POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (REFERRALS BY CHIEF CONSTABLE) (PRESCRIBED INFORMATION) (SCOTLAND) REGULATIONS 2024

SSI 2024/313

The above instrument was made in exercise of the powers conferred by section 6A of the Protection of Vulnerable Groups (Scotland) Act 2007 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations prescribe the information which the chief constable must refer, if held, to Scottish Ministers in relation to an individual whom the chief constable considers is or has been carrying out a type of 'regulated role' while not participating in the Protecting Vulnerable Groups Scheme in relation to that type of regulated role.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting 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 ("the PVG Act").

3. These Regulations supplement provisions in the Disclosure Act that introduce compulsory PVG scheme membership under section 45C to 45G of the PVG Act for anyone carrying out a 'regulated role with children or protected adults.' An individual will commit a criminal offence if that individual carries out a regulated role when not a member of the PVG scheme. This policy is intended to prevent people who are unsuitable, from carrying out regulated roles.

4. Section 80(2) of the Disclosure Act inserts new section 6A into the PVG Act. Section 6A places a duty on the chief constable of Police Scotland to give the Scottish Ministers any prescribed information that the chief constable holds in relation to an individual whom the chief constable considers is, or has been, carrying out a regulated role while not participating in the PVG Scheme.

5. The consequence of such a referral being made by the chief constable of Police Scotland is that the individual referred may be considered for listing in the children and/or adults lists under sections 15 and/or 16 of the PVG Act.

6. These Regulations prescribe the information the chief constable must refer, if held, as:

    - the individual's name, or any other names known by,
    - the individual's most recent address,
    - any other addresses at which the individual is, or has been, resident within the last 10 years,
    - the individual's date and place of birth,
    - the type of regulated role the individual is considered to have been doing,
    - the relevant period in which it was being done,
    - the responsibilities undertaken, and
    - for whom it was being done.

7. The information prescribed in these Regulations is similar to other information that must be provided to the Scottish Ministers for other referral types under sections 3 to 6 and 8 of the PVG Act, as prescribed in the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (https://www.legislation.gov.uk/ssi/2010/181/contents/made).

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.

10. 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 (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

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

Consultation

12. 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.

13. 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.

14. 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 has 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.

15. 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.

16. Disclosure Scotland has also engaged directly with Police Scotland on changes to information processing responsibilities for Police Scotland as a result of implementation of the Disclosure Act. In relation to these Regulations in particular, the information to be referred has been engaged on and agreed between Disclosure Scotland and Police Scotland. The existing Data Sharing Agreement between Disclosure Scotland and Police Scotland is being updated to reflect the changes in terminology created by the Disclosure Act changes and to acknowledge the new obligation arising from section 6A of the PVG Act for the chief constable. Currently, Disclosure Scotland and Police Scotland work as joint controllers for data protection purposes and for the purposes of these Regulations that will continue. Police Scotland will only be required to give information to the Scottish Ministers that they hold; they

will not be generating new information to provide to Disclosure Scotland under these Regulations.

Impact Assessments

17. 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/)

18. 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.

19. 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

20. 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