

Education, Children and Young People Committee
Wednesday 27 November 2024
31st Meeting, 2024 (Session 6)

Subordinate Legislation

Negative instruments

1. At its meeting today, the Committee will be considering the following negative instruments, as part of a package of SSIs—
 - Protection of Vulnerable Groups (Referrals by the Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (**Annexe A**)
 - Protection of Vulnerable Groups (Information for Listing and Vetting Information) (Scotland) Regulations 2024 (**Annexe B**)
 - Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (**Annexe C**)
 - Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024 (**Annexe D**)
 - Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024 (**Annexe E**)
2. More information about the instruments is set out in the annexes to this paper.

Clerks to the Committee
November 2024

Annexe A

Note by the Clerk on The Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (2024/313)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 13 December 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Protection of Vulnerable Groups \(Referrals by Chief Constable\) \(Prescribed Information\) \(Scotland\) Regulations 2024 \(SSI 2024/313\)](#)

Laid under: [Disclosure \(Scotland\) Act 2020](#)

Laid on: 4 November 2024

Procedure: Negative

Deadline for committee consideration: 9 December 2024

Deadline for Chamber consideration: 13 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 19 November 2024 and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 November 2024](#) report.
8. The DPLR Committee made the following recommendations in relation to the instrument—

The Committee draws this instrument to the attention of the Parliament on reporting ground (h) (form or meaning could be clearer) as the meaning of the term “details” in paragraph 6 of the schedule could be clearer.

Purpose of the instrument

9. These Regulations prescribe the information which the chief constable must refer, if held, to Scottish Ministers in relation to an individual whom the chief constable considers is or has been carrying out a type of ‘regulated role’ while not participating in the Protecting Vulnerable Groups Scheme in relation to that type of regulated role.
10. The Policy Note accompanying the instrument is included in Appendix A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
November 2024

Appendix A: Scottish Government Policy Note

POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (REFERRALS BY CHIEF CONSTABLE) (PRESCRIBED INFORMATION) (SCOTLAND) REGULATIONS 2024

SSI 2024/313

The above instrument was made in exercise of the powers conferred by section 6A of the Protection of Vulnerable Groups (Scotland) Act 2007 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations prescribe the information which the chief constable must refer, if held, to Scottish Ministers in relation to an individual whom the chief constable considers is or has been carrying out a type of 'regulated role' while not participating in the Protecting Vulnerable Groups Scheme in relation to that type of regulated role.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme ("the PVG Scheme") and keeps lists of individuals barred from working with children and protected adults on behalf of the Scottish Ministers.
2. The Disclosure (Scotland) Act 2020 ("the Disclosure Act") reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act").
3. These Regulations supplement provisions in the Disclosure Act that introduce compulsory PVG scheme membership under section 45C to 45G of the PVG Act for anyone carrying out a 'regulated role with children or protected adults.' An individual will commit a criminal offence if that individual carries out a regulated role when not a member of the PVG scheme. This policy is intended to prevent people who are unsuitable, from carrying out regulated roles.
4. Section 80(2) of the Disclosure Act inserts new section 6A into the PVG Act. Section 6A places a duty on the chief constable of Police Scotland to give the Scottish Ministers any prescribed information that the chief constable holds in relation to an individual whom the chief constable considers is, or has been, carrying out a regulated role while not participating in the PVG Scheme.
5. The consequence of such a referral being made by the chief constable of Police Scotland is that the individual referred may be considered for listing in the children and/or adults lists under sections 15 and/or 16 of the PVG Act.

