



**Protection of Vulnerable
Groups (Scotland) Act 2007
Consultation on Draft
Guidance**

**ATL Scotland's response to
the Scottish Government's
consultation document**

2 Feb 2010

The Association of Teachers and Lecturers (ATL), as a leading education union, recognise the link between education policy and our members' conditions of employment. Our evidence-based policy making enables us to campaign and negotiate from a position of strength. We champion good practice and achieve better working lives for our members. We help our members, as their careers develop, through first-rate research, advice, information and legal support. Our 160,000 members – teachers, lecturers, headteachers, support staff and students – are empowered to get active locally and nationally.

ATL is affiliated to the Trades Union Congress (TUC), Irish Congress of Trade Unions (ICTU), European Trade Union Committee for Education (ETUCE) and Education International (EI). The union is a member of the Social Partnership – working with the UK Government, employers and other unions on education issues. ATL is not affiliated to any political party and seeks to work constructively with all the main political parties.

Introduction

ATL Scotland welcomes the opportunity to comment upon the draft guidance issued in November 2009. We support the principle of safe and effective public protection and welcome the steps taken by the Scottish Government to improve safeguarding and to protect children and vulnerable adults.

ATL members across the UK are currently experiencing changes in safeguarding regulations with the introduction of the Independent Safeguarding Authority in England and Wales. ATL has made representation to the Westminster Government on behalf of its members as their trade union and collectively as part of the TUC coalition on Independent Safeguarding Authority. We believe that one of the strengths of being a UK-wide union is that we can draw upon our collective experiences in England, Wales and Northern Ireland to comment constructively on pertinent issues within the guidance document, and vice-versa when the occasion arises.

Chapter 1 Introducing the PVG Scheme

We note that it will not 'be compulsory for an individual who wishes to do regulated work to become a member of the **Scheme**, but it is an offence for an individual who is barred to undertake regulated work'.

Para 15 - who should join the scheme: states that no action need be taken at present for those currently employed or volunteering in regulated work, but for those who are starting regulated work for the first time or are changing employers they will have to register with the scheme. We would like to see a clear timetable introduced for the PVG scheme to be rolled out to all who carry out regulated work in Scotland only.

Para 34- Personal employers: ATL is pleased to note that personal employers cannot make a referral to Disclosure Scotland, that they will be asked to forward their concerns to the police. The Guidance needs to make clear also that concerns raised by e.g. parents be referred to the schools/college's internal complaints procedure and that they too cannot make a direct referral of concerns to Disclosure Scotland.

Para 36- Keeping information up to date: Will a failure to update on the two identified changes mean that an individual's Scheme membership status would change?

Para 39- Challenging the accuracy of information: We would like clarification on how an individual can request a review of the information on their scheme record as well as the level of proof required to challenge the accuracy of information.

Para 41 – Individuals doing **regulated work** while barred: states that it will not be compulsory for individuals to do regulated work in Scotland to join the scheme however Para 52- Moving around the UK: states that if an individual carries out regulated work in Scotland and England and Wales or Northern Ireland then in order to continue with this work an individual has to register with the SVG Scheme that covers England and Wales and Northern Ireland. We would like this requirement set out in Para 52 made more explicit in the guidance document.

Para 50 and 51- Sharing Barring and background information: As exchange of barring decisions works across jurisdictions across the UK we need to know if jurisdictions will share the fact that an individual is reviewing or appealing a barring decision in their own jurisdiction.

Chapter 2 Registering with Disclosure Scotland

ATL believes the guidance set out in the chapter is straight-forward and offers organisations clear steps to ensure compliance.

Chapter 3 Regulated Work

ATL supports the measures taken by the Scottish Government to improve safeguarding and to protect children and vulnerable adults.

Para 96- What is regulated work with children?: As there is no compulsion to join the PVG Scheme ATL believes that it is likely that employers when conducting their pre employment checks will exclude those for consideration for employment if they are not in the Scheme. How does the Guidance seek to ensure that this will not happen?

Para 102- Case study 7 A and C: The Guidance is confusing as the case study says '*Jean should become a scheme member.*' And '*Jean will need to be a scheme member to deliver her day-time lessons as these are likely to mean she works regularly with children.*' ATL seeks clarification as to whether scheme membership is or is not required for an individual to carry out regulated work.

Chapter 4 Who else is allowed to see a disclosure record?

ATL is content with the guidance contained within this chapter.

Chapter 5 Fees that must be paid

We note the proposed fees levels and shall respond accordingly to the separate consultation on the draft Scottish Statutory Instrument relating to the *Fees Regulations*.

Para 158- Who pays, and when?: ATL does not believe, however, that employees should be personally responsible for paying the PVG membership fee. We believe the payment of the fee should be met by employers and not by individual employees. We are concerned that the question of who pays the fee is left open-ended. If employers refuse to pay the fee, previously factored into their recruitment costs, then it will have a disproportionate and detrimental impact upon the low-paid and part-time workers, most of whom are women; a school cleaner would be expected to pay the same amount as a headteacher.

Chapter 6 Making referrals to Disclosure Scotland

ATL welcomes the fact that, unlike the SVG Act, individuals are not able to make referrals to Disclosure Scotland and would like to see this explicitly referenced within the Guidance document. ATL believes that complaints about individual employees should be heard by the employers or organisations that already have responsibility for that individual and who already have in place formal procedures for assessing and deciding on complaints.

We note that under the proposed guidance the General Teaching Council Scotland would have the power but not the duty to make a referral. Whilst it seems appropriate that as the regulatory body for teaching they could refer individuals under the Scheme we remain to be convinced they should have the power to refer someone who 'has not applied for registration but there is a reasonable expectation that they may do so in the future'. We would like clarification of scenarios where this may occur. ATL takes seriously the issue of safeguarding but would not wish to see powers granted without a clear rationale for their use. We would further like clarification as to what the Scottish Government considers to be "reasonable" within the aforementioned power.

Chapter 7 Consideration for Listing

ATL strongly believes in an individual's right to make personal representations and to be represented in proceedings where consequences such as barring could be an outcome. We believe in the individual's right to a fair hearing and do not believe that it is sufficient enough for the individual to have the opportunity to make written representation to Disclosure Scotland. Nor do we believe that in terms of natural justice the referring organisation should have an additional opportunity to make comments on the individual's written representation.

We agree that those individuals who pose a risk to vulnerable groups should be prevented from working in these environments. However, it is vital that everyone has the right to a fair hearing, and that any new systems or processes comply with existing best practice and with all legislation, including the Human Rights Act.

Chapter 8 How the Lists work

ATL believes that the review period, 10 years for those barred aged 24 or over, is too long a period for the first review to take place.

Chapter 9 Checking individuals in regulated work before the PVG Act came into force

Para 267: Says '*The PVG Act aims to have all individuals doing **regulated work** become **scheme members**.*' The Guidance needs to make this clear from the outset and explain that the Scheme will be rolled out to all in the future. It is not correct for the Guidance to let individuals believe that membership of the Scheme is not compulsory.

**This submission was prepared on behalf of
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