

# protection of vulnerable groups (scotland) act 2007

scottish vetting  
and barring  
scheme

Scottish Government  
response to the analysis  
of consultation on  
policy proposals for  
secondary legislation



safer  
scotland  
SCOTTISH GOVERNMENT

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*Note: For ease of reference, the chapters and section numbers in this document correlate with the chapters and sections in the analysis of the consultation on policy proposals for secondary legislation. As the consultation did not present any questions in sections 3.3 and 3.7, these are not included in this document.*

## **MINISTERIAL FOREWORD**

The Protection of Vulnerable Groups Disclosure Scheme (the PVG Scheme) is about ensuring that, for example, when we drop our children off at school or when a family member needs an operation, we are reassured that they are not left in the care of someone who would do them harm.

We know that the vast majority of people who work with vulnerable groups make a valuable and positive contribution to their lives. But there are some who would abuse the trust we place in them. None of us would consider it acceptable if, for example, our child was being looked after by a sex offender. Or if an elderly parent was in the care of someone who had a history of violent behaviour.

The PVG scheme will help to reduce the possibility of this happening so that we can have confidence when our loved ones are in receipt of regulated services. It will ensure that those who have regular contact with vulnerable groups, through the workplace, do not have a history of harmful behaviour. It will exclude people who, on the basis of their past behaviour, are known to be unsuitable from working, paid or unpaid, with children and protected adults and detect those who become unsuitable while in the workplace.

As well as strengthening protection for vulnerable groups, it introduces a more streamlined disclosure process for employers, employees and volunteers to use. A significant benefit of the scheme membership system it introduces is that it ends the need for multiple disclosure applications.

I am grateful to all those who responded to the consultation on policy proposals for secondary legislation and to those who attended the series of consultation and information events. This response reflects the broad consensus of the consultation findings and will shape the detail of the secondary legislation that we will lay before Parliament for consideration.

In the coming months, my officials will continue to work with a wide range of organisations and groups to develop a robust and efficient scheme.

A scheme that will identify people who are unsuitable to work with vulnerable groups.

A scheme that is trusted and that recognises that the vast majority of the workforce are caring and responsible people.

And a scheme that strikes the balance between proportionate protection and individual rights.

It is indeed encouraging to know that we are all working together to deliver a strengthened and robust scheme that contributes directly to the Scottish Government's objective of helping local communities flourish and become stronger, safer places to live.

**Adam Ingram**  
**Minister for Children and Early Years**

# CHAPTER 1

## 1.1 BACKGROUND

The Protection of Vulnerable Groups (Scotland) Act 2007 (PVG Act) creates the legislative framework for a strengthened, robust and streamlined vetting and barring scheme for those working with children and protected adults in Scotland. For ease of reference, the Scottish Government is referring to this as the PVG Scheme.

The PVG Act responds to recommendation 19 of the Bichard Inquiry Report published in June 2004, following Sir Michael Bichard's inquiry into the murder of two schoolgirls in Soham in 2002. Recommendation 19 states that *new arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered.*

The PVG Scheme will ensure that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of abusive behaviour. It will also deliver a fair and consistent system that will be quick and easy for people to use.

It will exclude people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detect those who become unsuitable while in the workplace.

### Current Position

Around 800,000 people in Scotland work with children or protected adults, either through their paid employment or as volunteers. Part 5 of the Police Act 1997 put in place a statutory framework to allow for criminal record checks for employment of these, and other, workers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. Since then over 3 million applications have been made for basic, standard and enhanced disclosures. In the 2007/08 financial year, 362,367 enhanced disclosures were processed.

Since 2005, Scottish Ministers have kept a list of individuals who are considered unsuitable to work with children – the Disqualified from Working with Children List – introduced by the Protection of Children (Scotland) Act 2003. It is an offence for anyone on the list to work in any prescribed child care position.

### Policy objectives

The policy objectives of the PVG Act are to ensure that:

- those who have a history of behaviour that indicates they are unsuitable to work with children or protected adults are prevented from doing so and those who become unsuitable are quickly removed from such work;
- employers have an improved tool to assess suitability and make safe and informed recruitment and retention decisions;
- the PVG Scheme is fair, consistent and easy for people to understand and use;

- the underlying processes are as streamlined, responsive and efficient as possible; and
- the Scheme dovetails with arrangements in the rest of the UK to ensure that cross-border loopholes do not develop which could be exploited by those who would harm children and protected adults.

The PVG Scheme offers the following improvements over the current system:

- **effective barring** – it won't just collect and disclose vetting information, but will also assess it, so that individuals who are considered unsuitable on the basis of vetting information are prevented from entering the workforce;
- **the adults' list** - a list of individuals who are unsuitable to work with protected adults;
- **continuous updating** - continuing to collect relevant information about an individual after the initial disclosure check has been made will ensure that new information indicating that they might be unsuitable can be acted upon promptly;
- **streamlined disclosures** - recognising that some people have several roles and that many people move and change jobs over time, the scheme removes the need for repeated disclosure applications to simplify and speed up the process;
- **access to disclosure for personal employers** - permitting them to check that the person they wish to employ is not unsuitable; and
- **more sources of vetting information** – giving both the scheme and employers more information to decide on the suitability of an individual for a particular post.

