

Response ID ANON-8Z9G-EGE1-M

Submitted to **Protection of Vulnerable Groups and the Disclosure of Criminal Information**

Submitted on **2018-07-18 15:49:10**

Section 2 - Disclosure Products

1 Do you agree that reducing the disclosure products will simplify the system?

Not Answered

If you have answered no, what do you think will simplify the system?:

We agree a reduction in the number of products would be beneficial. There is at times, especially for a person having initial contact with the system, a level of unnecessary complication and confusion because of the similarity of Disclosure Scotland products. There needs to be greater awareness of and clarity around the continuous nature of the PVG Scheme. We agree that the onus should not be on the individual customer to have to differentiate between a wide range of products. We agree with the three revised levels. However, there needs to be particular clarity between Levels 2 and 3.

In order to aid understanding of the different levels and which product is appropriate, we suggest that information needs to be readily available to individuals and employers in different roles and sectors, including examples of what circumstances call for the different products to be sought. In our experience, this is not necessarily clear or understood and results in people applying for all levels or the highest level when these are neither necessary or appropriate.

2 As we are trying to simplify the system, do you have any views on what this product should be called?

Level 1

If other, please state::

We would marginally prefer Level 1 – the risk of terminology such as Basic and Enhanced is that it indicates a hierarchical or qualitative assumption. Arguably the same can be said for Level 1. There is a risk that individuals assume greater protection by one mechanism or system over and against another. It might be better if both terms were avoided and a neutral descriptor was used like Alpha, Beta, Gamma – or A, B, C.

3 As an applicant, do you have any concerns with this approach?

Not Answered

4 Which option do you prefer?

Option 2

Please explain why.:

New employees in social care roles have to be registered with the SSSC. For many working in social care there is a reality of in-work poverty. Whilst we recognise that the operating of any disclosure system requires to be sustainable we are concerned that for a workforce that, according to our data, has such a level of transition, charging for each Level 1 disclosure would be expensive. Therefore we would favour Option 2. However, even here we have concerns about the level of charge. We are particularly concerned around the need to create an account in order to access the discounted rate as this will unfairly penalise individuals who, for a number of reasons, do not have internet access. This will disproportionately affect many individuals in the social care sector. We believe the discounted rate must therefore not be premised on account creation.

5 Do you agree that it is appropriate to regulate registered bodies in relation to B2B applications?

Yes

6 What impacts, if any, do you foresee from moving from a paper based system to a digital system?

What impacts, if any, do you foresee from moving from a paper based system to a digital system?:

We believe that a system which excludes paper application etc to not be sufficiently inclusive and potentially discriminatory under the Equality Act 2010 for some applicants. We have particular concern about the issue of digital poverty within the social care workforce but there is equal evidence of digital exclusion in the 18-30 age group for the general workforce.

As a representative body Scottish Care is concerned that there is an assumption that all individuals have digital access. There is sufficient evidence that there are particular groups of the population who experience digital poverty and illiteracy; this is disproportionately the case for many of those who work in social care of adults which will be relevant for Level 3. We would therefore be more comfortable that there was a general assumption that the process would be digital but that there was an allowance that an individual could be sent a physical certificate and could authenticate their identity by physical means.

In relation to the regulation of registered bodies, we believe it would also be beneficial to include more than one registered person. Otherwise, the efficiency of the system is compromised as soon as that sole individual is unavailable due to holidays, sickness or other reasons.

7 Do you agree with our proposed fee for this service?

Yes

If not, what do you think the fee should be?:

8 Are there any professions/roles that are not included that should be on the list?

No

If you have said yes, please note what these are.:

9 Are there any professions/roles you think should be removed from the list?

No

If you have said yes, please note what these are.:

10 Do you agree with the proposal to remove certain kinship carers and all foster carers from a membership scheme?

Not Answered

11 Do you think that the two types of kinship arrangements should continue to be treated differently under the future arrangements?

Not Answered

12 Do you agree with this proposal?

Not Answered

13 Do you agree with this proposal?

Not Answered

13a. Do you think that anyone else in the foster/kinship carer's network needs to be checked? If so, who and why?:

14 Do you believe that this is the correct approach going forward?

Not Answered

15 Which option should be the content of the Level 2 disclosure product be based upon?

Option 2b

Please provide the reason for your choice.:

16 Which price option do you prefer for the Level 2 product?

Option 2

17 Is it proportionate that the free checks should continue for volunteers who obtain Level 2 disclosures?

Yes

18 What issues, if any, do you foresee with a move to a digital service?

What issues, if any, do you foresee with a move to a digital service?:

As previously stated.

