

This is a Scottish Government consultation and is set against the theme of protecting children from those who are unsuitable to hold a specific post or role whilst enabling those who have successfully turned their lives away from criminal behaviour to make a positive contribution to society.

It is also set at a time where the Scottish Government is taking legislative steps to raise the age of criminal responsibility from 8 – 12 years.

The consultation sets out a root and branch review of the Protecting Vulnerable Groups Scheme (PVG) and is proposing to change one of the policy principles enshrined in the 2007 Act. The present scheme is not mandatory, i.e. it is not an offence to do regulated work without being a member of the PVG scheme so long as they are not barred from doing that work.

The consultation seeks the views of stakeholders on potential changes to legislation and operation of the PVG Scheme.

The consultation document clearly indicates that there will be a mandatory scheme and the questions are about how it should be introduced and how it should work.

### **Question 19 covers this topic from Section 3**

#### **Section 2 Disclosure products and fees**

It is proposed to reduce the levels disclosures to three with an altered fee structure. All levels of disclosure will have the option of creating an account with identification and verification only being required once. This could lead to reduced costs for subsequent applications.

#### **Level 1 disclosure**

This would be available to everyone and only unspent convictions are disclosed and would be aligned with current basic disclosure, with availability to persons of 16 years and over.

The digital information would be owned by the individual who will be able to securely route or share it with any employer or any other person they choose to provide it to.

#### **There are two fee proposals.**

Option 1 £25 each time a disclosure required, this is the same the current cost for basic disclosure.

Option 2 £30 for first or one-off application (or application without creating an account).

With the creation of account subsequent applications would be reduced to £17.

#### **Questions 1 – 5 covers options and fees for level 1 disclosures**

#### **New proposed Service**

An apostille is a stamp added to disclosure to verify authenticity or (a paper attached to the original document to meet forthcoming EU regulations).

Verification of basic disclosures is a service that is currently free. The attached document will be based on a template which will be translated into the language of the requesting authority and will confirm the applicant's criminal record status.

It is proposed to charge £10 for this service. If the new service is not continued once the UK leaves the EU the service will continue in its current form for EU and non-EU members' states.

#### **Question 7 covers this section of the consultation**

## Level 2 disclosure

Level 2 would replace the current standard and enhanced disclosures; it would be post specific and tailored to the context of the disclosure and post. There are three proposed options.

It would be available to any person aged 16 or over if the relevant employment conditions are met. It is proposed that level 2 application should be available for employment and roles that are covered by the Rehabilitation of Offenders Act 197 (Exclusions and Exceptions) (Scotland) Order 2013.

Information Disclosed	Option 1	Option 2a	Option 2b
Unspent convictions from UK central records and unspent cautions from police forces in England, Wales and Northern Ireland	√	√	√
Certain spent convictions from UK central records	√	√	√
Notification requirements under Part 2 of the Sexual Offences Act 2003	√	√	√
Other relevant information provided by the chief officer of a relevant police force		√	√
Whether the subject of the disclosure is listed in one of the barred lists held under the 2007 Act			√
Whether the subject of the disclosure is subject to one or more prescribed orders			√
Proposed Costs	£30 each time	£35 first or one off without account. £23 subsequent checks with an account.	

Digital delivery and ownership as level 1 but only employers who are lawfully entitled to which would require them to be a level 2 registered body with Disclosure Scotland. A level 2 disclosure applicant for a job would be able to securely share their vetting information with a prospective employer who would only be able to electronically receive it if all the requirements were met.

Level 2 Registered Bodies would require to have staff that has been vetted by Disclosure Scotland to receive the information shared by the individual.

It would be unlawful for any employer or any other person to request access to an individual's account in order to circumvent proper checks on their legal entitlement to see higher level disclosure information.

**Questions 8, 9, 15, 16 and 18 covers this section of the consultation**

**Question 17 is a specific question about the continuation or not of the fee waiver for volunteers.**

### ***Section 3 - Regulated Work***

The consultation proposes a change from 'Regulated Work' to 'Protected Roles'. This will determine which roles would be eligible for PVG Level Checks.

The current regulated work definition is applied where the job description clearly outlines that the work being done falls within the scope of the 2007 Act and has led to over 1500 applications to the PVG being rejection each year.

It is the intention of Scottish Government to publish a list of protected roles which through engagement with stakeholders would be updated on a regular basis to keep pace with societal changes.

The proposed list is contained in Appendix B of the consultation document, sports roles are listed under Sports and Leisure and Protected Establishments.

### **Questions 20 -25 covers this section of the consultation**

#### ***PVG Membership***

The current scheme has a lifetime membership however many organisations require repeat PVG checks at variable intervals.

