

Scottish Out of School Care Network response

Protection of Vulnerable Groups and the Disclosure of Criminal Information: A Consultation on Proposals for Change

This highly detailed, lengthy and wide ranging consultation with 94 questions has implications for everyone working or volunteering in out of school care in Scotland. The closing date is 18th July 2018.

Our answers to the questions are set out below – we did not answer some questions and consider that questions number 31 to 40 (pages 9 to 15) will be of most interest to services. We have put in some text and tables of the proposals here for context. You can respond online here:

<https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable/> We would encourage you to do so in terms of the new membership fee proposal questions at least.

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

Yes

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

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

Level 1

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

No it is clear that this level is one anyone can apply for if needed for employment or volunteering purposes.

Fees

Under the current legislation the cost of a basic disclosure is £25. This cost is incurred every time an individual applicant applies for a basic disclosure. The cost options for a Level 1 disclosure are set out below:

Proposal	Fee
Option 1	£25, cost will be incurred each time a Level 1 disclosure is required.
Option 2	£30 for first or one-off application. If applicant creates account which results in identification and verification being required once then future Level 1 applications will cost £17. If an applicant does not create an account then they will pay the full fee on each occasion.

Option 2 allows those individuals who may require a number of Level 1 disclosures to save money. It will also reduce the inconvenience of having to complete personal information with each application. This

option will benefit those individuals who are in temporary work or short term contracts and switching employers.

The proposed costs will be subject to review once the final consultation outcome is known. It is our intention to review costs periodically.

Question 4: Which option do you prefer? And why?

Option 2 as any option which helps generally lower paid applicants save money

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

Yes

In future it is our intention to charge an administration fee to cover the cost of both apostilles for EU and non EU member states. The cost of this service will be **£10**.

Questions 7: Do you agree with our proposed fee for this service?

Yes

Level 2 Disclosure

A Level 2 disclosure will be a new product with similarities to both the current standard and enhanced disclosures.

The table [below](#) compares standard and enhanced disclosures with the proposed Level 2 disclosure. There is further information setting out proposals for price, proposed Level 2 disclosure product content and method of delivery.

	Products currently available		Proposed product
	Standard	Enhanced	Level 2
Fee	£25	£25	From £30 but with options for reduced payment for future applications
Vetting information	Unspent and relevant spent convictions, sex offenders registration, unspent cautions	Unspent and relevant spent convictions, sex offenders registration, unspent cautions, 'other relevant information', information about barred lists (in some cases) and prescribed civil orders	Option to include all of the information currently available on standard and enhanced disclosures with a children and/or adult suitability information check
Delivery	Paper application form	Paper application form then	Online application process

<i>method</i>	<i>then certificate posted to individual and countersignatory</i>	<i>certificate posted to individual and countersignatory</i>	<i>and possible online access to vetting information</i>
Authentication of identity	<i>ID documents checked by countersignatory</i>	<i>ID documents checked by countersignatory</i>	<i>Possible online identification and verification</i>
Who can apply	<i>Any person</i>	<i>Any person</i>	<i>Any person aged 16 or over if the relevant employment conditions are met.</i>

We propose that Level 2 disclosure should be available for employment and roles that are covered by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”). These are listed in [Annex A](#).

Question 8: Are there any professions/roles that are not included that should be on the list?

No

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

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

No

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

Foster Carers/Kinship Carers

We are proposing that foster/kinship carers will be required to obtain a Level 2 check; this is similar to the check in England and Wales. This will mean that individuals applying to do either fostering, or kinship care in respect of a looked after child, will not be subject to the ongoing monitoring of a membership scheme for the rest of their lives.

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

No

The current position for kinship care in relation to children who are not looked after is as follows; there is entitlement for a basic disclosure if the arrangements place the child with a person(s) with whom the child has a family relationship. Care provided in the context of a family relationship is not eligible for a disclosure under the 2007 Act.

If, however, the kinship care arrangements place children who are not looked after with carers who are not relatives, and if those arrangements last for more than 28 days, then it will be regarded as private fostering. The meaning of relative is defined in section 21(1) of the Foster Children (Scotland) Act 1984: “relative” in

relation to a child, means a grandparent, brother, sister, uncle or aunt whether of the full blood or half blood or by affinity

Where private fostering arrangements are being made with individuals who are not relatives, the parents of the child can ask the prospective foster carer to apply to join the PVG Scheme. But as this is a private arrangement only a statement of PVG scheme membership would be available to the parents, and so no vetting information would be provided to the parents.

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

Yes

It is proposed that any member of the fostering / kinship household aged 16 or over will be required to have a Level 2 check. This also includes any members of the fostering/kinship family, friends or relatives who regularly stay overnight in the foster home.

Question 12: Do you agree with this proposal?

Yes

It is also proposed that a Level 2 check can be undertaken on anyone in the foster/kinship carer's network who supervises or care for the children.

Question 13: Do you agree with this proposal?

Yes

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

Independent Schools

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 lists those who are eligible for an enhanced disclosure in the context of child minders/guardians but this does not explicitly cover those residing on school premises as family members of house staff. The Care Inspectorate indicated that they would expect individuals in this position to have an enhanced disclosure, and schools would want to carry out this level of check. We want to make disclosures available to such people and propose that these individuals should be eligible for checks and included in the list in [Annex A](#). This will also require a change to the 2013 Order.

Question 14: Do you believe that this is the correct approach going forward?

Yes

The content of the Level 2 Disclosure Product

The challenge in creating a new product is to strike the correct balance between the legitimate expectation that employers have about useful disclosure content and the rights given to the disclosure subject under article 8 of the European Convention on Human Rights (the right to respect for private and family life).