Section 3 - Reforming the policy underpinning the PVG Scheme

19 How should a mandatory PVG Scheme be introduced and how should it work?

How should a mandatory PVG Scheme be introduced and how should it work?:

Whilst in general terms Scottish Care may be in favour of a mandatory scheme, we consider that the present consultation document fails to adequately convey the grounds for such a proposal. Once these are articulated, they need to be cogently and clearly articulated to the general public to ensure that the commitment to the non-mandatory scheme is not lost and that the flexibility to ensure the balance between public protection and unintended consequences continues. In addition, at a time of critical recruitment and retention challenges within the social care workforce, we are concerned that the timing of a mandatory scheme could risk placing the population who require care and support at risk because of the ability to recruit potentially being exacerbated by misconceptions of the Scheme becoming mandatory.

We would argue that there are some clear steps needed for the introduction of a mandatory scheme.

- A raising of public awareness.
- Appropriate training and development of organisations who will be engaged in the new Scheme.
- An adequate resourcing of those organisations and individuals most directly impacted.

20 Do you agree with the proposal to replace the “regulated work” definition with a list of roles/jobs?

Yes

21 Do you foresee any challenges for organisations from this proposed approach?

Yes

22 Are there any roles/jobs not within the list in Annex B that you think should be subject to mandatory PVG scheme membership?

Yes

If so, please provide more detail on why.:

There are some roles undertaken in a care home environment that are not necessarily explicitly referenced, e.g., where an individual delivers a services such as an activity or as a hairdresser/beauty therapist on a regular basis for a fee.

We agree that the broad definition of ‘regulated work’ has not been satisfactory and a list of protected roles is preferable. Our concern is that this list needs to be easy to update and the knowledge of any additions needs to be easily shared.

There should also be examples provided in relation to different contact levels to aid understanding.

23 To avoid inappropriate membership, what criteria to you think should be used to decide if an individual is in a protected role?

To avoid inappropriate membership, what criteria to you think should be used to decide if an individual is in a protected role?:

We believe the criteria of location, role, consistency and length of contact, regularity and environment as described are key.

24 Do you think that the decision about whether someone who is in a protected role meets an exception which makes them ineligible for the PVG Scheme should be taken by Scottish Ministers?

Yes

25 Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?

Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?:

No

26 Are there any services that should be added, or are there any services that should be removed?

Yes

If yes, please state what these are.:

Scottish Care believes that if a service is delivered by an individual on a one to one basis to an individual defined as requiring social care supports, e.g. under the Self-directed Support Act, that such an individual should fall under the mandatory Scheme. We therefore contend that personal assistants should be required to be under the mandatory Scheme.

27 Is this appropriate?

Yes

28 Do you agree with this approach?

Yes

29 Do you think these are the correct facilities, or should any be added or removed?

Yes

If yes, please state what these are.:

30 Do you think this approach is clear and helpful?

Yes

31 Do you think that list of positions is correct?

Yes

Should it be amended either by adding to it, or by taking away from it?:

32 How long should scheme membership last in a mandatory scheme?

5 years

33 Do you think a membership card would be beneficial to you as a member of the PVG scheme?

Yes

34 Do you think a membership card would be beneficial to you as an employer?

No

35 Do you agree with these proposals?

Yes

36 What is your preferred option?

Option 3

37 Are you in favour of being able to interact with Disclosure Scotland online?

Yes

38 Are you in favour of using electronic payment method for fees?

Yes

39 Do you have an electronic payment method that you prefer?

No

If you have answered 'yes' please say what it is.:

We agree with the proposals around online interaction and electronic payments but would re-iterate our concern that the new application process should not be exclusively digital in nature. We would also add that many individuals who work in social care do not have personal bank accounts and even if they do they do not utilise online or telephone banking. Data to this effect is available from all the major UK banks.

40 Do you have any proposals on how the transitional arrangements should work?

Do you have any proposals on how the transitional arrangements should work? :

Considerable public and media awareness raising; working with provider and employer organisations would be required. We would also suggest that charging arrangements need to be clear for individuals with the introduction of the changes for existing members delayed for a period of 7 years unless they utilise the system in the interim.

41 Should volunteers continue to receive free membership?

Yes

If no, should they be subject to a reduced fee?:

Any fee or fee waiver scheme is likely to act as a disincentive to volunteers at a time in which their role in supporting some of our most vulnerable citizens has never been greater and more needed.

42 Do you agree that voluntary organisations seeking to benefit from a reduced fee or the fee waiver should be subject to a public interest test?

