

ABERDEEN CITY COUNCIL

COMMITTEE	Public Protection Committee
DATE	4 July 2018
REPORT TITLE	Protection of Vulnerable Groups and the Disclosure of Information
REPORT NUMBER	OPE/18/044
DIRECTOR	Rob Polkinghorne
REPORT AUTHOR	Eleanor Sheppard
TERMS OF REFERENCE	1.1

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek Committee approval to submit the proposed Aberdeen City Council response to the Scottish Government consultation on the Protection of Vulnerable Groups and the Disclosure of Criminal Information by 18th July 2018.

2. RECOMMENDATION(S)

It is recommended that Committee:

- 2.1 Instruct the Chief Operating Officer to submit the response detailed in this report by the 18th July 2018.

3. BACKGROUND

3.1 Disclosure Scotland

Disclosure Scotland is an Executive Agency of the Scottish Government. It exercises the functions of the Scottish Ministers under the Police Act 1997 ("the 1997 Act") and the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") to issue both basic and higher level disclosures in Scotland. The Rehabilitation of Offenders Act 1974 ("the 1974 Act") provides for a system of protection to individuals with previous convictions not to have to disclose their convictions in certain circumstances. Without the 1974 Act, the common law position would require people to answer, truthfully, any questions about their offending history.

3.2.1 The 1974 Act – Spent Convictions

Under the existing terms of the 1974 Act, subject to certain exclusions and exceptions provided for in secondary legislation, anyone who has been convicted of a criminal offence and sentenced to custody for a period of 30

months or less can be regarded as rehabilitated after a specified period has expired, provided he or she receives no further convictions. After that period has expired, the conviction is treated as ‘spent’. A person can also become rehabilitated after receiving an alternative to prosecution such as a fiscal warning or a fiscal fine. The general rule is that, once a conviction is spent, that individual does not have to reveal it and cannot be prejudiced by it.

3.2.2 The Policy of the 1974 Act

The central policy behind the 1974 Act is that people should be able to move on from their previous offending behavior after sufficient time has elapsed and where their behavior was not of a severity that it must be disclosed forever. The approach allows individuals to reintegrate into their community and obtain suitable employment. All disclosures made by Disclosure Scotland are impacted by the rules in the 1974 Act.

3.2.3 Exceptions to the Policy

The protection provided by the 1974 Act does not apply in all circumstances. Scottish Ministers have a power to make certain exclusions and exceptions. In certain cases, depending on the type of job or employment in question, a person cannot deny the existence of certain spent convictions. It is in these cases that ‘higher level’ or ‘enhanced’ disclosures’ are available from Disclosure Scotland.

3.2.4 Enhanced Disclosures to Protect Vulnerable Groups

Disclosure Scotland established Enhanced disclosures to offer a higher level of assurance. These checks allow for certain spent convictions to be included although still ensure that only relevant spent convictions are included. The vast majority of spent convictions are relatively minor and will not be disclosed; but some are more serious and will be disclosed for a period of 15 years (or 7 years and six months) after conviction, even when otherwise spent, and some are so serious that they must always be disclosed. The Scottish Government publishes lists of the types of convictions that are to be disclosed for 15 years (or 7 years and six months) and those that are disclosed forever unless a sheriff directs otherwise.

3.2.5 Categories of Disclosure

Disclosures made under the 1997 Act are:

- Basic
- Standard (a higher level disclosure)
- Enhanced (a higher level disclosure)

This system was enhanced in February 2011 with the PVG Scheme for individuals doing ‘regulated’ work.

3.3.1 Information provided by the PVG Scheme

Disclosures made under the 2007 Act are:

- Statement of scheme membership (contains no vetting information);
- PVG scheme record disclosure (a higher level disclosure);
- PVG short scheme record (contains no vetting information).

