

Equality Impact Assessment – Results

Disclosure (Scotland) Bill

June 2019

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Disclosure (Scotland) Bill
Summary of aims and desired outcomes of Policy	<p>The main purpose of the Bill is to make amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 and to repeal and replace Part 5 of the Police Act 1997 as it applies in Scotland to support the modernisation of the policy design of the disclosure system. The proposals within the Bill will continue to balance safeguarding and proportionality, and provide a disclosure regime in Scotland that is more responsive to the needs of stakeholders by:</p> <ul style="list-style-type: none"> • providing a different disclosure regime for childhood offending • reducing disclosure periods for List A and List B offences on Level 2 disclosures • simplifying the process to appeal the inclusion of List A and List B convictions on Level 2 disclosures; and • developing a digital service designed in conjunction with users
Directorate: Division: team	DG Education, Communities and Justice; Children and Families; Disclosure Scotland; Policy Team

Executive summary

An equality impact assessment (“EQIA”) was undertaken in connection with the Disclosure Bill to consider potential impacts across the characteristics for significant provisions included in the Bill.

The Bill will make provisions to provide an alternative disclosure regime for convictions for offences accrued when aged between 12 and 17¹. This means:

- there will be no automatic disclosure of criminal convictions for offences accrued under the age of 18; and
- conviction information within this age range will only be disclosed once a decision has been taken by Disclosure Scotland that the information should be disclosed. The applicant will have the opportunity to apply for a review to the independent reviewer, which will include the opportunity to submit representations in support of why the conviction should not be disclosed.

These provisions are explored further in the Children’s Rights and Wellbeing Impact Assessment (“CRWIA”) and will not be covered in detail within this EQIA.

The Bill will provide for a number of measures to ensure the disclosure regime in Scotland balances its principal role of safeguarding with proportionality. There are a number of elements within the Bill which will help meet this objective, such as:

- A mandatory, time-limited scheme will close the safeguarding gap which might allow an unsuitable individual to perform regulated roles with children or adults, while also allowing more proportionate membership where people no longer working with vulnerable groups will not be unnecessarily monitored. In addition courts will no longer refer convictions for people who would not undertake regulated roles except in the most serious of cases (for example, child murderers or rapists);
- Paving the way for simplification of the current system with greater use of digital services. This will help individuals using the disclosure system to have more control of the disclosure of their information. Ending the system where two certificates are issued simultaneously to the applicant and the employer will ensure applicants are fully aware of the content of their disclosure before they ask Disclosure Scotland to make it available to an employer or other third party. This will reduce the risk of under or over disclosure;
- The reduction of the disclosure periods of List A and List B offences², in line with proposed changes to the periods for which convictions will be disclosable under the Management of Offenders (Scotland) Bill, will allow for people to move on from past offending behaviour sooner;
- A change to the process of conviction removal for List A and List B offences, moving from a sheriff summary application process to an internal review by Disclosure Scotland with an appeal to the independent reviewer. The applicant will be able to submit representations on why the conviction should not be disclosed. This will reform a process viewed by stakeholders as complex and costly, making it simple and accessible for all;

¹ The Age of Criminal Responsibility (Scotland) Bill as passed on 7 May 2019 provides that a child under 12 years cannot commit a criminal offence. However, under the proposals laid out in the ACR Bill, there remains the possibility of conviction and subsequent disclosure for offences accrued while over the age of 12.

² At present higher level disclosures may contain information about spent convictions for offences listed on schedules 8A and 8B of the Police Act 1997. It is necessary that relevant and serious convictions can continue to be disclosed in the public interest and under the proposals laid out in the Bill these will be restated as List A (replacing 8A) and List B (replacing 8B).

- The introduction of a review process for the disclosure of Other Relevant Information (“ORI”) provided by the police. Individuals will have the chance to view ORI proposed for disclosure by the police before it is seen by a third party, for example a potential employer, and be able to submit representations in support of the information not being disclosed and will have an option to ask for a review by the independent reviewer. This will add greater certainty to a process stakeholders have said is difficult to anticipate and to understand;
- The power for Ministers to impose conditions on scheme members under consideration for listing in cases where there are compelling safeguarding concerns;
- New powers for Local Authorities to make referrals to Disclosure Scotland within the context of their normal safeguarding duties such as children or adult protection referrals;
- Duties for Police Scotland to make referrals to Disclosure Scotland when they believe that an individual is doing a regulated role while unlawfully not a PVG scheme member;
- The ability for organisations to become umbrella bodies with the sole purpose of them offering a service to personal employers, such as individuals directing their own care/support, to help them consider the suitability of prospective employees.

