

PARTIAL EQUALITY IMPACT ASSESSMENT

THE POLICE ACT 1997 AND THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 REMEDIAL ORDER 2015

Title of Policy	The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015
Name of Branch, Division	Policy Team, Protection Services
Department or Agency	Disclosure Scotland
What is the purpose of the proposed policy (or changes to be made to the policy)?	To ensure we have a disclosure regime in Scotland that strikes a fair balance between the individual's right to respect for their private life and the interests of public protection.
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	This will affect those in employment or seeking employment where the employer is entitled to request a higher level disclosure (that is, a standard or an enhanced disclosure issued under the Police Act 1997 ("the 1997 Act"), or a scheme record issued under the Protection of Vulnerable Groups (Scotland) Act 2007("the 2007 Act")). There will be no impact on those seeking employment where the employee is able to apply for a basic disclosure under the 1997 Act. There will be an impact on some employers as they may receive less information than previously. There could be a benefit for some applicants as their disclosure certificate could contain less information in the future.
How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?	Disclosure Scotland will be responsible for delivering this policy.
How does the policy fit into our wider or related policy initiatives?	The remedial order fits into the strategic aims of the Scottish Government to produce: <ul style="list-style-type: none">• Safer and stronger communities, helping local communities flourish.
Do you have a set budget?	No

Introduction

Equality impact assessment (EQIA) is about considering how policy (by policy we mean activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

The Scottish Government has a statutory duty to consider and address the impact of policy on particular groups. Equality legislation covers the characteristics of: age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief and sexual orientation.

In order to begin to determine the equality impact of these amendments on society, a meeting was convened between policy, operations and data analysts within Disclosure Scotland. Due to the nature of the legislative process for the remedial order which is made under section 14 of the Convention Rights (Compliance) (Scotland) Act 2001, any additional consultation was not feasible until the laying of the order and the start of the statutory 60 day consultation period. This was the first stage of the development of the EQIA.

This partial EQIA has been developed based on the outcomes of this meeting and additional information from other data sources. It is not intended to be a definitive statement or assessment of impacts but presents possible impacts that may require further assessment by the Scottish Government. A more comprehensive final EQIA will be produced using the partial EQIA and taking into account the views of a wide range of stakeholders throughout the consultation period.

In order to ascertain stakeholder views on the equality impact of the proposed legislative changes, two specific equality questions are contained in the Respondent Information Form that will be used to record responses to the consultation. These are:

- In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the amendments to legislation in this consultation document may have on any particular groups of people?
- In relation to the Equality Impact Assessment, please tell us what potential there may be within these amendments to legislation to advance equality of opportunity between different groups and to foster good relations between different groups?

Rationale and aims of policy

In June 2014, the UK Supreme Court (UKSC) decided that the blanket disclosure of all convictions, including convictions otherwise considered spent under the Rehabilitation of Offenders Act 1974, by the Disclosure and Barring Service in England and Wales on standard or enhanced disclosures (issued under the 1997 Act as it applied in England and Wales) violated Article 8 of the European Convention on Human Rights. Article 8 grants a right to respect for private and family life. The

UKSC accepted that when a conviction becomes spent it should usually become part of a person's private life and that the system of automatic disclosure of all such spent convictions in higher level disclosures in England and Wales was in breach of Article 8.

The wider implications of this decision about the disclosure of all criminal convictions in higher level disclosures have been carefully considered as to their relevance for the Scottish system. We will continue to disclose all unspent convictions on any standard or enhanced disclosure issued under the 1997 Act or on any PVG scheme record disclosed under the 2007 Act and this is in line with the Supreme Court's decision. However, we propose changes in relation to the disclosure of spent convictions. Spent convictions will be disclosed if they are for offences on the list of 'Offences which must always be disclosed'. Spent convictions for offences on the list of 'Offences which are to be disclosed subject to rules' may be disclosed depending on the time that has elapsed since conviction and the age of the person at the time of conviction and depending on the disposal received in relation to the conviction.

Spent convictions for offences which do not appear on either list will usually not be disclosed, for example some very minor driving offences. At the moment these types of offences are disclosed on higher level disclosures, but under the amended system these minor offences will not routinely be disclosed.

The offences on the list of offences which will always be disclosed are serious offences: no matter how long ago they were committed and no matter what disposal was given, they are considered to be relevant to the purpose of the disclosure due to their serious nature and should therefore be disclosed. It is considered to be justified on the grounds of public protection that these types of serious offences should always be disclosed.

