

## PARTIAL EQUALITY IMPACT ASSESSMENT

### THE PROPOSED DRAFT POLICE ACT 1997 AND THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 REMEDIAL ORDER 2018

Title of Policy	The Proposed Draft Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018
Name of Branch, Division	Policy Team, Protection Services
Department or Agency	Disclosure Scotland
What is the purpose of the proposed policy (or changes to be made to the policy)?	To ensure we have a disclosure regime in Scotland that strikes a fair balance between the individual's right to respect for their private life and the interests of public protection in compliance with the European Convention on Human Rights (ECHR)..
Who is affected by the policy or who is intended to benefit from the proposed policy and how?	This will affect individuals where an employer or other organisation is entitled to request a higher level disclosure (that is, a standard or an enhanced disclosure issued under the Police Act 1997 ("the 1997 Act"), or a scheme record issued under the Protection of Vulnerable Groups (Scotland) Act 2007("the 2007 Act")). There will be no impact on those seeking to apply for a basic disclosure under the 1997 Act. There will be an impact on some employers and organisations as they may receive less conviction information than previously. There could be a benefit for some applicants as their disclosure certificate could contain less conviction information in the future.
How have you, or will you, put the policy into practice, and who is or will be responsible for delivering it?	Disclosure Scotland will be responsible for delivering this policy.
How does the policy fit into our wider or related policy initiatives?	The remedial order fits into the strategic aims of the Scottish Government to produce: <ul style="list-style-type: none"><li>• Safer and stronger communities, helping local communities flourish.</li></ul>
Do you have a set budget?	No

## **Introduction**

Equality impact assessment (EQIA) is about considering how policy (by policy we mean activities, functions, strategies, programmes, and services or processes) may impact, either positively or negatively, on different sectors of the population in different ways.

The Scottish Government has a statutory duty to consider and address the impact of policy on particular groups. Equality legislation covers the characteristics of: age, disability, gender reassignment, gender including pregnancy and maternity, race, religion and belief and sexual orientation.

In order to begin to determine the equality impact of these amendments on society we have collected information from data analysts within Disclosure Scotland. Due to the nature of the legislative process for the remedial order which is set out in section 13 of the Convention Rights (Compliance) (Scotland) Act 2001, a formal consultation will be launched on 11 September 2017, where we will invite written observations on the Proposed Draft Order, including any potential impact it may have on any particular groups of people. The consultation will run for the statutory 60 day period.

This partial EQIA is not intended to be a definitive statement or assessment of impacts but presents possible impacts that may require further assessment by the Scottish Government. A more comprehensive final EQIA will be produced using the partial EQIA and taking into account the views of a wide range of stakeholders throughout the consultation period.

In order to ascertain stakeholder views on the equality impact of the proposed legislative changes, two specific equality questions will be contained in the Respondent Information Form that will be used to record responses to the consultation. These are:

- In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the amendments to legislation in this consultation document may have on any particular groups of people?
- In relation to the Equality Impact Assessment, please tell us what potential there may be within these amendments to legislation to advance equality of opportunity between different groups and to foster good relations between different groups?

## **Rationale and aims of policy**

Standard and enhanced disclosures are issued under the Police Act 1997 (“the 1997 Act”) and disclosures of PVG scheme records are issued under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) - these types of disclosures are referred to collectively as ‘higher level disclosures’. In 2015, the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 amended the 1997 and 2007 Acts in relation to the spent conviction information which could be disclosed in a higher level disclosure. That Order introduced lists of

offences into Schedules 8A and 8B of the 1997 Act. Schedule 8A lists certain spent convictions which will continue always to be disclosed due to the serious nature of the offence (sometimes referred to as the ‘offences which must always be disclosed’ list); schedule 8B lists certain spent convictions which are to be disclosed depending on the length of time since conviction and the disposal of the case (sometimes referred to as the ‘offences which are to be disclosed subject to rules’ list).

In the case *P v Scottish Ministers* [2017] CSOH 33, P raised a petition for judicial review in relation to the disclosure of a previous conviction for lewd and libidinous practices on his PVG scheme record. Although the conviction was spent, the offence had been included in P’s scheme record due to it being in the list of offences that must always be disclosed (the “Always Disclose List” as listed in schedule 8A of the 1997 Act<sup>1</sup>). On 17 May 2017 the court declared that, insofar as they require automatic disclosure of P’s conviction before the Children’s Hearing, the provisions of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 (“the remedial order”) unlawfully and unjustifiably interfered with the petitioner’s right under Article 8 of the European Convention on Human Rights, and Scottish Ministers had no power to make the provisions in terms of section 57(2) of the Scotland Act 1998 (“the 1998 Act”).

The effect of the court order has been suspended under section 102 of the Scotland Act 1998 Act for nine months (to 17 February 2018) to allow Ministers to remedy the legislation.