Not Answered

If so, how should that test be defined?:

A public interest test which excludes private organisations delivering a public service who may wish to use volunteers would not be acceptable. 86% of all care homes in Scotland are operated by the independent sector and many are private providers. We would consider it wholly unacceptable that their ability to sue volunteers for the public good would be curtailed by a narrow test.

We would broadly define the test as requiring to be:

'Any organisation delivering a service, regardless of their constitutional model, which is fully or partially funded by income from public or charitable authorities and which uses volunteers for the direct benefit of individuals who are defined as being in need of protection, whether children or adults.'

43 Do you agree that employees and employers alike (including volunteers and volunteering bodies) who work or allow an individual to work in protected roles without joining the PVG Scheme or to stay in protected roles after membership has expired should be subject to criminal prosecution?

No

44 Do you agree that any scheme member who fails to pay the relevant fee to renew their PVG Scheme membership and where there are no employers (or volunteering bodies) registered as having an interest in them in a protected role should exit the PVG Scheme automatically at the expiry of their membership?

Yes

45 Should a person who joined the Scheme as a volunteer and benefitted from free entry later try and register a paying employer against their volunteer membership then the full fee would become payable and a new 5 years of membership would commence. Do you agree with this?

Yes

Section 4 - Removing unsuitable people from work with vulnerable groups

46 Do you agree with our proposals to dispense with the current court referral procedure under section 7 of the 2007 Act?

Yes

47 Are there offences missing from the Automatic Listing Order that you think should be included?

No

If you answered yes to question 47, please list the offences you believe are missing?:

48 Do you agree with proposals to create new referral powers for the Police?

Yes

49 Do you agree these powers should be limited to when police have charged a person with unlawfully doing a protected role whilst not a scheme member or where a referral has not been made by a relevant organisation?

Yes

50 Do you think this proposal closes the safeguarding gap in terms of self-directed support?

Yes

51 Do you think that this list of regulatory organisations should be amended?

No

52 If you think the list should be amended, please give details of additions or removals.

If you think the list should be amended, please give details of additions or removals.:

53 Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions?

Yes

54 If yes, how long should the conditions last before lapsing?

3 months

55 Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why?

Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why? :

The examples indicated are illustrative and we would be concerned both with a blanket or too narrow a definition of circumstances. We would suggest that standard conditions be imposed in such circumstances where Disclosure Scotland, through ORI or other means, has sufficient evidence of concern that an individual might be a present and significant threat and/or that there is evidence to necessitate further investigation.

We would wish to know the percentage of those who are Considered for Listing but about whom there is a subsequent decision not to List. Given the length of time which is detailed in the Consultation for this process we could be faced with a situation where an individual working, albeit with supervision and restriction, is materially and reputationally negatively impacted by a process which ends with no Listing. However we recognise the use of ORI in this context will be supported by some mechanism of partial restriction. We would wish this new intervention to be closely monitored and a review process established.

56 Do you agree that it should be a criminal offence if an individual and employer/voluntary body failed to comply with standard conditions?

Not Answered

57 Do you agree the age threshold for the shorter prescribed period for a removal application to be made should be raised?

Not Answered

58 Which option do you prefer?

Option C

59 Do you think it's appropriate that organisations, irrespective of where the regulated work is to be carried out, should be informed of a listed individual's barred status?

Yes

60 Do you agree with our approach for PVG Scheme Members in a protected role overseas or organisations employing PVG members to do a protected role, such as providing aid services?

Yes

61 We are proposing that there should be criminal offences in relation to organisations who employ barred persons overseas. Do you think that we should also consider introducing criminal offences in relation to barred individuals offering to undertake a protected role overseas?

Not Answered

Section 5 - Offence Lists and Removal of spent convictions from a disclosure

62 Are there any offences missing from either list that you think should be included?

Not Answered

If so what are they, on what list should they appear and why?:

63 Are there any offences on schedule 8A that you think should be on schedule 8B?

Not Answered

If so, please list them and explain why.:

64 Are there any offences on schedule 8B that you think should be on schedule 8A?

Not Answered

If so, please list them and explain why.:

65 Do you agree with the categorisation of the new offences?

Not Answered

If no, please state how they should be categorised. :

66 Do you believe the rules for disclosure in the current form of 15 years and 7.5 years provide appropriate safeguarding and privacy protections?

Not Answered

67 Do you agree that a reduction in the disclosure periods from 15 & 7.5 years is appropriate considering the changing policy on rehabilitation of offenders?

