POLICY NOTE

THE FEES FOR SCHEME MEMBERSHIP AND DISCLOSURE APPLICATIONS (SCOTLAND) REGULATIONS 2025

SSI 2025/25

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 70(1) and (2) of the Protection of Vulnerable (Groups) (Scotland) Act 2007(**1**) and section 61(1), (2)(a) and (b) and (3) of the Disclosure (Scotland) Act 2020 and all other powers enabling them to do so.

The instrument is subject to negative procedure.

Summary Box

The purpose of these Regulations is to make provision enabling the Scottish Ministers to charge a fee for Level 1 and Level 2 disclosures and for joining the PVG scheme.

It also provides for the waiving of fees in certain circumstances, including in relation to volunteers in qualifying voluntary organisations.

Policy Objectives

Background

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 the Scottish Ministers.

2. The Disclosure (Scotland) Act 2020 ("the Disclosure Act") reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 ("the Police Act") as it applies in Scotland and making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") under which the Scottish Ministers administer the PVG Scheme.

3. The Disclosure Act provides for two new types of state disclosure certificate, replacing the criminal conviction certificate (known as a Basic Disclosure), criminal record certificate (known as a Standard Disclosure) and enhanced criminal record certificate (known as an Enhanced Disclosure) under the Police Act and the PVG scheme record and the PVG short scheme record under the PVG Act.

4. The new types of disclosure are:

(**1**) Section 70 of the Protection of Vulnerable Groups (Scotland) Act 2007 was amended by paragraph 10(41) of schedule 5 of the Disclosure (Scotland) Act 2020 (asp 13) ("the Disclosure Act"). Section 97(1) contains a definition of "prescribed" relevant to the exercise of the statutory powers under which these Regulations are made.

- **Level 1 disclosure (replacing Basic Disclosure):** which can contain the prescribed details of every unspent conviction (including an unspent childhood conviction) of the individual that is recorded in central records.

- **Level 2 disclosure (replacing Standard and Enhanced Disclosure)**: which can contain unspent convictions, certain spent convictions and children's hearings outcomes, other relevant information from the chief constable in Scotland or chief officer of a police force in England and Wales or relevant overseas police force, if the individual is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 and certain civil orders.

5. A Level 2 disclosure can include barred list information where the disclosure application is being made in relation to a non-PVG scheme member for a purpose which requires this information to be available, for example, where someone is seeking to adopt a child (see section 16 of the Disclosure Act)**2**.

6. A PVG Scheme Level 2 disclosure is a Level 2 disclosure to which section 17 of the Disclosure Act applies. PVG Scheme Level 2 disclosures replace scheme records and short scheme records. A PVG Scheme Level 2 disclosure can be applied for in relation to a PVG scheme member for to the purposes of enabling or assisting a person (or any other person for whom the person acts) to consider the applicant's suitability to carry out, or to be offered or supplied for, a type of regulated role, either work with children, protected adults or both.

7. These Regulations exercise the power to charge fees in respect of applications for Level 1 and Level 2 disclosures and applications to join the PVG Scheme. They also exercise the power to waive fees in certain circumstances, including for volunteers working for qualifying voluntary organisations.

<u>The Regulations</u>

Fee levels

8. Regulations 2 and 3 set the fees for PVG scheme membership, confirmation of scheme memberships and for Level 1 and Level 2 disclosures. For Level 1 and Level 2 disclosures, the fee will be £25. For PVG Scheme Level 2 disclosures , the fee will be reduced to £18.

9. For those joining the PVG scheme for the first time, the fee is £59. Where an individual is joining the other 'workforce' after initially joining the scheme for one workforce, the fee will be £59.

10. The disclosure products under the Disclosure Act are not the same as those under the Police Act and the PVG Act. This means that there is not a direct equivalent for most

2 The Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024

products. However, looking at eligibility to apply for certain types of disclosure, the effect on the customer will be that:

Current product / Equivalent product	**Current cost**	**Cost under these regulations**
Criminal conviction certificate (Basic Disclosure) / Level 1 disclosure	£25	£25
Criminal record certificate (Standard Disclosure) / Level 2 disclosure	£25	£25
Enhanced criminal record certificate (Enhanced Disclosure)/Level 2	£25	£25
PVG scheme record / PVG Scheme Level 2 disclosure (at point of join)	£59	£59
PVG scheme record / PVG Scheme Level 2 disclosure (Existing scheme member)	£59	£18
PVG short scheme record / PVG Scheme Level 2 disclosure (Existing scheme member)	£18	£18
Statement of scheme membership / Confirmation of scheme membership	£59 (Join) / £18 (Existing)	£59 (Join) / £18 (Existing)

11. The Scottish Government has taken a decision to retain broadly equivalent fees for disclosures issued under the Disclosure Act as were previously issued under the Police Act and PVG Act, in recognition of our desire, in particular, to continue to support organisations providing vital services to children and protected adults by maintaining disclosure fee levels at the broadly equivalent levels they have been at since 2011.

