



Protection of Vulnerable Groups and the Disclosure of Criminal Information

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Question 1: Do you agree that reducing the disclosure products will simplify the system?

Yes No

Question 1a: If you have answered no, what do you think will simplify the system?

Question 2: As we are trying to simplify the system, do you have any views on what this product should be called?

Basic Level 1 Other (please state)

Question 3: As an applicant, do you have any concerns with this approach?

Yes No

Question 4: Which fee option do you prefer for the level 1/Basic disclosure?

No comment

Question 5: Do you agree that it is appropriate to regulate registered bodies in relation to B2B applications?

Yes No

No comment

Question 6: What impacts, if any, do you foresee from moving from a paper based system to a digital system?

We welcome the move towards a digital system. It is important to make sure that paper alternatives are available where necessary or appropriate. There may also be opportunities to link up relevant systems. As ever the challenge with digital will be – as it can be with paper – to make sure that the information is authentic and that people accessing the Disclosure information are aware of the date the check was carried out.

There may be additional challenges arising from the use of digital systems, as some people may lack the skills to engage with digital technology. There is a need to provide support and documentation to assist users.

There is also a need to make sure that these systems meet accessibility and security standards.

Questions 7: Do you agree with our proposed fee for the apostille service?

Yes No

No comment

Question 7a: If not, what do you think the fee should be?

Question 8: Are there any professions/roles for the Level 2 disclosure that are not included that should be on the list?

Yes No

Question 8a: If you have said yes, please note what these are.

The list should include 'any office or employment in the Scottish Social Services Council.

Question 9: Are there any professions/roles you think should be removed from the list?

Yes No

Question 9a: If you have said yes, please note what these are.

Question 10: Do you agree with the proposal to remove certain kinship carers and all foster carers from a membership scheme?

Yes No

We do not agree with this proposal. We recognise the concerns about disproportionality and the need to balance these concerns against wider public protection issues. There may also be a need to consider how the views of the children and families who use these services are considered. We believe that there is a need to explore these issues further.

Question 11: Do you think that the two types of kinship arrangements should continue to be treated differently under the future arrangements?

Yes No

Question 12: Do you agree with this proposal that any member of the fostering/kinship household aged over 16 will require a level 2 check?

Yes No

Question 13: Do you agree with the proposal that a level 2 check should be undertaken by anyone in the foster/kinship carers network who supervises the children?

Yes No

Question 13a: Do you think that anyone else in the foster/kinship carer's network needs to be checked? If so, who and why?

Question 14: It is currently not possible for individuals over the age of 16 residing in a residential school setting (for example, spouses of house parents), but who do not have specific responsibilities, to obtain an enhanced disclosure. We believe that they should be subject to a Level 2 disclosure, do you believe that this is the correct approach going forward?

Yes No

Question 15: Which option should be the content of the Level 2 disclosure product be based upon? Please provide the reason for your choice.

Option 1 Option 2a Option 2b

Question 16: Which price option do you prefer for the Level 2 product?

Option 1 Option 2

Question 17: Is it proportionate that the free checks should continue for volunteers who obtain Level 2 disclosures?

Yes No

Question 18: What issues, if any, do you foresee with a move to a digital service?

Please see our answer to question six.

Question 19: How should a mandatory PVG Scheme be introduced and how should it work?

The SSSC has registered over 100,000 social service workers over the past decade. We've taken a phased approach to registration. We're happy to share our learning and experience.

Question 20: Do you agree with the proposal to replace the "regulated work" definition with a list of roles/jobs?

Yes No

Question 21: Do you foresee any challenges for organisations from this proposed approach?

Yes No

1. Reviewing and maintaining this list in the social service sector at a time when there are new models of care. Employers will be able to advise on new roles.
2. There is potential for confusion as employers use a range titles for roles. It will be important to develop clear and robust job descriptors.

Question 22: Are there any roles/jobs not within the list in Annex B that you think should be subject to mandatory PVG scheme membership?

Yes No

Question 22a: If so, please provide more detail on why.

We think there is a need to review the way that the social service workforce is defined in relation to PVG. The Public Services Reform (Scotland) Act 2010 (sections 46 – 48) sets out legal definitions for social services, care services and social work services. Definitions for registered services (such as housing support services and day care of children) are contained with Schedule 12 of the Act. There are a few issues with the existing list. For example, it doesn't include social work assistants, criminal justice assistants or family support workers. This list doesn't appear to include early learning and childcare workers.

In Annex B we would remove the 'registered' in 'Registered social service worker.' Workers new into a role recognised for registration will have six months from the date they start in their role to register with the SSSC. The use of 'registered' could also be confusing as some workers have the option of registering with alternative bodies. Similarly, the use of 'registered' isn't always appropriate as some social service workers do not register with the SSSC or alternative bodies. For example, we register adult day care managers but we do not register other staff in these services.

