words Child Care in field C2. There is no legal requirement for you to re-check existing staff whether they have already been through the Disclosure process or not. Any new application would attract the normal Disclosure fee.

**Q: Does Disclosure Scotland notify organisations when a person is put on the list of unsuitable adults working with children?**

A: No. There is nothing in the legislation that allows for retrospective notification.

**Q: How do we find out if someone has been added to the list after the Disclosure is carried out?**

A: You would have to reapply requesting a check of the Lists.

**Q: Are we committing an offence if someone is added to the list after the Disclosure check has been carried out and we continue to employ them because we do not know they are on the list?**

A: The Act refers to an offence being committed if an organisation knowingly continues to employ someone who is on the list. The crucial word here is “knowingly”. If you can prove that you have taken reasonable steps to find out if that person is listed perhaps by checking before they were recruited and then re-checking again at regular intervals then it is unlikely you could be accused of knowingly continuing to employ.

**Q: Do we require to put "Vulnerable Adult" before each post working with Vulnerable Adults?**

A: There is no legislation for Vulnerable Adults in Scotland yet and therefore no list to check. Although legislation does exist in England and Wales, Disclosure Scotland does not yet have access to their List. There is therefore no need to enter the words Vulnerable Adults. Disclosure Scotland will advise all Registered Bodies as and when there is any change to this.

**Q: How are you going to deal with retrospective checking when it is introduced?**

A: Disclosure Scotland has requested a notification period so that they can adjust staffing levels and resources in preparation of retrospective checking. Retrospective checking has been deferred pending the Bichard report.

**Q: How can we find any further information on the implications of POCSA?**

A: The Scottish Executive has produced a guidance note for organisations. This can be obtained from the Scottish Executive’s website [www.scotland.gov.uk](http://www.scotland.gov.uk) or by clicking on this link [POCSA Guidance](#).