The PVG Scheme will be managed and delivered by Disclosure Scotland as an executive agency, which will also continue to deliver the other types of disclosure. A new team within Disclosure Scotland will receive and consider referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The team will gather and assess all relevant information to make expert, fair and consistent decisions.

## 1.2 CONSULTATION PROCESS

The PVG Act establishes the new PVG Scheme, but leaves some significant detail to be defined in secondary legislation. Because of the importance of this legislation and the widespread interest of stakeholders, a commitment was given during the passage of the PVG Bill to consult extensively on the development of significant parts of the secondary legislation.

### Consultation on Policy Proposals for Secondary Legislation

A formal written consultation took place between 1 November 2007 and 12 February 2008. Stakeholders were invited to comment on policy proposals for the secondary legislation required to implement the PVG Scheme. To complement the written consultation, 16 consultation/information events, which attracted over 1000 participants, were held between November 2007 and January 2008.

The consultation set out a number of policy proposals relating to each major issue.

- Chapter 2 - Scope of Regulated Work and Access to Disclosures
- Chapter 3 - Referrals and Listing
- Chapter 4 - New types of Vetting Information
- Chapter 5 - Retrospective Checks and Fees
- Chapter 6 - Connecting with the rest of the UK

The consultation attracted 199 responses, which were analysed by the Office of the Chief Researcher in the Scottish Government. The analysis also captured the views of participants who attended the consultation/information events. It was published on 27 June 2008.

The consultation document, the responses received and the analysis are at: <http://www.scotland.gov.uk/Topics/People/Young-People/children-families/pvglegislation/consultation>

This is the Scottish Government's response to the consultation analysis. It sets out both the policy and legislative direction.

For ease of reference, the chapters in this document correlate with both the consultation document and the analysis.

### Next Steps

The Scottish Government will conduct a further consultation on significant draft Scottish Statutory Instruments (SSIs). This consultation will be on the actual draft instruments and Explanatory and Executive Notes and will take place prior to the SSIs being considered by the Scottish Parliament.

Annex A sets out the list of all SSIs to be developed and those that will be subject to consultation.

In due course, the Scottish Government will consult on the package of guidance relating to particular aspects of the scheme that is currently being developed in partnership with a broad range of stakeholders.

A date for the scheme to go-live is still to be determined and will be announced well in advance to allow stakeholders adequate time to prepare.

For more information, contact the PVG Act Implementation team at the Scottish Government on 0131 244 4905 or visit <http://www.scotland.gov.uk/pvglegislation>

## **1.3 SUMMARY**

Scottish Ministers have fully considered the detailed analysis of the consultation on policy proposals for secondary legislation. This section summarises the actions that the Scottish Government proposes to take as it moves towards implementation of the PVG Scheme. These proposals will be reflected in Scottish Statutory Instruments laid before Parliament for consideration.

The rationale behind the decisions and more detailed information about how both the policy and secondary legislation will be taken forward is detailed from Chapter 2 onwards.

### **SCOPE OF REGULATED WORK AND ACCESS TO DISCLOSURES**

#### **Regulated Work with Children**

- The Scottish Government will re-examine the scope of regulated work with children and amend schedule 2 of the PVG Act to reflect recent changes to the Protection of Children (Scotland) Act 2003 and to ensure a proportionate approach to the scope of the scheme.

#### **Regulated Work with Protected Adults**

- The definition of protected adult will be extended to include any individual in receipt of any NHS or private healthcare service. NHS services will be prescribed by reference to those provided or secured by health boards under the National Health Service (Scotland) Act 1978. Private and independent health care services will be prescribed by reference to those regulated by the Regulation of Care (Scotland) Act 2001.
- The definition of protected adult will also be extended to include any individual in receipt of welfare services, defined by the nature and purpose of the service that an organisation provides. Welfare services will include support, assistance, advice or counselling to individuals and include those delivered by commercial organisations as well as public sector and voluntary and charitable organisations. In defining a protected adult, the same consideration of fairness and proportionality as outlined in relation to regulated work with children will be applied.

#### **Contractors and Disclosure**

- Disclosure information will be able to be shared between contracting parties where they are councils or health boards contracting for the provision of transport services to transport children and/or protected adults. This will require the explicit consent of the individual who is the subject of the disclosure.

## **Changes to Registration of Registered Bodies**

- There will be no requirement on registered bodies to make a minimum number of disclosure applications each year as a condition of continued registration. Instead, subject to the approval of the Scottish Parliament, the registration fee will be replaced with an annual subscription based on the number of counter-signatories registered to that organisation.

## **REFERRALS AND LISTING**

### **Making Referrals**

- For organisations making referrals, the content of the referral form will be broadly as set out in the consultation document although organisations will only be required to provide the information that they hold.

### **Automatic Listing**

- A conviction for one of a short list of serious sexual or violent offences will lead to automatic listing. Given the seriousness of these offences there will be considerable similarity between the lists of offences prescribed for both the children's and adults' lists.

### **Automatic Consideration for Listing Children's List Only**

- The list of convictions which lead to automatic consideration for listing identified in schedule 1 of the PVG Act will be modified to include additional serious offences that suggest a future significant risk of harm to children.