Elements of the Bill also seek to deliver the Scottish Government’s focus on transforming the lives of children and young people, opening doors of opportunity to all, making Scotland the best place to grow up and to give all our young children the best possible start in life.

Consultation

The PVG Review was announced in November 2016 by Deputy First Minister John Swinney. Since this announcement Disclosure Scotland officials have been engaging with a wide range of stakeholders to gain insight into how they feel about the current PVG Scheme and disclosure products and what they would like to see in Scotland’s future disclosure and barring arrangements.

The strategy of the review was designed so that it was as collaborative as possible, involving both internal and external stakeholders, and reaching a broad audience reflective of the users of the disclosure regime.

In order to ensure a high level of engagement, a number of methods have been used throughout the process. These have included:

- individual interviews
- group participation sessions
- telephone interviews
- online survey
- stakeholder conference

Feedback was collated, recorded and analysed after each round of engagement.

A public consultation ran from 25 April 2018 to 18 July 2018. This was a large consultation and focused on the policy of disclosure as well as the delivery of any changes to disclosure. In addition, 37 consultation events were held across Scotland and separate meetings were held with island based stakeholders. Three hundred and fifty-three unique responses were received in response to the consultation. Responses were received from a range of stakeholders with varying backgrounds including the judiciary, the legal sector, local government, voluntary organisations and the medical profession. There was general support for the proposals within the consultation. Scottish Ministers did receive some criticism on accessibility for the length of the consultation but a great many of respondents to the consultation expressed satisfaction with the consultation and its format.

Consultation outcomes

The consultation asked two specific questions which related to the impact of proposals on particular groups of people or advancing equality of opportunity. The protected characteristics raised in responses to this question were age and disability.

The most strongly recurring negative impacts were that:

- charging volunteers would introduce a barrier to volunteering, costing charities financially and socially;
- renewals would be a barrier to low income workers and may prevent them remaining in their field – it has been suggested Disclosure Scotland could mitigate impact by introducing tiers (either based on income, similar to SSSC, or an option of one, three or five year membership at different costs), payment plans or set a renewal that was lower than the cost of initially joining the Scheme; and
- a digital system could prove to be a deterrent to those who cannot access digital.

Other concerns raised about the prospect of change in charges for PVG membership were the possibility of indirect gender discrimination due to the prevalence of women in low-paid social care roles, the financial burden on people with convictions and those reliant on a prison liberation grant upon release from custody.

Retention of a paper option was requested by a range of sectors to ensure equality of opportunity for the less digitally literate (particularly the elderly) and those without connectivity. Some positive impacts were raised with responses noting that more ownership of accounts would assist accessibility and help people understand their rights and responsibilities around disclosure.

The Scope of the EQIA

To consider the impact of the provisions proposed on people with protected characteristics a variety of sources was used to help understand the likely impact of the proposed provisions:

- early engagement with organisations and individuals to establish what changes were required;

- the public consultation on options for change which included specific questions for views on potential impacts from the options;
- targeted engagement with groups known to be impacted by the changes such as organisations representing people arranging their own support/care, care-experienced people, people with convictions and children and young people;
- data from the Disclosure Scotland Business Analysis team on use of disclosure, relating to age and gender (most characteristics are not collected by Disclosure Scotland as it is not necessary to the operation of the regime); and
- Scottish Government and third party statistics, particularly those which relate to employment, volunteering, and convictions/criminal justice.

During the EQIA process, the potential impact on each of the protected characteristics was considered. However, our assessment identified that the policies were only likely to have a direct impact in relation to age, sex and disability. These impacts are discussed in more detail below.

The other protected characteristics - maternity and pregnancy; gender reassignment; sexual orientation; race; religion or belief; and marriage and civil partnership – do not have a direct bearing on disclosure checks, and we did not encounter evidence that suggested that people in these groups would be indirectly or disproportionately affected by the changes in the Bill.

We have also considered the Islands Communities impact assessment as part of this EQIA, although we believe that this Bill does not disproportionately impact Island Communities.

Key Findings

Age

The Bill is proposing a significant change to the disclosure regime which will bring positive impacts for this protected characteristic.

Convictions/criminal justice

The Bill will include provision to end the automatic disclosure of convictions for offences accrued under the age of 18. Convictions in this range will not be disclosed until an initial assessment is performed by Disclosure Scotland and there will be the opportunity for independent review and with regard given to representations submitted by the applicant. The upper age limit of 18 was chosen in recognition of the fact that adolescence is a unique phase of life and offending during childhood is not always indicative of a person's character as an adult. This will allow people with offending in their past who now live law-abiding lives to move on. This proposal is considered in further detail in the CRWIA.