6. These Regulations prescribe the information the chief constable must refer, if held, as:
 - the individual's name, or any other names known by,
 - the individual's most recent address,
 - any other addresses at which the individual is, or has been, resident within the last 10 years,
 - the individual's date and place of birth,
 - the type of regulated role the individual is considered to have been doing,
 - the relevant period in which it was being done,
 - the responsibilities undertaken, and
 - for whom it was being done.
7. The information prescribed in these Regulations is similar to other information that must be provided to the Scottish Ministers for other referral types under sections 3 to 6 and 8 of the PVG Act, as prescribed in the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Referrals by Organisations and Other Bodies\)\(Prescribed Information\) Regulations 2010](#).
8. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the [timeline for the passage of the Bill](#).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

9. The Scottish Ministers have made the following statement regarding children's rights.
10. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 is compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

11. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

12. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
13. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
14. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team has carried out a significant amount of research, which has included a range of users, including;
 - individuals with and without experience of using Disclosure Scotland's services,
 - individuals with convictions,
 - care experienced people,
 - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
 - organisations – including various roles e.g. HR, admin staff, counter signatories,
 - charities, and
 - voluntary organisations.
15. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its [response to the consultation](#) on 13 June 2019.
16. Disclosure Scotland has also engaged directly with Police Scotland on changes to information processing responsibilities for Police Scotland as a result of implementation of the Disclosure Act. In relation to these Regulations in particular, the information to be referred has been engaged on and agreed between Disclosure Scotland and Police Scotland. The existing Data Sharing Agreement between Disclosure Scotland and Police Scotland is being updated to reflect the changes in terminology created by the Disclosure Act

changes and to acknowledge the new obligation arising from section 6A of the PVG Act for the chief constable. Currently, Disclosure Scotland and Police Scotland work as joint controllers for data protection purposes and for the purposes of these Regulations that will continue. Police Scotland will only be required to give information to the Scottish Ministers that they hold; they will not be generating new information to provide to Disclosure Scotland under these Regulations.

Impact Assessments

17. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- [Disclosure \(Scotland\) Bill: Fairer Scotland Duty assessment](#)
- [Disclosure \(Scotland\) Bill: children rights and wellbeing impact assessment](#)
- [Disclosure \(Scotland\) Bill: data protection impact assessment](#)
- [Disclosure \(Scotland\) Bill: equality impact assessment](#)
- [Disclosure \(Scotland\) Bill: partial Business and Regulatory Impact Assessment](#)

18. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

19. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

20. The Minister for Children, Young People and the Promise confirms that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland
November 2024

Annexe B

Note by the Clerk on The Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 (2024/314)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 13 December 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

Title of instrument: [The Protection of Vulnerable Groups \(Information for Listing and Vetting\) \(Scotland\) Regulations 2024 \(2024/314\)](#)

Laid under: [Disclosure \(Scotland\) Act 2020](#)

Laid on: 4 November 2024

Procedure: Negative

Deadline for committee consideration: 9 December 2024

Deadline for Chamber consideration: 13 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

4. Once laid, the instrument is referred to:

- the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 19 November 2024 and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 November 2024](#) report.
8. The DPLR Committee made the following recommendations in relation to the instrument.

The Committee draws this instrument to the attention of the Parliament on the general reporting ground on the basis that it would have been helpful, in the interests of the accessibility of this instrument, if the accompanying documents made clear that the prescribed convictions and cautions do not include non-disclosable convictions and certain cautions as set out in section 18(5) of the Protection of Vulnerable Groups (Scotland) Act 2007.

Purpose of the instrument

9. The purpose of these Regulations is to make provision to enable the Scottish Ministers' access to records of convictions, cautions and other information for the purposes of barring and vetting of Scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007.
10. The Policy Note accompanying the instrument is included in Appendix B. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

ECYP/S6/24/31/2

14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
November 2024

Appendix B: Scottish Government Policy Note

POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (INFORMATION FOR LISTING AND VETTING) (SCOTLAND) REGULATIONS 2024

SSI 2024/314

The above instrument was made in exercise of the powers conferred by sections 18(4)(b), 18(5)(c), 49(1)(a) and (d) and 97(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 and all other powers enabling them to do so. section. The instrument is subject to negative procedure.

