

# **Protection of Vulnerable Groups and the Disclosure of Criminal Information**

## **Consultation report**

**October 2018**

## Ministerial Foreword



I am grateful to all those who commented on our proposals for change in relation to the Protection of Vulnerable Groups and the Disclosure of Criminal Information, whether by responding to the public consultation or attending one of the consultation events. I hope this report has captured the wide range of views expressed. I think most people would agree that a review of the current system was due. The proposals outlined in the consultation document, and your responses to them, can create an improved system that balances safeguarding and proportionality.

It is important to highlight again that these proposals were created in conjunction with a wide range of stakeholders to develop a system that will simplify the disclosure regime and deliver it in a modern way. It is in everyone's interest that the aspects of the current system which are valued are maintained and strengthened.

All the comments received will be taken into consideration as the new system is developed. The consultation is not the end of our engagement, and we look forward to listening and working with stakeholders as we progress.

A handwritten signature in black ink, appearing to read "Maree Todd".

**Maree Todd**

**Minister for Children and Young People**

## Contents

Ministerial Foreword.....	Error! Bookmark not defined.
Contents .....	2
Consultation Report .....	3
Acknowledgements.....	3
Introduction.....	3
Involvement in the Development of our Proposals .....	3
Discussions with Stakeholders.....	4
Responses.....	5
PART 1 – CONSULTATION QUESTIONS .....	6
Section 2 – Disclosure Products .....	6
Section 3 – Reforming the policy underpinning the PVG Scheme .....	17
Section 4 – Removing unsuitable people from work with vulnerable groups.....	30
Section 5 – Offence Lists and Removal of spent convictions from a disclosure .....	36
Section 6 – Additional Policy Questions .....	43
PART 2 – DISCUSSION OF THE KEY ISSUES.....	53
Relationship between the PVG Review, the Age of Criminal Responsibility (Scotland) Bill and the Management of Offenders (Scotland) Bill .....	53
Other Relevant Information (ORI).....	54
Disclosure Provisions for 12-17 year olds.....	55
Disclosure checks for under 16s.....	56
Simplifying the disclosure system by reducing the number of disclosure products .....	57
Standard conditions on individuals under consideration for listing.....	58
Protected Roles .....	59
Digital Services .....	59
ANNEXES .....	60

# Consultation Report

## Acknowledgements

The Scottish Government would like to thank all individuals and organisations who took the time to consider and respond to the proposals contained in [the consultation](#) on the Protection of Vulnerable Groups and the Disclosure of Criminal Information regime in Scotland.

## Introduction

The consultation paper was published on 25 April 2018, with five sections in the paper that sought stakeholders' views and asked 94 questions. Although the consultation ran for 12 weeks ending on the 18 July 2018, late responses were accepted.

The consultation was distributed widely to a large number of key stakeholders, including over 3,000 registered bodies. We received 352 responses, 268 from organisations and 84 from individuals. Responses were received from a range of stakeholders with varying backgrounds including the judiciary, the legal sector, local government, voluntary organisations and the medical profession.

The online consultation was designed to allow respondents to respond to only the areas that are relevant to them. Not all respondents completed the consultation questionnaire. Some respondents preferred to provide a written statement. The nature of the submissions varied with some providing responses to one question and others providing more detailed discussion on sections of the proposals that were of interest to them.

## Involvement in the Development of our Proposals

Our consultation paper, the responses to it and this report are only the start of the process of involving those with an interest in our proposals and their continued development. We will want to make sure that there will be opportunities to engage further with users and practitioners as we prepare the draft legislation. The Scottish Parliament's consideration of the Disclosure Bill (which was announced in the Programme for Government published on 4 September 2018) will be accompanied by thorough scrutiny including drawing on the expertise of those already involved in the system.

## Discussions with Stakeholders

There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations. These sessions took place on:

13 March 2018	Disclosure Scotland Stakeholder Advisory Board
17 April 2018	Police Scotland
3 May 2018	Camphill Scotland
28 May 2018	VSDS Session Stirling
22 May 2018	Edinburgh
25 May 2018	Glasgow
25 May 2018	Scottish Children's Reporter Administration
29 May 2018	Glasgow
31 May 2018	sportscotland
6 June 2018	VSDS Session Ayr
11 June 2018	VSDS Session Edinburgh
12 June 2018	Glasgow
14 June 2018	VSDS Session Castle Douglas
18 June 2018	Life Changes Trust focus group
18 June 2018	VSDS Session Dundee
18 June 2018	VSDS Session Glasgow
20 June 2018	VSDS Session Hospice Groups
20 June 2018	VSDS Session Stirling
21 June 2018	Glasgow
22 June 2018	Glasgow
22 June 2018	VSDS Session Hamilton
25 June 2018	Edinburgh
27 June 2018	Access to Industry
28 June 2018	Edinburgh
28 June 2018	Self Directed Support Scotland
3 July 2018	Glasgow
3 July 2018	VSDS Session Stirling
5 July 2018	VSDS Session Stirling
6 July 2018	VSDS Online Session
9 July 2018	VSDS Session Aberdeen
10 July 2018	VSDS Online Sessions
10 July 2018	Centre for Youth and Criminal Justice focus group
11 July 2018	Edinburgh
12 July 2018	Key
12 July 2018	Kirkwall
13 July 2018	Kirkwall
13 July 2018	Orkney Health Board

A summary of the main points from the events can be found at **Annex A**. **Annex B** provides you a list of those who were invited to the sessions and those who attended.

## Responses

This report provides an analysis of all the responses to the Scottish Government consultation on proposals for change to the Protection of Vulnerable Groups and Disclosure Regime in Scotland. Individual responses are not repeated verbatim in the report. The responses received will inform the development of our legislative proposals.

The table below provides a breakdown of all 352 respondents. It is clear from the consultation responses that respondents did not answer questions that were outwith their sphere of interest.

Respondent type	Full consultation response – number of respondents	Partial consultation response – number of respondents	Total
Individual	1	83	84
Organisation	8	260	268
Total	9	343	352

Those who responded broadly came from:

- Public Sector (38)
- Third Sector (172)
- Private Business (19)
- Education (17)
- Health (22)
- Individuals (84)

Where respondents gave permission, their responses have been published on the Citizen Space website at: [https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable/consultation/published\\_select\\_respondent](https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable/consultation/published_select_respondent).

The 245 respondents who agreed to their response being published are listed in **Annex C**.

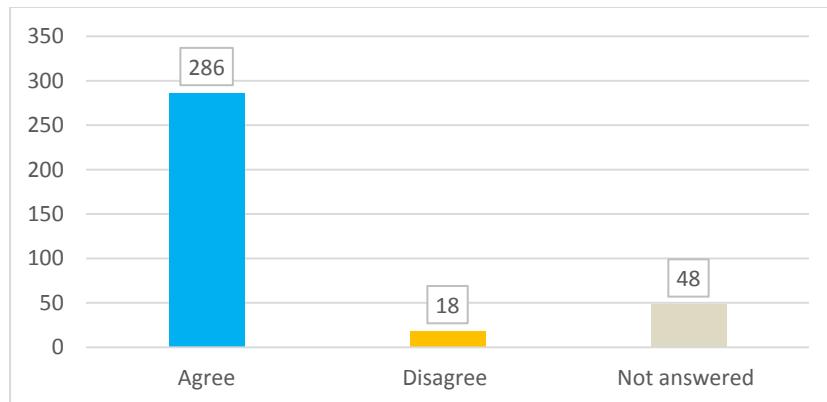
The report is in two parts: **part one** sets out the questions posed in the consultation questionnaire and provides a summary of comments from respondents and **part two** is a discussion of the key issues raised which were not specific to the questions asked. The completion of the consultation questionnaire was uneven and therefore the number of responses for each question varies.

## PART 1 – CONSULTATION QUESTIONS

There follows analysis of the answers to questions posed in sections 2–6 of the consultation; sections 1 and 7 did not contain questions. Statistics about the number of responses to each question are also given.

### Section 2 – Disclosure Products

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



The vast majority of respondents agreed that reducing the number of disclosure products will simplify the disclosure system. There was some qualified support for this proposal provided that public protection is not compromised. One respondent supported this in principle provided there is recognition, in the development of future products, of the unique position of those in receipt of self-directed support and the lack of vetting information available to them currently to make informed recruitment decisions.

#### Question 1a: If you have answered no, what do you think will simplify the system?

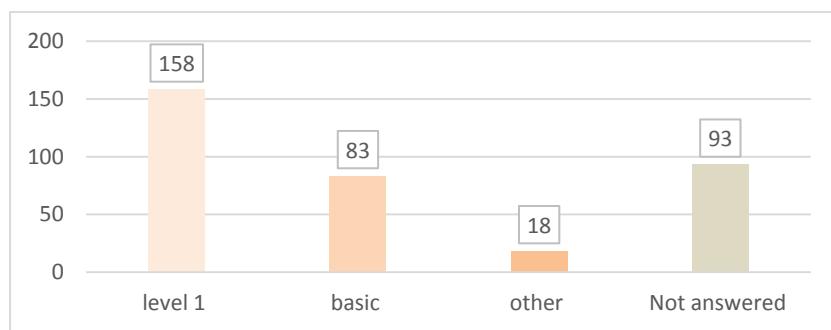
There were 34 responses to this question. Nine respondents took the view that reducing the number of disclosure products will not simplify the system and instead there should be consideration of the principles that underpin the disclosure system and the purpose of disclosure. These respondents provided commentary on what they see as the defects of the current system and its impacts on specific groups including children and young people and care-experienced individuals.

One such issue raised was the complexity of the disclosure system compounded by the system being underpinned by a number of different pieces of legislation. Complexity results in a lack of understanding and difficulty navigating the system, not just for the subjects of disclosure but also for practitioners and others supporting people through the process. There was recognition that some degree of complexity is unavoidable in the disclosure system but that this should not be passed onto individuals. The relationship between the proposals and the Age of Criminal

Responsibility (Scotland) Bill and the Management of Offenders (Scotland) Bill will be discussed in Part 2.

Disclosure Scotland's commitment to provide increased guidance was met with positive responses. Respondents felt that both guidance and training should be made accessible and in a number of formats, including materials suitable for children and young people. Additionally, support should be individualised and available over the phone or face-to-face. It was suggested that establishing an independent body to provide support would be welcome. It was also mentioned that information should be available at the point of an individual being charged or when accepting referral grounds at a Children's Hearing. It was also felt that disclosures and Subject Access Requests would be made more meaningful by labelling convictions as spent or unspent.

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

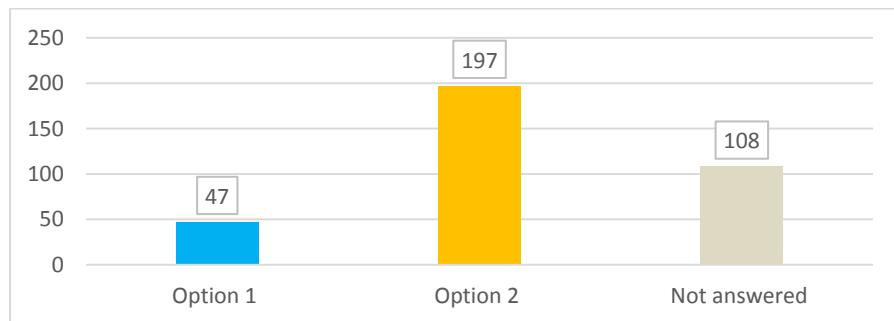


The majority of respondents said that this product should be called a 'Level 1'. This question offered respondents the opportunity to provide suggestions as to what this product should be called, these suggestions include: 'disclosure certificate application', 'simple disclosure' and 'complete disclosure'. Further comments suggested that, in general terms, the name should be meaningful, indicative of the level of protection offered by the disclosure and should be as descriptive as possible.

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

There were 252 responses to this question. Of these, 218 respondents did not have any concerns, 34 did have concerns. There were 100 respondents who did not answer this question.

**Question 4: Which fee option do you prefer for the Level 1/Basic disclosure? And why?**



The consultation proposed two fee options for this level of disclosure. The majority of respondents preferred the second option which centred on an applicant paying an initially higher cost for their first application and then, on the creation of an online account with Disclosure Scotland, a reduced price for future disclosures at this level.

Overwhelmingly, the reason given for selecting option 2 was that it would be more cost effective for applicants applying for multiple disclosures and for individuals on low incomes. Commenters said that this fits the employment landscape of short term or temporary work which could result in frequent disclosure applications.

A number of respondents expressed that creating an online account, for which identification and verification would only need to be completed once, would be a convenient, time saving step which would reduce the administrative burden for applicants. However, there were also some queries about how online identification and verification would work and how long an account would be active for; a specified number of years or indefinitely? It was felt that account creation should be mandatory to avoid confusion or inadvertent over-payment.

There was more limited support for option 1, the most commonly cited reason for selecting this option was that it is more straightforward than option 2. A number of employers commented on the issues the payment arrangements option 2 might present particularly as these employers pay for the disclosure on behalf of the employee. One respondent commented that option 1 would be easier in relation to forecasting and costs for disclosures required.

Another commenter explained that they might not feel the benefit of option 2 for a number of years when they would require the individual to get another disclosure but they could not predict that same employee would still be working with them after that time to receive the benefit of the reduced fee. Related to this, it was expressed that it would be unfair under option 2 for one employer to pay for the initial disclosure and then a different employer to benefit from a reduced fee for a later disclosure. A number of respondents noted that for them it is unlikely that they will require multiple disclosures to necessitate option 2.

Some respondents commented on the potential for General Data Protection Regulation<sup>1</sup> (“GDPR”) or security breaches related to the use of an online account as the reason for their preference for option 1 over option 2. It was also suggested that some applicants without digital access would be penalised under this proposal and that a reduced fee for subsequent disclosures should not be predicated on creating an account.

A number of respondents did not explicitly express a preference for either fee option but instead commented on the need for costs to be kept to a minimum. Some commenters went further and suggested that due to the link between poverty and offending and as these pertain to an individual’s own information, disclosures should be free. The suggestion that Level 1 disclosures should be free for care experienced people was made and that there should be an exemption or deferment process to ensure those unable to pay are not prevented from gaining employment opportunities.

There was support for an applicant being able to choose between option 1 and option 2 at the point of payment.

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

There were 228 responses to this question. Two hundred and twenty respondents agreed that it is appropriate to regulate bodies in relation to B2B applications. Eight respondents disagreed. One hundred and twenty-four respondents to the consultation did not take a view.

In support of this proposal the comment was made that, given the new data protection laws in place, this is the right approach as organisations requesting disclosures from a large volume of employees should be formally registered and their processing and storage of information regulated. It was suggested that bodies should also be required to confirm they will not act on behalf of another organisation or person outside of the terms of their registration and it should be an offence to do so.

One commentator suggested that this should be called something else to avoid confusion with the terms ‘registered body’ and ‘registered person’ already in use. Whether bodies already registered for processing higher level disclosures would have to re-register for the purpose of B2B applications was also queried.

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

There were 264 narrative responses to this question. Many respondents welcomed the move to a digital system. However, it was stressed that issues of accessibility

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<sup>1</sup> REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

must be kept in mind and an alternative, non-digital solution must be provided for those unable to use the digital system as a result of a lack of internet access, poor IT literacy, disability or learning difficulty. A number of commentators stated that not having an alternative would impinge upon inclusivity and equality.

The positive impacts of moving to a digital system highlighted by a number of respondents were quicker turnaround times, increased efficiency and minimised errors, reduced paper usage and associated costs, and greater ownership of information being placed on the individual.

A number of respondents also took the opportunity to raise concerns or queries about a move to a digital system. Data protection (particularly as the system will handle special category data), the ability for online systems to be hacked and the potential for digital communication to be forged were highlighted. The reliability of digital systems and the potential for such systems to crash as well as practical considerations such as lost usernames or passwords were also mentioned.

Several organisational responses raised queries on how digital identification and verification will be achieved. Also queried was how payment will be arranged for employers wishing to pay for a disclosure on a digital system that places greater onus on the applicant. It was felt that employers may lose prospective employees who have to pay upfront for their disclosure or there would be an administrative burden on employers having to reimburse employees who have paid the disclosure fee.

### **Question 7: Do you agree with our proposed fee for the apostille service?**

There were 223 responses to this question. Two hundred respondents agreed with our proposed fee for the apostille service. Twenty-three respondents did not agree. One hundred and twenty-nine respondents to the consultation did not answer this question.

### **Question 7a: If not, what do you think the fee should be?**

There were 38 responses to this question. A number of respondents suggested what they felt the fee for apostilles should be and the majority who did so felt it should be free. It was stated that specifically for the purpose of volunteering they should be free. Also suggested was a reduced cost of £5 or the cost of postage only since a template will be used. However, some felt that given the translation work involved the proposed £10 was too low. A concern was raised on the impact of the UK leaving the EU on this proposal.

### **Question 8: Are there any professions/roles for the Level 2 disclosure that are not included that should be on the list?**

There were 230 responses to this question. One hundred and sixty-four respondents took the view that there are no other roles that should be included in Annex A. Sixty-six respondents to the consultation believed that there are roles not included in

Annex A which should be. One hundred and twenty-two respondents to the consultation did not answer this question.