There are three credible options for the content of the Level 2 disclosure product:

	Option 1	Option 2a	Option 2b
Unspent convictions from UK central records and unspent cautions from police forces in England, Wales and Northern Ireland	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certain spent convictions from UK central records	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Notification requirements under Part 2 of the Sexual Offences Act 2003	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other relevant information provided by the chief officer of a relevant police force		<input type="checkbox"/>	<input type="checkbox"/>
Whether the subject of the disclosure is listed in one of the barred lists held under the 2007 Act		<input type="checkbox"/>	<input type="checkbox"/>
Whether the subject of the disclosure is subject to one or more prescribed orders		<input type="checkbox"/>	<input type="checkbox"/>

Option 1 is equivalent to the current standard disclosure.

Option 2a is equivalent to the current enhanced disclosure without a suitability information check.

Option 2b is equivalent to the current enhanced disclosure with a suitability information check.

The different options may result in more or less information being disclosed on a Level 2 disclosure than currently is on a standard or enhanced disclosure.

Your decision with regard to the options listed above should take account of the fact that the PVG Scheme products may also be changed. There will be discussion about this later in this paper.

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

Option 2b

Our services would usually have staff and volunteers included in the PVG scheme, but generally they indicated they would want the most information possible under any disclosure provided.

Fee

Under the current legislation the cost of both the standard and the enhanced disclosure is £25. This cost is incurred every time an individual applicant applies for a basic disclosure. The cost options for a Level 2 disclosure are set out below:

Proposal	Fee
Option 1	£30, cost will be incurred each time a Level 2 disclosure is required
Option 2a & 2b	£35 for first or one-off application. If applicant creates account which results in identification and verification being required once then future Level 2 applications will cost £23.

Options 2a and 2b allow those individuals that may require a number of Level 2 disclosures to save money. It will also reduce the inconvenience of having to complete personal information with each application. This option will benefit those individuals who are in temporary work or short term contracts and switching employers, or those whose employers carry out periodic checks.

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

Option 2

Fee Waivers

Under the current system for standard and enhanced disclosures certain positions for volunteers for certain qualifying voluntary organisations are entitled to free checks. Scottish Ministers meet the cost of these checks to support the voluntary sector.

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

Yes

Method of delivery

In the future, we want the individual when applying for a Level 2 disclosure to be able to apply online and provide all the information needed for their application. They will then receive the disclosure. We think that this digital information should be owned by the individual who will be able to securely route or share it with any employer or any other person they choose to provide it to i.e. voluntary organisation.

However, unlike with a Level 1 disclosure, only those employers who are lawfully entitled to see the Level 2 information may do so, which would require them to be registered with Disclosure Scotland as a Level 2 Registered Body with their credentials established and entitlement to see Level 2 information fully assured. The Level 2 disclosure applicant would then be able to securely share their vetting information with the prospective employer, who would only be able to electronically receive it if all of the requirements were satisfied. This puts the sharing of the information with a third party in the hands of the individual who applied for the disclosure. If they choose not to do so, they may not get the job or role but the decision to share or not share the information has been theirs.

This would change to a limited extent the current arrangements that employers typically have for countersigning higher-level disclosures. There will still be a requirement to have staff who have been vetted by Disclosure Scotland within Level 2 Registered Bodies to receive the information shared by the individual. It will be unlawful for any employer or any other person to request access to an individual's account in order to circumvent proper checks on their legal entitlement to see higher level disclosure information - the only permitted way will be via the appropriate electronic sharing of the information with accredited parties.

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

Could it be made clear here that those bodies registered at PVG level would therefore have the right to see Level 2 checks without necessarily having to also register separately?

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

Within the out of school care sector most staff and volunteers are currently under the impression that the PVG scheme is already mandatory, as it is a requirement for their work; therefore we do not believe the transition to “mandatory” in itself would cause much to change.

Replacing the idea of regulated work with a clear list of 'protected' roles (Voluntary and Paid)

Introducing a mandatory scheme based on a list of roles will provide clarity about whether a check is needed. There may be circumstances where an employer feels that a role they are offering should be subject to a higher level check but it isn't yet on the published list of protected roles. There could therefore be a provision for Scottish Ministers to permit a check to be made where they reasonably believe that the role applied for is likely to qualify as a protected role, with a duty arising having done so to determine if the role is a protected role suitable for inclusion in the list.

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

Yes

Question 21: Do you foresee any challenges for organisations from this proposed approach?

Yes

Looking forward to both 22 and 22a we already see a problem in that our highly regulated sector which is rightly part of the PVG scheme, is not included in the lists of roles. There should be careful monitoring and indeed regular reviews and consultations about this list.

Question 22: Are there any roles/jobs not within the list in [Annex B](#) that you think should be subject to mandatory PVG scheme membership?

Yes

Question 22a: If so, please provide more detail on why.

Our specific sector out of school care staff should be included in the roles list or the phrase “daycare of children” added in itself – as not only “daycare of children or adults with illness or disability”.

Under Protected Establishments - children

There should be the category "Daycare of children establishments"

There are also staff who work with children in play organisations; outdoor play rangers; holiday play schemes who should be included in the scheme. And there is no mention of uniformed organisations such as the scouts or guides which should also be covered by the PVG scheme.

Additional Factors

We want to maintain safeguarding without retaining the current level of bureaucracy and uncertainty around that decision. However, it is undesirable for the mandatory scheme to extend so as to include individuals whose normal duties result in fleeting or incidental contact with protected adults or children as this approach would result in a continual increase in size, and continual and unnecessary monitoring of some individuals.

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

Roles which involve regular contact with children and/or protected adults .

Roles which are responsible for providing a service to children and/or protected adults.

Positions of trust such as Care Inspection Officers.

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?

Yes there are always new roles developing which may need to be included.

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?

Possibly charity trustees and staff for organisations working on behalf of children, families or protected adults who do not have a direct service function but whose work does put them in regular contact but who have a high influence on services.

Definition of protected adult

We believe that a person delivering certain services should be a scheme member.

The first point that arises is whether the services mentioned above are those that should be covered by future scheme membership arrangements.

