

EAST AYRSHIRE COUNCIL

CABINET – 2 SEPTEMBER 2009

PROTECTION OF CHILDREN AND ADULTS AT RISK

Report by Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to advise Cabinet of the current position in relation to the Protection of Children and Adults at Risk and seek their approval for amendments to the Council's current procedures through:
- (i) the introduction of retrospective checks to be carried out on those existing employees in relevant occupations who have not been subject to the Enhanced Disclosure process; and
 - (ii) the development of a system of routine Disclosure re-checking for all employees in relevant occupations;

2. BACKGROUND INFORMATION

- 2.1** The establishment of Disclosure Scotland in April 2002 extended existing access to criminal record history to all posts covered by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, as amended. Previously, the only access to this information was through Police Checks provided by the Scottish Criminal Records Office (SCRO) in respect of posts meeting the criteria laid down in Scottish Office Circulars issued to Education, Health and Social Work Services.
- 2.2** The Protection of Children (Scotland) Act 2003 introduced defined Childcare positions and established a Disqualified from Working with Children List (DWCL). The DWCL is the cornerstone of the barring system in Scotland and has been in operation since 2005. In December 2008 there were 297 people on the DWCL.

3. PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

- 3.1** The Protection of Vulnerable Groups (PVG) (Scotland) Act 2007 will introduce a Vetting and Barring Scheme in Scotland. The aims of the Vetting and Barring Scheme are to keep unsuitable people from working with children and adults at risk; remove people who become unsuitable and streamline the disclosure process and reduce bureaucracy.
- 3.2** The PVG Scheme is Scotland's response to the principal recommendation of the Bichard Inquiry Report which was undertaken following the tragic murders in Soham in 2002. This recommendation called for a registration scheme for all those who work with children and vulnerable adults in the UK that would confirm that there is no known reason why an individual should not work with these client groups.

- 3.3** The legislation will establish a list of individuals unsuitable to work with children and consequently repealing the Protection of Children (Scotland) Act 2003 (which established the DWCL). The list of individuals barred from working with children will be renamed the “Children’s List” and a separate list will be established of individuals unsuitable to work with protected adults - the “Adults List”.
- 3.4** The definition of posts to be covered by the new legislation is updated and is termed “Regulated Work with Children”. “Regulated Work with Children” aims to incorporate the diverse paid and unpaid roles where there is contact with children. In doing so it uses the dual concepts of activities and work venues. The positions covered include the current “child care positions” with coverage extended to new roles e.g. children’s chat room moderators.
- 3.5** In 2010 the Scottish Government is introducing a new membership scheme that will replace and improve upon the current disclosure arrangements for people who work with vulnerable groups. The Protecting Vulnerable Groups Scheme (PVG Scheme) which delivers on the provisions outlined in the Protection of Vulnerable Groups (Scotland) Act 2007 will:
- help to ensure that those who have regular contact with children and protected adults through paid or unpaid work do not have a known history of harmful behaviour
 - be quick and easy to use, reducing the need for PVG Scheme members to complete a detailed application form every time a disclosure check is required
 - strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who they should check to protect their client group
- 3.6** An exact go live date in 2010 is still to be determined. The Government have stated that scheme membership will be phased in for existing workforces using a managed process of retrospective checking which will commence approximately 9 months after the go live date and will last for a three year period.
- 3.7** Implementation activities continue which include the development of secondary legislation required to fully implement the PVG Act and a comprehensive package of guidance and training will be made available to employers in the run up to the go live date.
- 3.8** Existing procedures will require to be amended to ensure compliance with the new Vetting and Barring Scheme.

4. CURRENT POSITION

- 4.1** The Council’s current Disclosure Procedures address the issues arising from current legislation including the Protection of Children (Scotland) Act 2003 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, as amended.
- 4.2** An Enhanced Disclosure is required for all individuals being considered for appointment to a Childcare or Adults at Risk position, including existing employees. However, the Council has not undertaken retrospective disclosure checks in respect

of employees who were appointed to their current post prior to the introduction of the Disclosure process.