There will be positive impacts for individuals who have accrued a conviction for an offence on which is currently in schedule 8A or 8B of the Police Act 1997 (to be replaced as List A and List B in the Bill). The current process for having such a conviction removed involves a summary application to a sheriff after a certain

amount of time has passed - as soon as the conviction is spent if it is an offence on 8B and after 15 years have passed from the date of conviction if it is an offence on 8A.

The Disclosure Bill will include provisions to simplify this process. Instead of an application to a sheriff, individuals will be able to make an internal application to Disclosure Scotland for removal of convictions with a right to request a review of this decision by the independent reviewer. In addition to simplifying this process this should also offer quicker results than the sheriff process and will be a cheaper to pursue.

The time that must elapse from the date of conviction before an application can be made to have a conviction for an offence on List A removed will be reduced from 15 to 11 years. The period that must pass from the date of conviction before an offence on List B can become 'non-disclosable' will similarly be reduced from 15 to 11 years. These proposals will enable people to move on from past offending behaviour and will maintain safeguarding.

Services

Disclosure products are used primarily to support safeguarding and risk assessment in the workplace, where it becomes particularly relevant in caring professions. In 2016, the vast majority of social care at home clients (75%) and long stay care home residents (90%) were aged 65 years and over³. In 2016-17 most self-directed support clients were aged 65 and over (71%), however this varied across Local Authorities. Six areas had more clients aged under 65 than over⁴.

The online survey conducted as part of pre-consultation engagement revealed that almost three quarters of respondents (74.2% of 849) felt that DS products are the best way to support recruitment and protect vulnerable groups. In the same survey, 94% of respondents thought the PVG Scheme should be mandatory. The Bill will include provision to move from a voluntary scheme to a mandatory membership scheme meaning that individuals doing regulated roles with children or adults will be required to be a scheme member and subject to disclosure checks. A mandatory scheme will tighten and strengthen safeguarding as it will be a criminal offence for people doing regulated roles not to be a scheme member.

³ [Care Home Census 2016](#) (Last updated: October 2016), [Social Care Services Scotland 2016](#) (Last updated: November 2016)

⁴ [Self-directed support in Scotland: 2016 to 2017](#) (last updated: 14 August 2018)

Employment and volunteering

The Bill will include provisions to restrict the availability of disclosures to individuals aged 16 and over. This will be across all applications types. However, it will be possible in certain circumstances where there is a compelling case for Disclosure Scotland to provide someone under 16 but over 12 with a disclosure to ensure that such individuals are not disproportionately disadvantaged by these proposals.

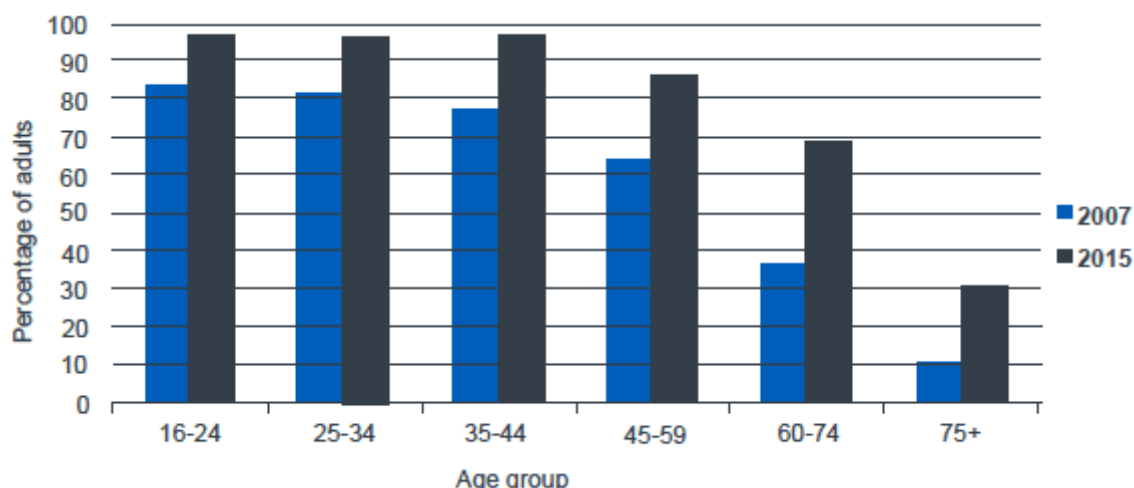
However, it will not be possible for under 16s to join the PVG Scheme and become subject to ongoing monitoring. It is not considered to be appropriate for under 16s to be in the position of doing regulated roles and having the level of responsibility for vulnerable groups that would support eligibility for PVG membership.