Summary Box

The purpose of these Regulations is to make provision to enable the Scottish Ministers' access to records of convictions, cautions and other information for the purposes of barring and vetting of Scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protection of Vulnerable Groups Scheme ("the PVG Scheme") and keeps lists of individuals barred from working with children and 'protected' adults on behalf of the Scottish Ministers.
2. The Disclosure (Scotland) Act 2020 ("the Disclosure Act") reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 under which the Scottish Ministers administer the PVG Scheme.
3. This instrument is needed to make detailed provision in relation to information that may be used for listing purposes and in relation to vetting information which may be included on a scheme record in respect of scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007. Without them, information about whether or not a PVG scheme member is the subject of a civil order would only be vetting information if it was revealed by a police force as other relevant information. But this is entirely a matter for the chief constable in determining whether the information is relevant to the type of regulated role in respect of which the individual is a PVG scheme member. 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.
4. Section 18(4)(b) of the PVG Act enables Scottish Ministers to require any person who holds "central records" (i.e. police criminal history databases) to

provide the Scottish Ministers with every “relevant matter” held in those databases for barring and listing purposes. Under section 18(5), “relevant matter” is defined and includes prescribed civil court orders. These civil court orders are sexual offending orders and cover relevant offences that would be considered when determining an individual’s suitability to work with children and vulnerable adults. These Regulations prescribe those civil court orders as:

- a) sexual offences prevention orders (or interim orders) made under the Sexual Offences Act 2003;
 - b) sexual harm prevention orders (or interim orders) made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or the Sentencing Act 2020,
 - c) foreign travel orders made under the Sexual Offences 2003 Act;
 - d) sexual risk orders (or interim orders) made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016,
 - e) notification orders (or interim orders) made under the Sexual Offences Act 2003
 - f) risk of sexual harm orders (or interim orders) made under the Sexual Offences Act 2003 or the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
5. If one of the civil orders set out above has been made and is in effect in respect of a PVG scheme member, vetting information on their scheme record will include: the prohibitions and/or requirements described in the order, the date of the order, the period for which the order has effect and details as to whether the order has been varied or renewed by a further court order.
6. Section 49 of the PVG Act sets out what “vetting information” is in relation to a member of the PVG Scheme. The PVG Act introduced ongoing monitoring for PVG scheme members, this ensures that any new vetting information that arises is checked to ensure the scheme member has not become unsuitable to work with vulnerable adults or children. These Regulations prescribe the details of the convictions and the details of the prescribed civil court orders (as set out in paragraph 5 above) that will be included as vetting information on scheme members scheme records.
7. The provisions in this instrument replicate and restate provisions currently set out in the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Vetting Information) Regulations 2010 (“the 2010 Regulations”) which will be revoked as part of the Disclosure Act implementation project. The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 inserted references to new prescribed orders into the Police Act 1997. These Regulations include these new civil orders which were not included in the 2010 Regulations. We consider that these orders should be accessible to

Scottish Ministers in relation to their barring functions and should form part of vetting information as it relates to a scheme member.

8. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill.

The Scottish Parliament website also sets out the [timeline for the passage of the Bill](#).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

9. The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

10. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

11. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
12. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
13. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;
 - individuals with and without experience of using Disclosure

Scotland's services,

- individuals with convictions,
- care experienced people,
- people with disabilities, including blind participants, deaf participants,
- people with low cognitive skills, dyslexia, dyspraxia,
- organisations – including various roles e.g. HR, admin staff, counter signatories,
- charities, and voluntary organisations.

21. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its [response to the consultation](#) on 13 June 2019.

14. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act and beyond.

