

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

Education, Children and Young People Committee

Wednesday 27 November 2024

SSIs – Disclosure (Scotland) Act 2020

Introduction

This briefing has been prepared to aid the Committee in its scrutiny of six SSIs – one affirmative and five negative – related to the Disclosure (Scotland) Act 2020.

Background

The Disclosure (Scotland) Act 2020 (the 2020 Act) amended the law in relation to how the state discloses previous offending behaviour to an individual's prospective employers, volunteering organisations and others.

The main purpose of the 2020 Act is to simplify the Disclosure System, safeguarding children and vulnerable adults, whilst also balancing an individual's right to move on from offending behaviour. It amends the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act), which provided for the barring of individuals considered to be unsuitable for regulated work and introduced a membership scheme with continuous monitoring.

The 2020 Act ends the automatic declaration of childhood convictions, introducing new review procedures, relevant police information, removable convictions, and functions of the independent reviewer. Under the 2020 Act the majority of childhood convictions (accrued between the ages of 12 and 18) are immediately spent, apart from extended sentences resulting in a custodial sentence of more than 48 months and convictions for sexual offences that resulted in custodial sentences of more than 12 months.¹

The 2020 Act also reforms and reduces the type of disclosure products available. Previously, there were ten different varieties of disclosures; the 2020 Act modified

¹ [Children and Young People in Conflict with the Law: Policy, practice and legislation](#), CYCJ, June 2023

this to create two broad levels of disclosure: Level 1 and Level 2. All of these are available to over 16s, and all but the Level 2 with PVG require payment of a fee.

Following these changes, the [Disclosure Scotland website sets out](#) that from 1 April 2025, types of disclosure will be as follows:

- **Level 1 disclosure:** Replaced the basic disclosure. Only unspent convictions accrued when an applicant was aged over 18 are disclosed automatically.
- **Level 2 disclosure:** All level two disclosures will show information on unspent convictions, certain spent convictions and certain spent childhood convictions (including certain children's hearings outcomes), unspent cautions (not childhood cautions), notification requirements for anyone on the Sex Offenders Register, and other relevant information held by the police.
- **Level 2 with [barred check list](#) check:** Needed for activities such as adopting a child. As well as basic Level 2 disclosure information it will show if an individual is on or under consideration for inclusion on the barred lists for working with children and adults. It will also show if you have any prescribed civil court orders.
- **Level 2 with PVG:** This disclosure will show baseline information for all Level 2 disclosures along with membership of PVG scheme, whether an individual is under consideration for the barred check list, and whether the individual has any prescribed civil court action.

The 2020 Act makes the Protection of Vulnerable Groups (PVG) Scheme essentially mandatory, creating offences for employers, volunteering organisations and individuals where an individual undertakes a regulated role when not a member of the PVG Scheme.

Much of the 2020 Act is not yet in force; the Regulations being presented to the Committee make further provisions for the changes it contains. The Scottish Government has therefore not carried out consultation on these specific Regulations. However, the policy notes accompanying each SSI details the consultation and engagement process in the lead up to Bill process. Impact assessments were also carried out as part of the Disclosure (Scotland) Bill process and no negative impacts were identified.

Further information about the implementation of the 2020 Act is [available on the Disclosure Scotland website](#).

The Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024

Procedure: Draft Affirmative

Purpose of regulations

The Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024 make provisions around the removal of individuals from regulated roles in certain circumstances.

They set out that organisations are prohibited from permitting and must remove an individual carrying out a regulated role in the following circumstances:

- Where the organisation is notified by Scottish Ministers that an individual carrying out a regulated role has been barred from such roles.
- Where an individual carrying out a relevant regulated role is not a member of the PVG Scheme.

The Disclosure (Scotland) Act 2020 (the 2020 Act) inserted provisions into the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act) making it an offence for an individual to carry out or agree to carry out any regulated role unless they participate in the PVG Scheme. Previously, there were offences under the 2007 Act relating to carrying out/employing an individual to do regulated work while barred, but these did not make the scheme mandatory.

Regulation 2 of these regulations sets out that where an organisation is notified that an individual carrying out a regulated role has been barred from regulated roles, the organisation is prohibited from allowing the individual to carry on in that role and must also remove the individual from the regulated role. Failure to comply with this regulation is an offence, as set out in the 2007 Act.