### **Listing Decisions**

- Work will proceed on the approach to making listing decisions, based on the elements proposed in the consultation.

### **Removal from Lists**

- Individuals will be able to apply for removal from the list(s) after five years if they were a child when listed (ie aged under 18 at the date of listing) or after ten years if they were an adult when listed (ie aged 18 or over) or at any time if the individual is able to demonstrate a change in circumstances.

## **NEW TYPES OF VETTING INFORMATION**

### **Regulatory Bodies and Councils**

- The definition and gathering of vetting information from regulatory bodies and councils, while supported by respondents, requires further detailed work with stakeholders. Aside from vetting information included in referrals from regulatory bodies, this information will not be included in the scheme from the outset.

## **Handling Sensitive Information from Regulatory Bodies and Councils**

- As identified above, vetting information will not be prescribed at the outset for councils. Where a referral is received and contains information about regulatory body disciplinary proceedings which is deemed relevant to the individual's suitability but doesn't lead to listing, that information will be disclosed on future scheme record disclosures.

## **Civil Orders**

- The four civil orders identified in the consultation paper (namely the Risk of Sexual Harm Order, Sexual Offences Prevention Order, Notification Order and Foreign Travel Order) will always appear on scheme record disclosures and on the enhanced plus disclosures for specific positions in respect of children or adults (eg adoption and Adults With Incapacity guardianship).

## **Other Sources of Vetting Information**

- Additional sources of vetting information, including information on previous competent referrals will not be prescribed as vetting information.

## **RETROSPECTIVE CHECKS AND FEES**

### **Retrospective Checking: whether and how?**

- Scheme membership will be phased in for the existing workforce using a managed process of retrospective checking. This will commence one year after go-live and will last for a three year period, so that the entire regulated workforce should be brought onto the scheme, four years from go-live.

### **Fee Levels and Charging Regime**

- There will be a two tier system of charging. A higher fee will be charged for all applications to join the scheme for the first time. The higher fee will also apply on any occasion when a Scheme Record Disclosure is requested. The lower fee will apply to Short Scheme Record Disclosures and Disclosure of Scheme Membership where the individual is already a scheme member.
- The fees for volunteers working in the voluntary sector will continue to be paid by the Scottish Government. Scheme members who join through voluntary work then go on to paid employment will not be required to pay the higher fee when they do so, but will be able to access scheme records on the same basis as those who are already in paid work.

## **CONNECTING WITH THE REST OF THE UK**

- The Scottish Government will continue to interact with those responsible for developing the system for the other parts of the UK through the Safeguarding

Vulnerable Groups Act 2006 (SVG Act 2006) and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to ensure that the schemes dovetail.

## CHAPTER 2

### SCOPE OF REGULATED WORK AND ACCESS TO DISCLOSURES PROPOSED ACTIONS

#### 2.2 REGULATED WORK WITH CHILDREN

<b>Q1 Do you have any comments on the content and structure of the guidance on the scope of regulated work with children?</b>
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Respondents were broadly supportive of the approach suggested in the consultation document that accessible guidance should be available before the PVG Scheme goes live.

A Guidance Advisory Group, representing a wide range of stakeholder interests has been set up to work with the Scottish Government on the development of guidance and training. The consultation analysis is helping to inform the work of this group and in particular, to explore how flow charts and diagrams can be used to make the guidance as accessible as possible.

Separately, subsequent to the publication of the consultation paper, issues around the definition of a child care position under the Protection of Children (Scotland) Act 2003 (PoCSA) were raised by stakeholders. This has resulted in an amendment to schedule 2 of PoCSA. The amendment removes from child care position, the work carried out by Parent Council members in schools where they have no contact with children and has other impacts too. The Scottish Government plans, subject to Parliamentary approval, to make a similar amendment to the PVG Act, suitably adjusted for that legislative context.

Scottish Ministers wish to ensure that the scope of regulated work with children includes those positions where unsuitable people could pose a risk. However, the scheme needs to be proportionate so that, with the exception of certain specified positions set out in schedule 2, part 4 of the Act, those who have no contact with children and those who have minimal contact with children in circumstances where the children themselves are supervised by scheme members are not within the scope of in the scheme. For other positions, for example, delivery drivers visiting a school or care home, where the risk to vulnerable groups of their presence on the premises is minimal, the Scottish Government wants to ensure that organisations take responsibility for properly assessing and managing that risk.

For this reason, the Scottish Government plans to re-examine the scope of regulated work with children to ensure a proportionate approach is taken to describe the scope of regulated work. Although there has been general discussion around some of the issues during the engagement events on the PoCSA amendment, there has been no formal consultation as the issues came to light later. For this reason, there will be a consultation on the draft SSI and the Executive Note accompanying the draft SSI will provide an explanation of the proposed changes.

## 2.3 REGULATED WORK WITH ADULTS

### DEFINITION OF PROTECTED ADULT

**Q2a and b. Do you believe an individual should be a protected adult if they are in receipt of any health service (NHS or private)? Are there any health services that should not be included?**

Of those who responded to the question, just over half favoured the proposal. There was broad support for the policy intention of ensuring that adults in receipt of health services should be afforded protection by ensuring that those individuals who provide care and support services to them are scheme members.