Question 23: To avoid inappropriate membership, what criteria to you think should be used to decide if an individual is in a protected role?

No comment.

Question 24: Do you think that the decision about whether someone who is in a protected role meets an exception which makes them ineligible for the PVG Scheme should be taken by Scottish Ministers?

No. We believe that this decision that should be devolved to Disclosure Scotland.

Question 25: Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?

No comment.

Question 26: Are there any welfare services that provide support to individuals with particular needs that should be added, or are there any services that should be removed?

Yes No

Question 26a: If yes, please state what these are

We think this should be considered as part of a clearer definition of social services. Please see our response to question 22a.

Question 27: There is the question of the extent to which someone has to be involved in the delivery of a service to bring them within the scope of doing regulated work. At present, the front-line member of staff or volunteer whose

normal duties require them to carry out certain activities with an adult, such as 'caring for', means that staff member is doing regulated work.

Is this appropriate?

Yes No

Question 28: Should the immediate line manager of that member of staff is also able to become a scheme member?

Yes No

Question 29: Outwith the activities, a person can be doing regulated work with adults if they work in certain establishments, namely, a care home; or in residential establishment or accommodation for people aged 16 or over. Do you think these are the correct facilities, or should any be added or removed?

Yes No

Yes, we think more should be added.

Question 29a: If yes, please state what these are

Please see our response to question 22a.

Question 30: There are also certain exclusions that apply to work in such establishments. A person whose normal duties involve working in such a place will only be doing regulated work if doing something permitted by their position gives them unsupervised access to adults, and where that contact with the adults is not incidental. Do you think this approach is clear and helpful?

Yes No

Question 31: the appointment of a person into certain positions in relation to services for adults means that membership of the PVG Scheme is possible. The positions are:

- member of a council committee or council sub-committee concerned with the provision of education, accommodation, social services or health care services to protected adults
- the chief social work officer of a council, and
- charity trustee of a charity whose—

(a) main purpose is to provide benefits for protected adults, and

(b) principal means of delivery of those benefits is by its workers doing regulated work with protected adults.

Do you think that list of positions is correct?

Yes No

Question 31a: Should it be amended either by adding to it, or by taking away from it?

In recent years social services have been provided by a range of public, private and voluntary providers. This approach is changing and the composition of these services is becoming increasingly diverse and complex. We would recommend revisiting this list to ensure these wider changes are taken into account.

Question 32: How long should scheme membership last in a mandatory scheme?

a) 5 years

b) 3 years

c) 1 year

Question 33: Do you think a membership card would be beneficial to you as a member of the PVG scheme?

Yes No

We do not believe that a card would be useful. The card would only be valid at the time it was produced.

Question 34: Do you think a membership card would be beneficial to you as an employer?

Yes No

Question 35: Do you agree with the proposals to review the conditions for registered bodies as set out in the Code of Practice and Police Act 1997 and to develop a scheme that can be delivered digitally, that includes registered body duties where possible?

Yes No

Question 36: What is your preferred option for membership and costs for PVG level disclosure?

Option 1 Option 2 Option 3

Question 37: Are you in favour of being able to interact with Disclosure Scotland online to manage PVG scheme membership?

Yes No

Question 38: Are you in favour of using electronic payment method for fees?

Yes No

Question 39: Do you have an electronic payment method that you prefer?

Yes No

Question 39a: If you have answered 'yes' please say what it is:

Question 40: Do you have any proposals on how the transitional arrangements for moving away from a life-time scheme membership should work?

We suggest a phased approach with clear timescales. Once a date has been set for the scheme to become mandatory all existing members who continue to be eligible for membership would need to opt in. Once members of the new scheme we suggest that members renew every five years or their membership ends.

Question 41: Should volunteers continue to receive free membership?

Yes No

Question 41a: If no, should they be subject to a reduced fee?

Yes No

Question 42: Do you agree that voluntary organisations seeking to benefit from a reduced fee or the fee waiver should be subject to a public interest test?

Yes No

Question 42a: If so, how should that test be defined?

Question 43: Do you agree that employees and employers alike (including volunteers and volunteering bodies) who work or allow an individual to work in protected roles without joining the PVG Scheme or to stay in protected roles after membership has expired should be subject to criminal prosecution?

Yes No

Question 44: Do you agree that any scheme member who fails to pay the relevant fee to renew their PVG Scheme membership and where there are no employers (or volunteering bodies) registered as having an interest in them in a protected role should exit the PVG Scheme automatically at the expiry of their membership?

Yes No

Question 45: Should a person who joined the Scheme as a volunteer and benefitted from free entry later try and register a paying employer against their volunteer membership then the full fee would become payable and a new 5 years of membership would commence. Do you agree with this?

Yes No

Question 46: Do you agree with our proposals to dispense with the current court referral procedure under section 7 of the 2007 Act?