3.3.2 How the PVG Scheme Works in Practice

The basic purpose of the PVG Scheme was to provide a system for individuals doing ‘regulated work’ with children or with protected adults (as defined in the 2007 Act). Previously such individuals would have been entitled to Enhanced Disclosures under the 1997 Act. So, in effect, the 2007 Act set up a separate system of disclosures for persons doing regulated work with children or protected adults and removed them from the scope of the 1997 Act provisions.

3.3.3 Applying to Join the Scheme to be able to work with Regulated Groups

When an individual applies to join the PVG Scheme, Disclosure Scotland check the police criminal history systems and also check if the person is barred from working with children or protected adults anywhere in the UK. A barred person cannot join the PVG Scheme to do regulated work with the vulnerable group they are barred with; children, protected adults or both groups.

3.3.4 Vetting Information and On-going Monitoring of Information

The information contained on a PVG scheme record is called ‘vetting information’ but it is the same information as was contained in an Enhanced Disclosure. The major difference between 1997 Act disclosures and the PVG Scheme is that after someone first applies for PVG scheme membership, Disclosure Scotland will continuously update and monitor their scheme record for as long as they remain a member. If new vetting information is added to the scheme record, for example convictions or police information, Disclosure Scotland will learn about this and can consider whether the new information means that it may be appropriate to bar the person from working with children, protected adults or both groups depending on which group they are a scheme member for.

3.3.5 Consideration for Listing Process

When it checks the person’s criminal record, Disclosure Scotland might find information about past convictions or cautions. In these circumstances Disclosure Scotland will decide if the information means that it may be appropriate to add the individual to the list of people barred from regulated work with children, protected adults or both groups. This part of the process is called the ‘consideration for listing process’.

3.4.1 Disclosure Scotland Powers

If Disclosure Scotland decides that it is appropriate to consider an individual for listing (barring) they will place the individual in the formal status of being under ‘Consideration for Listing’. Any PVG scheme record disclosure made within six months of this decision for the type of regulated work concerned will state that the individual is under consideration for listing. Disclosure Scotland retains all its powers to gather information pertinent to the consideration.

3.4.2 Disclosure Scotland can use powers to gather information about the individual concerned and decide whether the individual is unsuitable for regulated work.

If Disclosure Scotland decides to bar the individual, then they are also barred across the whole of the UK and would commit a serious criminal offence if they sought to or actually did such work.

3.4.3 Duties on Employers

It is a serious offence for an employer to employ a barred person to do regulated work. The only way that an employer can be sure that someone is not barred is to do a PVG check; this incentivises the use of the PVG Scheme although the Scheme is not mandatory.

3.5.1 Why are Changes to the Scheme being Proposed?

There are 1,141,167 PVG scheme members. There are 5,295 individuals barred from doing regulated work. The number of barred individuals includes those convicted in courts for offences that automatically lead to barring, such as a rape (of any person, adult or child) or the murder of a child.

3.5.2 Changes Since 2011

Over the last 7 years Disclosure Scotland has communicated with stakeholders and customers and has identified a number of areas where the PVG Scheme can operate more effectively or where modernisation is appropriate. It is felt that the time is right to review the legislation and determine whether it still fits with today's landscape and also whether developments in digital technology can deliver an even more assured and customer-focused PVG Scheme that better serves employers, volunteering organisations and individuals alike.

3.5.3 Pre-consultation engagement

Disclosure Scotland carried out three rounds of engagement before publishing this formal consultation. To ensure a high level of stakeholder engagement, it used a number of channels and methods throughout the pre-consultation process. A wide range of participants took part in the pre-consultation engagement including:

- Local Authorities
- NHS Boards
- Sport Governing Bodies
- Educational Institutes
- Church Groups
- Third sector organisations

The evidence gathered during this pre-consultation assisted the Scottish Government in the development of the proposals currently being consulted on.

3.6.1 The Current Consultation

The current consultation seeks views on potential changes to legislation relating to a range of Disclosure Scotland functions in order to modernise the approaches of Disclosure Scotland.