Section 94 of the PVG Act defines a protected adult as an individual, aged 16 or over who receives one or more type of care or welfare service. This definition recognises that some adults may always require protection due to the nature or frequency of services they receive, while others may do so only for short periods, for example, during a visit to the GP. This is why section 94 must operate in tandem with schedule 3 of the PVG Act which outlines the duties that constitute regulated work with adults.

The term 'protected adult' serves two purposes. It avoids labelling adults solely on the basis of having a specific condition or disability and will help employers identify the services that make an adult 'protected' so that they can assess which posts constitute regulated work and are therefore within the scope of the PVG Scheme. In effect, to define those situations where an individual would be afforded the protection offered by the PVG Act.

Designating an individual as a protected adult while in receipt of an NHS or independent health care service offers the most practical way for the providers of these services to comply with the PVG Act. This is consistent with the way other parts of section 94 of the PVG Act operate. It will provide comprehensive coverage, including non-specific services like accident and emergency and ambulance, so avoiding the need for constant changing of lists of services. It is also broadly consistent with the proposals in England and Wales and Northern Ireland.

The Scottish Government plans to further clarify the health care services, the delivery of which accord adults protected status under the PVG Act. For the NHS, services will be prescribed by reference to those provided or secured by health boards under the National Health Service (Scotland) Act 1978. For private/independent health care services, these will be prescribed by reference to their meaning within the Regulation of Care (Scotland) Act 2001.

Defining a category of adult to be protected in this way is proportionate as it is the most appropriate means to ensure employers operate the PVG Act as intended. It places no obligations or expectations on adults to demonstrate vulnerability and avoids categorising adults solely by a condition or disability. Proportionality is also achieved through application of the tests relating to regulated work that are outlined in Schedule 3 of the PVG Act.

Services that the Scottish Government does not intend to be covered include occupational health services, beauty/cosmetic salons, and tattoo studios.

## WELFARE SERVICES

### **Q3. Should the definition of welfare services be based upon:**

- 1. The nature of the service provided?**
- 2. An explicit list of prescribed services?**
- 3. The personal characteristics of the individual receiving care?**
- 4. An alternative proposal?**

The majority of respondents to this question supported defining welfare services by the nature and purpose of the service provided. This is likely to be the simplest option to prescribe and for providers of services to use. It is also consistent with other parts of section 94 of the PVG Act.

Defining welfare services in this way will rightly leave employers to decide, based on their own knowledge of types of services they provide, whether delivering their services means adults become protected under the PVG Act. It will therefore help employers to determine which of their employees delivering these services are doing regulated work with adults.

This is the more preferable option to the others as many consultation respondents recognised that attempting to define a list of all welfare-type services would likely leave gaps and require constant updating. Respondents also recognised that using an individual's disability, illness or characteristics (eg age) to define vulnerability is no longer consistent with person-centred adult protection policy.

The Scottish Government plans to define welfare services by the nature and purpose of the service that an organisation provides. Welfare services will include support, assistance, advice or counselling to individuals which:

- are provided by or on behalf of an organisation;
- have a frequency to their delivery;
- require formal training;
- either require some contract between provider and recipient, or are distinguished in a certain way, for example, by being personalised to meet an individual's needs.

Work will continue to further develop and clarify definitions to be included in secondary legislation and to ensure that the associated guidance is clear and easy to understand.

### **Q3b. Should the definition of welfare services be expanded to include commercial organisations that provide services similar to those provided by the statutory and voluntary sector?**

There was widespread support from respondents for the proposal to expand the definition of welfare services to include those provided by the commercial sector. This is a logical approach which will ensure consistent protection based on the nature of the service provided, to assist and support individuals rather than the status of the organisation providing it.

The Scottish Government plans to define welfare services in a way that incorporates commercial organisations that provide services similar to those provided by the statutory and voluntary sector.

The need to engage with relevant commercial sector organisations will be factored into stakeholder communication and guidance activities to ensure that they are aware of the implications of this change.

## **2.4 CONTRACTORS AND DISCLOSURE**

**Q 4a and b. Do you believe that disclosure information should be shared with third parties? If yes in which circumstances should the information be shared:**

- 1. Where a third party is contracting a transport provider for the purposes of transporting children or protected adults?**
- 2. Where a third party is contracting a provider for the purposes of maintaining premises in which services are provided predominantly to children and/or protected adults and where the maintenance will take place whilst these individuals are on the premises?**
- 3. Where a council is offering direct payments in return for the delivery of care to a protected adult?**
- 4. Where a council is letting premises to individuals and the intended use involves regulated work?**

This has proven to be a challenging area, with mixed views expressed by respondents. The question arose in the first instance from a desire to have a consistent approach to practice in relation to transport service contractors. In this area, respondents from both the contractor and commissioner sphere broadly supported the proposal to allow for the sharing of disclosure information. The majority of those answering the question were in favour of sharing information relating to contracting for transport services.

However there was much less support for third party disclosure in the other circumstances outlined. It was seen by many respondents to be disproportionate and intrusive, particularly in relation to direct payments and the letting of premises.