- 4.3** The Corporate Management Team at their meeting on 16 May 2007 agreed to maintain the status quo (i.e. no retrospective checking) pending the implementation of the new Vetting and Barring Scheme which at that time was expected to be introduced in 2008.

5. MATTERS FOR CONSIDERATION

- 5.1** In view of the requirements to request an Enhanced Disclosure for all individuals being considered for a designated Childcare and/or Adults at Risk post and the phased introduction of the new Vetting and Barring Scheme not taking place till a date still to be determined in 2010, the current position requires to be reviewed.
- 5.2** The Scottish Social Services Council (SSSC) has decided to make changes to its registration processes which have implications for employers. At present all applicants for SSSC registration undergo criminal records (Disclosure) checks. From 1 October 2009 onwards, applicants will no longer have to undergo a criminal records check for SSSC registration purposes. The onus will be on employers to confirm that their employees have been subject to Disclosure Scotland vetting in respect of the job for which they are seeking registration and provide the date and unique Disclosure Scotland reference number for each relevant check.
- 5.3** The Care Commission, following their inspection of the Council's "Safer Recruitment" in May 2009 made no recommendations or requirements as a result of this inspection however, they noted an area of improvement whereby the Council should consider extending the current system to include routine Disclosure rechecking for employees in all posts which require an Enhanced Disclosure. East Ayrshire Council's Chief Social Work Officer supports the Care Commission's comment in this respect.
- 5.4** In view of the circumstances outlined in paragraphs 5.1 to 5.3 above, the Corporate Management Team have agreed to recommend to Cabinet that retrospective checking be introduced for employees in relevant posts who have not previously been subject to the Enhanced Disclosure process and that a system of routine Disclosure rechecking for employees in relevant occupations is developed.

6. DISCLOSURE FEES

- 6.1** All new employees and existing employees being appointed to a relevant post meet the cost of the Disclosure Application themselves except where departments feel that because of the minimum number of hours worked each week the cost of the Disclosure would be prohibitive. However, existing employees whose role or post location is subsequently changed as a result of management action and therefore meet the criteria for Disclosure Scotland vetting have not been required to make that payment which is met by the Council. Accordingly in line with existing practice the Council would require to meet the cost of Disclosure vetting for employees who would be subject to a retrospective and/or recurring Disclosure check.

6.2 Employees who currently undergo Disclosure Scotland vetting as part of the SSSC registration process are reimbursed the cost of their Disclosure application by the Council.

6.3 The cost of a Disclosure increased from £20 to £23 on 1 August 2009.

6.4 The Corporate Management Team has agreed to review the current costing arrangements and a report on their proposals will be submitted to a future Cabinet meeting.

7. FINANCIAL IMPLICATIONS

7.1 Any additional costs arising from the above proposals will be met from within existing departmental budgets.

8. POLICY/LEGAL/RISK IMPLICATIONS

8.1 The proposed changes will ensure that the Council continues to meet its legislative requirements as an employer and conforms to the Improving Community Safety Theme contained within the Community Plan.

9. TRADE UNIONS

9.1 The proposals are subject to Trade Union consultation.

10. RECOMMENDATIONS

10.1 Cabinet is asked to:

- (i) agree that retrospective checks be carried out on those existing employees in relevant occupations who have not been subject to the Enhanced Disclosure process;
- (ii) agree that a system of routine Disclosure re-checking for all employees in relevant occupations be developed; and
- (iii) otherwise note the contents of the report.

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Depute Chief Executive/Executive Director of Corporate Support
20 August 2009

LIST OF BACKGROUND PAPERS

- 1. Protection of Vulnerable Groups (Scotland) Act 2007
- 2. Report on Protection of Children and Adults at Risk to Corporate Management Team of 16 May 2007
- 3. Report on Protection of Children and Adults at Risk to Corporate Management Team of 16 May 2007

4. Protection of Children (Scotland) Act 2003
5. Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, as amended.

Anyone wishing further information on this report should contact Martin Rose, Head of Human Resources telephone 01563 576092.

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