3.6.2 Disclosure Scotland Products

There are 10 different products offers by Disclosure Scotland under the 1997 Act and 2007 Act. This can lead to confusion around which product is the most appropriate and present accessibility issues. It is thought that reducing the number of products would reduce the complexity. It is proposed that two levels of disclosure are offered and PVG level products:

- Basic level disclosure where unspent convictions are disclosed;
- An enhanced level disclosure which is tailored for a specific post and includes unspent convictions, certain spent convictions and permits the Police to include non-conviction information; and

- The current PVG scheme which provides the same information as the enhanced level but in addition is subject to on-going monitoring and updating for those in positions of trust and power with children and protected adults

Disclosure Scotland aspire for a digital system to help guide applicants to the right disclosure type.

3.6.3 Aberdeen City Council Response to the Consultation

- Q1** ACC agree with the proposed approach and welcome a reduction in the number of products to simplify the process.
- Q2** ACC believes that the basic disclosure be known as Level 1 Disclosure
- Q3** ACC has no concerns about the approach being proposed
- Q4** ACC proposes that fees are in keeping with Option 2 in order to keep costs to a minimum and limit costs for individuals in temporary work
- Q5** ACC agrees it would be beneficial to regulate registered bodies in relation to bulk applications. This will ensure that they work to an agreed Code of Practice and are able to send and receive the information on behalf of the organisation.
- Q6** ACC has no concerns about moving from a paper-based system to a digital system
- Q7** ACC agrees with the £10 fee for the Apostille Service (under a forthcoming EU regulation) to verify authenticity and translation of documents for those seeking employment outwith the United Kingdom is reasonable
- Q8** ACC agrees with the stipulated list of professional roles that would require a Level 2 disclosure
- Q9** ACC don't believe that any of the professional roles should be removed from the list

3.6.4 Foster Carers/Kinship Carers

- Q10** ACC agrees that Foster Carers/some Kinship Carers should be subject to a Level 2 disclosure rather than on-going membership of the PVG scheme to bring greater consistency
- Q11** ACC agrees that the two types of kinship arrangements should continue to be treated differently, i.e. a Level 1 disclosure for direct family members looking after a non-looked after child and membership of the PVG scheme for those who are not related to the child being supported

- Q12** ACC agrees that any member of the household, or those who regularly stay overnight and over the age of 16 should be subject to a level 2 check
- Q13** ACC agrees that anyone else in the foster carer/kinship carer's network should be Level 2 checked.

3.6.5 Independent Schools

- Q14** ACC agrees that spouses of house parents living in a residential school setting should be subject to a Level 2 check

3.6.6 The Content of the Level 2 Disclosure Product

- Q15** ACC proposes that Option 2b forms the basis of the Level 2 disclosure as it provides the most comprehensive checks for those working with vulnerable groups
- Q16** ACC proposes the Option 2 price option as it presents best value to money in the longer term
- Q17** ACC agrees that costs for volunteers should continue to be free to the volunteer with the costs met by Scottish Ministers
- Q18** ACC agrees with the proposal to move to a digital service but recognise that this change would have to be well communicated to potential employees

3.6.7 Reforming the policy underpinning the PVG scheme

- Q19** ACC agrees that the PVG scheme should be mandatory for all adults working in sensitive roles with children and protected adults. This should be introduced following detailed communication and awareness raising campaign with the date of the requirement shared so that organisations have time to prepare for implementation.

3.6.8 Replacing the idea of regulated work with a clear list of 'protected' roles (voluntary and paid)

- Q20** ACC agrees with the proposal to replace 'regulated work' with a definition of roles and jobs and agree with the proposed list
- Q21** ACC do not foresee any challenges although roles can be entitled differently by different organisations so this approach would have to kept under regular review.
- Q22** The list enclosed in the consultation is comprehensive and does not require to be added to.

