POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (INFORMATION FOR LISTING AND VETTING) (SCOTLAND) REGULATIONS 2024

SSI 2024/314

The above instrument was made in exercise of the powers conferred by sections 18(4)(b), 18(5)(c), 49(1)(a) and (d) and 97(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 and all other powers enabling them to do so. section. The instrument is subject to negative procedure.

Summary Box

The purpose of these Regulations is to make provision to enable the Scottish Ministers' access to records of convictions, cautions and other information for the purposes of barring and vetting of Scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007.

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 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 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 under which the Scottish Ministers administer the PVG Scheme.

3. This instrument is needed to make detailed provision in relation to information that may be used for listing purposes and in relation to vetting information which may be included on a scheme record in respect of scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007. Without them, information about whether or not a PVG scheme member is the subject of a civil order would only be vetting information if it was revealed by a police force as other relevant information. But this is entirely a matter for the chief constable in determining whether the information is relevant to the type of regulated role in respect of which the individual is a PVG scheme member. Prescribing these civil orders as vetting information, removes the disclosing or otherwise of them from the discretion of chief constables and ensures that they are vetting information in every instance. The information will be gathered by Disclosure Scotland directly from central records

4. Section 18(4)(b) of the PVG Act enables Scottish Ministers to require any person who holds "central records" (i.e. police criminal history databases) to provide the Scottish Ministers with every "relevant matter" held in those databases for barring and listing purposes. Under section 18(5), "relevant matter" is defined and includes prescribed

civil court orders. These civil court orders are sexual offending orders and cover relevant offences that would be considered when determining an individual's suitability to work with children and vulnerable adults. These Regulations prescribe those civil court orders as:

a) sexual offences prevention orders (or interim orders) made under the Sexual Offences Act 2003;
b) sexual harm prevention orders (or interim orders) made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or the Sentencing Act 2020,
c) foreign travel orders made under the Sexual Offences 2003 Act;
d) sexual risk orders (or interim orders) made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
e) notification orders (or interim orders) made under the Sexual Offences Act 2003
f) risk of sexual harm orders (or interim orders) made under the Sexual Offences Act 2003 or the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

5. If one of the civil orders set out above has been made and is in effect in respect of a PVG scheme member, vetting information on their scheme record will include: the prohibitions and/or requirements described in the order, the date of the order, the period for which the order has effect and details as to whether the order has been varied or renewed by a further court order.

6. Section 49 of the PVG Act sets out what "vetting information" is in relation to a member of the PVG Scheme. The PVG Act introduced ongoing monitoring for PVG scheme members, this ensures that any new vetting information that arises is checked to ensure the scheme member has not become unsuitable to work with vulnerable adults or children. These Regulations prescribe the details of the convictions and the details of the prescribed civil court orders (as set out in paragraph 5 above) that will be included as vetting information on scheme members scheme records.

7. The provisions in this instrument replicate and restate provisions currently set out in the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Vetting Information) Regulations 2010 ("the 2010 Regulations") which will be revoked as part of the Disclosure Act implementation project. The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 inserted references to new prescribed orders into the Police Act 1997. These Regulations include these new civil orders which were not included in the 2010 Regulations. We consider that these orders should be accessible to Scottish Ministers in relation to their barring functions and should form part of vetting information as it relates to a scheme member.

8. 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

9. 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 Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

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

Consultation

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 and beyond.

Impact Assessments

16. 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/)

17. 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.

18. 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

19. The Minister for Children, Young People and the Promise confirms 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