Impact Assessments

15. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- [Disclosure \(Scotland\) Bill: Fairer Scotland Duty assessment](#)
- [Disclosure \(Scotland\) Bill: children rights and wellbeing impact assessment](#)
- [Disclosure \(Scotland\) Bill: data protection impact assessment](#)
- [Disclosure \(Scotland\) Bill: equality impact assessment](#)
- [Disclosure \(Scotland\) Bill: partial Business and Regulatory Impact Assessment](#)

16. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

17. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

18. The Minister for Children, Young People and the Promise confirms that a

ECYP/S6/24/31/2

BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland
November 2024

Annexe C

Note by the Clerk on The Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (2024/315)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 13 December 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Level 1 and Level 2 Disclosure Information \(Scotland\) Regulations 2024](#) (2024/315)

Laid under: [Disclosure \(Scotland\) Act 2020](#)

Laid on: 4 November 2024

Procedure: Negative

Deadline for committee consideration: 9 December 2024

Deadline for Chamber consideration: 13 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 19 November 2024 and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 November 2024](#) report.
8. The DPLR Committee made the following recommendations in relation to the instrument.

The Committee draws this instrument to the attention of the Parliament on the general reporting ground on the basis that it would have been helpful, in the interests of the accessibility of this instrument, if the accompanying documents made clear that the prescribed convictions do not include nondisclosable convictions within the meaning of section 9 of the Disclosure (Scotland) Act 2020

Purpose of the instrument

9. These Regulations make detailed provision about what information Level 1 and Level 2 disclosures will contain.
10. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

11. So far, no motion recommending annulment has been lodged.
12. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

13. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
14. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee
November 2024**

Appendix C: Scottish Government Policy Note

POLICY NOTE

THE LEVEL 1 AND LEVEL 2 DISCLOSURE INFORMATION (SCOTLAND) REGULATIONS 2024

SSI 2024/315

The above instrument was made in exercise of the powers conferred by the powers conferred by sections 1(a), 8(1)(a), 16(1)(b) and (2), 16(4)(a)(ii) and (v), 16(4)(b)(ii) and (v), 17(3)(d), 36(a), 59(1) and 69 of the Disclosure (Scotland) Act 2020 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations make detailed provision about what information Level 1 and Level 2 disclosures will contain.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protection of Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and ‘protected’ adults on behalf of Scottish Ministers.
2. The Disclosure (Scotland) Act 2020 (“the Disclosure Act”) reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 (“the 1997 Act”) as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”).
3. These Regulations replicate and restate the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (“the 2010 Regulations”) for the purpose of the Disclosure (Scotland) Act 2020, which will also be revoked when Part 5 of the 1997 Act is.
4. Level 1 and Level 2 disclosures, provided under the Disclosure Act, will replace basic, standard and enhanced disclosures issued under the 1997 Act as well as scheme records and short scheme records disclosed under the PVG Act. These Regulations make detailed provision in relation to what information Level 1 and Level 2 disclosures, provided under the Disclosure Act, will contain.
5. Section 69 of the Disclosure Act defines “central records” for the purposes of the Disclosure Act, these are records of information held for the use of police forces generally that may be prescribed. Regulation 3 prescribes those records as the information held in the criminal history/record databases held by forces across the UK and accessed by Disclosure Scotland when carrying out their vetting functions.