3.6.9 Additional Factors

- Q23** ACC proposes that membership will be required when either the applicant will have routine contact or when they have direct responsibility for a vulnerable group
- Q24** ACC agrees that the decision around eligibility should be taken independently by Scottish Ministers in order to ensure consistency
- Q25** ACC believes that all roles listed in Appendix B should be included in the PVG scheme

3.6.10 Definition of a Protected Adult

- Q26** ACC agrees with the list of services highlighted and agreed that all should require membership of the scheme
- Q27** ACC agrees that 'caring for' is an appropriate means of determining if staff are undertaking regulated work
- Q28** ACC believes this is appropriate and will assure both quality of service and the wellbeing of children, young people and adults
- Q29** ACC agrees that the facilities listed are correct.
- Q30** ACC agrees that this is a helpful approach in determining eligibility
- Q31** ACC agrees with this list of positions

3.6.11 Making the PVG Scheme Membership time limited requiring periodic renewal

- Q32** ACC believes that membership should last for 5 years before renewal is required

3.6.12 Membership Card

- Q33** ACC believes that a membership card with clearly stipulated dates for renewal would be helpful to remind colleagues of the need to re-register
- Q34** ACC does not see any benefits of a membership card to the employer

3.6.13 Fees and Delivery of PVG Disclosures

- Q35** ACC agrees with the proposals to increase the fee for registered bodies in line with inflation
- Q36** ACC prefers option 3 in keeping with a need to re-register every 5 years
- Q37** ACC agrees that there is a need to interact with Disclosure Scotland on-line
- Q38** ACC is in favour of using an on-line payment method for fees

Q39 ACC does not favour any electronic payment method but would want to be assured around the safety of personal information.

3.6.14 Transitional Arrangements

Q40 ACC believes that a phased approach will be necessary with different roles moving across the new scheme at different times. This will enable organisations to support the process in a planned way.

3.6.15 Volunteer Checks

Q41 ACC believes that volunteers should continue to receive free membership of the PVG scheme

Q42 ACC agrees that Voluntary organisations seeking to benefit from a reduced fee or fee waiver should be subject to a public interest test.

Q43 ACC agrees that employers and employees who work in protected roles without joining membership of the scheme should be subject to criminal prosecution

Q44 ACC agrees that any member who fails to pay the relevant fee to renew their membership and where no employers are registered as having an interest in them should be automatically removed from the scheme at the expiry of their membership.

Q45 ACC doesn't agree that volunteers who benefited from free membership should be charged if they register a paying employer against their volunteer membership.

3.6.16 Removing Unsuitable People from Work with Vulnerable Groups

Q46 ACC agrees with the proposal to dispense the court referral procedure

Q47 ACC agrees with the list of offences which will generate an automatic listing.

Q48 ACC agrees with the proposals to create new referral powers for the Police

Q49 ACC agrees that these powers should be limited to when the Police have charged a person who has been unlawfully undertaking a protected role whilst not a scheme member

3.6.17 Local Authorities and Health and Social Care Partnerships

Q50 ACC agreed that the Local Authority and Health and Social care Partnership should be able to make a referral in order to safeguard children, young people and adults and that this will help safeguard self-directed support.

- Q51** ACC believes that the list of regulatory organisations is correct and does not require to be amended.
- Q52** ACC doesn't believe the list should be amended.
- Q53** ACC agrees that 'listed' individuals should have standard conditions during the 6 month period.
- Q54** ACC believes that conditions should last for the full six months
- Q55** ACC believes that this will be hard to quantify and that decisions should be taken on an individual basis to ensure a proportionate response.
- Q56** ACC agrees that it should be a criminal offence if an employer or employee/volunteer failed to comply with standard conditions
- Q57** ACC agrees that the age threshold for the shorter prescribed period for a removal application should be raised
- Q58** ACC favours option B, raising the age to 21