**Question 8a: If you have said yes, please note what these are.**

There were 96 responses to this question. A number of positions were suggested which may be described broadly as those where an individual might come into contact with children or vulnerable adults through the provision of services, sport, support or advocacy but that are not eligible for PVG membership.

Specific suggestions were made for inclusion such as any statutory roles within local authorities, fraud investigators, Trading Standards Officers, Environmental Health Officers, those working with highly sensitive data, trainee solicitors, charity trustees, Licensing Standards Officers, roles which require the use of firearms by an employee such as a ghillie or stalker, and roles such as education officers within local authorities and third sector organisations which centre on developing and improving education services and hold significant influence.

It was felt that counsellors and psychotherapists should be added but it should be clear that this inclusion pertains to a particular specialism because not all clients are vulnerable throughout the delivery of therapy and it would be an unintended consequence to include someone, for example, that only works with bereaved clients some of the time rather than someone who works with such clients all the time.

There was concern expressed about the proposed removal of colleges from the category of 'protected establishments' and as such assurances were sought that all posts within colleges would be eligible for Level 2 disclosures or PVG membership. This would include both curriculum roles and support staff.

It was suggested that the Scottish Government should undertake a robust assessment considering which roles are eligible for each product and what information will be disclosed for that product. It should be ensured that the information disclosed is adequate, relevant and limited to what is necessary.

One respondent highlighted the discrepancies between Annex A and the Rehabilitation of Offenders (Exceptions and Exclusions) (Scotland) Order 2013 ("the 2013 Order"), the basis for eligibility of standard and enhanced disclosures currently. The respondent noted that a number of positions included in the 2013 Order are not listed in Annex A, they stressed that the policy intention of this proposal should not cut across or be inconsistent with the positions listed in the 2013 Order.

It was suggested that the current terminology used in the 2013 Order should be updated to accurately reflect the names of bodies referred to.

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

There were 221 responses to this question. Two hundred and nine respondents took the view that none of the professions or roles included in Annex A should be

removed. Twelve respondents felt that there are professions or roles within Annex A that should be removed. One hundred and thirty-one respondents to the consultation did not answer this question.

**Question 9a: If you have said yes, please note what these are.**

There were 22 narrative responses to this question. One respondent felt that as some of the roles included in Annex A involve coming into contact with children they should be subject to more in-depth scrutiny and therefore removed from this list and placed in the list of protected roles.

A number of commentators expressed similar sentiments about foster and kinship carers, commenting that these should be removed from Annex A and placed in the list of protected roles.

One respondent provided a list of positions included in Annex A that they felt specifically should be placed instead on the list of protected roles:

Any advocate or solicitor practicing family law, judicial appointments, prosecutors and officers assisting prosecutors, Justices of the Peace, precognition agents, any officer or employment carried out in relation to a prison, any employment which is concerned with the monitoring for the purpose of child protection communication by means of the internet and the Risk Management Authority

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

There were 198 responses to this question. One hundred and twenty-one respondents to the consultation did not agree with this proposal. Seventy-seven respondents did agree. One hundred and fifty-four respondents to the consultation did not answer this question.

More respondents disagreed with the proposal that certain kinship carers and all foster carers should be removed from the PVG Scheme. Respondents who commented felt that it is not appropriate to remove kinship and foster carers from the Scheme as this is essential for considering an individual's suitability for such a role and to protect against potential abuse. Removing such carers from the Scheme would necessitate periodic rechecking which one commentator deemed would provide insufficient protection.

One respondent stated their support for Level 2 checks to be carried out to ensure the suitability of foster and kinship carers. They recognised that in a minority of cases checks can reveal behaviours that would place a child at risk of harm but emphasised that the histories of carers can be varied and the presence of misdemeanours in their past should not preclude them from a caring role. It was suggested that weight should be given to the consideration and judgement of social workers in ensuring foster and kinship carers are able to provide children with the quality of care they need.

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

There were 181 respondents to this question. Eighty-eight respondents thought that the two types of kinship arrangement should continue to be treated differently under the future arrangements. Ninety-three respondents did not. One hundred and seventy-one respondents did not answer this question.

In relation to the two types of kinship care being dealt with differently in future, the responses were split with a slight majority believing they should not be treated differently. One commentator felt the distinction between the two types of kinship care to be unhelpful within the complex arrangements in Scotland across the different local authorities. Another felt that the current arrangements for both types of kinship care are unsuitable as neither offer sufficient scrutiny via the availability of higher level vetting information for the purposes of child protection.

**Question 12: Do you agree with this proposal that any member of the fostering/kinship household aged over 16 will require a Level 2 check?**

There were 185 respondents to this question. One hundred and seventy respondents stated that they agreed with this proposal. Fifteen respondents stated that they do not agree. One hundred and sixty-seven respondents to the consultation did not answer this question.

Agreement was expressed by a majority of respondents answering this question. One commentator's response highlighted the need to ensure a balance is achieved between child protection and a child cared for by foster/kinship care not being stigmatised or treated differently from their peers not under such care arrangements.

**Question 13: Do you agree with the proposal that a Level 2 check should be undertaken by anyone in the foster/kinship carers network who supervises the children?**

There were 184 responses to this question. One hundred and sixty-two respondents agreed with this proposal. Twenty-two respondents disagreed. One hundred and sixty-eight respondents to the consultation did not answer this question.

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

There were 74 responses to this question. A number of respondents simply said 'no' to this question. Several respondents' comments linked back to the preceding questions and suggested that those who have unsupervised contact or regular contact with the child should be checked. Also suggested, again linking to the previous questions, were adult members of the foster or kinship family, new partners of the foster or kinship carer or anyone who regularly stays overnight.

The need to avoid children cared for by foster or kinship care being treated differently from their peers was emphasised within responses regarding disclosure

checks on anyone in a carer's network who supervises the children or anyone else in that network.

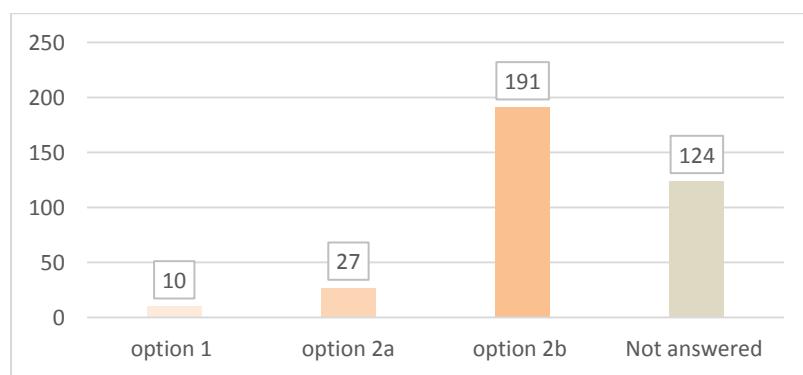
A number of respondents also commented negatively on these proposals. These respondents stated that such wide checks are undesirable and unachievable and they would have a direct impact on the ability of looked after children and young people to socialise, particularly spontaneously, with friends and as such this proposal failed to uphold articles under the United Nations Convention on the Rights of the Child ("UNCRC") on freedom of association, right to privacy and leisure, play and culture.

Instead, commentators noted that a more child-centred approach should be taken to ensure the experiences of looked after children remain as close as possible to those of their non-looked after peers. It was also noted there are already a number of safeguards and risk assessments in place to ensure child protection and disclosure checks are only one part of this.

**Question 14: It is currently not possible for individuals over the age of 16 residing in a residential school setting (for example, spouses of house parents), but who do not have specific responsibilities, to obtain an enhanced disclosure. We believe that they should be subject to a Level 2 disclosure, do you believe that this is the correct approach going forward?**

There were 201 responses to this question. One hundred and ninety-three respondents to the consultation believed this to be the correct approach going forward. Eight respondents did not believe this to be the correct approach. One hundred and fifty-one respondents to the consultation did not answer this question.

**Question 15: Which option should the content of the Level 2 disclosure product be based upon? Please provide the reason for your choice.**



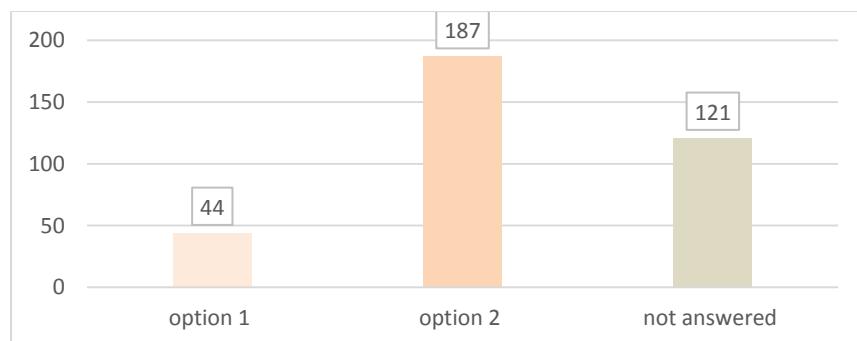
The majority of responses expressed the view that this should be based on option 2b. The reason most frequently cited by respondents is that it provides the most information, which they felt was necessary for employers to make recruitment decisions and assess the suitability of an individual for a role.

Some support was expressed for option 2a. Respondents selecting this option commented that this provides enough information without including information

irrelevant or inappropriate for the role, this was viewed as the fair middle ground between option 1 and option 2b and that it best strikes the balance between public protection and the rights of the individual.

There was limited support for option 1 but those who selected this option emphasised concerns over the use of Other Relevant Information (“ORI”) on options 2a and 2b and that disclosing too much information can hinder the ability of people to move on from past offending.

#### **Question 16: Which price option do you prefer for the Level 2 product?**



The majority of respondents to the question expressed a preference for option 2 which centres on an applicant paying an initially higher cost for their first application and then, on the creation of an online account with Disclosure Scotland, a reduced price for future disclosures at this level. Some respondents who provided written responses state that this allowed applicants to save both time and money.

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

There were 279 responses to this question. Two hundred and seventy respondents believed it is proportionate for free checks to continue for volunteers who obtain Level 2 disclosures. Nine respondents took the view that this is not proportionate. Seventy-three respondents to the consultation did not answer this question.

The vast majority of the respondents felt that it is proportionate that free checks continue for volunteers who obtain Level 2 disclosures. Those who offered comment on this stressed the significant detrimental impact introducing a fee would have on volunteering. Introducing a fee would act as a barrier to volunteering, discouraging individuals from an activity from which society derives huge benefit.

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

There were 232 responses to this question. This question received similar responses to question 6 posed in relation to a move to a digital system for Level 1 disclosures. A number of respondents did not provide a specific response to this question but instead referred to their answer to question 6.

All points raised in relation to a digital service will be shared with the Disclosure Scotland Digital Transformation Team who, with input from policy colleagues and stakeholders, will be developing the digital services.

## Section 3 – Reforming the policy underpinning the PVG Scheme

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

There were 206 responses. A number of points emerged including the need for a suitable lead-in time, adequate guidance and training, and clarity about the scope of work in a protected role.

Some respondents suggested phased introduction perhaps over a period of years supported by training and guidance. There was no support for another retrospective checking exercise as when the PVG Scheme was introduced.

With regard to practical suggestions, the most common theme was that existing PVG scheme members should transfer automatically to the new arrangements at no cost at go-live. Individuals new to work in a protected role should be able to join from day one.

A number of respondents suggested that the offence should be phased in, and there was also concern about the offence of working in a protected role when not a scheme member. It was felt that this could have a devastating impact on individuals and organisations. An alternative to prosecution should be the starting point for the offence of working in a protected role rather than a prosecution. A small number of respondents remain opposed to a mandatory scheme.

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

This question was answered by 304 respondents with 233 respondents supporting the proposal. The proposal was opposed by 71 respondents. Forty-eight respondents did not express a view on this question.

The scope of work in a protected role was raised by many respondents, stating the need for clarity about its extent especially if it was to be supported by an offence. A number of respondents suggested that further discussion should take place between the Scottish Government and organisations before final decisions are taken.

While many respondents accepted that a defined list of protected roles would make decisions about membership easier than was the case with regulated work, it was felt that this approach could bring risks. The biggest risk was that organisations would simply label jobs as being within the list, and therefore bring individuals into the new arrangements inappropriately. The aim of having proportionate-size scheme would be nullified. The only way to avoid this would be to revert to some assessment of what people were actually doing on a day-to-day basis.

Protected roles will be discussed further in Part 2.

**Question 21: Do you foresee any challenges for organisations from this proposed approach [that is, to replace ‘regulated work’ with ‘protected roles’]?**

There were 293 responses to this question. Two hundred and nine said that the replacement of regulated work with the idea of protected roles would bring challenges. Eighty-four respondents did not foresee challenges as a result of the change, while 59 respondents did not answer this question.

The majority of respondents believed that the proposed change would bring challenges. Comments related to the practical challenge of creating and keeping the list up-to-date. A number felt achieving that would be impossible given the diversity of organisations and roles that people had.

Several respondents added that if a list of protected roles was to be used, then the means of updating it must be swift. One option might be to use a criteria-based approach. The administrative burden for small voluntary organisations was also noted.

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

This question received 284 replies with 68 respondents choosing not to answer. The list at Annex B was judged to be deficient by 184 respondents, while 100 respondents felt the list was adequate. The main message to be drawn is that the work boils down to more than job titles of which there are many.

**Question 22a: If so, [roles / jobs not in Annex B of the consultation that should be subject to mandatory PVG scheme membership] please provide more detail on why.**

This question asked for comments on roles omitted from the list at Annex B and received 204 responses. There were over 500 roles not listed in Annex B suggested for inclusion in the list. These are listed at Annex D below.

The main reason for adding job titles was that the individuals in them would have roles in relation to children and vulnerable adults, in terms of caring, teaching, supervising, etc.

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

This question received 229 responses. Comments covered the following main areas: the need for clarity, the need for a risk based approach to membership, the need for some account to be taken of a person’s duties, the need to retain an incidental test or its equivalent to prevent unnecessary membership.

What a person did in relation to another was perhaps the most important factor in determining whether someone should be judged as working in a protected role. The

person being assessed for membership would therefore have a duty or responsibility towards another. Words such as 'control', 'care', 'teach', 'supervise', 'contact', and 'influence' were used to express that sentiment.

Other factors also had to be considered, namely the context and the duration of interaction. Words such as 'regular', 'alone', 'one-to-one', 'frequent', 'the location', and 'unsupervised' appeared in the responses. In opposition to this, words such as ' fleeting', and 'indirect' were factors that could be used to argue against scheme membership.

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

This question attracted 237 answers, while 115 respondents did not answer. Of those who replied, 130 felt the decision should be taken by the Scottish Ministers, whereas 107 respondents disagreed with that approach.

The comments highlighted the need for a non-bureaucratic process for making the decision, which took account of clear and published guidance about the factors that could affect the decision. These factors would be based mainly on what the role involved on a day-to-day basis, with whom, and where it would take place.

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

There were 158 responses to this question. It was suggested that this level should cover roles that were ancillary to, or which supported workers in protected roles. So administrative and support staff might be included as they might have access to sensitive information about vulnerable people. Managers or coordinators of staff in protected roles were also suggested by a few respondents, though this would be a change from current PVG arrangements.

At a more senior level, directors or trustees of organisations would be included at this level. In the sports sector, positions such as club chair, president, treasurer and secretary should be eligible for the Level 2 product, as should a range of technical positions in many sports where the post-holder might be able to hold power or influence over a child, such as judges and time-keepers.

The other groups to whom the Level 2 product should apply were: family members of foster carers and kinship carers; further education lecturers if they were excluded from being covered by the protected role disclosure; individuals providing advice of certain types such as, legal, financial, or housing; and individuals living in the household of host parents. The answers to questions 8 to 14 in section 2 are also relevant to this analysis.

**Question 26: Are there any services [that fall within the meaning of welfare services] that should be added, or are there any services that should be removed?**

There were 206 responses. The suggestion to alter the meaning of welfare services was supported by 58 respondents, while 148 respondents felt that change was not necessary. Another 146 individuals or organisations did not answer.

**Question 26a: If yes, [to add services to, or to remove services from, the meaning of welfare services] please state what these are.**

This question attracted 70 comments. The majority who replied to this question favoured adding services. A small number said the definition was fine. A number of respondents said that more clarity was needed around the existing definition if it was to be retained. No one suggested removal of a service.

It was suggested by some that informal groups should be considered as being brought within scope. These community-run bodies had minimal checking of providers, and they could attract vulnerable individuals. But there was a balance to be struck as putting onerous requirements in place might be a deterrent.

Examples of the types of services were: befriending; higher and community education; sport and physical activity services linked with health and wellbeing outcomes; housing support; humanitarian aid; counselling; and self-help. A person accessing these types of services would likely have a need or incapacity which could be either chronic or temporary. The important protection point was that the service delivered should be properly screened before being allowed to engage with someone who may be vulnerable albeit in some cases for only a short period of time.

**Question 27: There is then the question of the extent to which someone has to be involved in the delivery of a service to bring them within the scope of doing regulated work. At present, the front line member of staff or volunteer whose normal duties require them to carry out certain activities with an adult, such as 'caring for', means that staff member is doing regulated work. Is this appropriate?**

This question received 246 answers. Two hundred and twenty-eight respondents agreed that the proposal was appropriate, while 18 respondents disagreed. The question was left unanswered by 106 respondents.