The 2018 Proposed Draft Order sets out the proposed amendments to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007. The effect of the amendments will be that recipients of higher level disclosures under those Acts whose disclosure contains information about a conviction for an offence listed in schedule 8A of the Police Act 1997 (offences which must always be disclosed) will in certain specified circumstances have the right to apply to a Sheriff in order to seek removal of that conviction information before their disclosure is sent to a third party such as an employer.

They will have this right where the conviction for a schedule 8A offence is spent and

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- (a) where the person was aged under 18 at the date of conviction, 7 years and 6 months have passed since the date of the conviction; or
- (b) where the person was aged 18 or over at the date of conviction, 15 years have passed since the date of the conviction.

We consider that this policy should provide an ECHR compliant system.

### **Who was involved in this EQIA?**

An initial framing exercise for the EQIA was carried out involving a range of internal stakeholders from Disclosure Scotland.

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<sup>1</sup> Schedule 8A was inserted into the Police Act 1997 by *the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015* (Scottish Statutory Instrument 2015 No. 423).

This exercise helped to identify the potential impact of the legislation on other Scottish Government policy areas and on those in protected groups. It also assisted in identifying available existing evidence.

Due to the nature of the legislative process for the remedial order which is set out in section 13 of the Convention Rights (Compliance) (Scotland) Act 2001, a formal consultation will be launched on 11 September 2017, where we will invite written observations on the Proposed Draft Order, including any potential impact it may have on any particular groups of people. The consultation will run for the statutory 60 day period. Respondents will be invited to comment on the proposed draft remedial order and the amendments it makes, the partial Business and Regulatory Impact Assessment, the Child Rights and Wellbeing Impact Assessment, the Privacy Impact Assessment and the partial Equalities Impact Assessment.

### Scope of the EQIA

The scope of this EQIA is the impact of the legislation on those requiring a higher level disclosures who have one or more protected characteristics.

### Data sources

A variety of information sources were used in compiling this EQIA, which includes, but is not exclusive of:

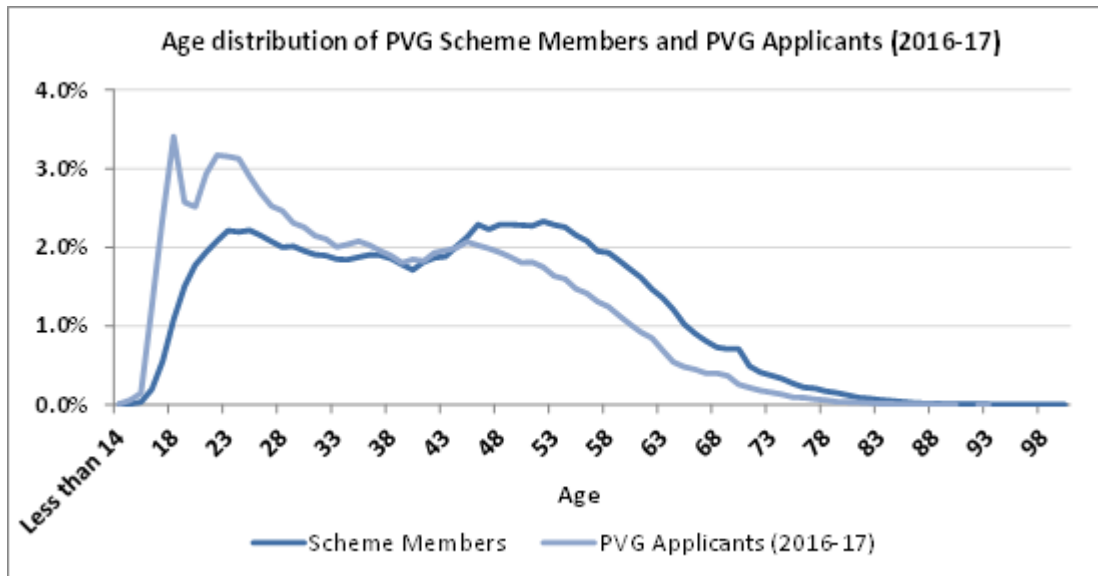
- Scotland's Population 2016 - The Registrar General's Annual Review of Demographic Trends
- Scottish Household Survey (2015)
- Annual Population Survey, results for year to 31 March 2017, ONS
- Scottish Government labour Market Briefing August 2017
- Disclosure Scotland Management Information Database

### Summary of key impact in equalities

To understand the different needs and experiences of those affected by the policy, we have gathered the following information about the impacts. The following is a summary of our findings so far. This is not a definitive or complete list of impacts, and some may turn out, on further assessment, not to be relevant.

Do we have information on	Yes	X	No	
Age	Yes	X	No	
Disability	Yes		No	X
Gender	Yes	X	No	
Lesbian, Gay, Bisexual & Transgender	Yes		No	X
Race	Yes		No	X
Religion and Belief	Yes		No	X

Age	Evidence: 1,087,200 members of the PVG scheme, this equates to 20% of the population of Scotland. Members of the PVG scheme vary in age, from 14 years to 85+ years.
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The graph above shows the age demographic for the PVG Scheme.