Question 26: Are there any services that should be added, or are there any services that should be removed?

No

Question 26a: If yes, please state what these are

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.

Question 27: Is this appropriate?

Yes

The immediate line manager of that member of staff is also able to become a scheme member.

Question 28: Do you agree with this approach?

Yes

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.

Question 29: Do you think these are the correct facilities, or should any be added or removed?

Yes

Question 29a: If yes, please state what these are

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.

Question 30: Do you think this approach is clear and helpful?

Yes

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:

- member of a council committee or council sub committee concerned with the provision of education, accommodation, social services or health care services to protected adults
- the chief social work officer of a council, and
- charity trustee of a charity whose-
 - (a) main purpose is to provide benefits for protected adults, and
 - (b) principal means of delivery of those benefits is by its workers doing regulated work with protected adults.

Question 31: Do you think that list of positions is correct?

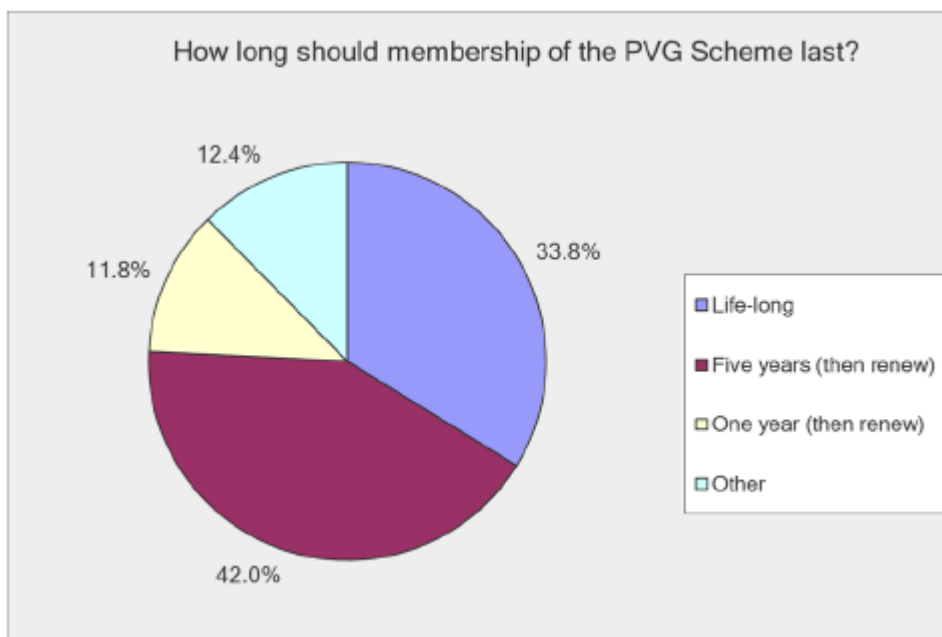
Yes

Question 31a: Should it be amended either by adding to it, or by taking away from it?

Making PVG Scheme Membership time limited requiring periodic renewal

The current PVG Scheme is a lifetime membership scheme with minimum scope to leave the Scheme. Extensive customer research in recent years confirms that a large number of those presently in the PVG Scheme are no longer doing regulated work with children or protected adults because they joined the Scheme to undertake a short term role or have otherwise chosen to leave regulated work. Disclosure Scotland estimates that as many as 20% of the current scheme membership of over 1 million members falls into this category. This is supported by the research carried out by Progressive who found that of those asked 79% were still in regulated work, both voluntary and paid.

Accordingly, we consider that better managing the PVG Scheme size is a critical outcome of the PVG Review. A mandatory scheme is a key part of achieving that outcome. The longer the tenure of PVG Scheme membership, the longer a person is potentially subject to ongoing monitoring if they stop doing work that falls within the Scheme; this represents an unnecessary cost to Scottish Ministers and constitutes an unnecessary intrusion into citizens' personal business.



As you can see in the diagram above, more stakeholders agree that the tenure of PVG Scheme membership should be limited than consider that it should be for life. Scottish Ministers consider that PVG scheme membership should be for a defined period and be periodically renewed. There will be a cost associated with renewal of scheme membership to incentivise those who ought to leave the PVG Scheme to do so. It will be necessary to ensure that anyone electing to leave the Scheme is not continuing in a protected role; this would be an offence for the individual and for the employer too.

Question 32: How long should scheme membership last in a mandatory scheme?

a) 5 years

But we would add that there should also be an option for one year membership for those staff and

volunteers who know they will only be doing regulated work for a short time e.g. students with summer jobs.

Membership Card

Stakeholders have indicated support for the introduction of scheme membership cards, about the size of a debit card and including basic details of the individual such as name and scheme membership number.

During pre-consultation engagement stakeholders expressed the view that a membership card would give individuals ownership of their disclosure membership.

Membership cards would require to be included in the cost of joining the Scheme, and there would also be an associated cost with replacing lost cards. Current Scheme members would require to be retrospectively issued with membership cards also at a cost.

If the member is barred from working with children or protected adults, their membership will be terminated. The membership card should be returned, and it is our intention to make it an offence to fail to return the card when barred. If an applicant loses their membership card, another card will be issued at a cost.

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

Yes

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

Yes

However we would point out that overwhelmingly our sector would want to keep the costs of membership down therefore if that means no membership card but a significant reduction in costs then that would be preferred.

Fees and Delivery of PVG disclosures

The present system requires a £59 payment to join the PVG Scheme and £18 for each subsequent short scheme record sought. In addition, employers pay a subscription to be registered bodies capable of countersigning PVG applications (and standard or enhanced disclosures under the 1997 Act); this annual fee is currently a minimum of £75.

In the future, when applying for PVG membership, we want the individual to be able to apply online and provide all the information we need in order to process their application. They will then subsequently receive the disclosure. We think that this digital information should be owned by the individual who will be able to securely route it or share it with any employer or any other person they choose to provide it to i.e. voluntary organisation.

