

Final Child Rights and Wellbeing Impact Assessment

Disclosure (Scotland) Bill

June 2019

Final CRWIA - Web version of Policy CRWIA – Disclosure (Scotland) Bill

CRWIA for the Disclosure (Scotland) Bill Date of publication: June 2019	
Policy/measure	Disclosure (Scotland) Bill
Summary of policy aims and desired outcomes	The Bill will make amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) and will repeal and replace Part 5 of the Police Act 1997 (“the Police Act”) as it applies in Scotland to support the modernisation of the policy design of the disclosure system. It will continue to balance safeguarding and proportionality, and provide a disclosure regime in Scotland. The Bill also allows scope for digital processes to improve safeguarding so that people who would prefer to do so can carry out their disclosure tasks online, including making applications and viewing disclosures.
Directorate; Division; Team	Children and Families; Disclosure Scotland; Protection Services and Policy: Policy Team
Executive Summary	<p>The main purpose of the Bill is to support the modernisation of the disclosure system and deliver the Scottish Government’s focus on transforming the lives of children and young people, opening doors of opportunity to all, to make Scotland the best place to grow up and to give all our children the best possible start in life.</p> <p>It is has been just over eight years since the Protection of Vulnerable Groups (PVG) Scheme commenced. During this time, 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 measures are appropriate.</p> <p>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 regime for childhood offending; • reducing disclosure periods for List A and List B¹ offences on Level 2 disclosures; • simplifying the process to appeal the inclusion of List A and List B convictions on Level 2 disclosure; and • developing a digital service designed in conjunction with users.

¹ At present higher level disclosures (the standard disclosure under the 1997 Act, the enhanced disclosure under the 1997 Act and the PVG scheme record under the PVG Act) 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).

<p>Background</p>	<p>The background to the Bill is set out in the Policy Memorandum published alongside the Bill on the Scottish Parliament website.</p>
<p>Scope of the CRWIA</p>	<p>The reforms to the disclosure regime in Scotland will ensure the legislation strikes the correct balance between the rights of children and young people not to disclose their previous offending behaviour and to move on with their lives and the rights of the public to be protected.</p> <p>We appreciate that there are groups of vulnerable and marginalised children who require special protection by the Government - and these are often the children who are most at risk of having their rights ignored or infringed. They include children in trouble with the law and care-experienced children.</p> <p>We are introducing a mandatory scheme, which means that in future all individuals who are performing a regulated role with children will need to have undergone the relevant level of check. This closes a safeguarding loophole that exists in the current scheme which is predicated on the concept of voluntary membership.</p> <p>This CRWIA considers the Bill's impact on the rights and wellbeing of children and young people in Scotland. This includes consideration of:</p> <ul style="list-style-type: none"> • Proposals in relation to the system of disclosure of convictions for offences accrued while under the age of 18; • Safeguarding proposals including: <ul style="list-style-type: none"> ○ proposal to provide Disclosure Scotland with powers to impose standard conditions on scheme members who are under consideration for listing, where it is considered necessary for the protection of the public or otherwise in the public interest; ○ new referral powers for local authorities and referral duties for Police Scotland; ○ mandatory scheme membership for people doing regulated roles; and ○ extending the PVG scheme to protect people who come into contact with scheme members working overseas in, for example, humanitarian aid work; • changing the point at which an individual becomes aware of the chief constable's intention to provide Other Relevant Information ("ORI") on a Level 2 disclosure, so that the individual has the right to make representations to the chief constable before disclosure of ORI to a third party. There will also be an opportunity to apply for a review by the independent reviewer; • The proposal to introduce a lower age limit of 16 years on applicants for criminal record checks, with exceptions granted on cause shown; • In view of the responsibilities both roles can have, the proposal to introduce a minimum age of 18 years for people who want to become a registered person, to be known as