6. Regulations 4 and 5 prescribe the details of convictions and cautions that will be included on Level 1 and Level 2 disclosures. In the case of convictions this includes the date of conviction, convicting court, offence and the penalty. For cautions this includes the date of the caution, the issuing police force and the offence.
7. Section 16 of the Disclosure Act provides for further information to be included in a Level 2 disclosure in cases where the disclosure is for a prescribed purpose. These purposes involve an assessment as to the suitability or otherwise of the individual to exercise power over vulnerable groups but fall short of being regulated roles for which PVG Scheme membership will be mandatory.
8. Regulation 6 sets out the prescribed purposes in relation to children and adults. The purposes prescribed largely replicate the purposes for which enhanced disclosures with suitability information in relation to children or adults could be requested under the 1997 Act and regulations 10 and 12 of the 2010 Regulations. Additionally, stakeholder feedback in relation to regulated roles together with a non-government amendment at Stage 2 of the Disclosure (Scotland) Bill resulted in two new purposes being prescribed in these Regulations because although the individuals concerned do not work directly with children or vulnerable adults, nor are they directly involved in their care, there is sufficient proximity to children and vulnerable adults to warrant them being prescribed for the purposes of section 16 of the Disclosure Act:
 - (1) an individual aged 16 or over whose suitability is not being assessed to carry out a regulated role with children, but who is living on the grounds of a school (where that individual is not themselves employed or a pupil of the school), and,
 - (2) individuals aged 16 or over living in the same household as a “Shared Lives Carer” within the meaning of paragraph 24 of schedule 3 of the PVG Act.
9. A shared lives carer is a person who provides care and support to one or more adults for either a short break or for a longer length of time, within their own home.
10. The prescribed details of the circumstances in which an individual became barred for the purposes of Level 2 disclosures under section 16 are prescribed in regulation 7 of these Regulations. replicating and replacing the existing provisions under regulation 11 and 13 of the 2010 Regulations.
11. The prescribed civil court orders and the prescribed details of those orders if imposed on an applicant are also provided for in the schedules to these Orders, which are prescribed because information about whether or not a PVG scheme member is the subject of a civil order would only be vetting information if it was revealed by a police force as other relevant information.

But this is entirely a matter for the chief constable in determining whether the information is relevant to the type of regulated role in respect of which the individual is a PVG scheme member. 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.

12. These civil court orders are sexual offending orders and cover relevant offences that would be considered when determining an individual's suitability to work with children and vulnerable adults. These Regulations prescribe those civil court orders as:

- a) sexual offences prevention orders (or interim orders) under the Sexual Offences Act 2003,
- b) sexual harm prevention orders (or interim orders), made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 or the Sentencing Act,
- c) foreign travel orders made under the Sexual Offences 2003 Act,
- d) sexual risk orders (or interim orders) made under the Sexual Offences Act 2003 or the Abusive Behaviour and Sexual Harm (Scotland) Act 2016
- e) notification orders (or interim orders) made under the Sexual Offences Act 2003
- f) risk of sexual harm orders (or interim orders) made under the Sexual Offences Act 2003 or the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.

13. Regulation 10 makes provision allowing Scottish Ministers to require an applicant to have their fingerprints taken for the purpose of confirming their identity where other means of authentication of identity has been unsuccessful.

14. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the [timeline for the passage of the Bill](#).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

15. The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers

certify that, in their view, the Level 1 and Level 2 (Disclosure Information) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

16. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

17. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
18. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
19. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;
 - individuals with and without experience of using Disclosure Scotland's services,
 - individuals with convictions,
 - care experienced people,
 - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
 - organisations – including various roles e.g. HR, admin staff, counter signatories,
 - charities, and voluntary organisations.
20. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its response to the consultation on 13 June 2019. Disclosure

Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs.

21. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

Impact Assessments

22. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- [Disclosure \(Scotland\) Bill: Fairer Scotland Duty assessment](#)
- [Disclosure \(Scotland\) Bill: children rights and wellbeing impact assessment](#)
- [Disclosure \(Scotland\) Bill: data protection impact assessment](#)
- [Disclosure \(Scotland\) Bill: equality impact assessment](#)
- [Disclosure \(Scotland\) Bill: partial Business and Regulatory Impact Assessment](#)

23. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified.

24. The Children's Rights and Wellbeing Impact Assessment identified that there is an impact in relation to Article 16 (right to privacy) as there are two new circumstances where Level 2 disclosure checks can be undertaken on 16 and 17 year olds but that this impact is neutral. The new circumstances are limited and similar to those which already exist. Safeguards in relation to the use of criminal history information in these circumstances have been established for over 10 years. In addition, children aged 16 and 17 years old must also agree to making the application for a non-PVG Scheme Level 2 disclosure. It cannot be done without their involvement.