If the conviction is for an offence on the 'Offences which are to be disclosed subject to rules' list, the age of the conviction and the age of the person at the date of conviction will both be considered. If the conviction is more than 15 years old at the date of the disclosure and the person was aged 18 years or over at the date of the conviction, it will not be disclosed. If the person was aged under 18 years at the date of conviction and the conviction was more than 7.5 years ago at the date of disclosure, it will not be disclosed.

Where a conviction for an offence on the 'Offences which are to be disclosed subject to rules' list is less than 15 years old (or 7.5 years as appropriate) then the disposal of the conviction will also be taken into account. Convictions that result in no punishment or intervention (other than the record of the matter) being imposed will not be disclosed, that is, any conviction for which the court imposes a sentence of admonition or absolute discharge or a discharge from a Children's Hearing will not be disclosed even where the conviction is less than 15 years old (or 7.5 years as appropriate).

Any applicant whose record contains multiple spent convictions will have each conviction considered separately and the rules will be applied to each conviction as though it is the only conviction on the record.

Applicants for a higher level disclosure whose certificate contains spent conviction information in relation to offences on the “Offences which are to be disclosed subject to rules” list will have a right to make an application to a sheriff for a new certificate from which that information has been removed. Applications to the sheriff will be under summary application procedure. The decision of the sheriff on any application will be final. The sheriff can order that conviction information should be removed if the sheriff is satisfied that the information is not relevant for the purposes for which the disclosure was sought.

With these changes in legislation we intend to achieve the following objectives:

- Ensure protection of Article 8 rights of individuals with a criminal record
- Continue to ensure the protection of the public in relation to areas of employment where employers can seek higher level disclosures
- Ensure those with minor non-relevant convictions are not hampered in finding jobs and moving on with their lives.

Who was involved in this EQIA?

An initial framing exercise for the EQIA was carried out involving a range of internal Scottish Government stakeholders.

This exercise helped to identify the potential impact of the legislation on other Scottish Government policy areas and on those in protected groups. It also assisted in identifying available existing evidence.

Due to the nature of the legislative approach (i.e. the use of a remedial order under section 14 of the Convention Rights (Compliance) (Scotland) Act 2001), a pre-legislative public consultation has not taken place. From the date the remedial order is published there will be a formal 60-day period for written observations. This will take place from 10 September 2015. Respondents will be invited to comment on the remedial order and the amendments it makes, the partial Business and Regulatory Impact Assessment and the partial Equalities Impact Assessment.

Scope of the EQIA

The scope of this EQIA is the impact of the legislation on those requiring a higher level disclosures who have one or more protected characteristics.

Data sources

A variety of information sources were used in compiling this EQIA, which includes, but is not exclusive of:

- Scotland's Population 2013 - The Registrar General's Annual Review of Demographic Trends
- Scottish Household Survey (2013)
- Annual Population Survey, Jan-Dec 2013, ONS
- Disclosure Scotland Management Information Database

Summary of key impact in equalities

To understand the different needs and experiences of those affected by the policy, we have gathered the following information about the impacts. The following is a summary of our findings so far. This is not a definitive or complete list of impacts, and some may turn out, on further assessment, not to be relevant.

Do we have information on	Yes	X	No	
Age	Yes	X	No	
Disability	Yes		No	X
Gender	Yes	X	No	
Lesbian, Gay, Bisexual & Transgender	Yes		No	X
Race	Yes		No	X
Religion and Belief	Yes		No	X