However, only those employers or other organisations, with their credentials established, who are lawfully entitled to see the information may do so, which would require them to be registered with Disclosure Scotland. The applicant would then be able to securely share their vetting information with the prospective employer, who would only be able to electronically receive it if all of the requirements were satisfied. This

puts the sharing of the information with a third party entirely in the hands of the individual who applied for the disclosure. If they choose not to do so, they may not get the job or role but the decision to share or not share the information has been theirs.

This would change to a limited extent the current arrangements that employers typically have for countersigning higher-level disclosures. There will still be a requirement to have staff who have been vetted by Disclosure Scotland to receive the information shared by the individual. Page | 12

It will be unlawful for any employer or any other person to request access to an individual's PVG account in order to circumvent proper checks on their legal entitlement to see higher level disclosure information - the only permitted way will be via the appropriate electronic sharing of the information with accredited parties.

Registered body fees

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.

Question 35: Do you agree with these proposals?

Yes

Membership and fees

The table [below](#) sets out the options for membership (in line with the proposals earlier in this chapter) and the costs for the membership.

	Current PVG	Option 1	Option 2	Option 3
Fee	£59	£15 (every year)	£36 (3 yearly)	£65 (5 yearly)
Length of membership	Lifetime	1 year	3 years	5 years
Method of delivery	Certificate posted to	Digital service	Digital service	Digital service

	applicant			
Age restriction	None apply	Not available to those under 16	Not available to those under 16	Not available to those under 16
Authentication of Identity	Checked by CSG	Possible online identification and verification	Possible online identification and verification	Possible online identification and verification

Option 1

This option would allow the applicant year round access to their account to update information etc. The applicant would be entitled twice, with no additional fee, to share information with employers etc. Any additional sharing required would be subject to a £10 fee which could be payable by the applicant or employer. The applicant would have to pay the renewal fee each year.

Subject to provisions regarding fees/fee waiver for volunteers in Qualifying Voluntary Organisations, any applicant who joins the Scheme subject to these provisions who then takes up paid employment, will be subsequently charged the appropriate fee as soon as paid employment begins.

Option 2

This option would allow the applicant year round access to their account to update information etc. The applicant would be entitled four times, with no additional fee, in their three year membership to share information with employers etc. Any additional sharing required would be subject to a £10 fee which could be payable by the applicant or employer. The applicant would have to pay the renewal fee after three years.

Subject to provisions regarding fees/fee waiver for volunteers in Qualifying Voluntary Organisations, any applicant who joins the Scheme subject to these provisions who then takes up paid employment, will be subsequently charged the appropriate fee as soon as paid employment begins.

Option 3

This option would allow the applicant year round access to their account to update information etc. The applicant would be entitled six times, with no additional fee, in their five year membership to share information with employers etc. Any additional sharing required would be subject to a £10 fee which could be payable by the applicant or employer. The applicant would have to pay the renewal fee after five years.

Subject to provisions regarding fees/fee waiver for volunteers in Qualifying Voluntary Organisations, any applicant who joins the Scheme subject to these provisions who then takes up paid employment, will be subsequently charged the appropriate fee as soon as paid employment begins.

Question 36: What is your preferred option?

Option 1 and Option 3

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

Yes

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

Yes

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

No

Question 39a: If you have answered 'yes' please say what it is:

Transitional arrangements

Ministers' proposals to move away from life-time scheme membership will have an impact on individuals who are PVG scheme members on the date the changes come into force. Two issues arise, firstly the movement of existing PVG scheme members into the new mandatory scheme if they are in a protected role. Secondly the bringing into the new mandatory scheme those either not currently in the PVG Scheme but doing regulated work or those whose duties come within the scope of a protected role for the first time.

Ministers would be grateful for your proposals on how these objectives could be best achieved.

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

All current members no matter when they joined should have five years before having to renew.

There should also be a five year transition period for those moving from Level 1 or 2 to the PVG.

Volunteer Checks

Certain checks for volunteers (those doing regulated work in a Qualifying Voluntary Organisation ("QVO")) are provided free at the point of use. The meaning of QVO is set out in a Scottish Statutory Instrument: <http://www.legislation.gov.uk/ssi/2010/167/contents/made>, as amended. This fee waiver has been felt to be very important so as to not discourage those who would like to volunteer. However inactive scheme members also impact the QVO sector; many people who volunteer do so in the context perhaps of helping with their own children - say coaching a youth football club - but do not want to continue to do so afterwards. As the Scheme operates now, their membership remains live despite them being inactive.

In light of that, we are asking for views on whether provision should be made for volunteers in QVOs to pay a nominal fee of, for example, £10 for five years' membership.

An alternative would be to remove a volunteer from the PVG Scheme after 5 years unless an organisation actively indicated a volunteering connection with them in a relevant protected role which would qualify for a further free membership, with the option to remain in the Scheme as an unattached personal member only remaining open upon payment of the full PVG fee.

Another factor that could contribute to a solution moving forward is to consider if the meaning of QVO properly encompasses voluntary work. One way to modify it would be to introduce a clear public interest test that have to be satisfied before a volunteer could benefit either from a reduced fee, or a fee waiver.

The meaning of QVO is set out in the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (as amended)^[4] :

7(2) In this regulation-

“qualifying voluntary organisation” means an organisation which is not-

- (a) a further education institution, a school, a public or local authority, or under the management of a public or local authority; and
- (b) conducted primarily for profit, and any profit generated is used to further the objectives of the organisation and not distributed to its members;

(3) For the purposes of the definition of “qualifying voluntary organisation” in paragraph (2)-

“further education institution” has the same meaning as in paragraph 15 of schedule 2 to the Act; and

“school” has the same meaning as in the Education (Scotland) Act 1980 but does not include a school that solely provides early learning and childcare within the meaning of Part 6 of the Children and Young People (Scotland) Act 2014.