Not Answered

68 What period between 11 and 15 years do you think is appropriate for disclosure?

Not Answered

69 Do you think the application process to seek removal of a spent conviction should be reviewed?

Not Answered

70 At present, an individual has three months from the date of notification of an intention to appeal to make an application to a Sheriff. Do you think this time period is:

Not Answered

If you indicated that the time period is too long or too short, what do you think the time period should be?:

71 Do you think any of the options set out above offer viable alternatives to an application to a Sheriff?

Not Answered

If yes, which one? :

If not, do you have any other suggestions? :

Section 6 - Additional Policy Questions

72 Do you agree that Ministers should have a power to issue statutory guidance to Police Scotland on the processes governing the generation and disclosure of ORI, including seeking representations from the individual before issuing it for inclusion on an enhanced disclosure or PVG scheme record?

Not Answered

73 Do you agree with Ministers' proposals to allow for representations to the chief constable before disclosure of ORI to a third party and for providing the individual with the option to appeal to an independent reviewer before ORI is disclosed?

Not Answered

74 Do you agree that the independent reviewer being appointed under the ACR Bill should be used for reviewing ORI?

Not Answered

75 Should there be specific provisions reducing the possibility of the state disclosure of criminal convictions accrued by young people 12 years or older on all types of disclosure?

Not Answered

Not Answered

Please tell us why you have selected an age range or given your answer.:

76 Should there be a presumption against the disclosure of all convictions accrued between 12 and a specified upper age, with the only possibility being police disclosure as ORI after ratification by the Independent Reviewer on the Level 2 and PVG Level disclosures?

Not Answered

77 Should there be no state disclosure of any conviction between the age of 12 and the specified upper limit, except where the conviction is for an offence listed in schedule 8A or 8B?

Not Answered

78 If there is a disclosure of an 8A or 8B conviction(s) should all other unspent convictions be disclosed even if the other unspent convictions are for offences not listed in schedule 8A or 8B?

Not Answered

79 Should disclosure applicants with 8A and 8B convictions be able to apply immediately to a sheriff (or other authority) to have those treated as protected regardless of the passage of time?

Not Answered

80 When including ORI on any disclosure about conduct between the age of 12 and the upper age limit should the police only be able to refer to matters they reasonably considered to be serious?

Not Answered

81 Do you agree with the proposal to place a lower age limit on applicants for criminal record checks?

Not Answered

82 In what circumstances should a criminal record check for a child under 16 be permitted?

In what circumstances should a criminal record check for a child under 16 be permitted?:

83 Do you have any concerns with this proposal?

Do you have any concerns with this proposal?:

84 Do you think a supported person arranging self-directed social care should have access to vetting information which could include details about previous convictions relating to a prospective carer?

Yes

If you responded 'No' to Q84 , do you have any suggestions about how Disclosure Scotland checks could be structured to assist a supported person making their own arrangements for self-directed social care? :

We believe that a supported person should have the same level of access to information as another employer would. However, appropriate information, advocacy and support needs to be in place to ensure that an individual understands the information and is able to use it to make an informed choice. This is particularly important in instances where capacity may be a concern. It is also crucial that individuals know how they can and cannot use the vetting information (including respecting confidentiality). However, none of these should be a barrier to someone having appropriate information.

85 Do you think this approach is correct?

Not Answered

86 Do you think that it should be?

Not Answered

87 Should vetting information be available if the arrangements are being made by a private individual?

Not Answered

88 Do you agree that the law be changed to sort this anomaly?

Not Answered

89 Do you think that provision should be made to bring into force the amendment at section 78(1) of the 2007 Act?

Not Answered

90 Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on any particular groups of people?

Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on any particular groups of people?:

91 Please tell us what potential there may be within these proposals to advance equality of opportunity between different groups and to foster good relations between different groups?

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92 Please tell us about any potential impacts you think there may be to particular businesses or organisations?

Please tell us about any potential impacts you think there may be to particular businesses or organisations?:

93 Please tell us about any potential impacts you think there may be to an individual's privacy?

Please tell us about any potential impacts you think there may be to an individual's privacy?:

94 Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?

Please tell us about any potential impacts, either positive or negative; you feel the proposals in this consultation document may have on children?:

About you

What is your name?

Name:

Becca Gatherum

What is your email address?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Scottish Care

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Very dissatisfied

Please enter comments here.:

Far too long a consultation document. This actively discourages and indeed prevents many stakeholders and interested parties to participate.

Very limited scope to provide more detailed and qualified responses outwith a yes/no distinction in many areas of the consultation.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Very satisfied

Please enter comments here.: