

REPORT TO: POLICY AND RESOURCES COMMITTEE

REPORT ON: VETTING OF MEMBERS OF COUNCIL COMMITTEES IN TERMS OF THE PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

REPORT BY: DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)

REPORT NO: 513-2006

1.0 PURPOSE OF REPORT

- 1.1 This report explains the obligations on local authorities and individuals that arise from the Protection of Children (Scotland) Act 2003 ("the 2003 Act") and also explains the effect of the Police Act (Criminal Records) (Scotland) Regulations 2006 ("the 2006 Regulations"). In particular this report details the obligation on Local Authorities to confirm that new members of Council Committees are not disqualified from working with children and can now be subject to an enhanced disclosure check. This report also details procedures to be adopted to provide this confirmation and undertake this check.

2.0 RECOMMENDATIONS

It is recommended that the Committee:

- 2.1 agrees that all parties mentioned in paragraph 6.1 be subject to an enhanced disclosure check on being elected in May 2007 and that the Chief Executive report to the Council if there are any disclosures of concern to him in relation to the members' duties.

3.0 FINANCIAL IMPLICATIONS

- 3.1 There are no immediate financial implications. The cost of confirmation as part of an election cycle would be around £500.

4.0 LOCAL AGENDA 21 IMPLICATIONS

- 4.1 NONE

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1 NONE

6.0 MAIN TEXT

- 6.1 The 2003 Act defines "child care position" as including members of Council Committees, Joint Committees and Sub-Committees concerned with the provision of education, accommodation, social services or health care services to children. Accordingly, all elected members together with all other members of the Education Committee are included in this definition.
- 6.2 With effect from 10th January 2005 it has been an offence for an individual who is disqualified from working with children to apply, offer to do, accept or do any work in a child care position.
- 6.3 With effect from 11th April 2005 it has been an offence for an organisation to offer work in a child care position to, or procure such work for, an individual who is disqualified from working with children.

- 6.4 Disclosure Scotland has confirmed that the only means by which a check can be made regarding whether or not someone is disqualified from working with children is by requesting confirmation of this as part of a standard or enhanced disclosure check. With effect from 1 April 2006 the 2006 Regulations permit Local Authorities to also ask Disclosure Scotland for an enhanced disclosure check in relation to an individual in a child care position. Information that is sought through a disclosure check is only obtained where the individual being checked signs the form agreeing to such a check. The Chief Executive shall undertake the vetting of all members.
- 6.5 Candidates in Local Government Elections will normally be checked as part of the four yearly election cycle or alternatively when elected at a by-election. As other members of the Education Committee are nominated sufficient time for the relevant check to be made prior to those members taking up membership of the Education Committee will require to be allowed.
- 6.6 The 2003 Act defines an individual as being disqualified from working with children when the individual is:
- 6.6.1 included on the Disqualified from Working with Children List ("DWCL") kept by the Scottish Ministers in accordance with the 2003 Act. An individual working in a child care position, whether paid or unpaid, requires to be referred to the Scottish Ministers by a local authority for inclusion on the DWCL when the individual has harmed a child or put a child at risk of harm and has been dismissed or moved away from contact with children as a consequence. The DWCL also includes approvals of referrals made by the Scottish Commission for the Regulation of Care, the Scottish Social Services Council, the General Teaching Council for Scotland and Scottish Ministers as part of a public inquiry. Those convicted by the criminal courts for certain offences against a child can also be referred for approval.
 - 6.6.2 included on the list kept by the Secretary of State of individuals considered unsuitable to work with children in terms of Section 1 of the Protection of Children Act 1999.
 - 6.6.3 subject to a direction under Section 142 of the Education Act 2002 stating that the individual is not to work with children.
 - 6.6.4 subject to an order disqualifying the individual from working with children under the Criminal Justice and Court Services Act 2000.
 - 6.6.5 (under the laws of any country outwith the United Kingdom) subject to a Prohibition or Disqualification which the Scottish Ministers by order provide corresponds to disqualification from working with children.
- 6.7 Section 11(3)(b) of the 2003 Act is not in force. Where this comes into force it shall be an offence for the Council to allow members of the said Committees to remain as members where they are disqualified from working with children. In order to confirm that this is not the case these members would all require to be checked. It is understood that this sub section is not likely to come into force during 2006 (if at all) as the Scottish Ministers are now proposing to introduce a comprehensive "Vetting and Barring Scheme" per recommendation 19 of the Bichard Enquiry into events relating to Soham. This recommends a scheme of registration of all childcare workers.
- 6.8 For the avoidance of doubt members of Council Committees who were members prior to 11 April 2005 do not need to be checked at present although this will be required should Section 11(3)(b) of the 2003 Act come into force.
- 6.9 COSLA has issued guidance to Councils and also to candidates on the application of the 2003 Act to elected members. Briefings and information packs are to be given to members of Committees.

7.0 CONSULTATIONS

- 7.1 The Chief Executive, Depute Chief Executive (Finance) and the Assistant Chief Executive (Management) has been consulted in the preparation of this report.

8.0 BACKGROUND PAPERS

8.1 COSLA guidance to candidates and Councils on the application of the Protection of Children (Scotland) Act 2003 to elected members of Councils.

8.2 Scottish Executive Publications:

Protection of Children (Scotland) Act 2003 - Guidance for Organisations

Protection of Children (Scotland) Act 2003 (Disqualified from working with Children List) - a Guide and Training Pack for the Voluntary Sector.

Protection of Children (Scotland) Act 2003 - Guidance for Individuals.

**9.0 Name Patricia McIlquham
Depute Chief Executive (Support Services)**

Date: 23 August 2006