

In addition to the following FAQ's, further information is available on the Disclosure Scotland website at www.disclosurescotland.co.uk

Q1: Can any organisation register to get checks done under the new legislation?

A1: 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 *Rehabilitation of Offenders Act 1974 (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 found on the Publications Page of the Disclosure Scotland website www.disclosurescotland.co.uk

Q2: What does the new legislation mean?

A2: The *Protection of Children (Scotland) Act 2003 (POCSA)* 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 (Please refer to FAQ5). At the same time, the legislation facilitates access to similar lists that are held in England and Wales (including "List 99") and these will be checked at the same time as the Scottish list.

Q3: If my organisation satisfies the criteria, do I need to register to get access to information provided by the new legislation?

A3: 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.

* The *Serious Organised Crime and Police Act 2005* carries with it a number of implications for the disclosure service. One of the major changes is the necessity for Enhanced Disclosures to be obtained wherever an individual is working with children or vulnerable adults. As a result, there should be no confusion in future about the applicable level of Disclosure required by a Registered Body. It is expected that this new legislation will be implemented by summer 2006.

Q4: What is Disclosure Scotland's role following the introduction of POCSA?

A4: Disclosure Scotland will carry out additional checks required by the *POCSA* legislation. The legislation states that anyone employed in a Childcare position, as defined in the Act, must be checked against the *DWCL*.

The *DWCL* was created as of 10th January 2005, however compulsory checking of new employees was deferred to 11 April 2005. Disclosure Scotland carried out checks as of 10th January 2005 if it was stated on the application form that the position applied for was a Childcare position.

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

IMPORTANT NOTE**Q5: How does Disclosure Scotland identify applications for Childcare positions?**

A5: The Disclosure Scotland application form is being redesigned and the new form will seek clarification/confirmation on whether or not the position involves Childcare by incorporating a checkbox on the form. 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. "C/care" would also be acceptable but the terms "Childcare" or "C/care" still have to be accompanied with other details of the position – e.g. Childcare Teacher, C/care Social Worker, etc.

Q6: When will the revised Disclosure form be available?

A6: The Disclosure application form 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 expected that the new forms will be available and in use from June 2006.

Q7: Why haven't application forms been changed prior to the Act being implemented to include a section to highlight Childcare positions?

A7: 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. It was anticipated there would be recommendations in the Bichard Report that would have implications for Disclosure Scotland 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 the 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 *POCSA*.

Q8: What is the age limit of The Protection of Children (Scotland) Act 2003 - 16 or 18?

A8: 18

Q9: What is a Childcare position?

A9: These are defined in Schedule 2 of *POCSA*. The schedule is available on Disclosure Scotland's website www.disclosurescotland.co.uk within the Publications Page.

Q10: Does the new legislation mean that all people with contact with children require to be checked against the lists?

A10: Only if they are working in a Childcare position as defined by *POCSA* (see FAQ9).

Q11: 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?

A11: Again the organisation would have to refer to Schedule 2 of *POCSA* to determine whether such positions meet the definition.

Q12: Do we need to re-disclose for current staff?

A12: 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.

Q13: How does this new legislation affect cross border organisations?

A13: The 2003 Act is the Scottish equivalent of legislation that has existed in England and Wales since 1999. The implementation of the Act on 10th January 2005 not only facilitated the creation on 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 (including "List 99"). This means that a Disclosure produced for a Childcare 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.

Q14: For those existing staff that are employed in Childcare positions as defined by Schedule 2 of *POCSA* and who have completed checks that did not mention "Childcare," are we expected to reapply?

A14: 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.

Q15: 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?

A15: The only access to the lists is via a new Disclosure submitted with the words Childcare in field C2. There is currently 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.

Q16: Does Disclosure Scotland notify organisations when a person is put on the list of unsuitable adults working with children?

A16: No. There is nothing in the legislation that allows for retrospective notification.

Q17: How do we find out if someone has been added to the list after the Disclosure is carried out?

A17: You would have to reapply for a new Disclosure requesting a check of the lists.

Frequently Asked Questions (FAQ's)

Q18: 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 him or her because we do not know they are on the list?

A18: 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.

Q19: Do we require to put "Vulnerable Adult" before each post working with Vulnerable Adults?

A19: There is no similar legislation for Vulnerable Adults in Scotland yet and, therefore, there is 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.





Q20: How are you going to deal with retrospective checking when it is introduced?

A20: Disclosure Scotland has requested a notification period so that we can adjust staffing levels and resources in preparation for retrospective checking. Registered Bodies will be provided with a suitable period of notice on any future plans for introducing retrospective checks.

Q21: How can we find any further information on the implications of POCSA?

A21: The Scottish Executive has produced a range of guidance notes for organisations. These notes are available on the Publication Page of Disclosure Scotland's website www.disclosurescotland.co.uk



	Phone	0870 609 6006 (Helpline available from 8:00am to 6:00pm, Monday to Friday)
	FAX	0870 609 6996
	Email	info@disclosurescotland.co.uk
	Address	Disclosure Scotland, P.O. Box 250, GLASGOW, G51 1YU