The majority of those who responded favoured the proposed approach, namely, that 'caring for' should mean that the person doing that caring should be within the scope of the membership scheme. This reinforces some of the suggestions made at question 23 above.

**Question 28: The immediate line manager of that member of staff is also able to become a scheme member. Do you agree with this approach?**

This question received 248 answers. Two hundred and twenty-nine respondents agreed it was appropriate that the immediate line manager of a person doing regulated work should also be a scheme member. Only 19 respondents disagreed. The question was not answered by 104 respondents.

There was again majority support for the proposal that the immediate manager of staff in a protected role should be within the scope of the membership scheme. A small number disagreed and perhaps they are aligned with those who, at question 25 above, suggested that managers should be covered by the Level 2 disclosure.

**Question 29: Outwith the activities, a person can be doing regulated work with adults if they work in certain establishments, namely, a care home; or in residential establishment or accommodation for people aged 16 or over. Do you think these are the correct facilities, or should any be added or removed?**

This question received 200 responses. One hundred and sixteen respondents said that facilities should be added or removed. Eighty-four respondents thought that no change was needed. One hundred and fifty-two did not answer the question.

There was support expressed for this approach by a narrow majority. However, it was felt that a list itself might be unhelpful; it could be seen as all or nothing. The challenge then would be whether the list should be qualified to either exclude or bring in staff working in the establishments. But that could open up the possibility of confusion and uncertainty.

**Question 29a: If yes, [with regard to whether work in certain establishments, should any be added or removed] please state what these are.**

Question 29a received 82 responses. There were a mixture of views with most suggesting one or more addition to the list of establishments. Some examples of the suggestions for inclusion were: community centres; sports and leisure facilities and venues; night shelters; temporary accommodation provided by a statutory body; secure hospitals; community hubs; and all establishments regulated by the Care Inspectorate.

A small number of respondents felt that the list of establishments did not need changed. One respondent suggested that establishments should be removed from the scope of work in a protected role.

**Question 30: There are also certain exclusions that apply to work in such establishments. A person whose normal duties involve working in such a place will only be doing regulated work if doing something permitted by their position gives them unsupervised access to adults, and where that contact with the adults is not incidental. Do you think this approach is clear and helpful?**

This question asked about the exclusion that can apply to work in adult establishments. There were 230 responses of which 174 respondents felt the exclusion was clear and helpful, whereas 56 respondents said it was not. The number of respondents expressing no view was 122.

While attracting broad support for this approach, a small number of comments to this question highlighted that exceptions can lead to confusion about when and how they apply.

**Question 31: Lastly, the appointment of a person into certain positions in relation to services for adults means that membership of the PVG Scheme is possible. The positions are set out in the 2007 Act at schedule 3 part 4. Do you think that list of positions is correct?**

One hundred and seventy respondents agreed with the positions in schedule 3. However, 51 respondents did not. One hundred and thirty-one did not answer the question.

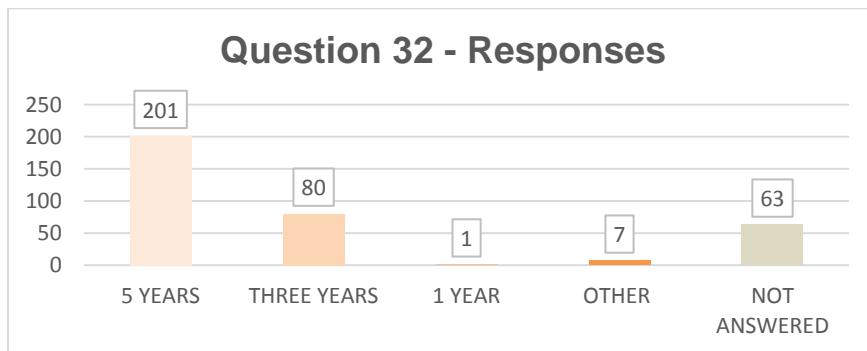
It was felt that an existing practice should continue in the future. Among the few comments made, it was suggested that those with access to information might be considered. The challenge of using a list of titles was noted as these can be subject to regular change.

**Question 31a: Should it [the list in the 2007 Act at schedule 3 part 4] be amended either by adding to it, or by taking away from it?**

There were 75 responses. There were contrary views about the list with suggestions for both addition and removal. The idea that a charity should have a main purpose was felt to be unhelpful. The delivery of services was more complex than when the 2007 Act was passed and that had to be recognised in the new arrangements.

A small number of respondents said that council committee members, and charity trustees should be removed from the list. Others took a different view and argued for their retention plus the addition of charity directors and officers, and all local government councillors. A few respondents felt that staff with roles relating to the quality assurance of services, or staff in sport and leisure facilities for protected adults should be added.

**Question 32: How long should scheme membership last in a mandatory scheme?** (a) 5 years  (b) 3 years  (c) 1 year



In the small number of comments to this question, the practical impact for individuals and organisations of periodic renewal was noted. It was felt that too short a period could be administratively demanding. The need for awareness raising was highlighted especially for organisations being alerted to a member of staff / volunteer requesting removal from the scheme as a way for a potentially dishonest person to avoid updated vetting information being shared.

Three organisations wondered if a more nuanced approach could be used, for example, by allowing the individual to decide on membership length at the point of joining or renewal. It was also suggested that in the case where scheme membership is necessary for a professional to practice, for example, teachers and medical practitioners, that a different approach to periodic renewal should be offered so as not to impact on a person's ability to practice their profession.

**Question 33: Do you think a membership card would be beneficial to you as a member of the PVG Scheme?**

There were 272 responses to this question. One hundred and seventy-eight respondents felt that a membership card was a good idea. However, 94 respondents were opposed to the idea, and 80 respondents offered no view.

The usefulness of a membership card was questioned by a significant proportion of respondents. Their key concerns related to it being out-of-date as soon as issued; and that it could be used by the unscrupulous to give false assurance about scheme membership status. It was also felt that a card would not contribute positively towards simplifying the scheme and easing how it operated.

One respondent was opposed to it being a criminal offence for failure to return a membership card when barred.

Those who supported the idea of a membership card suggested that an electronic card would be better than a physical card. This would have the advantage of it being up-to-date when shown to a third party.

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

This question received 271 responses. From an employer's perspective, 164 respondents felt that the membership card would be helpful. The opposite view – it would not help – was taken by 107 respondents, and 81 respondents chose not to answer the question.

There were a few comments on this question mainly around the fact that as PVG scheme members tend not to hold onto their scheme records now, why should a membership card be different?

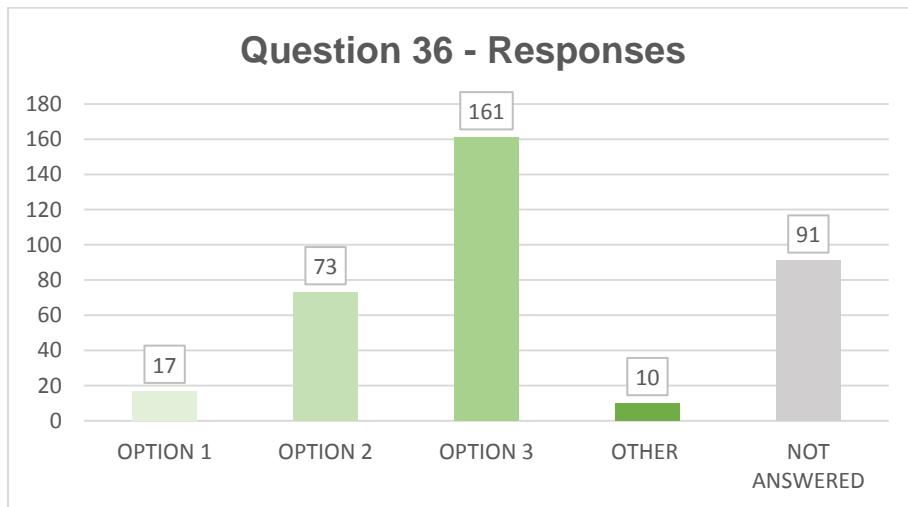
**Question 35: Currently the cost for a registered body to allow them to countersign is £75 per year, and this allows the registered person and four countersignatories to countersign applications. If an organisation wishes to have more than four countersignatories, there is an annual fee of £15 for each additional person. It is our proposal that this registration fee should increase to £90. This rise is in line with inflation since the fees came into force in 2011. We are not proposing to increase the fee for additional countersignatories above four.**

**The current conditions for registered bodies are set out in the Police Act 1997 and the Code of Practice published by the Scottish Ministers under section 120 of the 1997 Act. It is our intention to review these conditions to ensure they are suitable going forward. We also want to develop a scheme that can be delivered digitally, that includes registered body duties where possible.**

This question received 256 responses. Of these, 209 respondents supported the proposals, and 47 respondents were opposed. A total of 96 respondents expressed no view.

The majority accepted that an increase in line with inflation was appropriate. Some respondents were concerned about the impact on umbrella bodies of the proposal to deliver services digitally, and that they might have to register with Disclosure Scotland instead, at a further cost and with consequential administrative needs.

### Question 36: What is your preferred option?



There were comments about the administrative burden of short membership periods, and the need for clear process around removing members who claimed to have stopped working in a protected role, and of involving organisations in that process. The level of fee attracted some criticism as being too high particularly for individuals in low-paid jobs.

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

This question attracted 297 responses. There was support from 283 respondents for online interaction. Fourteen respondents were opposed, and 55 respondents did not answer the question.

There were few comments on this question, and these focused on the need to retain other methods for those who might not be able to work online.

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

There were 277 responses to this question about electronic payment of fees. There was support from 266 respondents, 11 respondents were opposed, and 75 respondents chose not to answer.

The small number of comments related to the need to provide for people and organisations that do not have access to the electronic option.

### Question 39: Do you have an electronic payment method that you prefer?

There were 277 responses to this. A minority, 109 respondents, said they had a preference, while 149 respondents said they did not. The question was unanswered by 94 respondents.

Once again, comments related to the need for alternative user-friendly options for those who could not use an electronic method, whether because it was not available or their organisation's rules at present did not permit it.

**Question 39a: If you have answered 'yes' [to the question preferred electronic payment method] please say what it is:**

This question followed on from question 39. There were 128 responses.

Respondents suggested a wide range of payment methods: BACS, PayPal, debit card, credit card, standing order, invoice (though some were opposed as it slows the process), bank transfer, online banking, Sage worldwide, Easibuy, mygov.scot account and direct debit.

It was requested that the online payment system should be able to provide itemised statements etc. so that organisations making payments could fulfil their accounting needs.

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

There were 181 responses to this question about moving members of the PVG Scheme to the new membership arrangements. Some of the comments relate to answers given at question 19 on how a mandatory scheme should be introduced.

The main points made by respondents related to guidance and training, and communication, and the arrangements for moving members of the PVG Scheme to the new membership scheme.

Organisations were very clear in their responses that they need to know well in advance of the change taking place – how it will happen, and by when it will have to be concluded. There were many practical suggestions about the mechanics of transition. A high number of respondents said that transition should be at no cost.

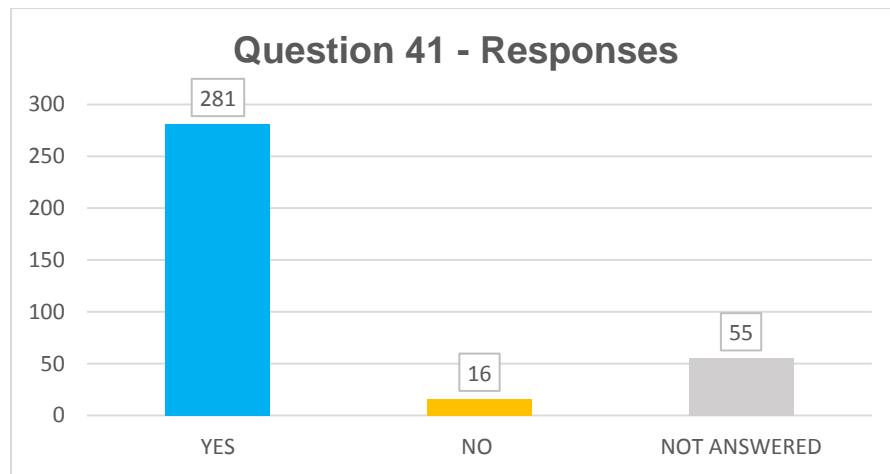
The need for Disclosure Scotland to contact all existing PVG scheme members as part of the transition exercise was highlighted. Doing so would enable Disclosure Scotland to remove those who did not need to be members of the new scheme. Some organisations offered to support Disclosure Scotland with that work.

In addition to that aspect, the scope of protected roles must be clear so that organisations know who is and who is not required to be in the new membership scheme. This is particularly important given the proposed offence of working in a protected role when not a member. Some respondents felt that the offence should not be brought into effect until Ministers were confident that the transition had been completed.

There were many calls for training and guidance material to support organisations and individuals in their assessment of whether work was a protected role. The absence of that material could bring uncertainty and possibly lead to offences being committed unwittingly. Time was also requested by organisations to allow them to

put in place the administrative arrangements needed to manage periodic membership.

#### **Question 41: Should volunteers continue to receive free membership?**



A few comments were made on this question. The message from them was that a fee for volunteers would be a negative step and potentially detrimental to volunteering in Scotland. It was also noted that it would bring related administrative burdens.

#### **Question 41a: If no, should they be subject to a reduced fee?**

There were 54 responses many of which re-iterated support for the fee waiver for volunteers being maintained. The importance of volunteering to Scotland was highlighted, as was the possible conflict between Ministers' Framework for Volunteering, and a fee on volunteers.

If there is to be a fee for volunteers, there was strong support from those who replied that it should be at a reduced rate.

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

There were 266 responses to this question about a public interest test. Agreement to a public interest test came from 154 respondents, while 112 respondents were opposed to such a test. The question was not answered by 86 respondents.

In the few comments to this question, it was questioned why organisations that had already satisfied Scotland's charity regulator of their status should be faced with another burden.

**Question 42a: If so, how should that [public interest] test be defined?**

There were 109 responses. It was suggested by some that the test had to be as simple as possible, and that it could involve, for example, citing an OSCR number and / or offering evidence of the public benefit the organisation provided.

Another suggestion was that the current meaning of ‘qualifying voluntary organisation’ (this is the type of organisation that benefits from the fee waiver now) should be turned from a negative to a positive statement.

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

There were 268 responses to this question. Of these, 179 respondents, favoured prosecution, while 89 respondents said they did not. The question was left unanswered by 84 respondents.

Just over half of those who answered this question favoured the creation of an offence but it would have to have an appropriate method of advising of impending expiry so that both have the opportunity to make appropriate arrangements to renew membership or to move the employee from regulated work. Concern was expressed about the lack of clarity on how the offence would operate. One respondent felt the benefits of this approach were doubtful especially given that omission could be inadvertent.

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

There were 271 responses to this question. Removal was supported by 238 respondents, while 33 respondents were opposed. The question was unanswered by 81 respondents.

While removal was supported by the majority of those who answered this question, a small number of comments were made. It was highlighted that a person may be between roles, and even be in the pre-employment process for another role. Automatic removal might impede their prospects and so a grace period would be better. Others agreed it was a sensible approach, but that employers (including volunteering bodies) with a known interest should be advised by Disclosure Scotland that the person was no longer a member of the Scheme.

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

There were 269 responses to this question. This proposal was supported by 229 respondents, while 40 respondents were opposed to it. The question was unanswered by 83 respondents.

There was a majority in support of the proposal. Comments made on this question included that: its wording pre-supposed five years' membership would be the case; the voluntary organisation must be contacted as it should not be assumed the person had also stopped volunteering; and charging of the fee should only begin when the next scheduled renewal date occurred. A final comment said the Equality Act 2010 had to be complied with and the proposal should be tested against that Act.

## Section 4 – Removing unsuitable people from work with vulnerable groups

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

There were 222 responses to this question. This was supported by 187 respondents, while 35 respondents were opposed. The question was unanswered by 130 respondents.

Two organisations provided comments in relation to retaining the court referrals process stating that, in their view, there are certain offences and categories of offence as well as certain offenders, where there are greater risks associated with them and their behaviour and which could suggest that they would continue to try and access people with vulnerabilities. As such it was suggested that courts could retain a right to make discretionary referrals when it was considered appropriate to refer to Ministers.

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

There were 170 responses to this question. Thirteen respondents said 'yes', while 157 respondents said 'no'. The question was unanswered by 182 respondents.

#### **Question 47a: if you answered yes to question 47, please list the offences you believe are missing**

A small number of respondents suggested the Order should be expanded to include common law offences such as theft, fraud, abduction and serious assault but they also recognised the level of severity would be an important factor.

Some respondents asked for consideration of coercive domestic abuse offences and two specifically commented on the impending Domestic Abuse (Scotland) Act 2018 in relation to the categories of emotional, psychological and financial abuse as potential offences worthy of automatic listing.

Three respondents noted that the Order specified only murder of a child and stated their view that murder of anyone of any age should lead to automatic listing.

Three respondents commented on including sexual grooming offences in relation to children.

### **Question 48: Do you agree with proposals to create new referral powers for the police?**

There were 224 responses to this question. This was supported by 214 respondents, while 10 respondents were opposed. The question was unanswered by 128 respondents.