Section 35(2) of the 2007 Act contains the regulation making power for Ministers and section 35(4) sets out that an organisation failing to comply with any such regulations made commits an offence. Penalties for this are set out in section 37 of the 2007 Act. A person guilty of an offence is liable for imprisonment of up to 12 months on summary conviction, a fine, or both. A person convicted on indictment is liable to imprisonment of up to five years, a fine, or both.

Regulation 3(1) is intended to address behaviour by organisations continuing to employ non-PVG Scheme members in regulated roles requiring PVG Scheme membership. It creates a prohibition against an organisation allowing an individual to carry out a relevant regulated role where the individual is not a member of the PVG Scheme, and also requires the removal of the individual from the role. Failure to comply with this is an offence under section 45E(3) of the 2007 Act, and penalties are set out in section 45G of the 2007 Act. As with the penalties for Regulation 2, a

person found guilty of an offence is liable for imprisonment of up to 12 months on summary conviction, a fine, or both. A person convicted on indictment is liable to imprisonment of up to five years, a fine, or both.

Regulation 3(2) allows for transitional arrangements so that an organisation does not commit an offence where an individual in a role requiring PVG Scheme membership has made an application to join the PVG Scheme before the relevant date.

The Scottish Government's policy note on the Regulations explains that the prohibition in Regulation 3 will commence "slightly later" than the prohibition in Regulation 2 in order to give "a few months grace" to those who are not currently members but will need to be under new arrangements.

The Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (SSI 2024/313)

Procedure: Negative

Clerks' paper Annexe A

Purpose of regulations

The Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 supplement provisions in the 2020 Act that introduce compulsory PVG Scheme membership for anyone carrying out a regulated role with children or protected adults.

The 2020 Act inserted a [new section into the 2007 Act](#) placing duty on the chief constable of Police Scotland to give Scottish Ministers any prescribed information held in relation to an individual considered to be or have been carrying out a regulated role while not a member of the PVG Scheme.

These Regulations set out the information which, if held, a chief constable must refer to Scottish Ministers in relation to an individual considered to have been carrying out a regulated role while not a member of the PVG Scheme. Information that must be referred relating to the individual is:

- Name, or any names known by,
- Most recent address,
- Any other address they have been resident at from the previous 10 years,
- Date and place of birth,

- Type of regulated role they are considered to have been doing,
- Relevant period the role was being carried out,
- Responsibilities undertaken,
- For whom the role was being done.

Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024

Procedure: Negative

Clerks' paper Annexe B

Purpose of regulations

These Regulations make detailed provision about information that can be used for listing and vetting purposes for members of the PVG Scheme. Listing is where ministers, in practice Disclosure Scotland, would add an individual to the barred list, meaning that the person was unsuitable to work with children, protected adults, or both.

The 2020 Act inserts section 18(5) into the 2007 Act which is concerned with the information the Chief Constable would provide to ministers when considering whether to list an individual. S18(5) provides a definition of "relevant matter" and prescribed civil court orders are included in this definition. **Regulation 3 and Part 1 of Schedule 1** prescribe those civil court orders.

Regulation 4 and Part 2 of schedule 1 prescribe the details of every relevant matter, including the prescribed civil court orders, for the purposes of section 18(4).

Vetting information is the information collated and provided to, for example, employers about any relevant criminal behaviours or other relevant information of an individual.

Section 49(1)(a) of the 2007 Act provides that "vetting information", in relation to a scheme member, includes the prescribed details of every relevant matter relating to the scheme member that is recorded in the police's central records. **Regulation 5 and schedule 2** of these Regulations prescribe the details of every relevant matter for the purposes of section 49(1)(a).

The Scottish Government policy note accompanying the SSI states:

Prescribing these civil orders as vetting information, removes the disclosing or otherwise of them from the discretion of chief constables and ensures that

they are vetting information in every instance. The information will be gathered by Disclosure Scotland directly from central records.

The relevant civil court orders prescribed by these Regulations cover a range of sexual harm and offences. A full list of the prescribed court orders can be found at Schedule 1, Part 1 of the Regulations. Schedule 1, Part 2 lists the prescribed details required for relevant matters. Schedule 2 sets out prescribed details of relevant matters required for vetting information.

The Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024

Procedure: Negative

Clerks' paper Annexe C

Purpose of Regulations

The Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 make detailed provision about what information Level 1 and Level 2 disclosures will contain. The Regulations come into force on the same day as section 8 (Level 2 Disclosure) of the 2020 Act.

As noted in the summary of the 2020 Act earlier in this briefing, Level 1 and Level 2 disclosures will replace basic, standard, enhanced and PVG Scheme-related disclosures.

Regulation 3 prescribes 'central records' - defined by the 2020 Act as records held for the use of police forces - as information held in the criminal history/record database by forces across the UK and accessed by Disclosure Scotland.

Regulations 4 and 5 prescribe the details of convictions and cautions included on Level 1 and Level 2 disclosures. Regulation 4 deals with information relating to unspent convictions and Regulation 5 deals with spent and unspent convictions and unspent cautions. For convictions, the information required includes date of conviction, convicting court, offence, and penalty. For cautions, it includes date of caution, issuing police force and offence.

Regulation 6 sets out the prescribed purposes for which suitability information about an individual can be requested. These replicate the previous prescribed purposes and add two new ones relating to individuals over 16 years of age who do not directly work or care for children or vulnerable adults, but either: live on the grounds of a school; or live in the same household as a "shared lives carer".

A 'shared lives carer' is defined in Schedule 4 of the 2020 Act as: "an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for protected adults together with, where necessary, accommodation

in the individual's home". This was added to the 2020 Act via a non-government amendment following stakeholder feedback on regulated roles.

Regulation 7 prescribes that details of circumstances in which individuals can be barred in relation to Level 2 disclosures.

Regulation 8 sets out required information for Level 2 disclosures for non-PVG scheme members and **Regulation 9** sets out required information for Level 2 disclosures for PVG scheme members.

Regulation 10 prescribes procedures and requirements around providing fingerprints as evidence of identity where this is required by Scottish Ministers under the 2020 Act. This is used where other means of confirming identity have failed.

The Schedules of these Regulations prescribe the court orders required for disclosures for non-PVG Scheme members (Schedule 1) and PVG Scheme members (Schedule 2).

The Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024

Procedure: Negative

Clerks' paper Annexe D

Purpose of Regulations

The barred lists allow for ministers to determine that a person should not carry out any regulated role with children or protected adults. Listing is relatively rare. The PVG scheme also discloses information about previous behaviours of an individual and, if the person is not listed, it is for the employer (for example) to make a judgement as to whether the person is suitable to take on particular regulated roles.

Section 68 of the 2020 Act contains a definition of 'consideration of suitability' of an individual for a regulated role requiring Level 2 with PVG disclosure by employers and others. That is, when they can undertake a Level 2 with PVG disclosure.

The definition set out in section 68 includes:

- people appointing someone (i.e. an employer) to a regulated role;
- people supplying an individual to someone else in order to carry out a regulated role (i.e. an agency supplying temporary staff); and
- "any other prescribed purpose"

Regulation 3 prescribes the “any other prescribed purpose” referenced in section 68(c) of the 2020 Act. This ensures that Level 2 Disclosures for PVG members can be requested when an individual’s suitability is being considered for:

- registration as a teacher or social worker,
- provision or management of a care service,
- being a foster carer,
- provision of an independent health service,
- appointment as a convenor, council member or committee member of the Scottish
- Social Services Council or the General Teaching Council for Scotland, and
- inclusion in a list for the provision of certain health and medical services.

The Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024

Procedure: Negative

Clerks’ paper Annexe E

Purpose of Regulations

Section 42 of the 2020 Act makes it an offence for a person to whom a Level 2 disclosure is made available to then disclose that to another person. This is to protect the confidentiality of this information and ensure that it is only used for a lawful purpose. Section 44 of the 2020 Act makes it an offence for a person to request/seek sight of a Level 2 disclosure for a non-permitted purpose. Section 45 of the 2020 Act sets out exceptions to these offences.

These Regulations prescribe further exceptions to the disclosure offences under section 42 and 44 of the 2020 Act.

Regulation 3 sets out that where an individual is carrying out a regulated role involving transport of children and protected adults to an educational institution, health body or independent care service, an employer can share a Level 2 disclosure with PVG Scheme membership with an organisation contracting their services and this would not be an offence on the part of the organisations employing or contracting the individual.

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