Question 41: Should volunteers continue to receive free membership?

Yes

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

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?

Yes

Question 42a: If so, how should that test be defined?

As it is currently defined e.g. not for profit; charitable or social enterprise, co-operative etc.

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?

Yes

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?

Yes

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?

Yes

Ending the necessity for court referrals to Disclosure Scotland

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

Yes

Question 47: Are there offences missing from the Automatic Listing Order that you think should be included? You can access the order [here](#)

No

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

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

Yes

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?

Yes

Local Authorities / Health and Social Care Partnerships

The central concern of Adult and Child Protection Committees' processes are rightly, about ensuring the immediate and longer term safety of known children or vulnerable adults. The power to refer would specifically ask local authorities/health and social care partnerships to consider potential future victims where a perpetrator has been a scheme member.

Question 50: Do you think this proposal closes the safeguarding gap in terms of self-directed support?

Yes

Power to make a referral - regulatory organisations

Under section 8(1) of the 2007 Act, certain regulatory organisations can make a referral to the Scottish Ministers about an individual who comes within the scope of their regulatory functions and who has met the referral grounds set out in section 2 of the 2007 Act. This power supports the policy of preventing unsuitable people from doing, or from continuing to do, regulated work.

The power to make such a referral extends to:

- Healthcare Improvement Scotland
- The Registrar of Chiropractors
- The registrar of dentists and dental care professionals
- The registrar of the General Medical Council
- The registrar of the General Optical Council

- The Registrar of health professionals
- The Registrar of nurses and midwives
- The Registrar of Osteopaths
- The registrar of pharmacists
- Social Care and Social Work Improvement Scotland (the Care Inspectorate)
- The General Teaching Council for Scotland
- The NHS Tribunal
- The Scottish Social Services Council

Question 51: Do you think that this list of regulatory organisations should be amended?

No

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

Persons under consideration for listing - new restriction impossible by Scottish Ministers

Question 53: Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions?

Yes

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

b) 6 months

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

n/a

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?

Yes

You will have read elsewhere in this document that adolescence and early adulthood is statistically the peak period for offending. Evidence shows that most young people who offend do not continue to do so in adulthood and research demonstrates developmental issues usually play a large part in the behaviour of young people that leads to them acquiring convictions. We are therefore proposing the age threshold for the shorter prescribed period of 5 years should be raised to 25 years.

Options

- a) no change to the age threshold
- b) raise the age threshold to under 21 years
- c) raise the age threshold to under 25 years

Question 57: Do you agree the age threshold for the shorter prescribed period for a removal application to be made should be raised?

Yes

Question 58: Which option do you prefer?

Option C

Extending the PVG Scheme to protect children and adults who come into contact with PVG Scheme members working overseas

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?

Yes

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?

Yes

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?

Yes

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

Schedule 8A and 8B offence lists

Two lists of offences have been developed - a list of 'Offences which must be disclosed unless a Sheriff orders otherwise' (schedule 8A) and a list of 'Offences which are to be disclosed subject to rules' (schedule 8B). Offences that do not appear on either list will not be disclosed after they become spent. In developing these lists of offences careful consideration was given to the attributes required for roles requiring higher level disclosure. Such roles place the individuals filling them in a position of power and responsibility. A conviction for a criminal offence that:

- resulted in serious harm to a person;
- represented a significant breach of trust and/or responsibility;
- demonstrated exploitative or coercive behaviour;
- demonstrated dishonesty against an individual;

- abused a position of trust; or,
- displayed a degree of recklessness that resulted in harm or a substantial risk of harm

is evidence that a person's conduct has caused harm to an individual and/or is evidence of misconduct in a position of authority. The protection of vulnerable groups and of sensitive assets must be balanced against any presumption that spent convictions ought not to be disclosed.

Links to the lists of the offences in schedule 8A and schedule 8B of the 1997 Act can be found in [Annex C](#); the Annex also shows new offences that have been created since the reforms in 2015 and the schedules we believe each these offences belong to.

The offences listed in schedule 8A and 8B of the 1997 Act are mirrored in schedules [A1](#) and [B1](#) respectively of the 2013 order, as amended. The provisions in the 1997 Act are aligned with the provisions in the 2013 Order to ensure that the policy of self disclosure and state disclosure remain aligned. The current rules about self disclosure are set out in [section 1](#) above.

Question 62: Are there any offences missing from either list that you think should be included? If so what are they, on what list should they appear and why?

N/A

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.

N/A

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.

N/A

Question 65: Do you agree with the categorisation of the new offences?

Yes

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

Applications to a sheriff for removal of spent convictions from a higher level disclosure

The Management of Offenders (Scotland) Bill proposes the following changes to the rehabilitation periods in respect of custodial sentences and when they would become spent for individuals convicted over the age of 18 and those convicted when under the age of 18.

Custodial sentences	Rehabilitation period Aged 18 or over when convicted	Rehabilitation period Aged under 18 when convicted
---------------------	--	--

Not more than 12 months	Sentence plus 2 years	Sentence plus 1 year
More than 12 months but less than 30 months	Sentence plus 4 years	Sentence plus 2 years
More than 30 months but not more than 48 months	Sentence plus 6 years	Sentence plus 3 years

If the Bill is passed, the longest period of disclosure for someone over 18 receiving a custodial sentence would continue to be ten years, (that is, for a 4 year sentence, the disclosure period is length of sentence, (4 years), plus 6 years which equals 10 years). However, as can be seen from the above table, the overall policy intention set out in Management of Offenders (Scotland) Bill is to reduce the period of disclosure for custodial sentences up to and including 48 months. For example, currently if someone is convicted of an offence and is given a 12 months' custodial sentence the conviction will become spent 10 years from the date of conviction. Under the proposals in the Management of Offenders (Scotland) Bill a 12 month custodial sentence will become spent 3 years from the date of conviction, (that is, length of sentence (12 months) plus 2 years which equals 3 years).