The Scottish Government plans to allow the sharing of disclosure information between contractors and commissioners where councils or health boards are contracting for the provision of transport services to transport children and/or protected adults. Information will only be able to be shared with the explicit consent of the individual who is the subject of the disclosure. This will be reflected in secondary legislation and set out in guidance.

There are no immediate plans to allow the sharing of disclosures with commissioners in any of the other circumstances outlined in the consultation.

## 2.5 CHANGES TO REGISTRATION OF REGISTERED BODIES.

### **Q5a and b. Should there be a minimum threshold of applications per annum from a registered body as a condition of registration? If yes how many?**

This question relates to the organisations registered with Disclosure Scotland for the purpose of receiving standard and enhanced disclosures under the Police Act 1997 or scheme record disclosures under the PVG Act. It arises because a large number of these 3,500 registered organisations only carry out very small numbers of disclosure applications. This makes it difficult for Disclosure Scotland to ensure the compliance of registered bodies with the legislation and the code of practice issued under the Police Act 1997.

There was little support for this proposal. However it remains important to achieve compliance with the code of practice and to manage inactive counter-signatories. Disclosure Scotland is often not informed when counter-signatories give up that role, which poses the risk that they may continue to countersign applications illegally.

A minimum threshold of applications per annum, as a condition of registration will not be applied. Instead, the Scottish Government intends, subject to Parliamentary approval to make registration subject to the payment of an annual subscription. The subscription will include a charge for each counter-signatory giving registered bodies an incentive to maintain this information accurately.

This will ensure that Disclosure Scotland is able to maintain up to date information and ensure compliance with the code. It may also encourage organisations that undertake fewer disclosures to use an umbrella body.

Alongside this, the Scottish Government plans to restrict organisations to a single registration (at present a number of larger organisations have multiple registrations). To ensure that larger organisations are able to manage their relationship with Disclosure Scotland, it is proposed to allow them to create and manage sub-accounts within a single registration. This will ensure that invoices reach the right part of the organisation and that responsibility for compliance with the various requirements of the code of practice rests with the right individuals.

Work will continue alongside the consideration of scheme membership fees to establish an appropriate fee for the registration subscription. Disclosure Scotland will also work closely with registered bodies to manage this transition process and to promote the availability of umbrella bodies for those that choose not to maintain an active registration.

## CHAPTER 3

### REFERRALS AND LISTING PROPOSED ACTIONS

#### 3.2 MAKING REFERRALS

##### **Q6. What should be included in the list of prescribed information for referrals for listing?**

The consultation proposed a list of information that should be prescribed for inclusion in an organisational referral for consideration for listing. The consultation sought views on whether this was appropriate and proportionate. The majority of respondents felt that this was proportionate and would in most cases be readily available. Some smaller organisations expressed concern that they may not be able to provide all of the information in all cases. However, the PVG Act is clear that organisations need only provide information that they hold.

The Scottish Government plans that the list of prescribed information will be based on that in the consultation document.

The guidance to potential referrers will emphasise that all of the information need not be provided in order to make the referral competent. However, failure to make a referral within 3 months of the duty arising will be an offence under the provisions of the PVG Act.

#### 3.4 AUTOMATIC LISTING

##### **Q7. What offences should lead to automatic listing?**

The consultation sought views on the types of offences that should lead to automatic listing of the individual. That is to say, any individual who commits such an offence, or has done so in the past and applies to join the scheme would be automatically barred from regulated work and would have no opportunity to make representations. In particular, the consultation sought views as to whether there should be separate lists of offences for adults and children and asked for comments on the content of the proposed lists of offences.

Respondents were strongly in favour of prescribing automatic listing offences. The majority favoured the same limited number of offences being prescribed for automatic listing on both the children's and adults' lists. They did so because the nature of offences are so serious that the individual would not be suitable to work with either vulnerable group.

The list of offences favoured is broadly in line with those in the scheme introduced through the SVG Act 2006 for auto bar offences (without representations).

The Scottish Government plans to define limited lists of offences that will lead to automatic listing on each of the children's and adults' lists where the individual is

aged 18 or over at the time of conviction. It is anticipated that there will be a high degree of overlap between the two lists, recognising that the seriousness of the crimes will indicate unsuitability to work with both vulnerable groups.

Where an individual is under 18 at the time of conviction then they would not be automatically listed, but would always be considered for listing, allowing them to make a case in mitigation of their actions.

A tightly-drawn list of offences based on those in the consultation paper, but refined further to reflect responses and further policy consideration (for example, to include murder of a child) will be set out. The draft list of offences will be further consulted on alongside the draft SSI. Longer term, provisions will need to be put in place to amend the list in the light of new offences arising from legislation, for example the Sexual Offences (Scotland) Bill.

### **3.5 AUTOMATIC CONSIDERATION FOR LISTING (CHILDREN'S LIST ONLY)**

<b>Q8. What offences should lead to automatic consideration for listing (children's list only)?</b>
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Respondents to the consultation were given several options in relation to the groups of offences that might lead to automatic consideration for listing. Group 1 was as set out in the Act. Group 2 added additional sexual offences against children and group 3 added further offences committed against an adult that would bring into question suitability to work with children.

