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Dear Convener,

Thank you for the discussion at the Education, Children and Young People Committee session on 27 November, which considered the following instruments:

- The Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024
- SSI 2024/313 Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024
- SSI 2024/314 Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024
- SSI 2024/315 Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024
- SSI 2024/316 Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations
- SSI 2024/317 Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 202

I would firstly like to take this opportunity to thank all Committee members for their input. I write to clarify the position with regard to several points discussed today.

Predicted volumes of new PVG applications

The Committee noted concern around a lack of clarity on anticipated numbers of additional PVG scheme members that would arise from the move to regulated roles.

Disclosure Scotland is already undertaking targeted engagement with relevant sectors and individual organisations that may not currently use the PVG Scheme but will be required to do so. That engagement will continue, at pace, to raise awareness of the changes within the Disclosure Act – in particular, the introduction of a

mandatory PVG scheme and the associated offences. This targeted engagement complements the public information campaign which has been designed to raise awareness of the impact of the changes brought about by the Disclosure (Scotland) Act 2020.

The main thrust behind a mandatory PVG Scheme is not to recruit many thousands of new members. Rather, the intention is to bring in those employees and volunteers who ought to be in the scheme because they have power and influence over children and protected adults but are presently excluded because of the old definition of 'regulated work' in the existing law. Some sectors and organisations have made compelling cases that their roles, presently excluded from PVG, should be eligible.

We are confident that increases in membership numbers caused by the introduction of the 2020 Act will be modest because the PVG Scheme is, for most employers, already essentially mandatory. This is because it is presently a criminal offence for an employer to employ a PVG-barred person in regulated work. The only way that can be checked is to obtain a PVG Disclosure. That means they are incentivised to ensure their staff are in the scheme where that is appropriate.

That leaves two potential groups of new joiners because of the new law. First, those who have been avoiding PVG Scheme membership for any reason – an example would be self-employed music teachers who will now be compelled to join PVG and be subject to daily monitoring. Second, the new roles that are brought in by the changes, for example football scouts dealing with young people.

The increase in PVG Scheme size will be minimal. Our current estimates are that fewer than 5000 new members will join by dint of the mandatory scheme. We undertake, however, to keep the Committee briefed should those estimates prove to be significantly out. These estimations are based on operational experience and our engagement with stakeholders. It is hard to be precise as it is, to an extent, demand led, but the PVG Scheme already has 1.5 million members, so it is reasonable to believe that any further increase would be extremely limited indeed if only because the scheme is close to saturation point in the Scottish workforce.

This engagement has been productive in raising awareness of the changes and encouraging those organisations/sectors to ready themselves. However, Disclosure Scotland have not yet confirmed with the relevant sectors and organisations the specific future volumes of PVG applications that will arise. They will do so as far as is practicable in the engagement between now and 1 April 2025. I am happy to provide the Committee with further updates on these figures when they become available to Disclosure Scotland.

Pre-consultation engagement found overwhelming support for a mandatory scheme. This was also confirmed during formal consultation on proposals to update and amend the Disclosure regime in Scotland. Furthermore, the Health and Sport Committee's 2017 inquiry into Child Protection in Sport reported that there was a "compelling case" for a mandatory PVG scheme.

It is also important for the Committee to note that Disclosure Scotland monitors service delivery performance daily, while also utilising application volume forecasts and resource planning, to ensure that their 14-day service level agreement for completing applications is maintained. Disclosure Scotland regularly outperform their targets and have now done so consistently over several years.

Requirement for PVG Scheme membership for elected members in local authorities

I also note the point raised by the Committee to clarify whether elected local authority members will require PVG membership. Currently, certain local authority members are eligible for PVG membership if they have committee involvement overseeing services for children and protected adults.

While the Disclosure (Scotland) Act does amend schedules 2 and 3 of the PVG Act (where “regulated roles” is defined), there is no practical impact to whether elected local authority members will qualify for PVG membership. Those members who currently attract PVG membership because of their role (i.e. resulting from their involvement with relevant committees overseeing services for children and/or protected adults) will continue to do so under the amendments to schedules 2 and 3 made by the Disclosure (Scotland) Act.

Those elected members I referred to who do not qualify for PVG membership include members of Parliament or members of the Scottish Parliament. This matter was raised as a Stage 2 amendment at the Committee during passage of the Disclosure (Scotland) Bill but was not supported by the Committee.

I hope this helps to clarify the point to the Committee’s satisfaction.

Prescribed information - Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024

I have also noted the point raised today, following a report by the Delegated Powers and Law Reform Committee (DPLRC), that it was suggested that information prescribed under SSI 2024/313 Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 differs from the prescribed information outlined in the passage of the Disclosure (Scotland) Bill.

Following the session, my officials have thoroughly reviewed the records of the passage of the Bill, as they relate to the DPLRC and/or references to the related sections of the Bill. They could find no reference to a suggestion at that time that the information prescribed for the Chief Constable would be limited to gender and National Insurance number.

In particular, the Delegated Powers memorandum, Stage 1 and Stage 2 reports, when remarking on the relevant section of the Disclosure (Scotland) Act, do not

make comments of this nature on the detail of prescribed information for the chief constable. On the contrary, in the Delegated Powers Memorandum, it is expressly stated that:

‘This regulation-making power is needed due to the level of detail required in relation to the information to be provided by the chief constable to the Scottish Ministers which could trigger the consideration for listing process under section 10 of the PVG Act. It is considered that the level of detail would be excessive to include on the face of the Bill. The information to be prescribed under the new section 6A (for the purposes of new section 10(1)(aa) of the PVG Act) will be the similar to the information already prescribed for organisational referrals under sections 3 to 6 and 8 of the PVG Act in the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (SSI 2010/181)’

Paragraph 1 of the Schedule of this SSI notes the prescribed information required, which matches the position as it was described in both the Delegated Powers Memorandum and this SSI.

In summary, it is the Scottish Government’s position that there has been no change in position in this SSI on the extent of the prescribed information that the Chief Constable is required to gather.

I would welcome the DPLRC and/or the Education, Children and Young People Committee specifically highlighting the details of where this was previously noted in the passage of the Bill.

I hope the Committee finds this response helpful.

Yours sincerely



Natalie Don-Innes
Minister for Children, Young People and The Promise