For such an example, this could result in an individual having their spent conviction disclosed for an additional 12 years on a higher level disclosure for an offence on schedule 8B before it will no longer be disclosed. Or wait a further 12 years before they can make an application to a sheriff to have the conviction for a schedule 8A offence removed.

We believe that there are two possible options going forward. Those are:

- maintaining the status quo for the disclosure periods; or
- reducing the disclosure periods to less than 15 years (for over 18s) and less than 7.5 years (for under 18s).

We do not believe that an approach that would increase the periods would be appropriate. This would be disproportionate when balancing safeguarding and an individual's right to a private life.

Reducing the disclosure periods for spent convictions

In relation to spent convictions for offences listed in schedule 8B, we propose that the current disclosure periods should reduce to no less than 11 years for those aged 18 or over at the date of conviction, and to no less than 5.5 years for those under 18 at the date of conviction. For those aged 18 or over on the date of conviction, this would ensure the continued disclosure of a conviction for any offences on schedule 8B for at least a year once the conviction was spent (where the longest rehabilitation period of 10 years continues to apply). For offences on schedule 8A, as with the current rules, no offence will be automatically protected and removed from a disclosure certificate after any particular period of time. However a change in the length of the automatic disclosure period would allow an applicant the ability to apply for removal of the spent conviction after 11 years (instead of 15 years) if over 18 at the time of conviction or 5.5 years (instead of 7.5 years) if under 18 at the time of conviction.

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?

Yes

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

Yes

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

15

Removal of spent convictions from a disclosure

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

Yes

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. Do you think this time period is:

Correct

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

Question 71: Do you think any of the options set out above offer viable alternatives to an application to a Sheriff?

Don't know

Question 71a: If yes, which one?

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

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?

Yes

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?

Yes

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

Yes

Disclosure provisions for 12 - 17 year old children

The current position

Scotland's current policy and legislative position already addresses the peculiar nature of youth offending as a serious, but usually temporary, phenomenon. Our Children's Hearings System already prevents many acts that would otherwise be construed as criminal from being processed as such, ensuring that behaviour by young people never reach a criminal court.

The existing position offers protections for young people who have committed offences. The Lord Advocate's Guidelines, the differential periods of disclosure provided for in the Rehabilitation of Offenders Act 1974 ("the 1974 Act") and the reforms made to higher-level disclosures in 2015 have all contributed to a system that helps young people move on from past offending. The content of higher level disclosures (standard, enhanced or PVG) is filtered to ensure that minor spent convictions do not appear at all, moderately serious convictions appear for 15 years after conviction (7.5 years if the conviction was before the individual's 18th birthday) and serious offences stay on indefinitely, unless a sheriff orders otherwise.

The current position will be improved further with the enactment of the Age of Criminal Responsibility (Scotland) and the Management of Offenders (Scotland) Bills. The Age of Criminal Responsibility (Scotland) Bill was introduced into the Scottish Parliament on 13 March 2018. If enacted, it will mean that the behaviour of children under 12 can never result in a conviction. Also any disclosure by the state (Disclosure Scotland) of that pre 12 behaviour will only happens as ORI from Police Scotland, and after independent review.

The Management of Offenders (Scotland) Bill was introduced to Parliament on 22 February and will, if enacted, shorten the period for which most offences remain 'unspent', with measures to shorten further the 'unspent' period for most offences when the offender was under 18 years at the date of conviction. This will impact on basic and higher level disclosures and reduce disclosure by both the state or the individual.

However, for those aged 12 years or more when convicted there remains the possibility both of conviction and subsequent disclosure.

Proposal for the future

Desistance from youth crime typically follows by the mid-twenties. There are particular disadvantages that impact on young people who persistently get into trouble with the law. Young people looked after and accommodated, for example, in foster care or residential care, are more likely to accrue convictions for minor matters that would likely have been dealt with by parental sanctions (see Moodie research from CYCJ 2016: 'Responses to offending in residential child care - factors that influence decision making'). The vast majority of children who are looked after and accommodated by the local authority are there on purely welfare and protection grounds, not offending behaviour. Yet there is a strong stigma felt by care

experienced young people; judged and labelled as criminals despite having done nothing wrong or being in any way responsible for their care status. The experience of adversity and childhood traumas can draw children into harmful behaviours and lead to contact with the police that simply would not have occurred had the child not had to negotiate the care system. Scottish Ministers consider that we have a duty to help young people move on from early harmful or criminal behaviour and live productive lives when they are ready to do so, whilst simultaneously ensuring that the disclosure system addresses those who pose risks of serious harm to the public.

While youth offending will cease with age in most cases, this isn't always so. In fact, there are instances where early onset predicts later escalating criminality; it is one of the proven risk factors typically assessed when examining the behaviour of an adult offender. We therefore propose that the appropriate policy solution will strike a balance between the rights of the young person to get on with life without the unnecessary burden of a criminal record and the requirement that harmful behaviour is identified in the interests of the public protection.

The ACR Bill draws a clear line at 12 years with regard to revised disclosure provisions for children because that is the proposed new age of criminal responsibility; all of the provisions in the ACR Bill support that change. The Scottish Government knows that there is a requirement to consider more widely how the disclosure system works for children who are aged 12 or older so as to ensure it is equitable and fair to all, protecting the life chances of children who may have committed offences in the past but who now wish to move on with law-abiding lives.