	<p>accredited bodies, because they employ others in the course of a business or those who are nominated to be a lead or countersignatory in connection with Level 2 disclosures;</p> <ul style="list-style-type: none"> • The proposal to end relevant offence court referrals. <p>The CRWIA should be read in conjunction with the other impact assessments conducted for the Bill.</p> <p>The Privacy Impact Assessment considers the impact of the Bill's provisions on an individual's right to privacy. The Equality Impact Assessment considers the potential impact of the Bill's provisions on each of the protected characteristics which includes age. The Fairer Scotland Duty considers impact based on socio-economic factors.</p>
<p>Children and young people's views and experiences</p>	<p>A public consultation based on the early engagement undertaken by officials at Disclosure Scotland commenced on 25 April 2018 and ran until 18 July 2018.</p> <p>While the official consultation period ran until 18 July 2018, wider engagement has continued throughout the development of the Bill.</p> <p>We engaged with children and young people with experience of the criminal justice system as part of the policy development. Officials met with members of Life Changes Trust and Who Cares? Scotland and ran a focus group in conjunction with CYCJ.</p> <p>We have engaged with members of the Scottish Youth Parliament to gather their views on the impact of the Bill to young people. We have also carried out engagement with young people accommodated in secure units.</p>
<p>Key Findings</p> <p>To include impact on UNCRC rights and contribution to wellbeing indicators</p>	<p>The proposals will positively impact the following children's rights under the UNCRC –</p> <p>Article 1 – children are those under 18 Article 2 – non-discrimination Article 3 – best interests of the child Article 4 – protection of rights Article 6 – life, survival and development Article 12 – respect for the views of the child Article 16 – right to privacy</p> <p>They will also positively contribute to the following wellbeing indicators –</p> <p>Safe Achieving Nurtured Respected Responsible Included</p>

	<p>Key messages from engagement were:</p> <ul style="list-style-type: none"> • The disclosure system should take account of the differences between adult and childhood offending as well as the developmental needs of children and adverse childhood experiences. • The disclosure system needs to be simpler for young people to understand and offer greater certainty about what is likely to be disclosed from childhood offending. The issue that care-experienced people are much more likely to have adverse contact with police than children who are not looked after by the state was highlighted and it was noted that care-experienced people often report difficulties when making applications for disclosure. They do not feel informed about the impact of convictions accrued while ‘in care’ on future opportunities. • A case by case approach, taking into account the background and context of the information was favoured and providing the individual the chance to be involved in the process and have their say is important.
<p>Conclusions and Recommendations</p>	<p>Childhood conviction provisions</p> <p>The Bill contains provision that there be separate disclosure provisions for convictions accrued between the age of criminal responsibility, 12, and an upper age limit of 17.²</p> <p>The Government is committed to affording all young people the chance to overcome early adversity, including the adversity of involvement in offending behaviour, to become productive and fulfilled adult citizens. The major theme coming through from our engagement with stakeholders and responses to the consultation was that a change is certainly needed.</p> <p>Although there were calls for a wider reform to the system than was proposed in the consultation, there has been support for a system that provides for consideration of information on a case by case basis with the applicant given the opportunity to make representations. The opportunity for independent review before the information could be disclosed was also welcomed. This provides an important additional safeguard for the individual and would allow information to be considered in context.</p> <p>This is a positive step which would move childhood offending away from a complex system of disclosure, give consideration to the context behind the conviction and provide the individual with the</p>

² The Age of Criminal Responsibility (Scotland) Bill as passed by Parliament on 7th May 2019 will increase the age of criminal responsibility to 12, meaning that any behaviour which took place before a person’s twelfth birthday will not be disclosable as a conviction but as a form of relevant police information.

opportunity to be involved in the process before any disclosure is made.

The feeling was that this would help simplify the system for young people, bring greater certainty about what was likely to be disclosed and align the disclosure system better with the principle that the welfare of the child is the paramount consideration.

We believe that this option would vastly improve the current disclosure system for individuals who accrued convictions as children and meets the 2016-17 'Programme for Government: A Plan for Scotland' which says that Ministers will 'look afresh at the disclosure of early childhood offending to enable young people to move beyond early mistakes.' The current Programme for Government commits Ministers 'as part of the Year of Young People, [to] undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation.' We believe that this proposal strikes the right balance between safeguarding and civil liberties.