Similarly, under the new arrangements, becoming a countersignatory will be restricted to individuals aged 18 and over. Disclosure Scotland has not received any applications in 2015-18 from anyone under 18 seeking to become a countersignatory.

These proposals are considered further in the CRWIA.

Digital accessibility

According to the study conducted by Ipsos MORI which examined digital capabilities across the UK, Scotland has one of the highest percentages of adults with basic digital skills. 81% of adults in Scotland reported having basic digital competency, however, those aged over 60 consistently reported being less confident in their digital skills⁵. Despite this, since 2007, the proportion of people making use of the internet has increased across all age groups. Those aged 60-74 have seen the greatest increase and internet use by age is expected to improve over time as young people, who are the primary users, transition into older age groups.



(Source: Scottish Household Survey.)

Disclosure Scotland's Transformation Programme has recognised the need to ensure accessibility for all ages on the digital platform as there is no upper age limit

⁵ <https://www.gov.scot/publications/scotlands-digital-strategy-evidence-discussion-paper/pages/5/>

to accessing a criminal record check. This programme conducts user research sessions with people of all ages to ensure the platform will work for them. Disclosure Scotland also recognises calls in the public consultation to ensure there are non-digital/supported avenues for accessing criminal record checks.

Sex

Employment and volunteering

There are 1,198,260 PVG scheme members – 369,748 (31%) men and 828,503 (69%) women⁶.

Regional employment figures show that in Scotland, 87.2% of men and 58.3% of women are in full time employment⁷. In 2016-17, women were significantly more likely to be studying subjects falling under “Care” than men with 82% of those studying being female⁸. Similarly, statistics on modern apprenticeships have found one of the groups with the highest proportion of women were Sport, Health and Social Care at 83% female⁹.

The higher rate of women likely to be studying and working in caring professions will contribute to the difference in gender of scheme members. Any changes to the overall operation of the PVG Scheme will impact a greater number of women than men by the nature of the roles undertaken.

The latest figures relating to volunteering show that 30% of women and 26% of men volunteered in the last 12 months. Between 2008 and 2016 the proportion of women who had volunteered in the last 12 months has been consistently higher than men¹⁰. As with the wider employment statistics, this contributes to higher numbers of women in the Scheme.

Convictions/criminal justice

In the last 3 years 9.98% of certificates for males contained conviction information compared with 3.74% of certificates for females¹¹.

Proposals relating to the disclosure of criminal information and how spent convictions are treated will thus impact a greater proportion of men.

⁶ (Business analysis – Disclosure Scotland (Last updated for total members and gender split: 23 October 2018))

⁷ [Regional Employment Patterns in Scotland: Statistics from the Annual Population Survey 2016](#) (Last updated: May 2017)

⁸ [College Statistics 2016-17](#) (Published: January 2018, SFC), [Report on Widening Access For All 2015/16](#) (Formerly Learning for All. Published: September 2017, SFC)

⁹ [Modern Apprenticeship Statistics 2016/17](#) (Published: June 2017, Skills Development Scotland)

¹⁰ <https://beta.gov.scot/publications/scottish-household-survey-key-findings-2017/pages/16/>

¹¹ Business analysis – Disclosure Scotland (Last updated 17 August 2018)

Disability

Services

Disclosure Scotland consulted on the option for providing disclosure information to those individuals who do not employ other persons in the course of business, for instance arranging self-directed support. Supported persons making social care arrangements had stated their concerns to Disclosure Scotland that the omission of vetting information can lead to them having to make recruitment decisions in the absence of potentially relevant information.

To address these concerns the Disclosure Bill includes a number of proposals to strengthen safeguarding which will be of particular benefit to individuals who do not employ other persons in the course of business, including for individuals arranging their own support:

- Moving from a voluntary to a mandatory PVG Scheme. This will mean that everyone doing regulated roles will have to be a PVG scheme member and subject to criminal history checks;
- New powers to enable local authorities to make referrals to Disclosure Scotland arising within the context of child or adult protection investigations undertaken by a local authority;
- Duties on Police Scotland to make referrals to Disclosure Scotland when they suspect someone of doing a regulated role while unlawfully not a PVG scheme member. In such circumstances Disclosure Scotland could consider such an individual for listing;
- The power for Disclosure Scotland to impose standard conditions on scheme members under consideration for listing but still lawfully able to do regulated roles will allow for the management of any risks identified during the period of consideration;
- Disclosure Scotland will be able to notify an individual who does not employ other persons in the course of business of the consideration for listing or listing status of an individual in their employment;
- The ability for organisations to become umbrella bodies with the specific purpose of assisting individuals arranging their own support to make decisions on a prospective employees' suitability.