25. The policy introducing the new circumstances also has a positive impact for children under Article 3 (best interests of the child and the Government supporting care and protection of children) and Article 19 (protection from all forms of violence) as it helps address public protection concerns about vulnerable people being cared for in home-based settings. The two new circumstances extend existing checks on those who are not doing regulated roles but who will be nearby and viewed as a trusted person by vulnerable groups in these home-based settings.

26. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during

screening and a full impact assessment was not done.

Financial Effects

27. The Minister for Children, Young People and the Promise confirms that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland
October 2024

Annexe D

Note by the Clerk on The Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024 (2024/316)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 13 December 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Consideration of Suitability for Regulated Roles \(Prescribed Purposes\) \(Scotland\) Regulations 2024 \(2024/316\)](#)

Laid under: [Disclosure \(Scotland\) Act 2020](#)

Laid on: 4 November 2024

Procedure: Negative

Deadline for committee consideration: 9 December 2024

Deadline for Chamber consideration: 13 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 19 November 2024 and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 November 2024](#) report. The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. These Regulations prescribe other purposes, to which the references to 'consideration of suitability for a type of regulated role', in sections 17(1)(b) and 44(2) of the Disclosure Act, are to apply.

A person will be:

- considering an individual's suitability to carry out, or be offered or supplied to be carried out, a type of regulated role (and so able to make a statement to that effect under section 12(1)(b) of the Disclosure Act) in relation to an application for a Level 2 disclosure to which section 17 of that Act applies (i.e. "a PVG Scheme Level 2 disclosure"), and
- requesting the provision of, or seeking sight of, a Level 2 disclosure for a permitted purpose in accordance with section 44 of that Act,

if the Level 2 disclosure concerned, is sought for, or relates to, one of the purposes prescribed in these Regulations.

9. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

10. So far, no motion recommending annulment has been lodged.

11. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

12. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

ECYP/S6/24/31/2

13. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

**Clerks to the Committee
November 2024**

Annexe D: Scottish Government Policy Note

POLICY NOTE

THE CONSIDERATION OF SUITABILITY FOR REGULATED ROLES (PRESCRIBED PURPOSES) (SCOTLAND) REGULATIONS 2024

SSI 2024/316

The above instrument was made in exercise of the powers conferred by section 68(c) of the Disclosure (Scotland) Act 2020 (“the Disclosure Act”) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations prescribe other purposes, to which the references to ‘consideration of suitability for a type of regulated role’, in sections 17(1)(b) and 44(2) of the Disclosure Act, are to apply.

A person will be:

- considering an individual’s suitability to carry out, or be offered or supplied to be carried out, a type of regulated role (and so able to make a statement to that effect under section 12(1)(b) of the Disclosure Act) in relation to an application for a Level 2 disclosure to which section 17 of that Act applies (i.e. “a PVG Scheme Level 2 disclosure”), and
- requesting the provision of, or seeking sight of, a Level 2 disclosure for a permitted purpose in accordance with section 44 of that Act,

if the Level 2 disclosure concerned, is sought for, or relates to, one of the purposes prescribed in these Regulations.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protection of Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and ‘protected’ adults on behalf of Scottish Ministers.
2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) under which the Scottish Ministers administer the PVG Scheme.
 - Section 68 of the Disclosure Act explains what is meant by references to consideration of the suitability of a person for a type of regulated role for the purpose of provisions in the Act relating to Level 2 disclosures for PVG scheme members. It captures people appointing someone to a regulated role directly (including private individuals employing someone in their personal capacity) and people supplying an individual to someone

else to carry out a regulated role. In circumstances where a private individual has used an accredited body to act as counter signatory for the application it is still the employer who is assessing the individual's suitability for the role, acting on the advice as to suitability provided by the accredited body.