It was envisaged that if a PVG member left regulated work that they would ask to be removed however experience over the past seven years and research completed on behalf of Disclosure Scotland evidence that 35% of member did not know they could leave and 44% have never thought about leaving even if they are no longer doing regulated work.

**Question 32 – consults on length of time for membership with options of 1 year, 3 years or 5 years.**

#### ***Membership Card***

Views are being sought on the introduction of a PVG Scheme membership card which would give individuals ownership of the disclosure membership. The introduction of a card would enable information in an accessible format that the scheme members could use to give access to scheme information to a prospective employer. Membership cards could contain information such as scheme membership number and renewal date. This would enable potential employers to see that they were a member of the scheme but a scheme record would still be required to receive vetting information. There would be a cost to join the scheme and current members would require to be issued with cards at a cost.

Membership would be terminated if a member was placed on one of the barred lists and it would be an offence to fail to return a terminated card.

### **Questions 33 and 34 cover this section of the consultation**

#### ***Delivery of PVG Disclosures and Fees***

The potential to move to online application and digital information sharing would enable scheme members to own their information and securely store or share it. Only employers or other organisation registered with Disclosure Scotland would be lawfully entitled to see the information and they would need to have staff in place who has been vetted by Disclosure Scotland to receive the information shared by the scheme member.

It would be an offence for an employer to request access to a members PVG account in order to circumvent proper check on their legal entitlement to see higher level disclosure information. The only permitted way will be via appropriate electronic sharing of information with accredited parties.

#### ***Registered Body Fees***

It is proposed to increase the current annual fee of £75 for registered person and four counter signatories to £90.

### **Question 35 covers this section**

## Member ship Fees

	<b>Current PVG Lifetime Membership</b>	<b>Option 1 1 Year Membership</b>	<b>Option 2 3 Years Membership</b>	<b>Option 3 5 Years Membership</b>
	£59	£15 per year	£36 for 3 Years	£65 for 5 Years
<b>Method of Delivery</b>	Certificate posted to applicant	Digital Service	Digital Service	Digital Service
<b>Age Restriction</b>	Non	Not available to under 16's	Not available to under 16's	Not available to under 16's
<b>Authentication of Identity</b>	Checked by Counter Signatory	On-line ID and verification	On-line ID and verification	On-line ID and verification
<b>Access to account to update information</b>		Year Round	Year Round	Year Round
<b>Initial Sharing Information at no additional costs</b>		Share information twice	Share information four times	Share information 6 times
<b>Subsequent Sharing of Information Cost</b>		£10 each time	£10 each time	£10 each time

For all options it is suggested that subject to the provisions regarding Fee Waiver for volunteers in Qualifying Voluntary Organisation who becomes a member and takes up paid appointment would be charged appropriate fee as soon as paid employment begins.

**Questions 38, 39 and 39a cover this section.**

**Question 40 asks for proposal for transition to new scheme.**

### ***Volunteer Checks for Volunteers in Qualifying Voluntary Organisations***

The proposal to move away from lifetime membership would result in inactive scheme members being removed. There are two proposals regarding this.

Option 1 Volunteers in Qualifying Voluntary Organisation to pay £10 for five years membership.

Option 2 Removal of Volunteer after 5 years unless an organisation actively indicates a volunteering connection in a protected role which would qualify for a further 5 years free membership

**Questions 41, 21, 42, 44 and 45 cover this section**

### ***Section 4 Removing unsuitable people from work with vulnerable groups***

The beginning of this section is about Court duties, police powers and Local Authorities/Health and Social care Partnership and power to make a referral to Disclosure Scotland by Regulatory Organisations.

Persons placed under consideration for listing are not currently barred from doing regulated work during the period of consideration. This has no time limit but Disclosure Scotland may only disclose this for a period of six months before application to court is required to extend this time.

Organisations look to Disclosure Scotland for guidance whether to remove individuals from regulated work while they are under consideration for listing. To address this issue Scottish

Government propose to take powers to impose strict supervision on any person under consideration for listing where it is necessary to do so. The duration of conditions would be time limited and lapse if Disclosure Scotland does not apply for an extension from a sheriff. The new power would enable Disclosure Scotland to impose conditions in other protected roles being carried out by a person under consideration for listing. Failure to adhere to these conditions could become a criminal offence for the individual/employing body/voluntary body.

**Questions 53, 54, 55 and 56 covers this section**

### ***Applications for Removal from List***

Under section 25 of the 2007 Act an individual may apply for removal from the list at any time if they can demonstrate that their circumstances have changed or a prescribed period has lapsed. The current threshold is 10 years for those aged 18 or over and 5 years for those listed under 18.