12. The Scottish Public Finance Manual**3** sets out that the standard approach to setting charges for public services is full cost recovery. Charging for services helps to avoid unnecessary public expenditure and eliminate hidden subsidies. Charging also

3 https://www.gov.scot/publications/scottish-public-finance-manual/fees-and-charges/fees-and-charges/

provides an incentive to use goods and services economically, efficiently and effectively. The fees set out in these Regulations are below cost recovery. This is discussed further under Financial Effects.

13. In setting the fees, the Scottish Ministers have had regard to the circumstances in which the fees are payable and the desirability of maintaining an appropriate balance between quality of the performance of the PVG Scheme, costs of achieving that quality and the income from fees. However, they also considered affordability for customers, particularly those on the lowest incomes. Stakeholder feedback (as noted in the 'consultation' section of this note and in the Business Regulatory Impact Assessment (BRIA)) indicated that, in the context of the current challenging financial climate, even a relatively modest increase would negatively impact upon those services and those who provide them.

14. These issues have been explored in the cost modelling (explored in the Business and Regulatory Impact Assessment) and have led to the proposal to retain broadly equivalent fee levels for Level 1 and Level 2 disclosures as were set for disclosures issued under the Police Act and the PVG Act.

Fee waivers

15. Regulation 4(1) makes provision for the waiver of the fee for one request for a confirmation of scheme membership under section 54 of the PVG Act where that request is made at the same time as the individual applies to join the PVG Scheme. This means that the individual is charged only in relation to their application to join the PVG Scheme, which will cost £59.

16. Regulation 4(2) makes provision for the waiver of the reduced fee for a PVG Scheme level disclosure where the application for that disclosure is made at the same time as the individual applies to join the PVG Scheme, again, so that the individual is charged only in relation to their application to join the PVG Scheme, which will cost £59.

17. Regulation 5 makes provision for volunteers working for qualifying voluntary organisations to join the PVG Scheme and receive PVG Scheme Level 2 disclosures free of charge. The provision made in regulation 5 aims to preserve current arrangements. Volunteers, with the same organisations currently eligible as qualifying voluntary organisations, will be covered by the waiver. The Scottish Government have decided to retain the fee waiver following a public consultation, and in recognition of the wider funding pressures faced by the third sector.

18. Volunteer Scotland Disclosure Services (VSDS) processes the majority of free disclosure checks for volunteers working in voluntary organisations and determines whether any particular position or organisation qualifies administratively using a number of criteria. This free service will continue for the voluntary sector, in addition to the fee waiver set out in regulation 5 itself.

19. Regulation 5(3) provides for the circumstances which must be met in order for an application to qualify for the fee waiver. Regulation 5(3)(a) requires the application to be accompanied by a statement by an accredited body which says it is in connection

with a regulated role for a qualifying voluntary organisation. The accredited body can be the qualifying voluntary organisation or an umbrella body, for example VSDS. The effect of regulations 5(3)(a) and 5(3)(b) is to ensure that the volunteer is doing a regulated role in a voluntary and unpaid capacity for a qualifying voluntary organisation.

20. Regulation 5(3)(c) requires that the application must solely be in respect of that voluntary role, precluding the waiver from being used to circumvent the payment of fees in other circumstances, such as where the individual does other paid work for the organisation as well as volunteering.

21. Regulation 5(4) defines what constitutes a qualifying voluntary organisation. By application of regulation 5(4), the definition excludes, for example, non-departmental public bodies, councils, health boards, schools and further education institutions, along with most private-sector businesses, large financial institutions and publicly listed companies. Regulation 5(4), however, does include organisations which solely provide early learning and childcare within the meaning of Part 6 of the Children and Young People (Scotland) Act 2014, for example, voluntary organisations offering education for pre-school children. Regulation 5(4) preserves current arrangements under the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (as amended).

