

Child Rights and Wellbeing Impact Assessment

**The Police Act 1997 and the
Protection of Vulnerable Groups
(Scotland) Act 2007 Remedial
Order 2018**

February 2018



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| CRWIA title The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 | |
| Date of publication | |
| Executive Summary | <p>Disclosure Scotland undertook a Child Rights and Wellbeing Impact Assessment on the proposed changes contained within the Remedial Order.</p> <p>The proposed policy changes are brought forward as a result of Lord Pentland's ruling in <i>P v Scottish Ministers</i> in which it was held that insofar as they required automatic disclosure of the petitioner's conviction before the Children's Hearing, the provisions for higher level disclosures unlawfully and unjustifiably interfered with the petitioner's right under Article 8 of the European Convention on Human Rights (ECHR).</p> <p>The proposals aim to respond to this ruling and ensure that 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 in compliance with the ECHR.</p> <p>The CRWIA has been informed by a range of evidence.</p> <p>The proposals contained in the Remedial Order have been considered against the available evidence and assessed under the general principles and Articles of the United Nations Convention on the Rights of the Child and the child wellbeing indicators.</p> <p>This assessment found that the Remedial Order will have a positive impact on the rights of children and young people who have been convicted of offences contained in schedule 8A of the Police Act 1997 (offences which must always be disclosed).</p> |
| Background | <p>Standard and enhanced disclosures are issued under the Police Act 1997 ("the 1997 Act") and disclosures of PVG scheme records are issued under the Protection of Vulnerable Groups (Scotland) Act 2007 ("the 2007 Act") - these types of disclosures are referred to collectively as 'higher level disclosures'. In 2015, the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 amended the 1997 and 2007 Acts in relation to the spent conviction information which could be disclosed on a higher level disclosure. That Order introduced lists of offences into schedules 8A and 8B of the 1997 Act. Schedule 8A lists certain spent convictions which will continue always to be disclosed due to the serious nature of the offence (sometimes referred to as the 'offences which must always be disclosed' list); schedule</p> |

8B lists certain spent convictions which are to be disclosed depending on the length of time since conviction and the disposal of the case (sometimes referred to as the 'offences which are to be disclosed subject to rules' list).

In the case *P v Scottish Ministers* [2017] CSOH 33, P raised a petition for judicial review in relation to the disclosure of a previous conviction for lewd and libidinous practices on his PVG scheme record. Although the conviction was spent, the offence had been included in P's scheme record due to it being in the list of offences that must always be disclosed (the "Always Disclose List" as listed in schedule 8A of the 1997 Act¹). On 17 May 2017 the court declared that, insofar as they require automatic disclosure of P's conviction before the Children's Hearing, the provisions of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 ("the remedial order") unlawfully and unjustifiably interfered with the petitioner's right under Article 8 of the European Convention on Human Rights, and Scottish Ministers had no power to make the provisions in terms of section 57(2) of the Scotland Act 1998 ("the 1998 Act"). The effect of the court order has been suspended under section 102 of the Scotland Act 1998 Act for nine months (to 17 February 2018) to allow Ministers to remedy the legislation.

The Remedial Order sets out the proposed amendments to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007. The effect of the amendments will be that recipients of higher level disclosures under those Acts whose disclosure contains information about a conviction for an offence listed in schedule 8A of the Police Act 1997 (offences which must always be disclosed) will in certain specified circumstances have the right to apply to a Sheriff in order to seek removal of that conviction information before their disclosure is sent to a third party such as an employer.

They will have this right where the conviction for a schedule 8A offence is spent and

- (a) where the person was aged under 18 at the date of conviction, 7 years and 6 months have passed since the date of the conviction; or
- (b) where the person was aged 18 or over at the date of conviction, 15 years have passed since the date of the conviction.

We consider that this policy provides an ECHR compliant system.

¹ Schedule 8A was inserted into the Police Act 1997 by *the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015* (Scottish Statutory Instrument 2015 No. 423).