If the ACR Bill progresses to law, behaviour by children under age 12 will not be labelled as criminal. However, as a child progresses through teenage years and towards adulthood it is reasonable to consider there is a growing sense of responsibility and accountability for their actions which is why they are held to be criminally responsible from 12, but nevertheless still protected by the Children's Hearings System and by the system for disclosure of such offending behaviour. The Government is committed to affording all young people the chance to overcome early adversity, including the adversity of involvement in offending behaviour, to become productive and fulfilled adult citizens. The 2016-17 'Programme for Government: A Plan for Scotland' says that Ministers will 'look afresh at the disclosure of early childhood offending to enable young people to move beyond early mistakes.' The current Programme for Government commits Ministers 'as part of the Year of Young People, [to] undertake a comprehensive audit on the most effective and practical way to further embed the principles of the UN Convention on the Rights of the Child into policy and legislation.'

During the preparation of the 2016 Report of the Age of Criminal Responsibility Advisory Group, members on its Disclosure Sub-Group reached a clear consensus that the issue of disclosure of conduct occurring when the subject was aged between 12 -17 merited early consideration and reform.

The policy solution to revise the system for the disclosure of offending conduct of individuals when age 12 or over has a variety of possibilities. Each option balances differently risks and benefits, and rights and responsibilities.

Some key policy options are outlined for discussion and debate below:

Option 1

Make no changes to the existing system which would mean that convictions accrued from age 12 and before 18 years would remain in the same position as now, which means that they are disclosed whilst unspent on all levels of disclosure, and disclosed whilst spent on higher level disclosures if listed on schedules 8A or 8B of the Police Act 1997.

Page | 24

Option 2

Apply for children between 12 and an upper age we are consulting on exactly the same disclosure system as has been set out in the ACR Bill for children under 12.

There would therefore be no possibility of disclosing automatically a conviction accrued during this age range, on any type of disclosure. A Level 1 disclosure (currently a basic disclosure) could contain no information about convictions under the upper age; there is also no possibility to include police information on this type of disclosure. All convictions accrued above age 12 and under the upper age limit would therefore remain undisclosed on those types of disclosures if this option was selected. Disclosure could only occur on Level 2 or PVG level disclosures as ORI following independent review.

At present, there is alignment between state disclosure and self disclosure for higher level disclosures. We are proposing that this alignment will be maintained under the future arrangements for Level 2 and PVG level disclosures. This will require changes to the Rehabilitation of Offenders legislation the nature of which will be contingent upon whatever decision is taken about the option for handling convictions obtained between 12 and the upper age.

If such a system were to be applied for disclosures requested only by people who are teenagers at the time of the disclosure request the impact would be low with around 870 disclosures per year. However, if this was applied for adult applicants who happen to have convictions from adolescence it would require a significant new investment in building capability and capacity in both the police and the independent reviewer service.

Option 3

There is an option to build on the current legislation to provide that no conviction, regardless of how recent, may be disclosed on a state disclosure when the individual was, at conviction, aged between 12 years and the upper age. However, this protection would be set aside:

- Where the conviction is listed on schedule 8A of the Police Act 1997
- Where the conviction is listed on Schedule 8B of the Police Act 1997
- Where the conviction is of a type that cannot become spent under the Rehabilitation of Offenders Act 1974 (excluded from rehabilitation)

But protected convictions would not be disclosed on higher level disclosures.

The consequence of this is that more serious offending would continue to appear as is currently the case on disclosures of youth offending on level 1, 2 and PVG disclosures, but unspent convictions for minor offences, for example, dropping litter would never be disclosed. This provides special protections for children as the corresponding disclosures for similar convictions accrued by adults would include all minor offence convictions until they were deemed spent under the 1974 Act.

At present, there is alignment between state disclosure and self disclosure for higher level disclosures. We are proposing that this alignment will be maintained under the future arrangements for Level 2 and PVG level disclosures. This will require changes to the Rehabilitation of Offenders legislation that will be contingent on which option is selected disclosing convictions obtained whilst the individual was aged 12 to the upper age.

An individual may consider that even a serious conviction should not be disclosed because of their youth at the time of the offence and because they consider that the circumstances are exceptional enough to justify non-disclosure.

The current legislation allows an individual to apply to a sheriff for removal of schedule 8B convictions if they are already spent and for removal of schedule 8A convictions if they are already spent and after a certain period of time has expired. This period of time is shorter (seven and a half years) for individuals who were under 18 when convicted.

Pursuing this option would mean that the individual could apply to the sheriff for removal of convictions accrued between 12 and the upper age regardless of whether the conviction is spent or not. This applies another protection for children convicted of offences to have immediate recourse to have a court to look at their circumstances and direct that a matter should not be disclosed, where the sheriff decides that is the appropriate outcome.

This option would permit minor offending by young people to be forgotten immediately in disclosure terms so that it does not blight their life chances at critical junctures such as securing training and apprenticeships. An example of this is a young person's story Scottish Ministers encountered through the charity Who Cares? Scotland.

Lynne was looked after and accommodated and living in a care home. The reasons for her reception into local authority care were entirely about her care and protection, caused by an adverse family background that included domestic violence and parental alcohol abuse. After she went to live in a residential unit she felt poorly supported and believed that the attitude of the authorities towards her defaulted to the view that she was an offender or "bad girl" as she terms it. During a minor domestic argument at the care home when she was a teenager she threw a soft-boiled vegetable at a member of care staff and the police were called. She was prosecuted for assault. This criminal conviction continued to impact on her ability to get into work and training when she left care.¹⁹¹

It is also true that some scenarios that might arise under this option are more challenging for employers to accommodate. For example, recent minor theft convictions would not be disclosed yet a young person could present to start an apprenticeship in a bank or supermarket where they will handle cash. In that scenario it is important that the employer considers all the relevant sources of information when making a

recruitment decision, including the strong probability that youthful offending will not persist into adulthood, the controls and training that they have in place for their employees as a deterrent to dishonesty and indeed the young person themselves seeing the opportunity of working as a very positive offer that they would be loath to lose. The disclosure system does not predict all instances of dishonesty in a workplace; much detected workplace crime comes from those who have not been previously detected or ever convicted. It is also true that the existence of a conviction, especially a minor one, may not be the best proxy for future behaviour. It is true that most, if not all, of us commit what would be criminal offences at various times of life for which we are never detected or convicted. The existence of a conviction on a person's record allows us to readily identify a group of citizens as being 'criminal' and therefore not like 'us' when in actual fact much of that is actually reflective of whether crime was detected or not.