22. The definition of a QVO has been preserved from the previous regulations following discussion with voluntary sector organisations, VSDS and having regard to the Scottish Council of Voluntary Organisations' definition.

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

24. 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 Act), the Scottish Ministers certify that, in their view, the Fees for Scheme Membership and Disclosure Applications (Scotland) Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

Fee levels

26. Bodies and representative groups have been consulted on fee levels, including:

- COSLA
- Coalition of Care and Support Providers in Scotland

- NHS Health Improvement Scotland
- NHS Forth Valley
- NHS Greater Glasgow and Clyde
- Access To Industry
- The Educational Institute of Scotland
- NASUWT – The Teacher's Union
- National Union of Students – Scotland
- University of the Highlands and Islands
- Scottish Council of Independent Schools

27. This is not a complete list due to the volume of organisations engaged with, and instead represents the range of sector engaged with. The Business and Regulatory Impact Assessment includes further information on engagement and approaches.

Fee waivers and discounting

28. Further, a public consultation took place from March to May 2024 on options around fee waivers and discounting, including moving from a full waiver to a discount for volunteers in qualifying voluntary organisations. The consultation received 1236 responses, primarily from volunteers.

29. This consultation was supported by in-person and digital engagement sessions available to stakeholders generally and to specific sectors. Disclosure Scotland hosted 23 events as part of the consultation process to 268 attendees from 175 organisations.

30. The themes emerging from engagement sessions broadly reflected those set out in the analysis above. Those who engaged through these sessions were encouraged to respond to the consultation, with their earlier views also captured to ensure that the views of those which did not have time or capacity to respond in writing were included in the policy development.

31. The main theme resulting from the consultation was the importance to volunteer involved organisations and Scottish communities of the fee waiver for volunteers in qualifying voluntary organisations and as a result that policy has been retained in these Regulations. It was noted that the financial and administrative impact of moving to a discount would be significant and for many services would require the diversion of funds for service delivery into safeguarding to cover the cost.

32. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website**4**.

Impact Assessments

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

4 https://www.gov.scot/publications/disclosure-scotland-fees-discounting-waivers-accredited-bodies-consultation-analysis-report/

- 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/)

34. An Equalities Impact Assessment, Fairer Scotland Duty 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 or socio-economic impact issues have been identified resulting from these Regulations. The decision to retain fees at their equivalent to current levels has been taken in recognition of a risk of negative impact on protected characteristics and socio-economic factors in the aftermath of the cost crisis.

35. The Children's Rights and Wellbeing Impact Assessment identified that these Regulations, in setting fees for disclosure products which are used to support the care and protection of children, interacts with Article 3 (Best interests of the child) insofar as the fee level must be set at a level which customers can afford. There was a risk that some organisations may not value the safeguarding benefits and legal requirement of the PVG Scheme and try to cut costs if fee levels are set too high. Some voluntary groups also told the Scottish Government that they thought this risk also existed in relation to moving to a fee discount (rather than waiver) for volunteers working in qualifying voluntary organisations too. Disclosure Scotland will work with Police Scotland to monitor for compliance with the legal requirement to join the PVG Scheme, regardless of fee level.

36. The fee waiver for volunteers working in qualifying voluntary organisations is relevant to Article 31 (Leisure, play and culture) by supporting volunteers, and the clubs they work in, to safely provide play and sport activities. As fees and fee waivers are remaining broadly the same, there is no change in the impact on children's rights. The impact from the existing system was previously assessed as neutral on fee levels and positive for the fee waiver for volunteers.

37. An Island Communities Impact Assessment screening was undertaken. No differential impact on island communities was identified during screening and a full impact assessment was not done.

Financial Effects

38. A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is minimal, as costs under these regulations have been retained at the equivalent levels they have been at since 2011. This includes retention of the fee waivers that have been in place since 2011. No business will be liable for additional costs as a result of the proposals in these regulations.

39. These regulations also do not change how the fees are collected by Disclosure Scotland. There is therefore no impact on businesses with regard the method of collection, or who is liable for the fees. There is no evidence held that suggests that businesses are unable to pay their disclosure fees

40. In deciding to retain broadly equivalent fees, the Scottish Ministers have had regard to the circumstances in which the fees are payable – in particular, the desire to support those on the lowest incomes.

Scottish Government
Disclosure Scotland

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