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

There were 219 responses to this question. This was supported by the majority of respondents (177), while 42 respondents were opposed. The question was unanswered by 133 respondents.

The majority agreed there is a gap in the current legislation which could be exploited by people, should they be so inclined, and favoured the option to place the limitations as set out in question 49. One organisation asked for a different test to be devised, which focuses on a person's access to individuals and information about those who have vulnerability. It asked that these new powers be underpinned by applying proportionality and consistency.

**Question 50: Do you think this proposal, to extend the powers of referral currently available to regulatory bodies to local authorities/health and social care partnerships, closes the safeguarding gap in terms of self-directed support?**

There were 193 respondents to this question. One hundred and eighty-one respondents answered 'yes', while 12 respondents answered 'no'. The question was unanswered by 159 respondents.

Self Directed Support Scotland (SDSS) members stated it was very important that Personal Assistant employers can make referrals to Disclosure Scotland, if not directly, then through police or their local authority. SDSS members thought these changes would ensure Personal Assistant employers could make better informed recruitment decisions. The Care Inspectorate supported this proposal but highlighted safeguarding for self-directed support will remain different than other forms of registered care and regulated work and that any changes should not run counter to the principles of self-directed support. In order to achieve a balance between autonomy and protection, the Care Inspectorate recommended that an option to obtain PVG and other DS checks, as well as referral powers, should be introduced for self-directed support.

**Question 51: Do you think that this list of regulatory organisations with powers to make referrals should be amended?**

There were 195 responses to this question. Forty-nine respondents answered 'yes', while 146 respondents answered 'no'. The question was unanswered by 157 respondents.

**Question 52: If you think the list should be amended, please gives details of additions or removals.**

Of those who replied 'yes' there were ten comments in relation to giving healthcare regulatory organisations their full titles e.g. the registrar of the Health and Care Professions Council is currently listed as the registrar of health professionals.

Some highlighted the need for adding National and Scottish Governing Bodies of Sport, recognised by UK Sport and sportscotland, that issue qualifications or licences enabling a coach or instructor to teach children and young people, but do not directly employ/deploy the coach or instructor. Respondents said that when a decision is made to remove qualifications for a safeguarding reason, which may not be directly related to sport, there is no formal mechanism for the governing bodies to make a referral.

Some recommended the addition of the Registrar of Independent Schools.

Two comments were made in relation to adding NHS Education for Scotland in their role of Responsible Officer for the revalidation of medical practitioners.

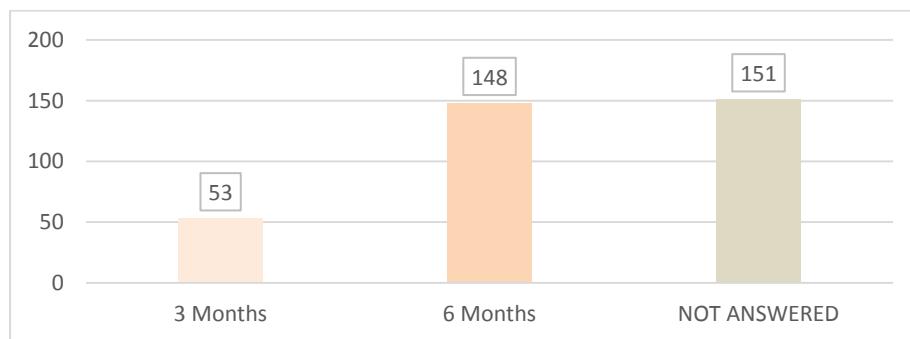
Respondents stated the list was weighted towards statutory regulation and highlighted the possibility of Third Sector Interfaces acting as a conduit for reporting concerns emerging from the third sector.

Comment was also made in relation to adding certain voluntary membership organisations, affiliated with the Professional Standards Authority, where trusted relationships exist between client and practitioner, and who have accredited registered workforces, investigate complaints and take decisions on sanctions. The British Association for Counselling and Psychotherapy and Counselling & Psychotherapy in Scotland were given as examples.

**Question 53: Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions on individuals under consideration for listing?**

There were 220 responses to this question. This was supported by 206 respondents, while 14 respondents were opposed. The question was unanswered by 132 respondents.

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



**Question 55: Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions?**

Organisations stated this proposal would support them to manage risk in situations where people are under consideration for listing.

Of those who responded to questions 53–56 there was a clear theme that standard conditions should be rare and reserved for the most extreme circumstances.

Respondents stated each case should be considered on its own merits and supported by a robust and clear risk assessment model. Respondents commented on the need to balance proportionality and the rights of the individual, against the need to protect children and adults from potentially unsuitable persons and also maintain public confidence in the PVG Scheme.

Eight organisations suggested the allegations or findings should be at a level comparable with the list of offences in the Automatic Listing Order and also cited the schedule 8A and 8B offences as a starting point. Other respondents stated allegations of serious misconduct of the type defined in the referral grounds at section 2 of the Act would be an indicator of when to impose standard conditions.

Three organisations stated the decision to impose standard conditions should be made by the independent reviewer, and five stated there should be a right of appeal.

Some respondents raised concerns about imposing standard conditions on the basis of alleged conduct that had not yet been established through legal or disciplinary proceedings. The consensus across a group of respondents was that a relevant finding should already have been made before conditions could be imposed. On a similar tone respondents specified the information should come from a credible source, such as the police through Other Relevant Information or other statutory authorities.

Ten respondents commented on the impact this proposal could have on small to medium organisations, with a particular emphasis on the voluntary sector. Some voluntary organisations stated it may not be operationally possible or viable for organisations to impose conditions. They said there would need to be some discussion and negotiation with employers available for Disclosure Scotland to impose workable and satisfactory conditions. The Care Inspectorate highlighted that there may be circumstances where there is no individual or organisation in a position to effectively supervise, monitor or control the individual concerned.

Respondents indicated this proposal could result in unnecessary bureaucracy, complexity and additional costs which would be unreasonable for employer / voluntary groups. Clarification was sought on how this would be funded.

Four organisations stated there was a risk of stigmatising people and tarnishing reputations. One organisation stated the ability of the person who is being considered for listing to contribute to society and earn an income may be temporarily stopped or permanently damaged, even if the result is that they are not barred.

Eight organisations considered the best solution would be for Disclosure Scotland to support employers to develop an action plan to address areas of concern at a local level to suit specific contexts. This could be complemented by comprehensive guidance to help employers take appropriate action.

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

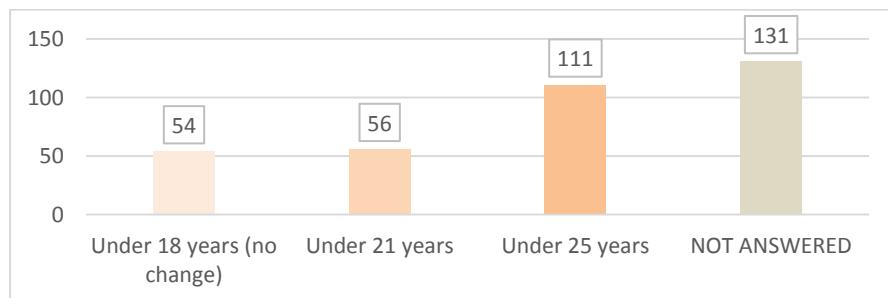
There were 209 responses to this question. This was supported by 179 respondents, while 30 respondents were opposed. The question was unanswered by 143 respondents.

In responding to this question a small number of respondents highlighted the effect this proposal may have on the voluntary sector, with one commenting that it may drive volunteers out of organisations because it would result in a high level of responsibility for volunteers.

**Question 57: Do you agree the age threshold for the shorter prescribed period for a removal application from inclusion on the list(s) to be made should be raised?**

There were 221 responses to this question. This was supported by 167 respondents, while 54 respondents were opposed. The question was unanswered by 131 respondents.

**Question 58: Which option do you prefer?**

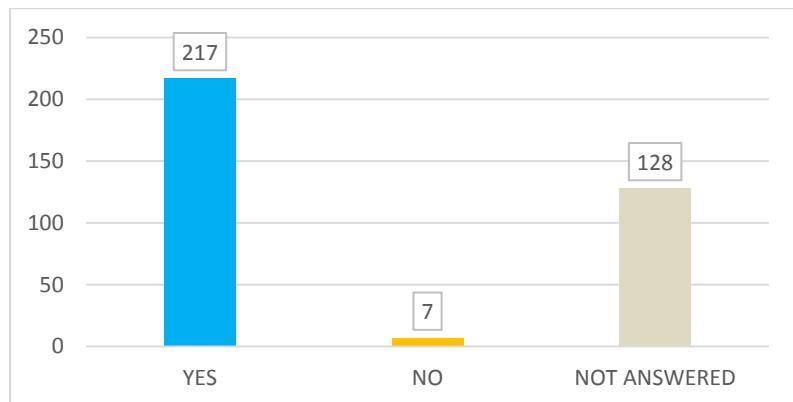


Respondents welcomed this proposed change. Organisations stated option C would be more consistent with the evidence on the peak age of offending and would bring greater consistency with the changes proposed in section 6. Respondents highlighted that changes should be aligned to other legislation that recognises certain young people, for example care leavers, should be afforded additional support up to the age of 26, rather than under 25 as presented in option C.

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

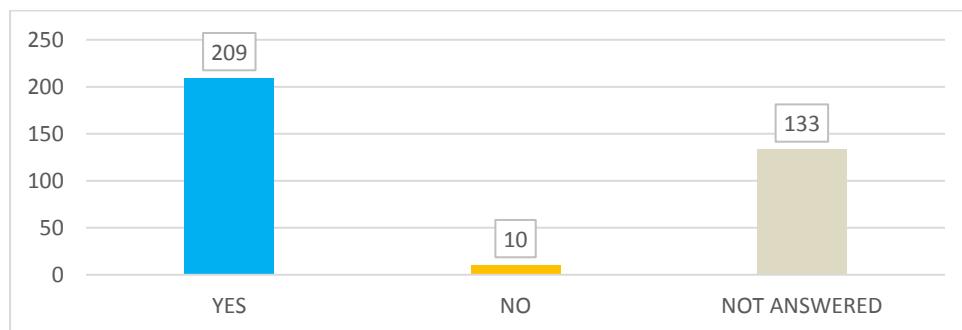
There were 232 responses to this question. This was supported by 224 respondents, while eight respondents were opposed. The question was unanswered by 120 respondents.

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



A clear majority of the 224 responses supported the proposal.

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



It is clear that the majority of those that responded to this proposal support the proposal in relation to introducing an offence for barred individuals offering to undertake a protected role overseas.

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

**Question 62: Are there any offences missing from either list, those being schedule 8A or schedule 8B, that you think should be included? If so what are they, on what list should they appear and why?**

There were 166 responses to this question, the majority of which held that there were no missing offences. There were twelve respondents who considered there to be missing offences, raising their concerns that the pace of technological change meant that it is important to reflect offences associated with conduct in the digital world, including through use of social media. Some respondents said that all offences resulting in harm to a child and domestic abuse related offences should be on the lists. One respondent felt that any offence in relation to animal abuse or animal cruelty must also be included on the lists.

The Law Society of Scotland said that offences in relation to identity theft, tax offences and breaches of court orders should be included in 8B as they are offences which would be of concern should an individual want to become a solicitor.

One respondent questioned the continued use of the 8A and 8B offence lists stating that it could create a conflict with the aims of rehabilitation and allowing people to move on with their lives.

Some respondents raised concerns about the large number of offences and wide ranging character of the offences captured within the schedules. They also found the fact that there are two offence lists complicated and opined that there should be one smaller list coupled with an individualised approach to simplify the system. These respondents also advocated a separate disclosure system for children, with no disclosure whatsoever of matters dealt with at children's hearings. This has effectively been proposed as a policy option in this consultation and is discussed in Part 2 of this document. They also suggested for all spent convictions to be removed from a disclosure unless the state makes a case to disclose it.

**Question 63: Are there any offences on schedule 8A that you think should be on schedule 8B? If so, please list them and explain why.**

There were 149 responses to this question, with 203 not answering this question. There were 138 respondents who said that there were no 8A offences that should be on 8B. Eleven believed that there were missing offences.

Some respondents said that offences in relation to prostitution should be moved, particularly the following offences under the Criminal Law (Consolidation) (Scotland) Act 1995 - Section 7(38) and Section 11(39). It was felt that many convictions in relation to prostitution are related to vulnerable people who move away from this offending and typically go on to lead law-abiding lives.

There were a number of similar comments to those found in response to question 62, related to a desire that there should be no disclosure of spent convictions unless the state makes a case for such disclosure, concern about the complicated nature of the offences lists and concern about the continued use of schedules 8A and 8B to determine what offences are capable of being disclosed on higher level disclosures when otherwise spent.

A number of responses also stated that there should be separate consideration given to those offences committed by those under 18 years of age, with particular consideration given to care-experienced children.

One respondent stated that offences relating to indecent images should not be disclosed as they do not determine whether or not the offender poses a risk to vulnerable adults or children.

**Question 64: Are there any offences on schedule 8B that you think should be on schedule 8A? If so, please list them and explain why.**

There were 150 people who responded to this question; the majority believing that there were no offences on schedule 8B that ought to be on 8A.

There were 18 respondents who felt that there were offences that should be on 8A that currently were not. Some of these felt that offences relating to use of psychoactive substances, perpetration of domestic abuse and abusive behaviour or the sexual harm of a partner or ex-partner demonstrated a substantial risk of harm such as to justify inclusion in schedule 8A.

Some respondents felt that all of the offences leading to direct endangerment of children should be on schedule 8A, even if only for those seeking access to PVG Scheme for regulated work with children. Offences relating to fire raising, making false accusations, offences against protected adults, offences against children, offences involving harassment, possession or use of offensive weapons and possession of obscene material should all be in 8A because they demonstrate the presence of risk factors pertinent to work with vulnerable groups.

One responder said that financial fraud should be on 8A as their staff will have significant responsibility for handling the financial affairs of vulnerable individuals and deem a conviction for this offence to be very relevant.

One regulatory body felt that there are a number of offences related to dishonesty and violence, appearing on schedule 8B, which raised particular regulatory concern for them. These included embezzlement, fraud and theft – all offences of dishonesty. More generally, they felt that the existing regime, as provided for by the 2015 Remedial Order<sup>2</sup> and its filtration system, had caused issues when trying to establish a pattern of behaviour in regulatory cases. A regulator's inability to rely on spent and

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<sup>2</sup> Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015

filtered convictions in cases where recent behaviour was similar limited the ability to show a pattern of conduct.

The Law Society has stated that there are a number of offences which in terms of fitness to practice would cause concern if an individual were to become a solicitor, these include perjury, fraud, forgery, embezzlement, offences under the Solicitors (Scotland) Act 1980, proceeds of crime and money laundering.

The Care Inspectorate asked for the inclusion of any offences under the Domestic Abuse (Scotland) Act 2018. While Scottish Women's Aid have stated that the offences contained in the following legislation should be on 8A:

- Criminal Procedure (Scotland) Act 1995 s234(a)
- Domestic Abuse (Scotland) Act 2011 s2
- Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011
- Protection from Harassment Act 1997 s9
- Any offence of breach of the peace with a domestic aggravator

A few respondents stated that the placement of the Sexual Offences (Scotland) Act 2009 37(1) or (4) causes concern and consideration should be given whether it should be on 8B.

**Question 65: Do you agree with the categorisation of the new offences included in Annex C?**

Of the 162 responses to this question, 146 agreed that the categorisation of new offences was correct. There were 16 who did not agree with the categorisation. Some respondents said that those convicted of these offences under 18 should be treated differently. One responder stated that some of the offences on the lists could result in the criminalisation of children and young people engaging in exploratory and experimental activity, such as sharing intimate photographs electronically.

**Question 65a: If no, please state how they should be categorised.**

Some of those who commented felt that common law breach of the peace offences were less serious than most of the other offences listed on the 8B rules list. One responder was unclear why "abusive behaviour towards a partner or ex-partner" is only proposed to be schedule 8B, rather than on 8A, as it clearly indicates harmful behaviour around a person's understanding of appropriate relationship dynamics.

One responder stated that there are many offences on these lists that should not be on either list and should not be disclosed once spent. Another asked if we can we make the system simpler by removing some of the common law offences as they are out of date by virtue of the time they were written.

Scottish Women's Aid has stated that they support the inclusion of the new offences in 8A, however, there are new offences proposed to be included in 8B which they feel are unacceptable and they should be in 8A. These offences are:

- Domestic Abuse (Scotland) Act 2018 s1
- Abusive Behaviour Sexual Harm (Scotland) Act 2016 s1

A handful of respondents have stated that the Abusive Behaviour Sexual Harm (Scotland) Act 2016 s1 should not be on 8B and the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 s1 should be removed from 8B. There is also a suggestion that the s38 of the Criminal Justice Licensing (Scotland) Act 2010 is a spectrum offence and should not be on 8A.

The Law Society of Scotland believes that the Criminal Finances Act 2017 s45(1) and s46(1) should be on 8A.

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

There were 193 responses to this question. The majority of those responding (148) agreed that the current rules provide appropriate safeguarding and privacy protections. Forty-five disagreed.