The need for the disclosure system to take account of the differences between adult and childhood offending, as well as the developmental needs of children and adverse childhood experiences, was a key theme coming from commentators in this area. The need to move away from a complex system was also emphasised. We recognise this and it will be reflected in the proposals brought forward in the Bill.

Separate disclosure provisions for convictions for offences accrued between 12 and 17 will have a direct positive impact on the rights and wellbeing of children and young people. They would not be stigmatised by unnecessary disclosure of information from childhood and be able to move away from their past behaviour.

The issue that care-experienced people are much more likely to have adverse contact with police than children who are not looked after by the state was highlighted and it was noted that care-experienced people often report difficulties when making applications for disclosure. They do not feel informed about the impact of convictions accrued while 'in care' on future opportunities. This is a clear strand that is being borne in mind when developing legislation and guidance.

Although there has been a reduction in disclosure of convictions accrued in childhood over recent years, the proposal still has the potential to improve the situation for a large number of people. For example, in the year 2017-18 Disclosure Scotland completed 450 applications for PVG scheme records which contained a conviction accrued while the applicant was aged between 12 and 17, 280 applications for basic disclosures, 70 applications for standard disclosures and 10 applications for enhanced disclosures³.

³ Disclosure Scotland Business Analysts 01/08/2018

We recognise that there is also a potential negative impact on children and young people who may come into contact with individuals who have not had information disclosed later in life, if they go on to reoffend. However we are confident that the proposal strikes the right balance between safeguarding and an individual's right to move on from past offending behaviour. A decision making process will be applied and information will be disclosed where it was considered necessary.

Minimum age to access disclosure

The Bill contains provision that disclosure products are only available to people aged 16 and over. However there may be some exceptional cases where disclosure checks on young people may be in the public interest. One example would be where a foster family had a 15 year old child in the household. Therefore, the policy is that in these exceptional cases it should still be possible to obtain a Level 2 disclosure, but the child should not be able to become a member of the PVG Scheme. 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.

The public consultation had 73% support for placing this minimum age. The approach taken to issuing higher level disclosure checks to children in the rest of the United Kingdom is that these are not allowed under age 16⁴. It is generally recognised as right and proportionate to treat children differently from adults and to protect them from unnecessary stigma related to disclosure for roles they may occupy when under the school leaving age. There are exceptions envisaged, where a disclosure check on a young person may be required, an example might be where a 15 year old is applying for work or college places which require a disclosure on anticipation of them turning 16.

Statistics from Disclosure Scotland found less than 1% of basic, standard and enhanced disclosures between 2015 and 2017 were made by people aged under 16 (less than 600 children over the three year period). The actual number of applications to join the PVG Scheme were higher, with around 1,775 total applications over the three years. Although a large number, this still makes up less than 1% of the total applications⁵.

The Scottish Children's Reporter Administration expressed the view that information in relation to people under the age of 18 should not ordinarily be available. It is the view of the Scottish Government that children and young people aged 16 and 17 should not be denied opportunities in education, training and

⁴ Access NI does not permit standard or enhanced checks for people aged under 16 (<https://www.nidirect.gov.uk/articles/types-accessni-checks>) and the Disclosure and Barring Service doesn't permit checks for any person aged under 16 (<https://www.gov.uk/government/organisations/disclosure-and-barring-service/about>)

⁵ Disclosure Scotland Business Analysts 20/11/2018

employment due to being unable to access disclosure. All organisations receiving information from Disclosure Scotland are subject to the Code of Practice and audit, however, specific provisions for convictions accrued by children will assist in protection of children aged 16 and 17 from disproportionate disclosure of childhood offending.

Safeguarding proposals within the Bill: mandatory scheme, standard conditions, new referral powers, extending the PVG Scheme to protect children who come into contact with scheme members working overseas, for example, humanitarian aid work

The Bill includes provision to introduce the safeguarding proposals set out in this impact assessment.