Employment and volunteering

Disclosure Scotland does not collect any information on disability as a protected characteristic as it has no bearing on the conduct of disclosure checks. However, evidence available from other sources has enabled officials to consider the potential impact of proposals on this protected characteristic within the wider context of employment and volunteering.

Recent statistics show that 16% of people employed in the third sector consider themselves to have a disability compared with 10% in the private sector and 11% in the public sector¹². In respect of volunteering, in 2016, 26% of people who volunteered had a disability, a long term illness or both¹³.

The Disclosure Bill will make no change to the arrangements in place for people doing voluntary work on behalf of qualifying voluntary organisations. Such individuals will continue to receive free disclosure checks.

There are many types of organisations who benefit from volunteering. Recent statistics show that the most common types of organisations which volunteers helped with were those who worked with 'children's activities associated with schools', 21% of people who volunteer do so with this type of organisation. Sixteen percent of people who volunteer do so with 'health, disability and social welfare' organisations¹⁴. It is recognized that society derives huge benefit from volunteering and that imposing a fee against checks for volunteers could be a barrier to voluntary work which could disproportionately impact the groups, and protected characteristics such as disability, which most commonly benefit from it.

Digital accessibility

Disclosure Scotland's Transformation Programme is already working with stakeholders and customers to design the digital platforms, this will continue to support any design changes required by new legislation.

The Scottish Government recognises new and existing services must be accessible for people with disabilities. Disclosure Scotland's user research team have included a wide range of people in the design of the new online service, including:

- people with dyslexia and dyspraxia;
- blind or partially sighted people;
- British Sign Language users;
- people with low digital skills;
- people with no digital skills.

All user research with the above groups takes place in an environment where people feel safe and comfortable. We have conducted home and workplace visits to people who use assistive technology e.g. screen readers and screen magnifiers. Disclosure Scotland will continue to engage with people with disabilities to ensure that the systems we design meet their requirements.

Other characteristics

The Scottish Government considers that the proposals would not have a disproportionate impact on other protected characteristics and nothing emerged in the early engagement or public consultation to suggest otherwise.

¹² [Annual Population Survey 2015](#) (Published: 2016)

¹³ [Scottish Household Survey 2016: Volunteering](#) (Last updated: September 2017)

¹⁴ [Scottish Household Survey 2017: Volunteering](#) (Published September 2018)

Island communities

Officials have engaged with island communities at each stage of policy development, including making visits to Orkney and the Western Isles in order to discuss impacts and concerns of these areas. Voluntary Action Western Isles also distributed the public consultation through their network of voluntary groups and organisations.

Disclosure Scotland's Business Analysis team have looked at the digital assistance requirements for moving to a digital-by-preference disclosure regime under the current legislation. Based on the statistics available by postcode town¹⁵, the estimated requirements for digital assistance across all disclosure types in Comhairle nan Eilean Siar and the Shetland Isles was 16 - 17% which is not disproportionate to mainland needs which ranged from 12 - 22%.

Although PVG scheme members living in the Scottish islands don't submit many applications, the density of scheme members in these communities is high compared to that for Scotland as a whole¹⁶. Orkney stands out in particular as having a very high proportion of residents being scheme members at 54% while Shetland and Comhairle nan Eilean Siar are just slightly higher than the proportion for Scotland as a whole (22%) at 27% and 24% respectively.

The policy proposals contained in the Disclosure Bill are not likely to have an effect on an island community which is significantly different from its effect on other communities, including different island communities, in Scotland.

Recommendations and Conclusion

The evidence collected over the course of the EQIA process has satisfied the Scottish Government that there is support for a number of the proposals set out in the Bill. Although some negative impacts were identified by respondents during the consultation process, a number of these in relation to a change in fees and not specific to protected characteristics, careful consideration has been given to these and the Scottish Government has found that the overall aims of the Disclosure (Scotland) Bill will have a positive impact upon the various protected characteristic groups. Where possible, steps will be taken to mitigate any negative impact.

There were no negative consequences identified through the EQIA of this policy and in terms of the protected characteristic groups identified in the Equality Act 2010. In the circumstances, the Scottish Government has concluded that no changes to the Bill are necessary.

¹⁵ Note: sample size for the Outer Hebrides and Lerwick are very low and may be misleading or highly unreliable.

¹⁶ Population estimated from Nomis. Information from Disclosure Scotland – Business Analysis Team (updated 12 December 2018)



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