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| <p>Scope of the CRWIA</p> | <p>The scope of the CRWIA is to assess the impact of the proposals on children and young people.</p> <p>As noted previously, the order provides that if a person was under the age of 18 on the date they were convicted of an 8A offence, they will have the right to apply to a Sheriff in order to seek removal of that conviction information before their disclosure is sent to a third party such as an employer, when the conviction is spent and 7 years and 6 months have passed since the date of conviction. The order set this criterion across the board and is not aimed at different groups of children and young people, however we know that it is more likely to affect different groups.</p> <p>Evidence shows that for a variety of reasons, some groups of children and young people are more likely to offend or having dealings with the police. These are therefore a distinct group of children and young people.</p> <p>We know that the proposed change will not impact children and young people straight away but as they get older when they may be applying to college/university or for employment.</p> <p>We also recognise the potential impact on children and young people who may come into contact with individuals who have had a conviction removed from their disclosure when they come into adulthood, if they go on to reoffend. This is another distinct group, the impact on whom must be considered.</p> |
| <p>Children and young people's views and experiences</p> | <p>A public consultation on the 2018 Proposed Draft Remedial Order was launched on 11 September 2017 and ran for 60 days to 26 November 2017. The consultation was published on the Scottish Government's website, Citizen Space website and notice was broadcast on Disclosure Scotland's twitter account. Notice was also sent to a wide range of stakeholders including bodies whose work is centred on children and young people. As well as inviting views/observations on the Proposed Draft Order, the consultation invited respondents to provide views on potential impacts to children and young people in relation to the partial CRWIA which was published alongside it.</p> <p>The Statement of the Scottish Ministers Summarising Written Observations on the Proposed Draft Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 has been published on the Scottish Government's website and can be found at Proposed draft Police Act 1997: ministers' statement - gov.scot</p> <p>Responses to the consultation were received from a number of bodies whose work is centred on the rights and welfare of children and young people.</p> |

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| | <p>The majority of respondents expressed general support for the provisions the Remedial Order makes for those convicted of an offence when under the age of 18. However a number of bodies whose work is centred on young people highlighted concerns not only with the Remedial Order but with the whole disclosure regime in Scotland. Others while supporting the proposals expressed support for wider legislative change and wide scale reform to further promote children’s rights and wellbeing.</p> <p>Respondents made reference to the positive effect on children and young people who have been convicted of offences which are included on schedule 8A. Although some noted that there needs to be a balance with the need for public protection, noting the possible negative impact on children and young people who may come into contact with individuals who have had a conviction removed from their disclosure.</p> <p>Agreement was noted that the proposed changes should have positive impacts on the domains of wellbeing, of being included, respected, responsible and achieving, which was welcomed. It was deemed that the proposed changes will continue to promote the safety of children. Moreover, it was felt that the proposed changes should support the upholding of children’s rights by supporting compliance with the ECHR and the UNCRC and have particularly beneficial impacts on upholding children’s rights to non-discrimination, privacy, education and child-friendly justice.</p> <p>It was also suggested that the proposals could help to mitigate future repeated intergenerational cycles and benefit employment opportunities helping to tackle inequality and poverty.</p> <p>No changes have been made to the proposals in light of the responses to the consultation.</p> |
| <p>Key Findings</p> | <p>The evidence gathered shows that the changes will affect individuals, including children and young people, with convictions for schedule 8A offences. This change will not impact children and young people right away but as they get older and are likely seeking opportunities in employment or further education. However our research shows that individuals affected will be few in number and it should be noted that the impact will be positive.</p> <p>In the year 2016-17, 2,995 children and young people, between the ages of 8 and 17 were referred to the Children’s Reporter on offence grounds. 706 of these people were girls and 2,289 were boys. The main offences were threatening or abusive</p> |

behaviour, assault and vandalism. The most common ages for an offence ground referral were 14 and 15.²

It should be noted that not all of these referrals will result in a conviction for an offence included in schedule 8A.

Only 0.2% of all Higher Level Disclosures completed in 2016-17 came from individuals aged under 16. 24.3% came from the 16-24 year old age group and 23.5% came from 25-34 year olds. The latter two are the age groups most likely to be impacted by the change from the perspective of individuals who were under the age of 18 when convicted of an offence included on schedule 8A.