Some 60 per cent of those who answered the question supported inclusion of both group 2 and 3 offences, which would mean that the widest range of offences lead to automatic consideration for listing. All of these offences are significant and serious offences and having committed them would bring into question the individual's suitability to work with children. They go beyond sexual offences to indicate a wider risk of significant harm to children.

Whilst there is no comparable statutory procedure for automatic consideration for listing on the adults' list, any scheme member or applicant for the protected adults' workforce who commits one of the prescribed offences is likely to be considered for listing on the adults' list or on both lists.

The Scottish Government intends to modify the existing list of offences in schedule 1 of the Act to include other serious offences that would bring into question the individual's suitability to work with children. A comprehensive list of offences based on those consulted on will be compiled.

Older statute now repealed but which may still be on an individual's criminal record will not be prescribed since the duty on courts to make referrals only has any meaning in respect of contemporary convictions. However, lists of equivalent repealed offences will be used administratively to help identify those individuals that require formal consideration for listing. As with automatic listing offences, the schedule will be reviewed and amended as required to take account of new offences

arising from legislation, including the Sexual Offences (Scotland) Bill. The draft SSI will include a full list of the offences and will be subject to further consultation.

The extended list of offences will broadly mirror the auto bar offences (with representations) under the SVG Act 2006.

### **3.6 LISTING DECISIONS**

#### **Q9. Do you have any comments on the approach to making listing decisions set out in 3.6?**

The majority of consultees found the proposed approach (of rules-based, caseworker assessment and expert consideration) to be fair, appropriate and comprehensive. The concerns that were raised (eg safeguarding the rights of individuals and transparency of decision-making) are actively being considered.

### **3.8 REMOVAL FROM LISTS.**

#### **Q10 and 11a. Should the age threshold for the shorter minimum no review period be set at 18 or 25? When should the minimum no review period start?**

An individual may apply to be removed from the list(s) at any time if they can demonstrate that their circumstances have changed. In addition, individuals may apply for removal after a certain prescribed time period has elapsed. This is known as the minimum no-review period.

The intention is that the period should be set at ten years for adults and five years for young people. The consultation asked whether young people should be regarded as under 18 or under 25 for the purpose of the minimum no-review period. It further asked when the period should commence.

Of those who responded, there was marginally more support for the age threshold for the five year minimum no-review period being set at 18 rather than at 25. This is less of an issue for the PVG scheme than it is for the rest of the UK. This is due to the additional provision in the PVG Act allowing for the individual to apply for removal from the list(s) at any time, if they can prove that their circumstances have changed since the listing decision or last application for removal.

The majority support was for the minimum no-review period to always start from the date of listing. This is the most consistent approach as it is dependent on a decision that the individual was unsuitable on that date regardless of when the harm occurred or the historic nature of the offence/conviction.

There may be some circumstances where an individual is barred from one workforce, then as a result of some later incident is also barred from the other workforce. The consultation proposed that a single minimum no-review period should apply, commencing with the first listing. Although comments were not specifically invited on this proposal, some respondents expressed concern that this may benefit the individual at the expense of jeopardising the protection of vulnerable groups. However, it is important to note that the minimum no review period only sets

a date when the individual can apply for removal. That removal will not be automatic and formal consideration will be given to whether the individual poses a risk to one or both workforces before a decision to remove them from one or both lists is taken.

The Scottish Government proposes that individuals may apply for removal from the list(s) after five years if they are aged under 18 at the date of listing or after ten years if they are aged 18 or over. The minimum no review period will commence from the date of first current listing.

## CHAPTER 4

### NEW TYPES OF VETTING INFORMATION PROPOSED ACTIONS

#### 4.2 REGULATORY BODIES AND COUNCILS

**Q12a and b. What vetting information should be provided by regulatory bodies? And should this be shared?**

The consultation proposed that regulatory bodies use a two prong test in deciding when to provide vetting information to the scheme. The first component of the test is if the regulatory body has taken a decision:

- not to register an individual
- to de-register a registrant
- to place conditions of practice on a registrant
- to place an interim suspension order on a registrant or
- to prosecute or take legal proceedings against a registrant

The second component of the test is that the reason for the decision suggests the registrant has harmed or risked harm to a vulnerable person over and above any harm arising from professional incompetence.

All regulatory bodies that responded agreed with the approach set out above.

The Scottish Government plans to prescribe in regulations, vetting information specific to disciplinary and other procedures set out in the rules and regulations of each regulatory body, broadly in line with the information listed in paragraphs 166 to 168 of the consultation.

Information will be extracted from current and retrospective referrals received by the scheme. If information is included in a referral about a scheme member which doesn't lead to listing, it will come within the meaning of vetting information and be added to their scheme record and therefore be disclosable. If a referral about a non-scheme member contains prescribed information and the individual subsequently applies to join the scheme, then the vetting information will form part of their scheme record.

**Q13. What information do councils hold that might be relevant to an individual's suitability to do regulated work with children or adults and how might it be gathered?**

The PVG Act allows for vetting information on PVG Scheme members to be provided by councils to be prescribed in regulations. The consultation analysis suggests that councils may hold relevant information but further work is required to define the information and to establish the means to share it effectively.

