

## **DUNDEE CITY COUNCIL**

**REPORT TO: SOCIAL WORK COMMITTEE – 16 October 2000**

**REPORT ON: PROTECTING CHILDREN – SECURING THEIR SAFETY**

**REPORT BY: DIRECTOR OF SOCIAL WORK**

**REPORT NO: 658-2000**

### **1.0 PURPOSE OF THE REPORT**

1.1 The report informs members of the Scottish Executive's intention to establish an Index of Adults Unsuitable to Work with Children. It provides summary details of the proposed initiative which is aimed at helping to safeguard children from abuse and harm. The report also provides information on the content of a draft response prepared on behalf of the Council in respect of the consultation document.

### **2.0 RECOMMENDATIONS**

2.1 It is recommended that the Social Work Committee:-

2.1.1 Note the contents of the report.

2.1.2 Approve the contents of the draft response.

2.1.3 Instruct the Director of Social Work to forward the proposed response on behalf of the Council to the Scottish Executive by 27 October 2000. Details of the response are contained in Appendix 2, Dundee City Council Response To The Pre-Legislative Paper Of The Establishment Of An Index Of Adults Unsuitable To Work With Children

### **3.0 FINANCIAL IMPLICATIONS**

3.1 There are no immediate financial implications arising from this report. Future financial implications are likely to be limited and met from within existing budgets.

### **4.0 AGENDA 21**

4.1 The proposals in the consultation document will result in the promotion of the health and well being of children and are in line with the principles of Agenda 21.

### **5.0 EQUAL OPPORTUNITIES IMPLICATIONS**

5.1 The proposed actions indicated in the document are in line with recruitment procedures already followed in fair selection recruitment.

## 6 MAIN TEXT

### 6.1 Background

6.1.1 Under existing arrangements, the Council, as an employer, is able to undertake criminal record checks through the Scottish Criminal Record Office (SCRO) when appointing people to positions which give them substantial access to children.

6.1.2 A consultation paper on *Proposals for a National System of Accreditation of Vetting Information Regarding Adults Working with Children and Young People* was issued for consultation in February 1997. In this paper the then Government indicated its intention to establish an Index of adults deemed unsuitable to work with children and this intention was reiterated in the Government's response to the Kent Report in November 1998.

6.1.3 Scottish Ministers therefore undertook in the Programme of Government to establish such an Index which will contain the names of persons deemed to be unsuitable to work with children, whether as paid employees or unpaid volunteers. Similar legislation elsewhere in the United Kingdom will allow access from Scotland to information held on the English, Welsh and Northern Irish lists. A summary of the proposals in respect of the Index, and which are the subject of this consultation, are contained in Appendix 1, Summary of Proposals.

### 6.2 Who Will be Included on the Index?

6.2.1 Names of those who have been dismissed or transferred from positions giving access to children by reason of misconduct which has caused a child (or children) harm or has put a child (or children) at risk will be included on the Index. The names of persons who resigned or simply walked out in such circumstances to avoid dismissal would also be notified. There will be no time limit to restrict the time between an act of misconduct taking place and someone being placed on the Index.

### 6.3 The Responsibility of Employers

6.3.1 The legislation will place a duty upon employers to notify names for possible inclusion on the Index where there is a clear case for placing them on it. There would also be a duty on employers to consult the Index when they intend to employ someone in a position working with children. The legislation will give a definition of *those working with children* which will also include those in positions whose normal duties involve directly supervising or managing those working directly with children.

### 6.4 The Responsibility of Voluntary Organisations

6.4.1 Those organisations that are regulated or registered have the same duties placed on them as employers. Those unregulated organisations and groups would be encouraged to consult the Index, but would not be legally bound to do so. A checklist for parents on *Young People's Involvement in Youth Activities* has been produced as a guide to parents in promoting their children's safety.