Age	<p>Evidence: 812,468 members of the PVG scheme, this equates to 15% of the population of Scotland. Members of the PVG scheme vary in age, from 14 years to 85+ years.</p> <table border="1"> <caption>Data extracted from the Age distribution in % graph</caption> <thead> <tr> <th>Age Group</th> <th>PVG applications (%)</th> <th>Scheme Members (%)</th> </tr> </thead> <tbody> <tr><td>Less than 14</td><td>0.5</td><td>0.5</td></tr> <tr><td>18</td><td>0.5</td><td>0.5</td></tr> <tr><td>22</td><td>3.0</td><td>2.5</td></tr> <tr><td>26</td><td>3.2</td><td>2.5</td></tr> <tr><td>30</td><td>2.8</td><td>2.2</td></tr> <tr><td>34</td><td>2.5</td><td>2.0</td></tr> <tr><td>38</td><td>2.2</td><td>2.0</td></tr> <tr><td>42</td><td>2.0</td><td>2.5</td></tr> <tr><td>46</td><td>2.5</td><td>2.8</td></tr> <tr><td>50</td><td>2.5</td><td>2.8</td></tr> <tr><td>54</td><td>2.2</td><td>2.8</td></tr> <tr><td>58</td><td>1.8</td><td>2.5</td></tr> <tr><td>62</td><td>1.5</td><td>2.0</td></tr> <tr><td>66</td><td>1.0</td><td>1.5</td></tr> <tr><td>70</td><td>0.8</td><td>1.0</td></tr> <tr><td>74</td><td>0.5</td><td>0.8</td></tr> <tr><td>78</td><td>0.3</td><td>0.5</td></tr> <tr><td>82</td><td>0.2</td><td>0.3</td></tr> </tbody> </table>	Age Group	PVG applications (%)	Scheme Members (%)	Less than 14	0.5	0.5	18	0.5	0.5	22	3.0	2.5	26	3.2	2.5	30	2.8	2.2	34	2.5	2.0	38	2.2	2.0	42	2.0	2.5	46	2.5	2.8	50	2.5	2.8	54	2.2	2.8	58	1.8	2.5	62	1.5	2.0	66	1.0	1.5	70	0.8	1.0	74	0.5	0.8	78	0.3	0.5	82	0.2	0.3
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	<p>The graph above shows the age demographic for the PVG Scheme. In 2014/15 there were 258,160 applications for all higher level disclosure, the applicants' ages varied from 15 years to 85+ years. The majority of applicants fell within 15-51 year age range. After the age of 74, the level of volunteering declines. In 2013, 20% of men and 20% of women aged 75 years and over volunteered in the previous 12 months, compared to 28% of adults overall. 11,373 or 1.3% of PVG scheme members are aged 74+ years. Of the 6,070 enhanced disclosure applicants in 2014/15, 60 or 0.98% were aged 74+ years.</p>																																																									

	<p>Volunteers aged 16 to 24 years were most likely to have volunteered with organisations working with children or young people (30%) or with health, disability and social welfare (24%). 14% of PVG scheme members and 31% of higher level disclosure applicants in 2014/15 were aged 16 to 24 years.</p> <p>The Scottish Government considers that the legislative changes would not have a disproportionate impact on any particular age group. However, consultation responses may suggest otherwise.</p>												
Disability	No information available. Disclosure Scotland does not collect any information on the disability of disclosure applicants since disability has no bearing on the conduct of disclosure checks.												
Gender	<p>In 2013, 51% of Scotland's population were female and 49% were male.</p> <p>87% of males in employment are in full time employment compared to 57.4% of women.</p> <p>The diagrams below show the gender split for PVG applications and membership since the inception of the PVG Scheme. These show that more women are PVG members and more women are applying to the PVG scheme.</p> <table border="1"> <thead> <tr> <th>Scheme Members</th> <th></th> </tr> </thead> <tbody> <tr> <td>Female</td> <td>573848</td> </tr> <tr> <td>Male</td> <td>238620</td> </tr> </tbody> </table> <table border="1"> <thead> <tr> <th>PVG applications</th> <th></th> </tr> </thead> <tbody> <tr> <td>Female</td> <td>857707</td> </tr> <tr> <td>Male</td> <td>325278</td> </tr> </tbody> </table> <p>The diagram below shows the gender split for enhanced disclosure applications in 2014/15. This shows that men tend to be requesting more</p>	Scheme Members		Female	573848	Male	238620	PVG applications		Female	857707	Male	325278
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	<p>enhanced disclosures.</p>
	<p>In 2012, around two-thirds (64%) of people employed in the third sector were female, and 36% were male.</p> <p>In 2013, a higher percentage of women (30%) than men (25%) volunteered. Between 2008 and 2013 the proportion of women who had volunteered in the previous 12 months was consistently higher than the proportion of men.</p> <p>The Scottish Government considers that the legislative changes would not have a disproportionate impact on either gender. However, consultation responses may suggest otherwise.</p>
Lesbian, Gay, Bisexual & Transgender	No information available. Disclosure Scotland does not collect any information on these characteristics of disclosure applicants since they have no bearing on the conduct of disclosure checks.
Race	No information available. Disclosure Scotland does not collect any information on the race of disclosure applicants since race has no bearing on the conduct of disclosure checks.
Religion and Belief	No information available. Disclosure Scotland does not collect any information on the religion or belief of disclosure applicants since religion and belief has no bearing on the conduct of disclosure checks.

Who else should be consulted?

We recognise that there are currently some gaps in our evidence and understanding about potential impacts of some of the legislative changes for some equality groups. Within the consultation we have asked two questions about this partial EQIA and would welcome your views and comments. This will also be sent to relevant and interested parties to consider the impacts of the policy. These will be used to help us develop the final EQIA.