3.6.18 Extending the PVG Scheme to protection children and adults who come into contact with PVG members working overseas

- Q59** ACC agrees that organisations, irrespective of where the regulated work is to be carried out, should be informed of the listed individuals barred status.
- Q60** ACC agree that the scheme should be extended to ensure that those offering aid overseas through an employer registered in Scotland should also be covered by the need for PVG membership
- Q61** ACC agrees that it should be a criminal offence for an employer to employ barred persons overseas

3.6.19 Schedule 8A and 8B Offence Lists

- Q62** ACC agrees with the offences list as provided.
- Q63** ACC agrees that the offences are recorded on the correct list
- Q64** ACC agrees with the offences list as provided
- Q65** ACC agrees with the categorization

3.6.20 Applications to a Sheriff for Removal of Spent Convictions from a Higher Level Disclosure

- Q66** ACC agrees that the current rules for disclosure in the current form of 15 years and 7.5 years provide appropriate safeguarding and privacy protections
- Q67** ACC agrees that there is a need to reduce disclosure periods is appropriate considering the changing policy on the rehabilitation of offenders
- Q68** ACC believes that a period of 13 years is appropriate for disclosure.

3.6.21 Removal of Spent Convictions from a Disclosure

- Q69** ACC agrees that the application process to remove a spent conviction should be reviewed.
- Q70** ACC believes the time limit of 3 months to make an application to the Sheriff is correct.
- Q71** ACC believes that the option of an Independent reviewer could be helpful.

3.6.22 Additional Policy Questions

- Q72** ACC agrees that Ministers should have the power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of other relevant information.
- Q73** ACC agrees with the proposal to allow representations to the Chief Constable and to be provided with the opportunity to appeal to an independent reviewer before other relevant information is disclosed.
- Q74** ACC agrees that the independent reviewer appointed should be used for reviewing other relevant information.

3.6.23 Disclosure Provision for 12 – 17 year old children

- Q75** ACC agrees that there should be specific provision reducing the possibility of the state disclosure of criminal convictions accrued by young people 12 years or older on all types of disclosure.
- Q76** ACC propose that these exceptions apply to all young people up to the age of 21 as the results of trauma can be long lasting and impact beyond the age of 18
- Q77** ACC agree that there should be no state disclosure of any convictions between the age of 12 and specified upper limit, except where the conviction is for an offence listed in schedule 8A and 8B.
- Q78** ACC agrees that the disclosure of an offence listed in schedule 8A and 8B should trigger the disclosure of all other unspent convictions

- Q79** ACC disagrees, disclosure of offences listed in 8A and 8B should not enable applicants to immediately have those treated as protected regardless of the passage of time.
- Q80** ACC agrees that the Police should only be able to share other intelligence that they consider to be serious in nature.
- Q81** ACC agrees with the proposal to place a lower age limit on applicants for criminal record checks
- Q82** ACC believes that a criminal record check would be required when a young person may have unsupervised access to a vulnerable child

3.6.24 Registered Person and Counter Signatories for Higher Level Disclosure Applications

- Q83** ACC has no concerns about the proposal to ensure that those nominated to be a counter signatory are above the age of 18.
- Q84** ACC agree that those employing support through Self-Directed Support should have the assurance of the Disclosure Scheme
- Q84** ACC agrees that employers of private tutors for adults should continue to be able to request PVG membership if they feel the work being done falls into the scope of regulated work. ACC believes that this work should be regulated if the interpreter is supporting a vulnerable person but the need for interpretation does not automatically mean that the work is regulated
- Q85** ACC believes that the vulnerability of the client should be used to determine if the work should be regulated.
- Q86** ACC believes that vetting information should be available when tutors and interpreters are working with anyone who could be deemed as vulnerable.