## 6.5 **Who Will Make the Decision to Include Names on the Index?**

6.5.1 The legislation to establish the Index will give Scottish Ministers the power to place a person's name upon it. Overall oversight of the Index will rest with the Scottish Minister whose portfolio includes child protection. Currently this is the Minister for Children and Education. In practice, decisions whether or not to place a person's name on the Index will usually be taken by officials acting on behalf of Ministers.

## 6.6 **Can Someone Appeal Against Registration?**

6.6.1 When a decision is made to place a person's name on the Index, that person would be notified of the decision. Should the person disagree with the decision to place him or her on the Index they would then have the right to appeal against this. Such appeals will be undertaken by a Tribunal established for the purpose, or by Sheriffs. A firm decision on which alternative should be implemented will be made after this consultation exercise. Ministers will also take carefully into account any possible implications for the rights of the individual in considering the best way to set up an appeals mechanism, given the seriousness of being placed on the Index.

6.6.2 After registration the frequency of appeal would be limited to every 10 years following inclusion on the Index for those over 18 at the age of first registration and every 5 years for those aged 18 and under.

## 6.7 **Vulnerable Adults**

6.7.1 Although the Index will initially only apply to those working with children, consideration is being given to extending this to cover those working with vulnerable adults.

## 6.8 **Implications for the Council**

6.8.1 Access to the information held on the Index will be obtained by applying for a criminal records certificate or enhanced criminal record certificate through the SCRO. The introduction of the new certification in 2001 may have cost implications for access to records but it is anticipated that any additional charges will be minimal.

6.8.2 The Council will also have to establish systems to inform the Index of any relevant person thought to require registration and be prepared to supply evidence in support of such a recommendation.

6.8.3 The giving or offering of work to a disqualified individual, despite knowing that the individual is disqualified would be an offence punishable by a prison sentence or fine.

## 7.0 **CONSULTATION**

7.1 The Director of Education, the Director of Neighbourhood Resources and Development, and the Director of Support Services have been consulted in the preparation of this report.

**8.0 BACKGROUND PAPERS**

No 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 any material extent in preparing the above report.

**9.0 SIGNATURE**

Director of Social Work .....

Date .....

**SUMMARY OF PROPOSALS**

- 1 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.
- 2 Names to be considered for inclusion on the Index would be those of persons who had been dismissed or transferred from positions giving access to children by reasons 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.
- 3 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.)
- 4 Any person whose name is notified to the Index would be invited to submit observations and any 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.
- 5 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 their inclusion on the list to be reconsidered after a specified period.
- 6 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.
- 7 The Index would be capable of being extended in due course to cover those who may be unsuitable to work with vulnerable adults.
- 8 The second category of people considered unsuitable to work with children would comprise those who have convictions 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.
- 9 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.

**DUNDEE CITY COUNCIL  
RESPONSE TO THE PRE-LEGISLATIVE PAPER**

**ON**

**THE ESTABLISHMENT OF AN INDEX OF ADULTS  
UNSUITABLE TO WORK WITH CHILDREN**

Dundee City Council welcomes the initiative being taken by the Scottish Executive which will contribute to measures designed to safeguard children from the risk of harm and abuse.

**General Comments**

The following general comments are made in respect of the initiative:

- ◆ It is disappointing that the Executive has not sought to be more demanding on the voluntary sector in advancing Lord Cullen's recommendation 27 which is quoted on page 4 of this document.
- ◆ It is suggested that attention will have to be given to the management of the Index in respect of accuracy, data retention, and the processing of appeals so as to ensure that civil liberties are respected and the principles of fairness and equity maintained. Consideration should also be given to a system for the monitoring of the reliability and effectiveness of the Index.
- ◆ It is suggested that while the Index will form a useful safeguard, the protection of children and young people will also be advanced by good practice in recruitment, child protection policies and training and the raising of public expectations on provider agencies irrespective of their status.
- ◆ It is our view that any proposal to charge for SCRO checks is likely to be counter-productive to the aim of increased vetting.
- ◆ Should consideration be given to individuals who are identified within the Children's Hearing system as likely perpetrators of abuse being included on the Index? Consideration would have to be given to the role of the Children's Reporter and Sheriffs in such cases.
- ◆ It is suggested that consideration should be given as to how information on a probation or parole order, which has specific conditions about employment, paid or unpaid, can be included in a SCRO check.