3. These Regulations restate, for the purposes of sections 17(1)(b) and 44(2) of the Disclosure Act, purposes, beyond employment, which were provided for in section 73(c) to (f) of the PVG Act and the SSIs made under section 73(g) of that ¹Act before it was amended by paragraph 10(44) of schedule 5 of the Disclosure Act.
4. These Regulations ensure that Level 2 disclosures can be requested when an individual's suitability is being considered for or in relation to:
 - registration as a teacher or a 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 to a committee 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.
5. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the [timeline for the passage of the Bill](#).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

6. The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Consideration of Suitability for Regulated Roles

¹ These SSIs will be revoked as part of the Disclosure Act implementation project:
[The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Prescribed Purposes for Consideration of Suitability\) Regulations 2010](#)
[The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Prescribed Purposes for Consideration of Suitability\) Regulations 2011](#)
[The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Prescribed Purposes for Consideration of Suitability\) Regulations 2016](#)

(Prescribed Purposes) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

7. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

8. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
9. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
 - There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including; individuals with and without experience of using Disclosure Scotland's services,
 - individuals with convictions,
 - care experienced people,
 - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
 - organisations – including various roles e.g. HR, admin staff, countersignatories,
 - charities, and
 - voluntary organisations.
22. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its [response to the consultation](#) on 13 June 2019.

10. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

Impact Assessments

11. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- [Disclosure \(Scotland\) Bill: Fairer Scotland Duty assessment](#)
- [Disclosure \(Scotland\) Bill: children rights and wellbeing impact assessment](#)
- [Disclosure \(Scotland\) Bill: data protection impact assessment](#)
- [Disclosure \(Scotland\) Bill: equality impact assessment](#)
- [Disclosure \(Scotland\) Bill: partial Business and Regulatory Impact Assessment](#)

12. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

13. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

14. The Minister for Children, Young People and the Promise confirms that that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland
November 2024

Annexe E

Note by the Clerk on The Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024 (2024/317)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to annulment by resolution of the Parliament until 11 October 2024. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

Title of instrument: [The Disclosure and Use of Level 2 Disclosures \(Prescribed Purpose and Circumstances\) \(Scotland\) Regulations 2024 \(2024/317\)](#)

Laid under: [Disclosure \(Scotland\) Act 2020](#)

Laid on: 4 November 2024

Procedure: Negative

Deadline for committee consideration: 9 December 2024

Deadline for Chamber consideration: 13 December 2024

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.

4. Once laid, the instrument is referred to:

- the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 19 November 2024 and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 19 November 2024](#) report. The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. The purpose of these Regulations prescribes a further purpose and further circumstances, in which the offences under sections 42 and 44 of the Disclosure (Scotland) Act 2020 do not apply. That purpose and those circumstances are where an individual's employer has contractual arrangements with one of the specified third parties for the provision of transport services.
9. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

Committee consideration

10. So far, no motion recommending annulment has been lodged.
11. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:
 - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
 - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

12. If Members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
13. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee November 2024

Annexe E: Scottish Government Policy Note

POLICY NOTE

THE DISCLOSURE AND USE OF LEVEL 2 DISCLOSURES (PRESCRIBED PURPOSE AND CIRCUMSTANCES) (SCOTLAND) REGULATIONS 2024

SSI 2024/317

The above instrument was made in exercise of the powers conferred by sections 45(1)(f) and 45(2)(f) of the Disclosure (Scotland) Act 2020 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