**Questions 57 and 58 looks at 3 options for age threshold;**

- |          |                                   |
|----------|-----------------------------------|
| Option A | No change to age threshold        |
| Option B | Raise threshold to under 21 years |
| Option C | Raise threshold to under 25 years |

### ***Extending the PVG Scheme to protect children who come into contact with PVG Scheme Members working overseas***

The present scheme allows organisation recruiting in Scotland for work abroad. It is proposed that overseas work which would be a protected role if done in Scotland should be specified as a protected role. The result is that a person could be barred in Scotland and do the same regulated work abroad and the organisation would not commit an offence if they continue to employ that individual. The barred individual would not be able to join the PVG Scheme and the organisation would be notified of their non membership status but information that they were barred would not be provided.

It is proposed Disclosure Scotland be allowed to inform organisations that the person has been barred from doing regulated work.

It is proposed employing organisations registered in Scotland:

- To obtain a PVG check on any individual whom they intend to place overseas in a position that would be a protected role were it in Scotland
- To make it a criminal offence for any Scottish based organisation to knowingly offer a barred individual work overseas that would be a protected role in Scotland.
- To make it a criminal offence, prosecutable in Scotland for any Scottish based organisation to fail to submit a referral to Disclosure Scotland when they move or dismiss an individual from a protected role for conduct that would have necessitated a referral if it had taken place in the course of work in a protected role in Scotland

**Questions 59,60 and 61 covers working abroad in protected roles**

### ***Section 5 Offence Lists and Removal of spent convictions from a disclosure***

Schedule 8A and 8B offence lists have been developed to offences which must be disclosed, this has been subject to review in the past year.

**Questions 62, 63, 64 and 65 cover the schedule 8A and 8B.**

**Questions 66, 67 and 68 examines the time periods for spent convictions**

## **Section 6 – Additional Policy Questions**

### ***Other Relevant Information (ORI)***

Scottish Ministers are proposing to adopt a power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of ORI, including seeking representation from the individual before issuing it for inclusion on an enhanced disclosure or PVG scheme record.

### **Questions 72, 73 & 74 cover this proposal**

#### ***Disclosure provisions for 12 – 17 year old children***

This section looks at proposal on accrued convictions for 12 -17 year olds and outlines options for debate. It builds on the work already been done in terms of age of criminal responsibility and the intention to help and support young people to move on from early harmful or criminal behaviour whilst ensuring a system addressing those who pose risk of serious harm.

Option 1 – no change to existing system

Option 2 – Apply for children age 12 an upper age as set out in ACR Bill for children under 12

Option 3 – As option 2 however this protection would be set aside where conviction is listed on Schedule 8A or 8B of the Police Act 1997. Or where the conviction is a type that cannot become spend under the Rehabilitation of Offenders Act 1974.

This is a complex area and requires further scrutiny.

### **Question 75, 75b, 76, 77, 78, 79, 80,81 and 82 cover these topics**

#### ***Registered persons and counter signatories for higher level disclosure applications***

Section 120 of the 1997 Act makes provision for a register of individuals to be held by Disclosure Scotland to countersign higher level disclosure applications. The option set out in Section 3 a counter-signatory will have a part to play in the future disclosure arrangements for proposed Level 2 and PVG Level disclosures.

It is proposed to introduce a minimum age of 18 years for people who want to become registered person or those who are nominated to be counter signatory in connection with level2 and PVG level disclosures.

### **Question 83 covers this proposal**

#### ***Private individuals – work with children***

This section does not propose changes to the current approach and has not addressed private individuals working in what may be protected roles for instance Private Sports Coach work with child or children under 18 in a self employed position.

### **Questions 85, 86 and 87 covers this topic**

#### ***Charity Trustees***

**Question 88 looks at the scope of the Act for charity trustee of organisations that work with both children and protected adults to become PVG members.**

***Notification requirements under Part 2 of the Sexual Offences Act 2003***

**Question 89 looks at bringing into force amendment at section 78(1) 2007 Act**

This is a technical question which would require legal advice.

**Questions 90, 91, 92, 93 and 94 are catch all questions on potential impacts and opportunities as a result of the proposals.**

***Section 7 – Non legislative changes***

This section outlines the steps Disclosure Scotland is or will be taking to resolve some of the non legislative issue raised by Stakeholders including how to address the issues around the duty to refer and the complex format. They are committed to a process of co-design with stakeholders and users to address issues including necessary arrangements who cannot use digital channels.