POLICY NOTE

THE CONSIDERATION OF SUITABILITY FOR REGULATED ROLES (PRESCRIBED PURPOSES) (SCOTLAND) REGULATIONS 2024

SSI 2024/316

The above instrument was made in exercise of the powers conferred by section 68(c) of the Disclosure (Scotland) Act 2020 ("the Disclosure Act") and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations prescribe other purposes, to which the references to 'consideration of suitability for a type of regulated role', in sections 17(1)(b) and 44(2) of the Disclosure Act, are to apply.

A person will be:

- considering an individual's suitability to carry out, or be offered or supplied to be carried out, a type of regulated role (and so able to make a statement to that effect under section 12(1)(b) of the Disclosure Act) in relation to an application for a Level 2 disclosure to which section 17 of that Act applies (i.e. "a PVG Scheme Level 2 disclosure"), and
- requesting the provision of, or seeking sight of, a Level 2 disclosure for a permitted purpose in accordance with section 44 of that Act,

if the Level 2 disclosure concerned, is sought for, or relates to, one of the purposes prescribed in these Regulations.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protection of Vulnerable Groups Scheme ("the PVG Scheme") and keeps lists of individuals barred from working with children and 'protected' adults on behalf of Scottish Ministers.

2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") under which the Scottish Ministers administer the PVG Scheme.

- Section 68 of the Disclosure Act explains what is meant by references to consideration of the suitability of a person for a type of regulated role for the purpose of provisions in the Act relating to Level 2 disclosures for PVG scheme members. It

captures people appointing someone to a regulated role directly (including private individuals employing someone in their personal capacity) and people supplying an individual to someone else to carry out a regulated role. In circumstances where a private individual has used an accredited body to act as countersignatory for the application it is still the employer who is assessing the individual's suitability for the role, acting on the advice as to suitability provided by the accredited body.

3. These Regulations restate, for the purposes of sections 17(1)(b) and 44(2) of the Disclosure Act, purposes, beyond employment, which were provided for in section 73(c) to (f) of the PVG Act and the SSIs made under section 73(g) of that [1]Act before it was amended by paragraph 10(44) of schedule 5 of the Disclosure Act.

4. These Regulations ensure that Level 2 disclosures can be requested when an individual's suitability is being considered for or in relation to:

    - registration as a teacher or a social worker,
    - provision or management of a care service,
    - being a foster carer,
    - provision of an independent health service,
    - appointment as a convenor, council member or to a committee of the Scottish Social Services Council or the General Teaching Council for Scotland, and
    - inclusion in a list for the provision of certain health and medical services.

5. Further details of the policy objectives relating to the Disclosure Act are set out in the Policy Memorandum (https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/disclosure-scotland-bill/introduced/policy-memorandum-disclosure-scotland-bill.pdf) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website (https://www.parliament.scot/bills-and-laws/bills/s5/disclosure-scotland-bill) also sets out the timeline for the passage of the Bill.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

6. The Scottish Ministers have made the following statement regarding children's rights:

    In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

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[1] These SSIs will be revoked as part of the Disclosure Act implementation project:
The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2010
The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2011
The Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Purposes for Consideration of Suitability) Regulations 2016

EU Alignment Consideration

7. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

8. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.

9. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.

    - There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including; individuals with and without experience of using Disclosure Scotland's services,
    - individuals with convictions,
    - care experienced people,
    - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
    - organisations – including various roles e.g. HR, admin staff, countersignatories,
    - charities, and
    - voluntary organisations.

10. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its response (https://www.gov.scot/publications/government-response-protection-vulnerable-groups-disclosure-criminal-information-consultation/pages/1/) to the consultation on 13 June 2019.

11. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

Impact Assessments

12. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

    - Disclosure (Scotland) Bill: Fairer Scotland Duty assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-fairer-scotland-duty/)
    - Disclosure (Scotland) Bill: children rights and wellbeing impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-crwia/)
    - Disclosure (Scotland) Bill: data protection impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-dpia/)
    - Disclosure (Scotland) Bill: equality impact assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-eqia/)
    - Disclosure (Scotland) Bill: partial Business and Regulatory Impact Assessment (https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-partial-bria/)

13. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

14. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

15. The Minister for Children, Young People and the Promise confirms that that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland

November 2024