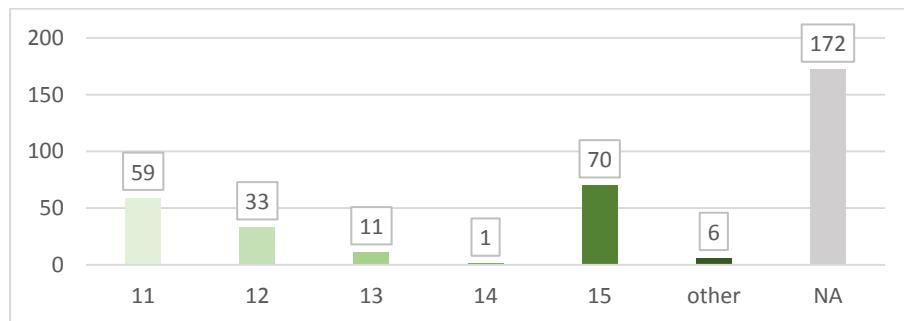
A number of respondents raised concerns about the length of time some convictions would be disclosed, including some of those that would always be disclosed. This makes it difficult for those to move on from past offending.

There was support from a number of respondents for childhood offending to have a different approach to that of offending in adulthood.

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

Of the 191 responses to this question, 125 agreed that this approach was appropriate. Sixty-six did not agree that this was the appropriate approach. One hundred and sixty-one respondents did not respond to this question.

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



There were a range of responses to this question, with 104 respondents supporting a reduction to between 11 and 14 years for disclosure.

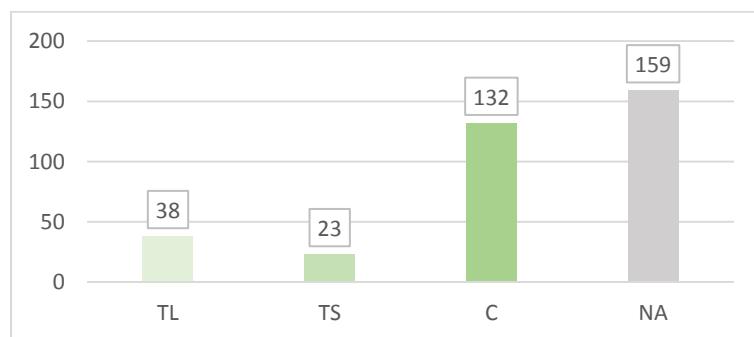
Again there is support for a different approach to childhood offending to that of offending in adulthood.

A handful of respondents questioned whether any convictions should be disclosed once spent but, if spent convictions are to be disclosed, the disclosure periods should be lower in line with academic evidence.

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

There were 203 responses to this question, with 173 of those respondents supporting the proposal that applications to a sheriff need to be reviewed. Thirty respondents did not feel it needed to be reviewed and 149 did not answer the question.

**Question 70: At present, an individual has three months from the date of notification of an intention to appeal to make an application to a sheriff.**



Of the 193 responses to this question, the majority felt that the current timescale of three months was correct. There were 38 who felt it was too long and 23 felt it was too short.

One respondent stated that any timescale must balance the needs of the employers and the applicants.

**Question 70a: If you indicated that the time period is too long or too short, what do you think the time period should be?**

There were 48 responses to this question, with responses offering a variety of timescales. These timescales varied from two weeks to 24 months, with one month and six months the most popular.

**Question 71: Do you think any of the options set out above, those being the introduction of an administrative process stage prior to application to a sheriff, the introduction of an independent reviewer or making an application to a tribunal, offer viable alternatives to an application to a sheriff?**

There were 172 responses to this question. There were 120 who felt that the alternative options to the application to the sheriff were viable whilst 52 did not.

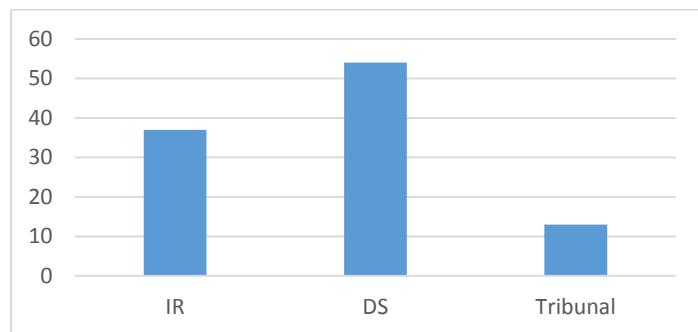
Two respondents emphasised the importance of any review taking into consideration the needs of regulated professions and ensuring procedures and guidelines are consistent and transparent.

Again a common theme was that there needed to be consideration given to children, and more specifically, care-experienced people.

Concerns were raised by a number of respondents that all proposed options leave the onus on the applicant for removal. There were suggestions that the state should apply for the continuation of disclosure of a conviction or that the process should be simplified by the expunging of less serious offences, something which currently happens.

**Question 71a: If yes, which one?**

There were 104 responses to this question.



**Question 71b: If not, do you have any other suggestions?**

There were 19 responses to this question. Two respondents stated that this process should stay within the remit of the judiciary. A number of respondents stated that the area is very complex and more guidance and information needs to be available.

A handful of respondents stated that we should look to other countries for solutions, especially in relation to children, for example the sealing of childhood convictions. It was also suggested that a more nuanced approach with judicial oversight would be a better approach, it was felt that this should not be done by a government body. Another suggestion was the automatic removal of lower level offences, this currently happens as minor convictions are not disclosed once spent.

One respondent raised concerns that any review on the decisions of the independent reviewer would be in point of law only. They also raised concerns in relation to the internal process that Disclosure Scotland Protection Services, although experienced in making decisions to bar individuals from regulated work, may not have the experience or expertise to consider convictions in other contexts, such as fitness to practice as a solicitor.

## Section 6 – Additional Policy Questions

### Other Relevant Information

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

There were 206 responses to this question. One hundred and eighty-three respondents answered 'yes' and 23 answered 'no'. One hundred and forty-six respondents did not answer this question.

It was noted there was a potential for an increase in the time taken to issue certificates, which emphasised the importance of the process being timeous.

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

There were 197 responses to this question. One hundred and sixty-nine respondents answered 'yes' and 28 answered 'no'. One hundred and fifty-five respondents did not answer this question.

One respondent who was in favour of this proposal felt that in terms of the need to operate a scheme with fairness and transparency it seemed appropriate that individuals should have the right to know what is being disclosed in ORI.

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

There were 186 responses to this question. One hundred and seventy respondents answered 'yes' and 16 answered 'no'. One hundred and sixty-six respondents did not answer this question.

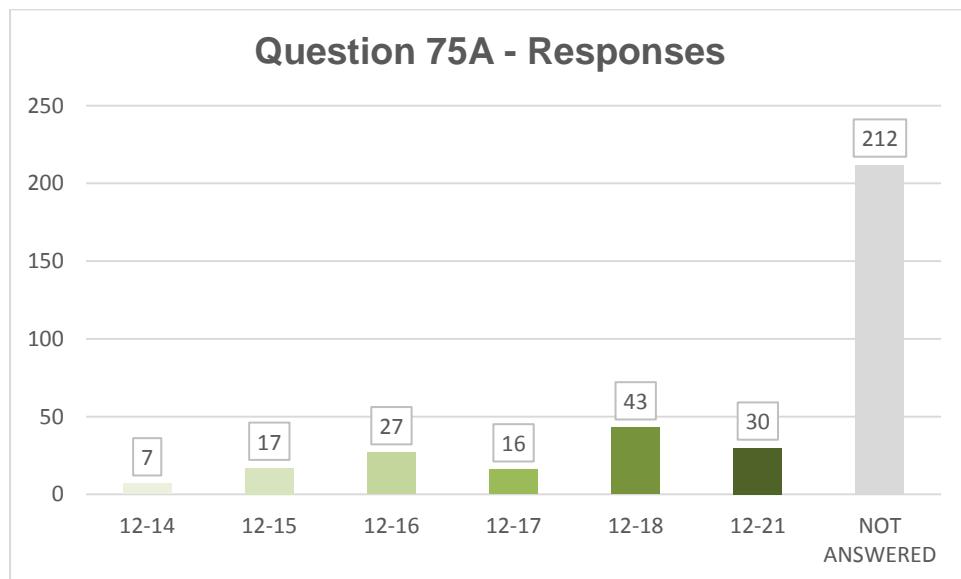
Other Relevant Information will be discussed further in Part 2 of this report.

### Disclosure provisions for 12-17 year old children

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

There were 188 responses to this question. One hundred and forty-five respondents answered 'yes' and 43 answered 'no'. One hundred and sixty-four respondents did not answer this question.

**Question 75a asked: If there should be special provisions, what age range should they apply to? Question 75b then asked respondents to provide a reason for their answer.**



Forty-three respondents felt that the special provisions should apply to young people from 12-18 years of age.

The main reasons given were that this strikes a balance between allowing young people to move on, and recognising that a young person can be viewed as an adult at the age of 18 and have a higher level of maturity and sense of responsibility.

There were 30 respondents who felt that the special provisions should apply to young people from 12-21 years of age.

Several of these respondents noted that desistance from youth crime tends to occur by the mid-20s and that this age range provides a better opportunity for young people to move on. The lifelong effects for care-experienced people were also noted, as was concern that disclosure of convictions can act as a barrier to further opportunities for young people.

In addition to the figures shown for the age ranges offered in the consultation, six respondents felt that we should consider extending the age range to 12-25, noting that this is consistent with the peak age of offending, citing evidence that the human brain is not fully mature until the mid-20s and that psychosocial and cognitive development continues up to age 25.

Comments across the range of answers shown in the chart also recognised that many young people who offend have experienced difficult circumstances and trauma in their lives. There was a clear sense that the disclosure regime ought to take better account of these adverse experiences.

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

There were 169 responses to this question. Ninety-nine of respondents answered 'yes' and 70 answered 'no'. There were 183 respondents who did not answer this question.

One respondent noted that they welcomed the simplicity of this option, making it accessible and understandable to children.

Several organisations made no response to the options proposed in the consultation. They did, however, note under this option that they welcomed the introduction of no automatic disclosure of convictions and deemed it would offer the greatest protection. They noted the importance of the independent reviewer role being truly independent, provided with clear accessible information to guide decision making and bringing transparency to the process.

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

There were 164 responses to this question. One hundred and three respondents answered 'yes' and 61 answered 'no'. One hundred and eighty-eight respondents did not answer this question.

Comments in favour of this option included that it continues the policy aim of decriminalising conduct by children and provides that only more serious matters could be disclosed for children. People who offend as adults would continue to have all matters related to their adult convictions disclosed until they became spent under the relevant provisions governing the periods during which convictions are deemed unspent.

One respondent who did not favour this option noted that continuing to rely on schedules 8A and 8B was insufficient because it retained a complexity in the system and treated childhood offending as if it were the same as that of an adult when that may not be the case.

Some respondents noted that this option offered only limited change and protection and echoed concerns about the additional complexity this option would bring to the system and the well-established difficulties people have in exercising their rights, in this instance regarding the application for removal of conviction information.

Another organisation recommended that assessing whether disclosure is appropriate should be dealt with on a case by case basis, taking into account the offender's wider life experiences and circumstances. They saw only limited benefit in set categories of offences such as those provided in schedules 8A and 8B, and would

instead recommend guidance be provided to assist in the individualised assessment of offences in the context of wider life experience and circumstances.

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

There were 166 responses to this question. Eighty-six respondents answered 'yes' and 80 answered 'no'. One hundred and eighty-six respondents did not answer this question.

One organisation in favour noted that their procedures provide for fitness and properness guidance meaning that multiple minor offences potentially can demonstrate a disregard for the law. They advised it is important to them that all unspent offences are disclosed.

Another noted that a solitary but very serious offence may have occurred due to a unique and never-repeated set of circumstances, but the accrual of a number of minor offences could be more concerning as it may indicate a course of behaviour that should be disclosed.

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

There were 164 responses to this question. Eighty respondents answered 'yes' and 84 answered 'no'. One hundred and eighty-eight respondents did not answer this question.

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

There were 175 responses to this question. One hundred and forty-seven respondents answered 'yes' and 28 answered 'no'. One hundred and seventy-seven respondents did not answer this question.

Of those who replied 'yes', one organisation noted that statutory guidelines should clearly and definitively define the role and duties of the police in providing ORI.

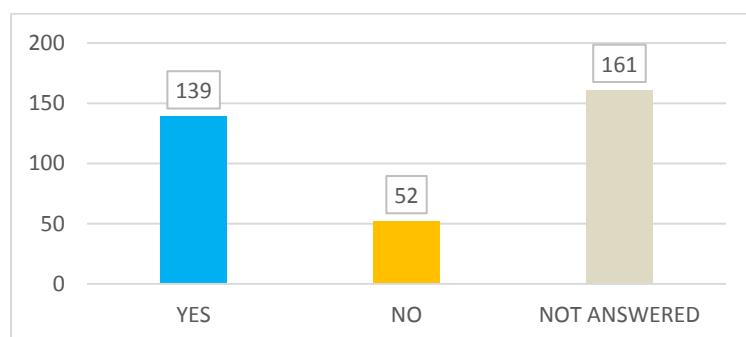
Another noted that any other non-serious matters would not be appropriate to disclose, and doing so would violate the rights of the child or young person under article 8 of the European Convention on Human Rights (ECHR). As such, it must be both absolutely necessary and proportionate to a legitimate aim (such as protecting a vulnerable person) for ORI to be disclosed. Another suggested that a written explanation should be required.

One organisation not in favour noted that disclosure of ORI for children should not take place and that they have serious concerns that disclosure of this information is a breach of the right to a fair trial and the right to private life.

Disclosure provisions for 12-17 year old children will be discussed further in Part 2 of this report.

## Registered persons and counter signatories for higher level disclosure applications

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



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

There were 135 respondents who answered this question. Though most respondents to question 81 agreed with placing an age limit on criminal record checks, those responding to question 82 generally supported exceptions to permit people under 16 to undertake roles working with vulnerable people, particularly around the voluntary sector.

Concerns surrounding the age limit will be discussed further in Part 2.

### Question 83: Do you have any concerns with the proposal to introduce a minimum age of 18 years for people who want to become a registered person or those who are nominated to be countersignatory in connection with Level 2 and PVG Level disclosures?

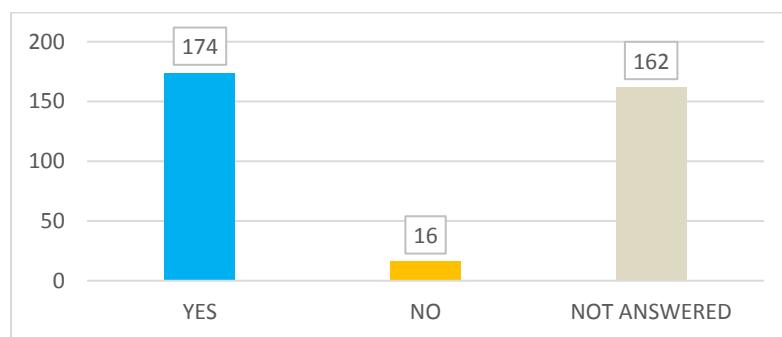
There were 140 respondents answering this question. Of these, 126 had no concerns with the proposal. Four of the remaining responses did not relate to this question.

Some respondents suggested that making the minimum age 16 years, highlighting the voting age as indicative of 16 being an appropriate age to set the responsibilities at. Further responses pointed to the minimum legal age of directors and the Scottish Charity Regulator-recommended minimum age of charity trustees being 16. There were also questions as to why the minimum age for countersignatories under a future scheme should be set higher than the minimum age for regulated work and a

belief this is a decision that should be made by employers regarding the job role, not the age of employee.

## Self-Directed Support

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



**Question 84a: If you responded 'No' to Q84 , do you have any suggestions about how Disclosure Scotland checks could be structured to assist a supported person making their own arrangements for self-directed social care?**

Narrative responses here supported continuing using a statement of scheme membership but then associating the supported person with a scheme member for notifications regarding their scheme membership status.

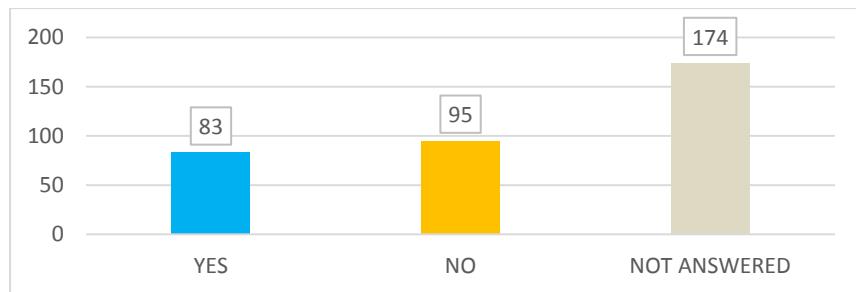
Other responses advocated a third party registered body within care or social work receiving the information and making an assessment on whether the vetting information would preclude an individual from being suitable (rather than the “not unsuitable” consideration of the PVG Scheme), which they could then share with the supported person. One suggested the applicant then being able to dispute the decision if found unsuitable to the supported individual and their registered body.

A range of respondents expressed the view that people would need to be provided with additional support in interpreting the information provided to make an informed choice and understand their obligations in receiving this information to not disclose it further.