These Regulations prescribe a further purpose and further circumstances, in which the offences under sections 42 and 44 of the Disclosure (Scotland) Act 2020 do not apply. That purpose and those circumstances are where an individual's employer has contractual arrangements with one of the specified third parties for the provision of transport services.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme ("the PVG Scheme") and keeps lists of individuals barred from working with children and/or protected adults on behalf of Scottish Ministers.
2. The Disclosure (Scotland) Act 2020 ("the Disclosure Act") reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") under which the Scottish Ministers administer the PVG Scheme.
3. Section 17 of the Disclosure Act makes provision for a Level 2 disclosure with scheme membership information to be provided to the accredited body which countersigned the application where the applicant requests that to happen in accordance with section 18.
4. Section 42 of the Disclosure Act makes it an offence for a person, to whom a Level 2 disclosure is made available or disclosed, to unlawfully disclose it to another person. Section 44 of the Disclosure Act makes it an offence for a person to request, or otherwise seek sight of a Level 2 disclosure for a purpose other than a permitted purpose. Section 45 of the Disclosure Act sets out exceptions to the disclosure offences under sections 42 and 44.
5. These Regulations prescribe further exception to the disclosure offences under section 42 and 44 in relation to arrangements for the transportation of children and protected adults in particular circumstances where a third party may seek to use an individual's disclosure record. Regulation 3 specifies that those circumstances are where the individual is doing a regulated role that involves transporting children or protected adults to an educational

institution, health body or independent care service under the arrangements made by the individual's employer and the council or educational institution, health body or independent health care service.

6. Regulation 3(2) of these Regulations enables an employer to share a Level 2 disclosure with scheme membership information with the organisation contracting their services in the circumstances set out and not commit an offence under section 42(1) of the Disclosure Act.
7. Regulation 3(3) of these Regulations enable an organisation contracting transport services in these circumstances to use a Level 2 disclosure with scheme membership information and not commit an offence under section 44(3) of the Disclosure Act.
8. These Regulations support the safeguarding of children and protected adults in circumstances where they are under the care of the organisation contracting the transport service but where the service is not being provided directly by that organisation. This supports a consistent safeguarding approach.
9. These Regulations replicate provision provided for in the Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests for Scheme Records) (Prescribed Circumstances) Regulations 2010 (“the 2010 Regulations”), permitting a continuity of the existing policy under the new disclosure types. The 2010 Regulations will be revoked as part of the Disclosure Act implementation project.
10. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the [timeline for the passage of the Bill](#).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

11. The Scottish Ministers have made the following statement regarding children’s rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

12. This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

13. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
14. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual PVG Scheme members.
15. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;
 - individuals with and without experience of using Disclosure Scotland's services,
 - individuals with convictions,
 - care experienced people,
 - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
 - organisations – including various roles e.g. HR, admin staff, countersignatories,
 - charities, and
 - voluntary organisations.
23. The results of the consultation informed further development of the policy and Disclosure (Scotland) Bill provisions. The Scottish Government published its [response to the consultation](#) on 13 June 2019.
16. These Regulations continue in effect the current policy for the sharing and use of PVG scheme records in these specific circumstances. There was extensive engagement in 2009 and 2010 on the scope of circumstances where such disclosures should be made available. The Scottish Government sought views on whether the Protection of Vulnerable Groups (Scotland) Act 2007 (Unlawful Requests For Scheme Records) (Prescribed Circumstances) Regulations 2010 delivered the policy as intended and whether they should be adjusted,

although extension beyond transport services was outside the scope of the consultation. The ability to use the provisions have been adopted into practice, notably for local authorities on transport contracts where there is standardised guidance. The review of the PVG scheme in 2017 and recent engagement has not identified a need for changes to the scope of the circumstances where this type of sharing would be lawful.

17. Disclosure Scotland are committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act. The guidance provided by the Scottish Government to local authorities on transport services will be updated to reflect the updates in legislative references and terminology.

Impact Assessments

18. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- [Disclosure \(Scotland\) Bill: Fairer Scotland Duty assessment](#)
- [Disclosure \(Scotland\) Bill: children rights and wellbeing impact assessment](#)
- [Disclosure \(Scotland\) Bill: data protection impact assessment](#)
- [Disclosure \(Scotland\) Bill: equality impact assessment](#)
- [Disclosure \(Scotland\) Bill: partial Business and Regulatory Impact Assessment](#)

19. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified. No impact on children's rights have been identified.

20. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

21. The Minister for Children, Young People and the Promise confirms that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.