**Specific Comments**

The following specific comments are made in respect of the proposals:

**Proposal 1**

Whilst welcoming the parental checklist, it is suggested that this measure will only be effective if supported by wide and regular publicity, which will have to be distributed continuously. The Executive might want to consider the role of education authorities in making such information available to all parents (see further comments on Annex A).

## **Proposal 2**

The content of this proposal is to be commended for tackling “difficult” areas such as misconduct, which does not result in a criminal charge, and where someone resigns before dismissal proceedings can be initiated or concluded.

## **Proposal 4**

While recognising the problems of registration, it is suggested that this proposal highlights the inconsistency which results from not being in a position to place a duty on voluntary organisations in respect of the care and protection of children.

For some organisations we foresee the likelihood of them taking the easier option of dismissing, or cancelling the involvement of a volunteer without progressing data to the Index.

## **Proposal 5**

We welcome the inclusion of supervisory and management roles.

## **Proposal 6**

Consideration should also be given here to the future role of the Scottish Commission for the Regulation of Care and the Scottish Social Services Council.

## **Proposal 7**

We suggest that the avenue of appeal should be via the Sheriff to emphasise the seriousness of the Executive’s commitment to the care and protection of children.

## **Proposal 9**

We welcome the intention to consider the extension of the Index to those working with vulnerable adults.

## **Proposal 10**

See comments under Disqualification as Part of a Sentence.

## **Proposals 11, 12 & 13**

The position in respect of those included on the Index is outlined. It is also clear that there will be a duty on employers to notify the Executive of anyone in their employ who meets the criteria for inclusion. It is not clear what sanctions can be brought on employers who fail in this duty. It is clear that employers who are aware of the inclusion of an individual and who subsequently offer him or her employment with children can be prosecuted. What is the position in relation to employers who are unaware of an individual’s inclusion because they have failed to carry out a check?

## **Disqualification as Part of a Sentence**

It is suggested that this group would include those who are convicted of specific criminal offences against children “*and who receive custodial sentences*”. Some sex offenders do not receive custodial sentences and this leaves those who could be deemed to be a risk to children in the community. Where there is no statutory order, or where any statutory order with specific conditions against working with children has ended, their offences will be picked up by the SCRO check for employers, but this will not prevent them going for unpaid, voluntary work with an “unregulated” organisation.

## **Definition of Working with Children**

We welcome the attempt to be more specific over defining the nature, extent and scope involved in the application of this legislation and look forward to seeing the specific wording.

Would the scope of the definition mean that those employed as bus drivers or in the transporting of children should also be included?

## **ANNEX A**

The inclusion of a checklist for parents is welcomed.

It is suggested that the wording of question 2 should be reconsidered. A more generic way of referring to local authority services is suggested, given that each Council will have its own range of departments and/or services.

Should groups and organisations have to name leaders in advance of events and should parents be encouraged to ask if checks on workers/volunteers are made to the Index. Parents should be able to assure themselves if this is routinely part of a voluntary organisation’s protocols. They may wish to use clubs which carry out such checks and this may be a way of encouraging organisations to take up consultation with the Index.

A checklist should also warn parents that such checks *do not guarantee safety* and that if they have concerns about any aspect of the running or practices of the organisation and its members they should take the necessary action.

Dundee City Council commends the Executive on its commitment to consultation during the pre-legislative stages of initiatives and we look forward to the parliamentary progress of legislation which will result in an Index of Adults Unsuitable to Work with Children.