There is broad support for access to this information for those arranging self-directed care, however, as highlighted by the narrative responses, further work is required to ensure they understand how to use vetting information and their obligations under confidentiality and data protection.

## Private Individuals i.e. Tutors working with children or protected adults

### Question 85: Do you think this approach for private individuals working with children or protected adults is correct?



### Question 86: Do you think that the services of specialised interpreters whose assistance may be needed to allow a person to participate in day-to-day life should be regulated work?

There were 172 respondents who answered this question. Of these, 145 agreed, 27 did not. There were 180 who did not answer this question.

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

There were 176 respondents who answered this question. Of these, 154 believed vetting information should be available, 22 did not. There were 176 who did not answer this question.

### Question 88: Do you agree that the law be changed to sort this anomaly that a charity must have one main purpose only, that is work with children or work with protected adults, for a trustee to be able to join the PVG Scheme and if a charity has as its main purpose services directed at both vulnerable groups then trustees cannot apply to join the PVG Scheme?

There were 218 respondents who answered this question. Of these, 214 agreed with the proposal, four did not. There were 134 who did not answer this question.

## Notification requirements under Part 2 of the Sexual Offences Act 2003

### Question 89: Do you think that provision should be made to bring into force the amendment at section 78(1) of the 2007 Act that would have allowed information about a notification requirement under the 2003 Act made following an application by a chief constable to be included on a basic disclosure?

There were 171 respondents who answered this question. Of these, 158 agreed with making this provision, 13 did not. There were 181 who did not answer this question.

## Impact Assessments

The final five questions sought views on the impact of the proposals within the consultation on various groups. Responses to these questions will inform ongoing work on impact assessments as we develop future provisions. Many impacts raised here have been explored at other points throughout this report.

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

Responses to this question tended to focus on negative impacts. The protected characteristics raised in responses to this question were age and disability.

The most strongly recurring negative impacts were:

- charging volunteers would introduce a barrier to volunteering, costing charities financially and socially;
- renewals would be a barrier to low income workers and may prevent them remaining in their field – it has been suggested Disclosure Scotland could mitigate impact by introducing tiers (either based on income, similar to SSSC, or an option of one, three or five year membership at different costs), payment plans or renewal not being the same cost as initially joining the Scheme;
- a digital system could prove to be a deterrent to those who cannot access digital.

Other concerns raised about the prospect of change in charges for PVG membership were the possibility of indirect gender discrimination due to the prevalence of women in low-paid social care roles, the financial burden on people with convictions and those reliant on a prison liberation grant upon release from custody.

Retaining a paper option was requested by a range of sectors to ensure equality of opportunity for the less digitally literate (particularly the elderly) and those without connectivity.

Some positive impacts were raised with responses noting that more ownership of accounts would assist accessibility and help people understand their rights and responsibilities around disclosure.

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

There was limited response to this question, however many noted there are a number of positive proposals for people with convictions and those who have accrued convictions as children. It was highlighted that proposals here are fairer for care-experienced young people than the current system, however, more training is needed to support organisations in making risk assessments which would advance these opportunities. As per Disclosure Scotland's corporate parenting plan, a

detailed look at the impacts of proposals on care-experienced children and adults will be made as part of the impact assessments.

There was also concern that the cost may negatively impact the employer/employee relationship as employers who currently take on the costs of PVG membership may have to move this cost onto the employee under a new fee structure.

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

There was cross-sector concern regarding potential administrative burdens from the changes proposed. Many of these concerns echoed points raised earlier in the consultation around transitional arrangements, guidance and fees and these will be assessed further in the impact assessments.

The other prominent concern was around the recruitment and retention of staff under a mandatory scheme. Organisations felt further explanation was required regarding whether individuals could take on regulated work on an interim basis while waiting on their membership as there is a view there could be significant delays generated as Disclosure Scotland catch up on a backlog of people having to join the Scheme.

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

The most common impact raised were general statements on the loss of privacy intrinsic to the nature of disclosing criminal information, however, in most responses it was noted they felt the proposals generally struck a good balance between safeguarding and individual rights.

The digital system is viewed as a positive step in terms of passing more control of information to the individual. It was viewed favourably in removing the risk of certificates being lost in the post or incorrectly delivered. The expiry of memberships was viewed as positive for individuals' privacy as it would reduce the numbers of people being monitored unnecessarily and without their knowledge.

There was significant concern regarding cyber security and unauthorised access or corruption of the cloud storage, with reference made to recent attacks on public sector organisations. Sharing to private individuals (self-directed support, personal tutors, interpreters etc.) was raised as a potential risk as these individuals may be less aware of their data protection responsibilities.

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

Respondents were generally positive with regard to impacts on children and a number of responses stated the impact would be positive without elaborating on specific proposals.

A substantial number of responses highlighted that reform to enhanced / Level 2 disclosure and the PVG Scheme would assist in creating a safer environment for children outside their guardian's care. Responses here referred to question 85 and 87, regarding allowing private individuals access to vetting information. It was viewed that this would support the safety of children. Foster carers being removed from the Scheme was viewed in some responses as creating a safeguarding gap.

There were generally positive comments regarding the proposals to limit the disclosure of convictions accrued as a young person and creating greater distinction between crimes committed by children and by adults. This came out particularly with regard to the overrepresentation of care-experienced young people in the criminal justice system.

Removing the ability of children to take on protected roles/regulated work was viewed as damaging to opportunities and development for children and young people. It was highlighted in one response that in Scotland it is possible to leave school after 31 May of the year if the child turns 16 between 1 March and 30 September and not being able to access Level 2 or PVG checks could prevent them from applying for further education or work.

## PART 2 – DISCUSSION OF THE KEY ISSUES

There were a number of related issues brought out in the consultation responses which are highlighted in this part of the report along with further commentary on the detail of the proposals. It is hoped this will help to clarify and allay concerns raised by some respondents.

### **Relationship between the PVG Review, the Age of Criminal Responsibility (Scotland) Bill and the Management of Offenders (Scotland) Bill**

A number of respondents commented that the PVG Review proposals, alongside the proposed amendments in the above Bills, will load further complexity on an already complex system. Similarly, they expressed frustration that these interlinked legislative changes are being undertaken in a piecemeal manner, and instead stated that there should be a holistic review of the entire disclosure system.

On the surface, the existence of three separate related bills or future bills<sup>3</sup> might suggest that silo-working is an issue. This is not accurate; Scottish Government policy officials from Justice, Youth Justice and Disclosure Scotland have worked closely together in all aspects of amending the disclosure regime in pursuit of a broader vision. The current proposals in the Management of Offenders (Scotland) Bill will significantly shorten disclosure periods for almost all sentences. This will have a positive impact on disclosure users whether they be adults or children as convictions will be spent sooner, meaning that minor convictions are less likely to be disclosed on the basic disclosure. The reforms will also mean that applicants for higher level disclosures will be able to make the application to a sheriff sooner in those cases where the individual has a conviction for an offence included on schedule 8B.

The Age of Criminal Responsibility (Scotland) Bill proposes to increase that age from eight to 12, meaning that there can be no convictions (in practical terms this refers to offence grounds being found proved by a Children's Hearing) recorded before that. This builds on the change made in the Criminal Justice and Licensing (Scotland) Act 2010 which ended the possibility of children under 12 being prosecuted for offending behaviour. Disclosure of any behaviour from before the age of criminal responsibility would only be possible after an independent review of the police decision to include it, and where the disclosure subject has the opportunity to respond to the police information before it is disclosed to another party, such as an employer.

The policy ideas proposed in the consultation are fully in keeping with the wider Government strategy to improve the disclosure system and the justice system generally for both children and adults. They must be seen in this context. The review contains proposals that, if enacted, would represent a transformational improvement

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<sup>3</sup> The Management of Offenders (Scotland) Bill, the Age of Criminal Responsibility (Scotland) Bill and the future Disclosure Bill

in the position of young people and adults. It also offers an opportunity to take further steps on the journey of:

- improving, and simplifying the disclosure regime for all; and
- providing positive impacts for those with convictions whilst balancing public protection.

Taken together, these changes show how this Government has embarked on a steady progression of reforms that have sought to engage the public, and key professional concerns, at all stages. We are committed to policies that balance public protection with the right to forget past offences so that everyone in Scotland has the possibility of contributing to the wellbeing and development of our nation. Research evidence shows clearly that continually having to re-live one's offending past damages the chances of some people being able to do that.

### **Other Relevant Information (ORI)<sup>4</sup>**

Some commentators expressed concern that the consultation proposals for reforming how ORI is generated were too focused on revising the existing process rather than taking a more fundamental look at the whole practice.

Respondents acknowledged that ORI plays an important role in safeguarding and is used only sparsely as a proportion of all disclosures. However, concerns remained over the fairness of having the possibility of ORI and the perception of lack of transparency. It is felt that this would make it difficult for individuals to predict whether there will be ORI on a disclosure and what they can do about it if they think it unfair.

Under present arrangements, if a police force holds information about a disclosure applicant the chief officer must decide if they reasonably believe it to be relevant to the purpose of the disclosure requested, and whether it ought to be disclosed. It should be noted that Scottish Ministers are confident that Police Scotland and other UK police forces exercise this function with appropriate care. As noted previously, only a tiny minority of enhanced disclosure and PVG scheme record disclosures contain this information. The ability to include this information on a disclosure is a very significant part of the measures (in the Police Act 1997) that followed the Dunblane Primary School murders. It is therefore not the intention of Scottish Ministers to erode this vital power which can lead to barring under PVG as well as disclosure to an employer or prospective employer.

However, the practice in Scotland concerning ORI differs from the rest of the UK. In England and Wales police forces work to Home Office guidance governing ORI and the law provides chief officers with a power to seek representations from applicants. It also affords applicants the right to apply for an independent review of the ORI to

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<sup>4</sup> ORI is information added to an enhanced disclosure or PVG scheme record by a police force. It is typically non-conviction information that the police believe is relevant to disclose to an employer in respect of a particular role (enhanced disclosure) or for working with a vulnerable group (PVG).

have it changed or removed before disclosure. As can be seen from the proposals in the consultation, Scottish Ministers would like to alter the point at which the individual becomes aware of the police intention to disclose ORI in Scotland. They would like to provide the individual with the opportunity to challenge any proposed ORI and have it removed or adapted before it is disclosed to a prospective employer. As such, we consider it necessary to introduce the additional steps as proposed in the consultation.

The proposal that an applicant would be able to submit representations and appeal decisions through an independent reviewer before any ORI is included on a disclosure certificate will improve fairness and transparency; this was welcomed by commentators. The new process will also be very clearly understandable to the public because we will issue statutory guidance.

It was noted that to ensure effectiveness of the proposals, the rights and opportunities to request a review must be clearly communicated to individuals along with the provision of appropriate supporting information. It was also raised that the process should be easy to understand, as simple as possible, and set timescales to avoid any unnecessary delays and the resulting impact on opportunities. We welcome these comments which aim to ensure individuals are well informed and well supported.

### **Disclosure Provisions for 12-17 year olds**

Some responses explored the impact of the disclosure system on children and young people. Certain respondents felt that the current disclosure system does not fit coherently alongside the welfare-based Children's Hearing System and the 'Whole System Approach'. It was noted that the disclosure system should take account of the differences between adult and childhood offending as well as the developmental needs of children and adverse childhood experiences. As such, the system should allow for consideration of the context in which offending behaviour occurs.

The consultation contained proposals aimed specifically at improving the life chances of children and young people who have had interactions with the justice system as a result of past offending behaviour, these were:

- offending behaviour from childhood would only be disclosed on enhanced and PVG level disclosures following the individual having an opportunity to make representations, and ratification by an independent reviewer;
- the continued differentiation between periods of disclosure for spent convictions, for convictions accrued at age 18 or over, and under the age of 18;
- the alternative options presented for having spent convictions removed from higher level certificates including the options of having the inclusion of such convictions considered by an independent reviewer or Disclosure Scotland Protection Services through an internal review process.

On the area of what is disclosed for 12-17 year old applicants, or later disclosed about conduct dating from that period of life, some respondents explored the impact of the disclosure system on children and young people.

The major theme coming through was that a change is certainly needed. Although there were calls for a wider reform to the system than those proposed, there were many comments which generally favoured the more radical of the three consultation options, namely option 2. This proposed no disclosure at all of criminal conduct from this age range unless that disclosure took place in the form of police information and only after an independent reviewer had considered the information and approved its disclosure. Part of this process would be to gather and fully consider the views of the person about whom the disclosure would be made.

The feeling was that this would help simplify the system for young people, bring greater certainty about what was likely to be disclosed and align the disclosure system better with the principle that the welfare of the child is the paramount consideration. This has been noted as lacking in the current system. Some commentators felt that even this use of ORI was not ideal but recognised that it was the best option should the state retain the ability to disclose harmful behaviour from this age range. The issue that care-experienced people are much more likely to have adverse contact with police than children who are not looked after by the state was highlighted and it was noted that care-experienced people often report difficulties when making applications for disclosure. They do not feel informed about the impact of convictions accrued while 'in care' on future opportunities. This is a clear strand that we should bear in mind when developing legislation and guidance.

The need for the disclosure system to take account of the differences between adult and childhood offending, as well as the developmental needs of children and adverse childhood experiences, was a key theme coming from commentators in this area. The need to move away from a complex system was also emphasised. We recognise this and it is reflected in the proposals in the consultation which aim to afford different provisions to positively impact children and young people.

## **Disclosure checks for under 16s**

There was significant support for placing a minimum age on obtaining a criminal record check, with 73% of those who responded to this proposal supporting it. However some respondents raised concerns.

The approach taken to issuing disclosure checks to children in the rest of the United Kingdom is that these are not allowed under age 16. As recognised previously in this report, it is generally right and proportionate to treat children differently from adults and to protect them from unnecessary stigma related to disclosure for roles they may occupy when under the school leaving age. However there are exceptions envisaged, where a disclosure check on a young person may be in the public interest. An example might be when a foster family has a 15 year old child and a foster child is coming to live with them, or where a 15 year old is applying for work or college places which require a disclosure on anticipation of them turning 16.

In addition, the appropriateness of children aged under 16 doing unsupervised regulated work needs to be considered. Currently an individual can only apply for PVG scheme membership if they are doing regulated work. If under 16s are unsuitable to do unsupervised regulated work, then they are not eligible for PVG scheme membership. There are two types of regulated work – work with children and work with protected adults. Regulated work is usually jobs including:

- caring responsibilities;
- teaching or supervising children and/or protected adults;
- providing personal services to children and/or protected adults;
- having unsupervised contact with children and/or protected adults.

It can also apply to certain positions of trust within organisations, even where the role doesn't involve any direct contact with children or protected adults. Examples of this include:

- membership of certain council committees;
- trustees of charities focused on children;
- trustees of charities focused on protected adults.

## **Simplifying the disclosure system by reducing the number of disclosure products**

As noted in Part 1 a number of respondents, particularly charities and support and advocacy groups for youth justice and people with convictions, expressed that reducing the number of products available alone will not simplify the disclosure system.

Reducing the number of disclosure products available is just one of the ways Scottish Ministers propose to simplify the system. This proposal, along with a host of other interlinked options, would fundamentally overhaul and re-shape the disclosure system to the benefit of stakeholders. It is important to note that the proposals contained within the consultation, including the proposal to reduce the number of disclosure products, were directly informed by [extensive pre-consultation engagement](#) carried out with a broad range of stakeholders. Simplification of the disclosure system coupled with the commitment by Disclosure Scotland to increase and improve the guidance available will be a positive, practical step that addresses gaps in understanding among stakeholders.

Support was expressed for Disclosure Scotland's commitment to provide increased guidance. It was stressed that both guidance and training is required, and that this should be accessible and in a number of formats, including materials suitable for children and young people. Additionally, support should be individualised and available over the phone or face-to-face. It was suggested that establishing an independent body to provide support would be welcome. It was also mentioned that information should be available at the point of an individual being charged or when accepting referral grounds at a Children's Hearing. It was also felt that disclosures should be made more meaningful by labelling convictions as spent or unspent.

As touched on above and as detailed in the consultation, Disclosure Scotland has made a commitment to providing more guidance and training. We are continually engaging with stakeholders to develop guidance and training that meets user needs and welcome respondents' views on how this can be achieved.

In recent years we have taken proactive steps to address gaps in stakeholder knowledge through workshops and training sessions delivered by the Disclosure Scotland Customer Engagement Team to a broad range of stakeholders throughout Scotland.

Disclosure Scotland is also a leading member of the '[Scotland Works for You](#)' alliance consisting of representatives from sport, academia, and public and private bodies. Together, the group has created online guidance which aims to support people with convictions by suggesting how to prepare for employment and how to discuss previous convictions. The guidance also supports employers on topics such as how to consider people with convictions for employment and how to interpret information provided on disclosure certificates.

This commitment to providing improved resources to support stakeholders is one that will continue as we transition to a refreshed disclosure system and beyond.