In 2016/17 we completed just over 304,500 applications for all higher level disclosure, the applicants' ages varied from 15 years to 85+ years. The majority of applicants fell within 35-49 year age range.

	Proportion of completed Higher Level applications in 2016-17
Under 16	0.2%
16-24	24.3%
25-34	23.5%
35-49	29.2%
50-64	19.4%
65+	3.5%

20,100 or 1.8% of PVG scheme members are aged 74 years and over. Of the 5520 enhanced disclosure applications completed in 2016/17, 40 or 0.7% were for people aged 74+ years.

13.5% of all PVG scheme members are aged 16 to 24 years old. In 2016/17 16 to 24 year olds accounted for 24.3% of all higher level disclosure applications completed.

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The youth employment rate in Scotland during the year to end March 2017 increased

by 1.5 percentage points over the year from 55.9% to 57.4%,

The Scottish Government considers that the legislative changes would not have a disproportionate impact on any particular age group. However, consultation responses may suggest otherwise.

Disability

No information available. Disclosure Scotland does not collect any information on the disability of disclosure applicants since disability has no bearing on the conduct of disclosure checks.

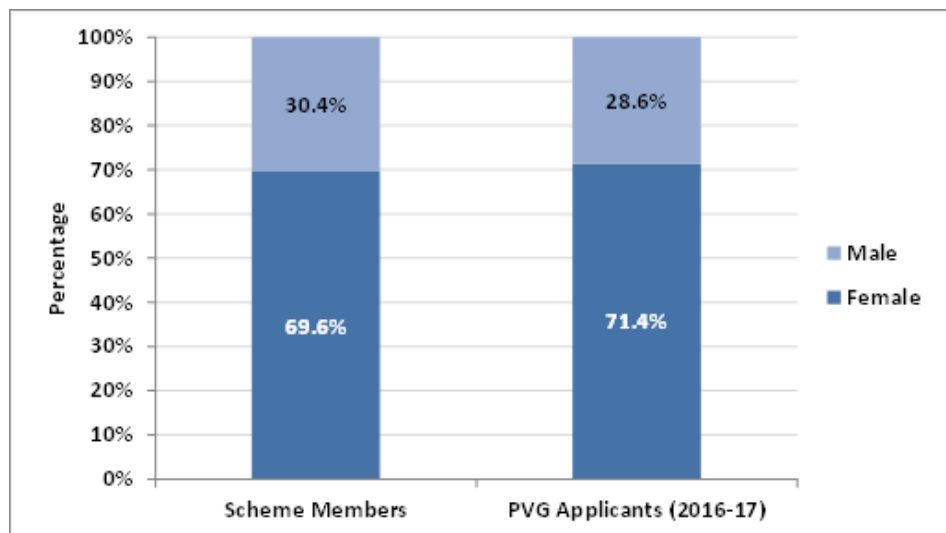
Gender

In 2016, 51% of Scotland's population were female and 49% were male.

As of August 2017 79.2% of males aged 16-64 were in employment compared to 71.3% of women. Of those people in part time employment, 75% were female and 25% were male.

The diagrams below show the gender split for PVG applications and membership since the inception of the PVG Scheme. These show that more women are PVG members and more women are applying to the PVG scheme.

	Female		Male	
	Level	Proportion	Level	Proportion
<b>Scheme Members</b>	757,000	69.6%	330,200	30.4%
<b>PVG Applications (2016-17)</b>	206,300	71%	82,500	29%



The diagram below shows the gender split for enhanced disclosure applications in 2016/17. This shows that men tend to be requesting more enhanced disclosures.

	<p style="text-align: center;"><b>Number and distribution of Enhanced applications by gender and age, Scotland 2016/17</b></p> <p>Overall, in 2015, more women (30 per cent) than men (24 per cent) volunteered in the last 12 months</p> <p>The Scottish Government considers that the legislative changes would not have a disproportionate impact on either gender. However, consultation responses may suggest otherwise.</p>
Lesbian, Gay, Bisexual & Transgender	No information available. Disclosure Scotland does not collect any information on these characteristics of disclosure applicants since they have no bearing on the conduct of disclosure checks.
Race	No information available. Disclosure Scotland does not collect any information on the race of disclosure applicants since race has no bearing on the conduct of disclosure checks.
Religion and Belief	No information available. Disclosure Scotland does not collect any information on the religion or belief of disclosure applicants since religion and belief has no bearing on the conduct of disclosure checks.

**Who else should be consulted?**

We recognise that there are currently some gaps in our evidence and understanding about potential impacts of some of the legislative changes for some equality groups. Within the consultation we have asked two questions about this partial EQIA and would welcome your views and comments. This will also be sent to relevant and interested parties to consider the impacts of the policy. These will be used to help us develop the final EQIA.