There is possible negative impact on children and young people who may come into contact with individuals who have had a conviction removed from their disclosure when they come into adulthood. When considering this distinct group, it is important to stress that spent convictions for offences on schedule 8A will not be removed automatically. Only a Sheriff can instruct removal of these convictions if they are not relevant to the type of regulated work in relation to which a person is a member of the PVG Scheme, or is not relevant to the purpose for which the disclosure certificate was requested (standard and enhanced disclosures under the Police Act 1997). The Sheriff may also take into account the circumstances around the conviction. The number of children who could be affected in this manner is limited as the number of appeals to a Sheriff for conviction removal is expected to be low, just 24 per year. Further, the right to appeal for conviction removal is only available to convictions capable of becoming spent under the Rehabilitation of Offenders Act 1974. Convictions outside the scope of rehabilitation under the Act, will continue to be disclosed on higher level certificates. Additionally it should be stressed that higher level disclosures are only one of the tools an employer should use when making safe recruitment decisions and should not be solely relied upon by employers in making such decisions.

The Remedial Order promotes the implementation of the UNCRC by positively impacting the following Articles:

Article 2 – Non-discrimination

Article 3 – Best interests of the child

Article 4 – Protection of rights undertake all appropriate

Article 6 – Life, survival and development

Article 16 – Right to Privacy

² Scottish Children's Reporter Administration Facts Sheet and Online Statistics 2016-17

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| | <p>Article 28(2) – Right to education Article 40 – Juvenile justice Article 42 – Knowledge of rights</p> <p>The Remedial Order will contribute to the wellbeing of children and young people by having a positive impact on the following wellbeing indicators:</p> <p>Included – The Remedial Order seeks to provide individuals with the opportunity to be a full member of the communities in which they live and learn; receiving help and guidance to overcome inequalities by enabling them to potentially put offending behaviour that occurred when they were a child behind them more quickly than under current legislation. Potentially helping to tackle inequality and poverty.</p> <p>Respected – The Remedial Order seeks to ensure that the rights of children are respected, in line with the UNCRC. It will involve them in the decisions that affect their wellbeing</p> <p>Achieving - Children and young people affected will potentially be able to achieve more – by being able to pursue their choice of college/university courses or follow a career path without having irrelevant offences from their childhood disclosed for many years after they have become an adult.</p> <p>Responsible – The Remedial Order will provide individuals affected with the opportunity to take an active role within their home, school and community.</p> |
| <p>Conclusions and Recommendations</p> | <p>We have concluded from the CRWIA that in terms of responding to Lord Pentland’s ruling in <i>P v Scottish Ministers</i> the proposals strike the correct balance between allowing children and young people the potential to put past behaviour behind them and move on with their life and the need for public protection. We recommend from this assessment that no changes are required.</p> <p>As noted previously, it promotes children’s rights by supporting several Articles of the UNCRC and wellbeing indicators.</p> <p>We do note the support for wider legislative change and wide scale reform to further promote children’s rights and wellbeing. We would advise that the landscape is not static, and changes proposed to the minimum age of criminal responsibility, and the rehabilitation of offenders legislation along with possible changes as a result of the PVG Review will change it further.</p> |
| <p>Monitoring and review</p> | <p>The measure will be monitored as part of the PVG Review.</p> |

| Order Provision | Aims of measure | Likely to impact on . . . | Compliance with UNCRC requirements | Contribution to wellbeing indicators |
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| Articles 3 and 4 of the order | Insert into the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 provisions to allow individuals with schedule 8A convictions the opportunity to apply to a Sheriff for removal of that conviction from their higher level disclosure before it is issued to an employer provided the conviction is spent and 15 years have passed from date of conviction if the individual was over 18 at the time and 7.5 years from the date of conviction if they were under 18 at the time. | Children or young people requiring a higher level disclosure or PVG scheme record who have been convicted of a schedule 8A offence. | This promotes the implementation of the UNCRC by positively impacting the following articles: Article 2 – Non-discrimination Article 3 – Bests interests of the Child Article 4 – Protection of Rights Article 6 – Life, survival and development Article 16 – Right to Privacy Article 28(2) – Right to education Article 40 – Juvenile justice Article 42 – knowledge of rights | The remedial order will contribute to the wellbeing of children and young people by having a positive impact on the following wellbeing indicators: Included, Respected, Achieving and Responsible. |

CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required

CRWIA not required

X

Authorisation

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Date



13/2/18

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