## **Standard conditions on individuals under consideration for listing**

An important principle of the European Convention on Human Rights is that the outcome of a process should not precede the process itself. That means it is not possible to bar an individual temporarily before carrying out the consideration for barring. However over the years of the PVG Scheme, the barring service in Disclosure Scotland has encountered cases where very serious and harmful conduct has been alleged and the individual continues to seek and do all types of regulated work whilst the formal process to consider that conduct is ongoing. For that reason we consulted on limited powers that Scottish Ministers could exercise to restrict or limit the types or circumstances of work with vulnerable groups an individual could do during the consideration for listing (barring), short of imposing a provisional bar.

There was strong support for giving Scottish Ministers new powers to impose such conditions, with 94% of those who responded to this proposal supporting it. Respondents welcomed the additional level of protection this would provide to ensure children and the vulnerable are protected from harm. Organisations also stated it would help them better manage risk on a case-by-case basis. However some concerns or issues were raised in a number of responses. These included:

- What guidance would be made available in respect of the decision-making to ensure transparency?
- What would the parameters be for imposing conditions? There was a clear emphasis that it should be rare and reserved for only the most serious cases
- What the conditions would comprise?
- The impact it would have on small to medium organisations, particularly the voluntary sector. There were concerns about bureaucracy, costs and criminalising volunteers, which could drive people out of volunteering.

- It may not be possible to effectively enforce, monitor and supervise when there is no individual or organisation to oversee the conditions.
- What level of support and guidance would be given to organisations and individuals who have to work to standard conditions?

We welcome the broad support received for this proposal. It is recognised that conditions should only be imposed in the most serious of cases and care must be taken to ensure proportionality and fair use of such powers. This area is complex and work will be required in collaboration with a wide range of stakeholders to develop a framework which is practical and is underpinned by principles of proportionality and safeguarding.

## Protected Roles

The other key point covered in section 3 of the consultation paper related to the proposal to replace regulated work with protected roles. Consultation responses suggest there is wide support for the proposal. However, the scope of work in a newly-designed protected role was raised by many respondents, emphasising the need for clarity about its extent especially if it was to be supported by new criminal offences. The reliance on simply a job title might also be unhelpful, and respondents said that factors relating to what individuals were doing on a day-to-day basis should also inform the decision about whether work was in a protected role. Requests were made for further discussion between the Scottish Government and organisations before final decisions are taken. We intend to do that and proposals for the replacement of regulated work with a system that allows employers and individuals greater clarity will be forthcoming for further discussion.

## Digital Services

While there was very broad support for moving Disclosure Scotland's services online, many respondents mentioned the need to retain other methods of delivery and payments. Disclosure Scotland will ensure that there will be alternatives available to those who can't or won't use online services. These alternatives are essential if the new membership scheme is to be inclusive, given the diversity of Scotland's people and the organisations with whom they work and / or volunteer.

## SUMMARY AND OBSERVATIONS FROM CONSULTATION EVENTS

This annex provides a brief summary of the main issues raised at the consultation events and observations made on them.

### **DS Led Events**

Between the April and mid-July 2018, Disclosure Scotland undertook a range of PVG Review stakeholder events. These two hour sessions were open to all organisations and individuals who use disclosure or have an interest in disclosure. A wide variety of organisations attended these events, examples of these were health boards, universities and colleges, local authorities, faith organisations and organisations acting on behalf of those individuals with convictions. These sessions were designed to allow discussion over the key areas within the consultation, explain the proposals and answer any questions. The sessions covered six main topics within the PVG Review namely replacing regulated work with a list of protected roles, PVG membership length and fees, fees for Level 1 and 2 disclosures, reducing the disclosure period for spent convictions, disclosure provisions for 12 – 17 year old children and standard conditions relating to Protection Services. Below are the key points on the six topics.

#### **Protected Roles**

- Overall welcomed the introduction of this but some think this would cause more confusion so regulated work should be retained with better guidance
- Role list needs to be expanded some examples were provided
- Clear guidance will be required for organisations
- Requirement for regular updating of roles
- Establishments should include Out of School Care and Colleges
- Having an offence connected to the mandatory scheme may cause practical difficulties
- Terms such as disability and illness limiting, appropriate terminology needs to be considered in any new legislation

#### **PVG Membership Length and Fees**

- Concern of fees on low paid employees if membership length introduced
- Flexibility in having multiple renewal/payment options
- Membership Cards met with mixed opinions
- Fees should be subject to a sliding scale dependent on income
- Disadvantaged people who stayed with same employer for their career
- Mandatory scheme will cause additional administrative costs for organisations

#### **Fees for Level 1 and 2 Disclosures**

- Could cause more confusion merging unless clear guidance
- Prefer options of on line accounts for cheaper options
- Concern that some questions in consultation 'yes / no' and some leading and questions could not be challenged
- Support of digital system

- Not all attendees used the Police Act Disclosures and did not comment much

### **Reducing the Disclosure Period for Spent Convictions**

- Positive view in relation to reducing disclosure periods
- Questioned as to if proposals went far enough in the reduction
- Feeling by some organisations that 11 years was still too long and should be 7-10 years in line with studies on risk of reoffending
- Not all organisations felt they had enough knowledge on the topic to offer an opinion
- Concern of fees to sheriff more supportive of Disclosure Scotland taking this in house possibly with independent reviewer

### **Disclosure provisions for 12 –17 year old children**

- Seen as being too complex
- Upper age limit in line with other legislation
- Upper age limit should be flexible to reflect the severity of offence
- Not all organisations felt they had enough knowledge on the topic to offer an opinion
- Opportunity for applicants to write their story in relation to conviction
- The need to align with other legislation and processes e.g. Children's Hearing System

### **Standard Conditions relating to Protection Services**

- Overall a positive response to Disclosure Scotland providing more support
- Confusion occurring in requirements of regulators and Disclosure Scotland
- Concern that what was the effect on organisation. If Disclosure terms not achievable
- Disclosure Scotland should provide more support for those under consideration for listing e.g. care-experienced young people
- Concern about removing responsibility from employer
- Independent reviewer should have involvement in this process
- Would prefer assistance from Disclosure Scotland only if requested and should not have mandatory input

## **VSDS led events**

Between the start of May and mid July 2018 VSDS undertook a range of PVG Review Stakeholder events. These were two hour sessions targeted at voluntary sector organisations enrolled with VSDS. They used these sessions to inform their own response to the PVG consultation. Topics covered were mandatory PVG scheme membership, protected roles, volunteer fees, replacing lifetime membership with time limited membership, QVO definition and scheme membership cards.

### **Mandatory PVG scheme membership**

- Concern over members being removed if they do not pay fee but still in role
- Concern over offences in relation to mandatory scheme
- Timescales to start whilst waiting for PVG since could not start without
- Concern over under 16s not able to do protected roles. Negative impact on volunteering

### **Protected Roles**

- Protected roles should be used but with regulated work as a baseline
- Role list needs to be expanded some examples were provided
- Clear guidance will be required for organisations
- Requirement for one list rather than separate sections
- Establishments should include all areas of hospitals
- Protected roles generic terms open to abuse

### **Volunteer fees**

- Overwhelming support for fee waiver for volunteers
- Even minimal reduced fee impact on volunteering fee waiver for volunteers
- Volunteers to be members for a year and then if still volunteering join scheme

### **Replacing lifetime membership with time limited membership**

- Not good for students
- Concern over internal resource issues of managing the scheme
- Shares over period good idea but how would this operate
- Suggestion shares have a reduced cost and percentage given back to original organisation that paid cost (for paid posts)

### **QVO Definition and Public Interest Test**

- Should replace current definition with what a QVO is. Currently describes what a QVO is not
- Should be dependent on size and turnover of an organisation
- If a charity should be eligible for free checks. OSCR should decide this

### **Scheme membership cards**

- Mixed views concerns over additional costs and environmental impact

In addition there was a concern over the digital way forward in that a lot of organisations do not have internet connection and a lot of volunteers are not very computer literate and may be put off volunteering.

## **sportscotland event**

This was a bespoke PVG Review event for sportscotland with several two-hour sessions targeted at sports bodies that attracted a wide range of organisations. Examples of sports represented were swimming, netball, football, angling, judo and karate. Topics were the same as with the Disclosure Scotland events.

### **Protected Roles**

- The term “protected” causing confusion due to current use of the term in regulated work and so regulated work should be reformed
- Frequency of roles should be a consideration
- How would a mandatory scheme be policed
- Establishments should include other facilities such as Dance Schools
- Suggestions for additional positions supplied

### **PVG Membership Length and Fees**

- Overwhelming support for fee waiver for volunteers
- 3 year renewal preferred option
- Membership cards met with mixed opinions with phone app rather than cards
- Clarification on what information would be shared

### **Fees for Level 1 and 2 Disclosures**

- No strong views expressed
- Guidance to be clear when to use PVG and the Police Act Disclosures

### **Reducing the Disclosure Period for Spent Convictions**

- Mixed views between reducing disclosure periods and status quo
- Feeling by some organisations that 11 years was still too long and should be 7-10 years in line with studies on risk of reoffending
- Not all organisations felt they had enough knowledge on the topic to offer an opinion
- Concern of fees to sheriff more supportive of Disclosure Scotland taking this in house possibly with independent reviewer

### **Disclosure provisions for 12–17 year old children**

- Upper age limit in line with other legislation so 16 preferred options
- Upper age limit should be flexible to reflect the severity of offence
- Not all organisations felt they had enough knowledge on the topic to offer an opinion

### **Standard Conditions relating to Protection Services**

- Overall a positive response to Disclosure Scotland providing more support
- Concern about removing responsibility from employer

## List of Organisations Represented at Engagement Sessions

ABC Nursery and Out of School Care  
Aberdeen FC  
Aberdeen FC Community Trust  
Aberlour  
Access to Industry  
Accord Hospice  
Active Stirling  
ACVO  
All Together Edinburgh  
Angling Scotland  
Auchinleck Community Development Initiative  
Ayr Gaiety Partnership  
Ayr Housing Aid Centre  
Ayrshire College  
Ayrshire Community Trust  
Ayrshire Hospice  
Badminton Scotland  
Baptist Union of Scotland  
Barnardos  
Befriend-a-Child  
Befrienders Highland  
Befriending Networks  
Birsay, Harray & Sandwick  
Blide Trust  
Boxing Scotland  
Butterfly Personnel  
Camphill Scotland  
Care Inspectorate  
Care Review Scotland  
Catherine Wheels Theatre Company  
Catholic Church – Diocese of Galloway  
Catholic Church – Diocese of Motherwell  
Caudwell Children  
CCPS  
CHAS  
Checkin Works  
Chess Scotland  
Children 1st  
Clan Cancer  
Clydesdale Community Initiatives  
Common Wheel  
Commonwealth Games Scotland  
Community Justice Scotland  
COSCA  
Crossreach  
Crossroads  
Cumnock Congregational Church

Centre for Youth and Criminal Justice  
Dennis Law Legacy Trust  
Diabetes Scotland  
Disclosure Scotland Stakeholder Advisory Board  
Down's Syndrome Scotland  
Dyce and Stoneywood Community Association  
East Ayrshire Council  
East Dunbartonshire Council  
Edinburgh Leisure  
Edinburgh Napier Student Association  
Edinburgh University Student Association  
Employability Orkney  
Engage Me  
Falkirk Council  
Fife Council  
Firefly Arts Ltd  
Forth Valley Sensory Centre  
Free Church of Scotland  
George Heriot's Trust  
Glasgow Kelvin College  
Govan Help  
Helensburgh and Lomond Carers Centre  
Highland Hospice  
Horse Scotland  
IncludeM  
Insight Counselling  
International Rescue Corps  
Judo Scotland  
Key  
Kilbryde Hospice  
Killermont Out of School Care  
Kincross Christian Fellowship  
Kirkconnell Community Church  
Kirkwall Arts Club  
Kirkwall East Church  
Lanarkshire Rape Crisis Centre  
LAYC  
LEAP/ Hands on project  
Leprosy Mission Scotland  
Lewis Christian Education Association  
Liberty Church  
Life Changes Trust  
Link Group Ltd  
Live Active  
Lothian 4x4 Response  
Machan Trust  
Methodist Church in Scotland  
Moray Reach Out  
Morven Day Services

Mountaineering Scotland  
MS Society Scotland  
MS Therapy Centre Lothian  
Music 4 You  
National Trust for Scotland  
Nepalese Himalayan Association  
Netball Scotland  
NHS Education for Scotland  
NHS Highland  
NHS Lanarkshire  
NHS Lothian  
NHS Orkney  
North Ayrshire Women's Aid  
NSPCC Scotland  
Ochils Mountains Rescue Team  
OHAL  
Orkney Health Board  
Orkney Islands Council  
ORSAS  
Perth College  
Perth Gospel Hall  
Place2Be  
Police Scotland  
PoppyScotland  
Portobello Monday Centre  
Positive Prison? Positive Futures  
Primecare Health Ltd  
Prince and Princess of Wales Hospice  
Prison Fellowship Scotland  
Project Scotland  
Quiet Waters  
Rape Crisis Scotland  
Recruit with Conviction  
Red Cross  
Relationships Scotland Orkney  
Respite Fife  
RNIB  
Royal Scottish Country Dance Society – Glasgow Branch  
Royal Scottish Pipe Band Association  
Royal Yachting Association (Scotland)  
RSPB  
SACRO  
Samaritans  
Scottish Amateur Swimming Association  
Scottish Archery Association  
Scottish Athletics  
Scottish Canoe Association  
Scottish Council of Jewish Communities (SCoJeC)  
Scottish Curling

Scottish Cycling  
Scottish Episcopal Church  
Scottish Fencing  
Scottish Football Association  
Scottish Golf x 2  
Scottish Gymnastics  
Scottish Huntingdon's Association  
Scottish Karate Board  
Scottish Out of School Care Network  
Scottish Pool Association  
Scottish Rugby Union  
Scottish Schools Football Association  
Scottish Squash  
Scottish Swimming  
Scottish Target Shooting  
Scottish Veterans Residences  
Scottish Women's Football  
SCRA  
Seascape  
Self Directed Support Scotland  
SG Health Directorate  
Shapinsay Lunch Club/School  
Sheddocksey Baptist Church  
Shelter Scotland  
Snow Sports Scotland  
South Ayrshire Befriending Project  
South Ayrshire Women's Aid  
South Carrick Community Leisure  
South Lanarkshire Council Universal Connections  
South Lanarkshire Leisure  
St Andrew's First Aid  
St Columba's Hospice  
St George's Tron Church  
Stanley Development Trust  
Stem Learning  
Stirling Baptist Church  
Stonehouse Male Voice Choir  
SYFA  
Take Control (South Lanarkshire)  
Tennis Scotland  
The Big Space Out of School Club  
The Broomhouse Centre  
The Church of Scotland Safeguarding Service  
The Food Train  
The Health Agency  
The Rock Church – Elim  
The Yard  
Thistle Foundation  
Time to Heal

Triathlon Scotland  
University of Glasgow  
University of Strathclyde  
University of the West of Scotland  
VASA  
Venture Scotland  
Voluntary Action East Renfrewshire  
Voluntary Action North Lanarkshire  
Volunteer Centre Borders  
Volunteer Centre East Ayrshire  
Volunteer Centre South Lanarkshire  
VSDS – Volunteer Scotland Disclosure Services  
Waterski and Wakeboard Scotland  
West Dunbartonshire Council  
West Highland College UHI  
Who Cares? Scotland  
Wick Academy Football Club  
Women's Aid Board  
Woodpark Evangelical Church  
Woolfords, Auchengray & Tarbrax Improvement Foundation  
Work Place Chaplaincy Scotland

## Agreed Publication of Responses - List of Respondents

Aberdeen City Council  
Aberdeen Science Centre  
Aberdeenshire Council - Human Resources Department  
Aberdeenshire Council ECS  
Absolute Disclosure Ltd  
Active Stirling Ltd  
ACVO (Aberdeen City Third Sector Interface)  
AdvoCard  
Archdiocese of Glasgow (Roman Catholic Church)  
Argyll and Bute Council  
Ayr Housing Aid Centre  
Ayrshire Community Trust  
Baptist Union of Scotland  
Barnardo's Scotland  
Barton Homecare Scotland  
Befriending Networks  
BMA Scotland  
Brightwork Limited  
Camphill Scotland  
Care Inspectorate  
CELCIS  
Celesio UK  
Central Baptist Church, Dundee  
Centre for Youth & Criminal Justice  
Chess Scotland  
Chest Heart & Stroke Scotland  
Children & Young People's Commissioner Scotland  
Children 1st  
Children's Hearings Scotland  
Church of Scotland Safeguarding Committee  
Citizens Advice Scotland  
Clackmannanshire Council  
Clan Childlaw  
Coalition of Care and Support Providers in Scotland  
Colleges Scotland  
Community Justice Scotland  
Community Pharmacy Scotland  
Company Chemist Association  
Connect  
COSCA (Counselling & Psychotherapy in Scotland)  
Crew 2000 Scotland Ltd  
Criminal Justice Voluntary Sector Forum  
CrossReach  
Crossroads (Harris) Care Attendant Scheme  
Crossroads Caring Scotland  
Diocese of Argyll & the Isles - Catholic Church  
Diocese of Motherwell - Catholic Church