In line with Article 3, consideration of proposals and impacts within the Bill as a whole are being done in the context of 'Getting It Right For Every Child' (GIRFEC) and the best interests of the child, including both victims of crime and children who have accrued convictions. Disclosure and, in particular, the PVG Scheme is an important part of employers assessing the suitability of staff who have access to children.

The Bill includes provisions to strengthen safeguarding in Scotland by making the Scheme mandatory, introducing standard conditions, new referral duties for police, increased referral powers for local authorities and employers (the latter particularly in relation to overseas aid) support the protection of children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, under Article 19.

The proposal to give Scottish Ministers the power to place standard conditions on scheme members under consideration for listing could have a negative impact on young people if they were placed under those conditions, where they could be stigmatised even if the outcome was not to bar them from doing regulated roles. However, standard conditions will only be used in the most serious of cases and is likely to affect only a small number of children and young people, especially as people under 16 won't be able to join the PVG Scheme. This proposal also has the potential to protect children at possible risk of harm should imposing standard conditions be deemed necessary.

Other Relevant Information (ORI)

The Bill contains provision to allow an individual to make representations to the chief constable before disclosure of ORI and for providing the individual with the option to appeal to an independent reviewer before ORI is disclosed if they remain dissatisfied with the chief constable's decision to disclose the ORI.

	<p>Although this proposal is aimed at all age ranges and not specifically children and young people, it will have a positive impact of the rights of children and young people as individuals will be made aware of the intention to disclose ORI before it is shared with an employer or other third party and give all individuals the opportunity to make representations about the information (including instances where the information is from their childhood.)</p> <p>Figures show that this is likely to affect only a small number of children. Only a very small percentage of disclosure certificates contain ORI⁶.</p> <p>Minimum age to become a countersignatory/registered person</p> <p>It is recommended that the Bill should include provision to introduce a minimum age of 18 years for people who want to become a registered person, to be known as accredited body under the future arrangements, or those who are nominated to be a lead signatory or countersignatory.</p> <p>This will have no impact on the protection of children and young people but has the potential to negatively impact children who want to become a lead signatory or countersignatory. However the age limit was proposed in light of the level of responsibility these roles have.</p> <p>Our figures show that there have been minimal (less than 5) individuals under the age of 18 in each of the last three years who have had countersignatory accounts created and no individuals under the age of 18 have had registered person accounts created. Any negative impact will therefore be very small.</p> <p>Ending relevant offence court referrals</p> <p>The Bill contains provision to end relevant offence court referrals. As the Scheme will become mandatory this will have no adverse impact on the protection of children and young people. If an individual who is already a scheme member is convicted in court for an offence against a child, this will be picked up by the ongoing monitoring of their PVG scheme membership without the need for a court referral.</p> <p>It will however bring to an end the situation where people are referred to Disclosure Scotland for the purposes of determining whether they are unsuitable to do regulated roles, regardless of whether that person has ever done or intended to do a regulated role. There is therefore a potentially positive impact on this group of people, which could include children.</p>
<p>Monitoring and review</p>	<p>A review will be undertaken after the Bill has been implemented and the measures introduced have been in operation for a suitable</p>

⁶ Disclosure Scotland Business Analysts 31/07/2018

	<p>period of time. Stakeholder engagement will be ongoing through implementation and beyond.</p> <p>We will continue to engage with service users, including young people, those employing them and advocacy groups, to assess the impact of the reforms on recruitment, improved life chances and whether the aim of making the legislation easier to understand for young people is working.</p>
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CRWIA Declaration

Tick relevant section, and complete the form.

CRWIA required	CRWIA not required
✓	

Authorisation

<p>Policy lead</p> <p>Lynne McMinn Disclosure Bill Team Manager / Head of Policy Disclosure Scotland</p>	<p>Date</p>
<p>Deputy Director or equivalent</p> <p>Lorna Gibbs Chief Executive Disclosure Scotland</p>	<p>Date</p>



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