The Scottish Government will continue to discuss this issue with stakeholders to determine how to take this forward in a measured and consistent way. This provision is not expected to be up and running for go-live and instead, will be a subsequent enhancement to the scheme.

#### **4.3 HANDLING SENSITIVE INFORMATION FROM REGULATORY BODIES AND COUNCILS.**

##### **Q14a and b. Should vetting information from regulatory bodies and councils be withheld from disclosure certificates and if yes in which circumstances?**

There was widespread support from consultation respondents for any information that is held to be disclosed. All vetting information relevant to employer decisions on suitability to work with vulnerable groups will be disclosed. This will mean that some information will not be disclosed. For example, information regarding an individual's professional competence, which is not relevant to their suitability to work with vulnerable groups will not appear on a disclosure.

#### **4.4 CIVIL ORDERS**

##### **Q15. Which civil orders should be disclosed on scheme records and on standard and enhanced disclosures?**

The consultation specifically asked whether the following types of civil orders should be disclosed in scheme records and standard and enhanced disclosures.

- Risk of sexual harm order
- Sexual offences prevention order
- Notification order
- Foreign travel order

And any interim order associated with any of these.

Currently civil orders are only disclosed on enhanced certificates if the police consider that they are relevant to the post applied for. The consultation proposed that this discretion should be taken away from the police so that, in relation to work with vulnerable groups, these orders would be routinely disclosed. There was widespread support for these orders to be disclosed on PVG Scheme records.

For standard and enhanced disclosures there is no justification for disclosing such information.

The Scottish Government plans to establish that the four specified civil orders should routinely appear on scheme record disclosures and on enhanced plus disclosures but not on standard or enhanced disclosures. Enhanced plus disclosures will be available, for example, for adoption and Adults With Incapacity guardianship purposes and will consist of an enhanced disclosure as well as information about listing on the relevant list.

#### 4.5 OTHER POSSIBLE SOURCES OF VETTING INFORMATION

**Q. 16a and b. Should the fact of previous competent referrals be included on scheme record disclosures? Is there any other vetting information beyond that from the police, regulatory bodies, councils and the civil orders identified in 4.4 that should be included on disclosures?**

The Scottish Government does not intend to include details of previous competent referrals in scheme record disclosures. On balance it is felt that disclosing this information would be unfair to the scheme member and could lead to unfair suspicion and prejudice while potentially allowing an employer to cast doubt on the decision making process.

Consultation respondents gave very few suggestions as to additional sources of vetting information that could be prescribed. Currently there is no intention to prescribe additional sources of information beyond those discussed in the consultation paper.

## CHAPTER 5

### RETROSPECTIVE CHECKS AND FEES PROPOSED ACTION

#### 5.2 RETROSPECTIVE CHECKING: WHETHER AND HOW?

**Q.17 – 20. How should scheme membership be phased in? If by retrospective checking should there be a delay before it starts, over what period should it take place and how should individuals be prioritised to join the scheme?**

The first question asked whether scheme membership should be phased in through natural turnover or a managed process. The majority of respondents supported a managed process of retrospective checking.

The consultation suggested a number of options for phasing in the process: by date of last disclosure; by sector; or by random personal characteristic, such as month of birth.

Most respondents were keen to ensure that the administrative burden was spread over the full retrospective checking period therefore ruling out phasing by sector.

The most favoured option was by date of last disclosure, which would ensure that those who had never had a disclosure and so theoretically pose the highest risk join first.

A partnership approach between organisations and Disclosure Scotland will be required to make the period of retrospective checking work as only the employing organisations have employee information. The Scottish Government will further discuss with stakeholders, how best to plan the retrospective checking process.

The Scottish Government plans to phase in scheme membership using a managed process of retrospective checking. This will be carried out over a three year period, commencing one year after the scheme goes live, so that the whole process takes place over four years.

#### 5.3 FEE LEVELS AND CHARGING REGIME.

**Q21. What charging regime should be used, a two tier approach or a subscription model?**

Most consultation respondents favoured a two tier system of charging. Respondents felt that this option would be easier and cheaper than a subscription model to implement and that it would be more likely to discourage over use of the scheme.

The Scottish Government plans to introduce a two tier system of charging. A higher fee will be charged for all applications to join the scheme for the first time. The higher fee will also apply on any occasion when a full Scheme Record Disclosure is requested. The lower fee will apply to Short Scheme Record Disclosure and

Disclosure of Scheme Membership where the individual is already a scheme member.

The draft SSI setting out the proposed fee structure will be subject to further consultation and the actual fees will be announced as soon as they can be confirmed.

**Q22. Should individuals who become scheme members through volunteering be required to pay a higher tier fee for joining the scheme if and when they join the paid workforce?**

Scottish Ministers currently cover the disclosure costs for volunteers working with children and adults at risk in the voluntary sector. This arrangement will continue under the PVG Scheme.

This question effectively asks whether an employer should pay the higher fee when they recruit someone into paid work who has become a scheme member, without cost, through volunteering activities. This would effectively allow Scottish Ministers to recover their volunteering subsidy by treating the individual as a new scheme member when they entered paid employment. Respondents had mixed views on this area. Some regarded it as a legitimate recovery of costs, while others saw it as a potential barrier to volunteering

There will be no attempt to recover the cost of free scheme membership applications where the individual goes on to paid work in the regulated workforce. Instead, the rules regarding the payment of fees will be consistent regardless of how an individual joined the scheme, with the costs for volunteers in the voluntary sector covered by a subsidy from Scottish Ministers.