Dumfries and Galloway Council  
Dundee City Council  
Dunoon Baptist Church  
Dyce and Stoneywood Community Association  
Dyslexia Scotland  
East Lothian Council  
Edinburgh Academy  
Edinburgh Young People's Service (YPS)  
Educational Institute of Scotland  
Field Studies Council  
Fife Voluntary Action  
Food Train  
Forensic Allied Health Professionals - Forensic Network  
Forth Valley Sensory Centre  
Forth Valley U3A (Cultural Activities in Care Homes project)  
Free Church of Scotland  
General Dental Council  
General Medical Council  
General Pharmaceutical Council  
General Synod Office of the Scottish Episcopal Church  
Glasgow Council Family  
Golden Jubilee National Hospital (National Waiting Times Centre Board)  
Home-Start Wigtownshire  
Hospital Broadcasting Association  
Inclusive Skating  
Information Commissioner's Office  
International Rescue Corps  
Inverclyde Council  
Jeely Piece Club  
JSL Care Ltd  
Law Society of Scotland  
LifeCare  
Livingston Radio Cars (ltd)  
Lynton Day Centre and East Linton Drama Group  
Macduff Bowling Club  
Machan Trust  
Majorcare  
Marie Curie  
Mid-Lin Day Care  
MND Scotland  
Montrose football club  
Moray Reach Out  
National Parent Forum of Scotland  
National Day Nurseries Association  
National Trust for Scotland  
National Youth Justice Advisory Group  
Newburgh Preschool  
NHS Education for Scotland  
NHS National Services Scotland

NHS Western Isles  
NMAHP Directorate within NHS Education for Scotland  
North Ayrshire Council  
NSPCC Scotland  
PAMIS  
Perth & Kinross Council  
Randolph Hill Nursing Homes (Scotland) Ltd  
Recruit With Conviction Ltd  
Revive MS Support  
Cargill, Robert  
Royal Yachting Association (UK national governing body for all forms of boating)  
RSPB  
RYA Scotland  
Salvation Army  
Samaritans  
Scotland's International Development Alliance  
Scottish Archery  
Scottish Association of Social Workers (part of BASW)  
Scottish Care  
Scottish Care Leavers Covenant  
Scottish Catholic Safeguarding Service. Bishop's Conference of Scotland  
Scottish Charity Regulator  
Scottish Children's Reporter Administration (SCRA)  
Scottish Council for Voluntary Organisations  
Scottish Council of Independent Schools  
Scottish Council of Jewish Communities (SCoJeC)  
Scottish Council on Deafness  
Scottish Courts and Tribunals Service  
Scottish Independent Advocacy Alliance  
Scottish Out of School Care Network  
Scottish Swimming - National Governing body  
Scottish Target Shooting  
Scottish Volunteering Forum  
Scottish Women's Aid  
Scout Association  
Scouts Scotland  
SCVO  
Self Directed Support Scotland (SDSS)  
Shared Lives Plus  
Shelter Scotland  
Shetland Adult and Child Protection Committee  
Shetland Canoe Club  
Shetland Islands Council  
Shetland Link Up  
Social Work Scotland  
SPDS (Society of Personnel and Development Scotland)  
South of Scotland Golfers' Association  
SPAEN  
sportscotland

SQA  
Scottish Social Services Council  
St Columba's Hospice  
St Margaret's School for Girls  
Stanley Development Trust  
Stirling Council  
SU Scotland  
TCV - The Conservation Volunteers  
The Action Group  
Triathlon Scotland  
Turning Point Scotland  
United Kingdom Homecare Association (UKHCA)  
Universities Scotland  
University of Strathclyde  
University of the West of Scotland  
Unlock - for people with convictions  
Victim Support Scotland  
Volunteer Centre Borders  
Volunteer Edinburgh  
Volunteer Glasgow  
Volunteer Scotland Disclosure Services  
West Dunbartonshire CVS  
West Lothian Council  
Who Cares? Scotland  
Wick Academy FC  
Youth Scotland  
YouthLink Scotland

**Question 22a: Are there any roles / jobs not within the list at Annex B that you think should be subject to mandatory PVG scheme membership? If so, please provide more detail on why.**

Among the roles suggested were:

Academy Skills Coach  
Acting coach  
Acting teacher  
Active schools coordinator  
Activities Worker  
Activity leader  
Acupuncturists  
Addiction worker  
Admin staff and senior managers in registered care service  
Admin staff in service with access to sensitive information  
Admin staff in small voluntary orgs  
Adopters  
Adult care establishments  
Adult care home worker  
Adult day centre staff  
Adult hospice worker  
Adult learners returning to school  
Adult Learning Tutor/coach  
Adult placement carer  
Adult resident in house of host parent  
Adult secure workers  
Advice workers; welfare, housing and financial  
Advocacy workers  
Advocate  
Aid Worker  
Alternative medicine practitioner  
Alternative therapists  
Ambassadors  
Ambulance care assistant  
Apprenticeship managers  
Arbiter  
Armed forces cadet tutors etc  
Art engagement officer  
Artists  
Arts therapists  
Assist instructors  
Assistant coaches  
Assistant minister  
Audiologists  
Beauty therapist in care home  
Befriender  
Befriending co-ordinator  
Bereavement listener

Bereavement officer  
Bible class worker  
Boys' Brigade captain  
Boys' Brigade Helper  
Boys' Brigade officer  
Boys' Brigade volunteer  
Cadet carer  
Cadet leaders  
Candidate  
Care assistant  
Care Assistant (in any setting with children or adults with welfare needs)  
Care Attendant  
Care home owner / manager  
Career advisor  
Career Advisor – children and/or adults  
Carer  
Catering staff  
Chaperones  
Chaplain  
Chari supervising regulated work  
Charity trustees  
Chief executive and board members of a charity  
Child care assistant  
Child minder / child-minding assistant  
Child Protection Coordinator  
Child Protection Officer  
Child protection officer / safeguarding officer/ wellbeing & protection officer (different names commonly used for the same role)  
Child safeguarding officer  
Child welfare and protection officer  
Child welfare officer  
Childcare Worker  
Childminder, all persons in their household  
Children and pastoral care worker  
Children and pastoral visiting worker  
Children and young person's worker  
Children's Activities Worker  
Children's activity worker  
Children's education centre worker  
Children's entertainer  
Children's home workers  
Children's hospice workers  
Children's hospital workers  
Children's Nursery Assistant  
Children's Nursery Manager  
Children's Nursery Nurse  
Children's Nursery Worker  
Children's secure accommodation workers  
Children's television presenters and other staff on children's programmes

Children's ward workers  
Children's worker  
Children's: care worker, club leader, club worker, holiday club helper, or summer mission coordinator  
Children's officer  
Chiropodist  
Church Organist (but only if their job remit specifies that they work with children and protected adults)  
Church Organist (but only if their job remit specifies that they work with children)  
Classroom Assistant  
Cleaners and care takers  
Cleaning staff in care homes  
Cleaning staff in leisure centres  
Club child protection officer  
Club coach  
Club committee members  
Club development coordinator (supervise regulated work)  
Club helper  
Club safeguarding / welfare officer  
Coach  
Coach (assistant)  
Coach and public service vehicle drivers  
Coaches including fitness instructors  
Coastguard  
Communications officers visiting vulnerable adults in their own homes  
Community based trainer  
Community care worker  
Community centre volunteer  
Community centre volunteer for children, or adults with disability or illness  
Community development co-ordinator  
Community development worker  
Community Education Worker  
Community first respondents  
Community learning and development assistant  
Community learning and development worker  
Community outreach volunteer or coordinator  
Community trainer  
Community workers  
Computer coding teacher  
Congregational Children's Worker  
Congregational Coordinator  
Congregational Youth Worker  
Consultant  
Costume fitter  
Counselling support worker  
Counsellor  
Counsellor – trauma  
Counsellor (Domestic Abuse)  
Counsellor (Hospice)

Counsellor (individuals with “serious” illness)  
Counsellor (Life limiting illness/disability)  
Counsellor (Mental Health)  
Counsellor (Pregnancy)  
Counsellor depression anxiety  
Counsellors  
Counsellors: sexual abuse, family planning, learning disabilities, physical disabilities  
Crèche and Sunday school worker  
Crèche helper or worker  
Crèche helper youth worker  
Crèche manager  
Crèche Nursery Assistant  
Crèche Nursery Nurse  
Crèche Nursery Worker  
Crèche worker and pastoral care worker  
Crèches in shopping centres etc  
Criminal justice officer  
Dance coach  
Dance teacher  
Dance therapist  
Day Carer in any setting with children or adults with illness or disability  
Day- carer for children  
Deacon  
Dental Hygienist  
Dental Nurse  
Dental support worker  
Dentist  
Development manager  
Development Officer  
Development worker  
Diagnostic radiographers  
Dietetics  
Dieticians  
Director of Dance  
Director of Music  
Directors / chief executives for children’s and / or adults’ services  
Directors of registered care services  
Disability advice worker  
Dispensing optician  
Doctor  
Domestic staff  
Drama therapist  
Driver  
Driver - Sole Charge of Children  
Driver counsellor  
Drivers at sport events  
Drivers for sport activities  
Driving instructor  
Drug and alcohol officer

Early Years Manager  
Early Years Officer  
Early Years Practitioner  
Early Years Worker  
Education centre governors  
Education centre worker  
Education Practitioner  
Educational establishment worker  
Elder  
Elected member of committees for children / adult care and health services  
Emergency Responder  
Emerging ministries worker  
Employability service officer  
Equipment support staff  
Escort  
Faith community janitor  
Faith leader  
Faith/Religious officer  
Family mediation officer  
Family Support Co-Ordinator  
Family support worker  
FE college support role  
FE lecturers  
Firemen  
First aiders  
First respondents  
Fitness assessor  
Fitness instructor  
Fitness trainer  
Food bank workers  
Foster carers  
Freelance coach  
Gallery assistants  
Girls' Brigade Auxiliary Helper  
Girls' Brigade Helper  
Girls' Brigade Leader  
Girls' Brigade Officer  
Girls' Brigade Worker  
Godparents  
Ground staff  
Guide leaders  
Gym assistant  
Gym instructors  
Hairdresser in care home  
Head of services for children  
Head of volunteering  
Health link worker  
Health professional trainees  
Healthcare support workers/Auxiliaries

Hearing aid dispenser  
Helper in dementia club  
Helpline advisor  
High Performance Manager - Supervising regulated work  
Holiday play staff  
Home carers  
Home support worker  
Home visitors  
Hospice chaplain  
Hospice housekeeper  
Hospital and nursing home visitor  
Hospital chaplain  
Hospital managers in clinical areas  
Hospital porter  
Host Family (Parent)  
Host parent  
Housekeeping staff for children  
Housing officer  
Housing support establishment officer  
Housing support officer  
Housing technical staff  
Independent coach  
Instructor  
International rescue corps  
Interpreters for children, or adults with disability or illness  
Interpreters in any setting  
Investigating officers  
Invigilator  
Janitors  
Junior choir leader  
Junior leaders  
Kinship carer  
Kit man  
Kit person  
Land Trainer - Teaching children  
Language school teachers  
Learning and development officers  
Lecturers  
Leisure attendant  
Leisure attendant in school  
Leisure attendant in sport facility  
Leisure centre workers accessing changing areas  
Librarians  
Life assistants  
Lifeguard  
Lifestyle coach  
Listener (for counselling service)  
Locality worker  
Locum Minister

Manager / Supervisor - Where they manage /supervise those undertaking regulated work  
Managers / trustees of education centres  
Managers in social care setting  
Masseuse  
Medical Doctor  
Medical Nurse  
Medical photographer  
Medical practitioner  
Meet Manager - Supervising regulated work  
Member of host family e.g. adult living in the same household as host parent  
Mentor  
Midwife  
Military charities  
Minister  
Minister of Word and Sacrament  
Minister of Word and Sacrament - Locum  
Ministers of religion  
Ministries Candidate  
Ministries Reader  
Modern apprentice  
Monitoring officer  
Mountain rescue  
Music teacher  
Music therapists  
Musician working with children  
Nurse  
Nursery Assistant  
Nursery Manager  
Nursery practitioner  
Nursery worker  
Nursing associate  
Occupational Therapist  
Occupational therapy support worker  
Operating department practitioner  
Operational manager for children's and / or adults' services  
Ophthalmic optician  
Organist youth worker  
Orthoptist  
Osteopaths  
Out of school care staff and managers  
Outdoor play ranger  
Outdoor sport and recreation activity instructors  
Outreach workers  
Paramedic/ambulance technician  
Parent and toddlers group workers  
Parent helper  
Parent helper / chaperon - used on trips, competitions and overnights  
Parent helper at school clubs and outings

Parent in host family  
Parent volunteer  
Parish development worker  
Parish safeguarding co-ordinator  
Parish worker  
Passenger assistant on minibus  
Pastor  
Pastoral Care assistant  
Pastoral care worker/holiday club helper  
Pastoral care worker/Sunday school  
Pastoral Care Worker/Visitor  
Pastoral carer  
Pastoral Support  
Pastoral worker  
Pastors and priests  
Pathologist  
Patient driver  
Peer Worker  
Peer worker for children, or adults with disability or illness  
People in position of trust  
Performance coach  
Peripatetic music instructors  
Person living on site of regulated establishment  
Personal carer  
Personal trainer  
Pharmacy advisor  
Pharmacy support person  
Phlebotomists  
Physician assistant  
Physician associates  
Physiologist  
Physiotherapist  
Placement carer  
Play leader  
Play scheme Worker  
Play workers  
Play workers at holiday centres  
Playgroup Manager  
Playgroup Worker  
Playroom Worker  
Podiatrist  
Police constables  
Pool Side Helper/assistant - Supervising children  
Poolside Worker  
Pregnancy advisor  
Pre-school staff  
President supervising regulated work  
President/Chair - Supervising Regulated Work  
Priest

Prison officers  
Project manager for children's and / or adults' services  
Prosthetist  
Psychiatrist  
Psychologist  
Psychotherapist  
Radiographer  
Ranger  
Reader  
Recreational instructor  
Referee  
Reflexologists  
Registered Chiropractor  
Registered Osteopath  
Registered Pharmacist  
Registered Pharmacy Technician  
Registered Social Service Worker  
Registered Social worker  
Reporter of officers appointed under section 8(5) of the Local Government etc  
Researchers  
Residential education centre worker  
Sacro-cranial therapists  
Safeguarding advisor  
Safeguarding Coordinator  
Samaritan volunteer  
School chaplain  
School Coordinator  
School crossing patroller  
School escorts  
School hostel worker  
School janitor  
School workers  
Schools governors and trustees  
Scientist giving patient care  
Scout and guide leaders and helpers  
Search and rescue volunteers  
Self-employed music instructors  
Self-employed tutors: music, sports and the arts  
Seminarian  
Sensitive information researcher  
Service co-ordinator for adults with disability / illness  
Service co-ordinator for children  
Service managers  
Shared lives carer  
Social care worker  
Social work assistant  
Social work team manager  
Social Worker  
Social worker officer

Soft play workers  
Speech and language therapists  
Speech Therapist  
Spiritual care  
Sport and leisure worker  
Sport club chair  
Sport club co-ordinator  
Sport coaches  
Sport scout  
Sport therapists  
Sports & Leisure attendants  
Sports Agents  
Sports Coach for children, or adults with disability or illness  
Sports co-ordinator  
Sports development manager  
Sports development officer  
Sports leader  
Sports scientist  
Sports Scout  
Staff in hospital patient areas  
Staff in juvenile detention units  
Staff in outdoor residential establishments  
Staff in residential facilities for any vulnerable group  
Staff in school environment  
Strategic directors of children's and / or adults' services  
Student finance  
Student minister  
Student training for profession  
Summer club leader  
Summer Sunday school worker  
Sunday club worker  
Sunday school helper  
Sunday school officer  
Sunday school teachers and crèche staff  
Sunday school worker and pastoral care driver  
Sunday school: assistant, helper, leader, teacher, worker, or volunteer  
Support for learning staff  
Support volunteers  
Support worker for children, or adults with disability or illness  
Support workers  
Surgeon  
Swimming Teacher  
Taxi drivers  
Teacher  
Team manager (supervise children)  
Team Manager / coordinator - Supervising children  
Technical or match officials, judges, score/time keepers  
Technicians helping people to live day-to-day in their own home  
Telephone / Online Support Worker - Childline and the Samaritans

Therapeutic radiographer  
Therapist  
Trade roles in local authorities who work routinely in schools and residential homes  
Training Support Worker  
Translators  
Transport attendant  
Transport escorts  
Transport of children officer  
Transport of patients officer  
Transport of School children officer  
Trustees of SCIOs  
Tutor (children and protected adults in college settings)  
Tutors  
Uniformed organisation workers  
Videographer  
Voice coach  
Volunteer befriender  
Volunteer car drivers  
Volunteer co-ordinator  
Volunteer manager  
Volunteer mentor  
Volunteer with children, or adults with disability or illness  
Volunteer with frail old people  
Volunteering development officer  
Volunteers visiting the sick at home  
Volunteers working with youth groups  
Welfare and benefit officers  
Women's aid counsellor  
Workers in patient treatment areas of hospitals  
Workers on addictions  
Young leader  
Youth activities leader  
Youth activities worker  
Youth club volunteer  
Youth Development Officer  
Youth Development Worker  
Youth fellowship helper  
Youth helper  
Youth photographer  
Youth volunteer  
Youth work leader  
Youth worker and pastoral care worker  
Youth workers



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