3.6.25 Charity Trustees

- Q88** ACC believes that charity trustees supporting children, young people and vulnerable families should be included in the PVG scheme

3.6.26 Notification Requirements under Part 2 of the Sexual Offences Act 2003

- Q89** ACC believes that the provision should be made to bring into force the amendment to enable applications by the Chief Constable to be included on a basic disclosure

3.6.27 Additional Questions

- Q90** ACC believes that the review of the current system is timely and appropriate and welcomes many of the proposed changes. As a Local

Authority we are keen to ensure that implementation of changes is carefully communicated, planned and phased to ensure that employees and volunteers have sufficient time to undertake on-line registration.

Volunteering is often a means of becoming prepared to re-enter the workforce. As a Local Authority we would have great concerns about those re-entering the workforce being charged for an updated disclosure and feel that this is unhelpful in promoting economic growth.

As a Local Authority we are keen to keep costs to employees at a minimum and would welcome the planned review of charging to ensure that it is affordable for all.

Many colleagues who require PVG membership also require registration with a professional body to regulate their work. It would be helpful to align registration processes where possible.

- Q91** The proposals outlined provide an opportunity for some vulnerable children and young people to be better placed to thrive economically as young adults. The proposals will ensure that vulnerable groups, including those who are care experienced, are afforded equality of opportunity and understanding of the impact of trauma on their early lives.
- Q92** The most significant impact for the Local Authority will be communicating the changes and ensuring that employees are aware of their responsibilities in terms of renewing membership on-line and consideration should be given to building in an alert system so that employees are warned of the need to re-register. Employees do not currently pay for their own membership of the scheme and this will have a significant impact on some in lower paid roles. This will require to be carefully considered and thought through.
- Q93** Any disclosure scheme has potential impact on an individual's privacy but the protection of children, young people and vulnerable adults must take priority. Aberdeen City Council believes that the safeguards being suggested in the consultation offer sufficient assurance and strike the correct balance between an individual's privacy and the protection of children and vulnerable adults.
- Q94** Aberdeen City Council believes that the proposals outlined in the consultation document will offer greater assurance to children, young people and families.

4. FINANCIAL IMPLICATIONS

- 4.1** There are no immediate financial implications resulting from this consultation. Updated legislation and arrangements may have an impact on employees who will have to renew, and pay, for membership of the scheme on a regular basis.

5. LEGAL IMPLICATIONS

- 5.1 There are no legal implications resulting from this consultation response. Updated legislation and guidance may require adaptions to current systems to ensure that the Local Authority meet their duties.

6. MANAGEMENT OF RISK

	Risk	Low (L), Medium (M), High (H)	Mitigation
Reputational	Risk of Aberdeen City Council being seen as not taking their child protection duties seriously by not responding to this consultation	M	Mitigated by submission of the response detailed in this report.

7. OUTCOMES

Local Outcome Improvement Plan Themes	
	Impact of Report
Prosperous Economy	The proposals outlined in the consultation will ensure that vulnerable children and young people are able to access employment in later life, this will contribute to the economy.
Prosperous People	The proposals outlined in the consultation will ensure that vulnerable children and young people are able to access employment in later life, this will contribute to the economy.
Protected from Harm	The consultation seeks views on how best to protect children, young people and vulnerable adults from harm. ACC balances the right of an individual to privacy with the need to vulnerable groups.

Design Principles of Target Operating Model	
	Impact of Report
Customer Service Design	The consultation response showed how we believe the Disclosure and PVG process can safeguard our children, young people and vulnerable adults.
Workforce	The consultation response shows how Aberdeen City Council believes that vulnerable young people can join the workforce whilst assuring safety.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Equality & Human Rights Impact Assessment	<i>Completed</i>
Privacy Impact Assessment	<i>Not required</i>
<u>Children's Rights Impact Assessment/Duty of Due Regard</u>	<i>Not required</i>

9. BACKGROUND PAPERS

10. APPENDICES

Consultation document which will be completed electronically subject to Committee approval.

11. REPORT AUTHOR CONTACT DETAILS

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