Yes No

Question 47: Are there offences missing from the Automatic Listing Order that you think should be included? You can access the order [here](#)

Yes No

Question 47a: if you answered yes to question 47, please list the offences you believe are missing

Question 48: Do you agree with proposals to create new referral powers for the Police?

Yes No

Question 49: Do you agree these powers should be limited to when police have charged a person with unlawfully doing a Protected Role whilst not a scheme member or where a referral has not been made by a relevant organisation?

Yes No

We would anticipate that police would refer any registered workers to us under the notifiable occupations scheme.

Question 50: Do you think this proposal, to extent the powers of referral currently available to regulatory bodies to local authorities/health and social care partnerships, closes the safeguarding gap in terms of self-directed support?

Yes No

We think these proposals help to close the gap.

Question 51: Do you think that this list of regulatory organisations with powers to make referrals should be amended?

- **Healthcare Improvement Scotland**

- The Registrar of Chiropractors
- The registrar of dentists and dental care professionals
- The registrar of the General Medical Council
- The registrar of the General Optical Council
- The Registrar of health professionals
- The Registrar of nurses and midwives
- The Registrar of Osteopaths
- The registrar of pharmacists
- Social Care and Social Work Improvement Scotland (the Care Inspectorate)
- The General Teaching Council for Scotland
- The NHS Tribunal
- The Scottish Social Services Council

Yes No

We think current powers should be expanded so powers to refer are not restricted to those within the scope of registration.

Question 52: If you think the list should be amended, please gives details of additions or removals.

The Registrar of Independent Schools should be added.

Question 53: Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions on individuals under consideration for listing?

Yes No

Yes, although perhaps there could be potential to impose specific conditions in future?

Question 54: If yes, how long should the conditions last before lapsing?

a) 3 months

b) 6 months

They should last for at least six months. Most police or third party investigations are not concluded within this period. Setting the condition for least six months would prevent having to continually ask for conditions to be reapplied.

Question 55: Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why?

This should apply if there is an imminent risk to protected groups.

Question 56: Do you agree that it should be a criminal offence if an individual and employer/voluntary body failed to comply with standard conditions?

Yes No

Question 57: Do you agree the age threshold for the shorter prescribed period for a removal application from inclusion on the list(s) to be made should be raised?

Yes No

No comment

Question 58: Which option do you prefer?

- a) no change to the age threshold
- b) raise the age threshold to under 21 years
- c) raise the age threshold to under 25 years

Option A Option B Option C

No comment

Question 59: Do you think it's appropriate that organisations, irrespective of where the regulated work is to be carried out, should be informed of a listed individual's barred status?

Yes No

Question 60: Do you agree with our approach for PVG Scheme Members in a protected role overseas or organisations employing PVG members to do a protected role, such as providing aid services?

Yes No

Question 61: We are proposing that there should be criminal offences in relation to organisations who employ barred persons overseas. Do you think that we should also consider introducing criminal offences in relation to barred individuals offering to undertake a protected role overseas?

Yes No

No comment

Question 62: Are there any offences missing from either list, those being schedule 8A or schedule 8B, that you think should be included? If so what are they, on what list should they appear and why?

No

Question 63: Are there any offences on schedule 8A that you think should be on schedule 8B? If so, please list them and explain why.

No

Question 64: Are there any offences on schedule 8B that you think should be on schedule 8A? If so, please list them and explain why.

No

Question 65: Do you agree with the categorisation of the new offences included in Annex C?

Yes No

Question 65a: If no, please state how they should be categorised.

Not applicable

Question 66: Do you believe the rules for disclosure in the current form of 15 years and 7.5 years provide appropriate safeguarding and privacy protections?

Yes No

Question 67: Do you agree that a reduction in the disclosure periods from 15 & 7.5 years is appropriate considering the changing policy on rehabilitation of offenders?

Yes No

Question 68: What period between 11 and 15 years do you think is appropriate for disclosure?

11 12 13 14 15

Question 69: Do you think the application process to seek removal of a spent conviction should be reviewed?

Yes

Question 70: At present an individual has three months from the date of notification of an intention to appeal to make an application to a Sheriff. Do you think this time period is:-

Too long Too short Correct

Question 70a: If you indicated that the time period is too long or too short, what do you think the time period should be?

Four weeks

Question 71: Do you think any of the options set out above, those being the *introduction of an administrative process stage prior to application to a sheriff, the introduction of an independent reviewer or making an application to a tribunal*, offer viable alternatives to an application to a Sheriff?

Yes No

Question 71a: If yes, which one?

Question 71b: If not, do you have any other suggestions?

Question 72: Do you agree that Ministers should have a power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of ORI, including seeking representations from the individual before issuing it for inclusion on an enhanced disclosure or PVG scheme record?