Finally, it is worth reflecting on emerging evidence that after a period of desistance from typical offending types the probability of an offender being reconvicted returns to that of the general population. This tells us that people can and do change and past dishonesty does not necessary mean that the person will offend again, contrary to much received wisdom on this matter.^[10] This is borne out by the testimony of major employers who recruit people with convictions. Research with such employers tells us that they value the individuals with adverse criminal records very highly as being loyal and trustworthy employees who recognise that employment has allowed them to move on and experience success.

There is no proposal made in this option to end the facility of the police to provide non-conviction information about those aged over 12 on the enhanced disclosure and PVG scheme record. The reader is drawn to review the policy proposal elsewhere in this consultation about changes to the general system of ORI so that there are new powers for Scottish Ministers to issue guidance to the police on ORI and, specifically, to provide that individuals can make representations before the disclosure of ORI to a third party and also a facility to have the decision independently reviewed before disclosure occurs.

These measures, if enacted, would enhance the protections for those who have conduct dating from age 12 to the upper limit so that the provision of ORI about that behaviour will be subject to a number of checks and controls that enhance fairness whilst retaining and protecting the important role that ORI has in protecting the public.

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

Yes

Question 75a: If there should, what age range should the special provisions apply to?

5. 12 - 18 years

Question 75b: Please tell us why you have selected an age range or given your answer.

UNCRC definition of a child is up to age 18

Questions 76: Should there be a presumption against the 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?

or

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?

Yes

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?

Yes

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?

Yes

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?

Yes

Availability of all types of disclosures for under -16s

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

Yes

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

Fostering and adoption and kinship care

Registered persons and countersignatories for higher level disclosure applications

In view of the responsibilities both can have, Ministers propose to introduce a minimum age of 18 years for people who want to become registered person or those who are nominated to be countersignatory in connection with Level 2 and PVG Level disclosures.

Question 83: Do you have any concerns with this proposal?

No

Self-directed support

Supported persons making social care arrangements have complained that this omission of information can lead to them having to make recruitment decisions in the absence of potentially relevant information.

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?

Yes

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?

Private individuals - work with children and / or protected adults

The question about the extent to which private individuals who provide services should be subject to the proposed mandatory membership of the PVG Scheme arises in circumstances apart from self directed support. Under the current PVG Scheme, examples that have arisen include private tutors, and interpreters.

In cases, where a private tutor is being engaged, the person offering the work can ask for a PVG statement of scheme membership if the work being done will fall within the scope of regulated work because it is within the activities set out in Part 2 of schedule 2 of the 2007 Act. But again, this means that no vetting information is provided to the prospective recruiter. Private tutors providing services to an adult cannot apply for PVG scheme membership as their work will not fall within the definition of regulated work.

Question 85: Do you think this approach is correct?

No

Likewise with specialised interpreters whose assistance may be needed to allow a person to participate in day-to-day life. It is questionable whether this work is regulated work.

Question 86: Do you think that it should be?

No

If you do, the question about the appropriate level of disclosure arises

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

Yes

Charity Trustees

With regard to charity trustees, there is a separate anomaly relating to the fact 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. If a charity has as its main purpose services directed at both vulnerable groups then trustees cannot apply to join the PVG Scheme. Subject to respondents' views on whether charity trustees of charities providing services to children and protected adults should remain within the scope of PVG scheme membership, we propose to sort this anomaly.

Question 88: Do you agree that the law be changed to sort this anomaly?

Yes

Notification requirements under Part 2 of the Sexual Offences Act 2003

Notification requirements under the Sexual Offences Act 2003 (“the 2003 Act”) arise following conviction anywhere in the UK, or following a caution in England and Wales, and Northern Ireland for an offence listed in Schedule 3 of the 2003 Act. A person subject to notification requirements under the previous legislation (the Sex Offenders Act 1997) whose notification requirement was still live when the 2003 Act came into force transferred to the new arrangements.

When a notification requirement is part of the disposal for a case, information about is included in all types of disclosure in line with the current law about the content of disclosure certificates.

In addition, to people convicted or cautioned in the UK, the 2003 Act provides that a chief constable can apply to a court for an order to subject a person convicted or cautioned for a relevant offence outwith the UK to the notification requirements.

Question 89: Do you think that provision should be made to bring into force the amendment at section 78(1) of the 2007 Act?

Yes

Miscellaneous changes

We will be taking this opportunity to make minor drafting amendments to the existing legislation, for example, updating the names of organisations or regulatory bodies listed within current legislation etc.

Additional Questions

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?

The thousands of staff working in out of school care are generally not highly paid and the organisations they work for are often run on a very tight budget. Out of school care is not a statutory service in Scotland but is rightly subject to high levels of regulation given this work is caring for children. The proposals to introduce five year membership fee renewals, from a one off lifetime fee, will have a big negative impact on such staff and services.

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?

In terms of children's rights under the UNCRC we welcome proposals which will advance equality for those children whose minor offences may have followed them in later life but no longer listing such offences. We especially welcome that concurrent legislation proposed to being the age of criminal responsibility up to 12.

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

As mentioned out of school childcare, holiday services, breakfast clubs all require staff and volunteers to be members of the PVG scheme, as such the financial impact will be high.

There is also considerable expansion of the early learning and childcare workforce on the way with the move to provide 1140 hours of ELC – this may require thousands of new of potential posts to be joining the PVG scheme.

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

The proposals improve individual's rights to privacy.

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?

It is positive that children (aged up to eighteen in our view) will rarely be subject to disclosure checks and the lower age limit is welcome.