## CHAPTER 6

### CONNECTING WITH THE REST OF THE UK PROPOSED ACTIONS

No specific questions were asked in this area of the consultation and respondents who commented broadly supported the approach outlined.

The Scottish Government will continue to work with colleagues and agencies responsible for developing the system for the other parts of the UK through the SVG Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

Both schemes will remain separate and distinct in the detail of their operation, which will mean that people working in both jurisdictions need to be a member of both schemes and those moving between jurisdictions will need to become members of the scheme in the jurisdiction they are moving to.

However, the policy aim of all administrations involved is to create schemes that interact smoothly and effectively with one another, making them easy to use for employees and employers, while preventing any loopholes that could be exploited by those who would seek to harm vulnerable groups.

Both Acts and the Northern Ireland Order already provide for individuals who are listed in one administration to be barred from regulated work in all administrations.

In order to make this approach work, agreement has been reached on a protocol that will be used to decide which jurisdiction takes barring decisions in any given case. The guiding principle is that the jurisdiction with the more immediate exposure to any potential risk from the individual should apply its rules to consideration for listing. This will ensure that individuals are never considered for listing by both administrations on the basis of the same information. The protocol is summarised below.

#### Cross border listing decision protocol

<b>Scheme membership</b>	<b>Who makes the decision whether to list</b>
Member of the Scottish scheme only	Disclosure Scotland on behalf of Scottish Ministers will always make the decision.
Member of the SVG scheme only	Independent Safeguarding Authority will always make the decision.
Members of both schemes	Disclosure Scotland on behalf of Scottish Ministers will always make the decision if the referral, incident or conviction originates in Scotland.  The Independent Safeguarding Authority will always make the decision if the referral, incident or conviction originates elsewhere in the UK.

<p>Members of neither scheme (this is likely to be particularly relevant during the period of phasing in the scheme, where an individual is in regulated work, but hasn't yet joined the scheme and in relation to automatic listing offences where doing regulated work is not a pre-requisite to listing)</p>	<p>Disclosure Scotland on behalf of Scottish Ministers will always make the decision if the referral, incident or conviction originates in Scotland.</p> <p>The Independent Safeguarding Authority will always make the decision if the referral, incident or conviction originates elsewhere in the UK.</p>
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Detailed work is now underway to develop the secondary legislation, technical interfaces, guidance and detailed operating procedures that will be required to make for effective interaction between the two schemes. This will continue as both programmes prepare for full implementation

## ANNEX A

### FORWARD PROGRAMME FOR SECONDARY LEGISLATION

Table 1 summarises the Scottish Statutory Instruments that are already in force. Table 2 summarise the forward programme for the remaining secondary legislation (numbers refer to sections in the PVG Act).

**Table 1**  
**SSIs laid or in force**

Title	Citation	Date in force
The Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No 1) Order 2007	2007/385	1/9/2007
The Disclosure Scotland (Staff Transfer) Order 2007	2007/417	1/10/2007
The Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No 2) Order 2007	2007/564	11/1/2008
The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2008	2008/006	6/2/2008

**Table 2**  
**Secondary legislation**

<p>[1] Consultation on <i>significant</i> draft SSIs:</p> <ul style="list-style-type: none"> <li>• criteria for automatic listing (s14)*;</li> <li>• relevant offences (automatic consideration for listing) (s32)*;</li> <li>• contractors and disclosure (s67, 73);</li> <li>• fees (s70);</li> <li>• definition of protected adult (s94);</li> <li>• regulated work with children (sch 2, para 29)*; and</li> <li>• regulated work with adults (sch 3, para 14)*, <i>if needed</i>.</li> </ul> <p style="text-align: right;"><i>*affirmative procedure</i></p>
<p>[2] Publication of final RIA on secondary legislation.</p>
<p>[3] SSIs laid at the Scottish Parliament (in batches to be determined):</p> <ul style="list-style-type: none"> <li>• <i>as listed in [1] above and the following...</i></li> <li>• referral information (s3-6, 8);</li> <li>• listing procedure (s25, 42);</li> <li>• statements of scheme membership (s46);</li> <li>• vetting information (s49);</li> <li>• scheme mechanics (s63, 64, 72);</li> <li>• provision giving effect to corresponding legislation (s87, 92);</li> <li>• procedure for transfer of individuals listed under POC(S)A 2003 (s98, transitional);</li> <li>• miscellaneous disclosure provisions (Police Act 1997); and</li> <li>• amendments to Rehabilitation of Offenders Act order*.</li> </ul> <p style="text-align: right;"><i>*affirmative procedure</i></p>
<p>[4] Provisions for retrospective checking (s35) will not go to the Scottish Parliament before go-live.</p>



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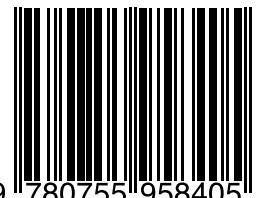
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