Yes No

Question 73: Do you agree with Ministers proposals to allow for representations to the chief constable before disclosure of ORI to a third party and for providing the individual with the option to appeal to an independent reviewer before ORI is disclosed?

Yes No

Question 74: Do you agree that the independent reviewer being appointed under the ACR Bill should be used for reviewing ORI?

Yes No

Question 75: Should there be specific provisions reducing the possibility of the state disclosure of criminal convictions accrued by young people 12 years or older on all types of disclosure?

Yes No

Question 75a: If there should, what age range should the special provisions apply to?

1. 12 – 14 years
2. 12 – 15 Years
3. 12 – 16 years
4. 12 – 17 years
5. 12 – 18 years
6. 12 – 21 years

Question 75b: Please tell us why you have selected an age range or given your answer.

Questions 76: Should there be a presumption against the disclosure of all convictions accrued between 12 and a specified upper age, with the only possibility being police disclosure as ORI after ratification by the Independent Reviewer on the Level 2 and PVG Level disclosures?

Yes No

Question 77: Should there be no state disclosure of any conviction between the age of 12 and the specified upper limit, except where the conviction is for an offence listed in schedule 8A or 8B?

Yes No

Question 78: If there is a disclosure of an 8A or 8B conviction(s) should all other unspent convictions be disclosed even if the other unspent convictions are for offences not listed in schedule 8A or 8B?

Yes No

Question 79: Should disclosure applicants with 8A and 8B convictions be able to apply immediately to a sheriff (or other authority) to have those treated as protected regardless of the passage of time?

Yes No

Question 80: When including ORI on any disclosure about conduct between the age of 12 and the upper age limit should the police only be able to refer to matters they reasonably considered to be serious?

Yes No

Question 81: Do you agree with the proposal to place a lower age limit on applicants for criminal record checks?

Yes No

Question 82: In what circumstances should a criminal record check for a child under 16 be permitted?

Question 83: Do you have any concerns with the proposal to introduce a minimum age of 18 years for people who want to become registered person or those who are nominated to be countersignatory in connection with Level 2 and PVG Level disclosures?

We do not believe it is appropriate to set this minimum age for registered persons or countersignatures. Some employers could have workers below 18 years of age who are undertaking this role. This is a decision for employers.

Question 84: Do you think a supported person arranging self-directed social care should have access to vetting information which could include details about previous convictions relating to a prospective carer?

Yes No

Question 84a: If you responded 'No' to Q84 , do you have any suggestions about how Disclosure Scotland checks could be structured to assist a supported person making their own arrangements for self-directed social care?

Question 85: Do you think this approach for private individuals working with children or protected adults is correct?

Yes No

No comment

Question 86: Do you think that specialised interpreters whose assistance may be needed to allow a person to participate in day-to-day life it should be regulated work?

Yes No

No comment

Question 87: Should vetting information be available if the arrangements are being made by a private individual?

Yes No

No comment

Question 88: Do you agree that the law be changed to sort this anomaly that a charity must have one main purpose only, that is work with children or work with protected adults, for a trustee to be able to join the PVG Scheme and if a

charity has as its main purpose services directed at both vulnerable groups then trustees cannot apply to join the PVG Scheme?

Yes No

Question 89: Do you think that provision should be made to bring into force the amendment at section 78(1) of the 2007 Act that would have allowed information about a notification requirement under the 2003 Act made following an application by a chief constable to be included on a basic disclosure?

Yes No

Question 90: Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on any particular groups of people?

We believe these proposals will play a key part in modernising this system. They will have positive benefits for potential applicants and the people they support.

Question 91: Please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

We note that the level 2 will only be open to 'any person aged 16 or over if the relevant employment conditions are met' (p21 of consultation). In Scotland it is possible to leave school before turning 15. For example, if you turn 16 between 1 March and 30 September you can leave school after 31 May of that year. Setting an age limit at 16 may mean that a small number of people are unable to apply for a level 2 prior to or at the start of their employment. We think flexibility may be required here.

Question 92: Please tell us about any potential impacts you think there may be to particular businesses or organisations?

Some proposals will impact on workers registered with the SSSC and their employers. These workers will have two sets of fees and two renewal processes to follow. These processes may have substantial implications for workers. A failure to maintain PVG scheme membership will have implications for a worker's registration and their ability to work. Where relevant it may potentially lead to a referral to the SSSC.

Employers will need good access to online information about their employees to know if their membership is current and when their fees are due. They will need a system which can help to ensure employees aren't potentially committing an offence by working without a valid membership. Organisations will need this information for all employees to allow them to link this to their own monitoring systems.

The SSSC will require notification of any conditions imposed on an individual's PVG membership as this may also have an impact on their registration with us.

Question 93: Please tell us about any potential impacts you think there may be to an individual's privacy?

Question 94: Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?