

Equality Impact Assessment Record

**The Police Act 1997 and the
Protection of Vulnerable
Groups (Scotland) Act 2007
Remedial Order 2018
("the 2018 Remedial Order")**

February 2018



Scottish Government
Riaghaltas na h-Alba
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EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 ("the 2018 Remedial Order")	
Minister	Minister for Childcare and Early Years	
Lead official	Lynne McMinn Policy Manager Disclosure Scotland	
Officials involved in the EQIA	name	team
		Policy Team Disclosure Scotland
Directorate: Division: Team	Disclosure Scotland; Protection Services: Policy Team	
Is this new policy or revision to an existing policy?	The proposals are brought forward as a result of Lord Pentland's ruling in <i>P v Ministers</i> ([2017] CSOH 33) in which it was held that insofar as they required automatic disclosure of the petitioner's conviction before the Children's Hearing, the provisions for higher level disclosures unlawfully and unjustifiably interfered with the petitioner's right under Article 8 of the European Convention on Human Rights.	

Screening

Policy Aim

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).

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 ("the 2015 Remedial Order") amended the 1997 and 2007 Acts in relation to the spent conviction information which could be disclosed in a higher level disclosure. That 2015 Remedial Order introduced lists of offences into schedules 8A and 8B of the 1997 Act. Schedule 8A lists certain spent convictions for which will continue always to be disclosed due to the serious nature of the offence (sometimes referred to

as the 'Always Disclose List'¹); schedule 8B lists certain offences, spent convictions for which are to be disclosed subject to rules depending on the length of time since conviction and the disposal of the case (sometimes referred to as the 'Rules List').

In the case *P v Scottish Ministers*, 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 Always Disclose List. 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 2015 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 1998 Act for nine months (to 17 February 2018) to allow Ministers to remedy the legislation.

The 2018 Remedial Order sets out the proposed amendments to the 1997 and 2007 Acts. 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 the Always Disclose List 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 either—

- (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 are satisfied that this policy provides an ECHR compliant system.

The remedial order fits into the strategic aims of the Scottish Government to produce safer and stronger communities and helping local communities flourish.

Who will it affect?

The proposals will affect individuals where an employer or other organisation is entitled to request a higher level disclosure. 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

¹ 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).

conviction information than previously. There could be a benefit for some applicants as their disclosure certificate could contain less conviction information in the future.

What might prevent the desired outcomes being achieved?

As noted above, these proposals are the result of a decision of the Sheriff Court. The effect of the court order from P v Ministers has been suspended under section 102 of the 1998 Act for nine months (to 17 February 2018) to allow Ministers to remedy the legislation. Scottish Ministers cannot operate a disclosure system that has the potential of being incompatible with ECHR. If the proposals do not receive Parliamentary approval then Disclosure Scotland would have to stop processing higher level certificates.

Stage 1: Framing

Results of framing exercise

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

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 ("the 2001 Act"), a formal consultation was launched on 11 September 2017, where we invited written observations on the proposals, including any potential impact it may have on any particular groups of people. The consultation ran for the statutory 60 day period. Respondents were invited to comment on the remedial order and the amendments it makes, the partial Equalities Impact Assessment, the partial Business and Regulatory Impact Assessment and the partial Child Rights and Wellbeing Impact Assessment.

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

A variety of information sources were used in compiling this, 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

Our initial framing exercise was informed by the information collected by Disclosure Scotland as it has a direct bearing on the conduct of disclosure checks. As shown below, the protected characteristics we have information on are age and sex. For other protected characteristics including disability, race, religion and belief and lesbian, gay, bisexual and transgender there is no information available as Disclosure Scotland does not collect any information on these characteristics as they have no bearing on the conduct of disclosure checks.

Extent/Level of EQIA required

An EQIA was required. The initial framing exercise identified the proposals' potential to impact upon those with protected characteristics, mainly in relation to age and sex. The findings of the initial framing exercise were published in

the partial EQIA as part of our public consultation seeking observations on the proposals.

In order to ascertain stakeholder views on the equality impact of the proposed legislative changes, two specific equality questions were asked within the consultation. The first question concerned any views on potentially positive or negative impact the proposals may have on particular groups of people. The second question centred on the potential there may be for the proposals to advance equality of opportunity between groups and to foster good relations between groups.

The 60 day formal consultation ran from 11 September 2017 to 26 November 2017. Notification of the publication of the 2018 Remedial Order was given on 11 September 2017 on the Scottish Government's website, the Citizen Space website, and by broadcasting on Disclosure Scotland's twitter account. Notice was also sent by email to major stakeholders.

The quantitative data used in the initial framing exercise was bolstered by responses to the consultation. The Consultation responses on the potential impact of the proposals were received from stakeholders across various areas including local authorities, health boards, charities and advocate groups, professional bodies, Police Scotland and a number of individuals. A summary of the initial framing exercise and the consultation response can be found below detailing the potential positive or negative impacts of the proposals on equality as well as a discussion on the points raised.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic ²	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>Our initial framing exercise gathered information on the age ranges of current PVG scheme members and individuals making applications for higher level disclosures from Disclosure Scotland.</p> <p>Information gathered at this stage shows the ages of PVG members to range from 14 to 85+.</p> <p>In 2016/17 Disclosure Scotland 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 the 35 – 49 year age range.</p> <p>In 2016/17 35 – 49 year olds accounted for 29.2% of all higher level disclosures completed, 16 – 24 year olds accounted for 24.3% of all higher level disclosures, 25 – 34 year olds accounted for 23.5% and 50 – 64 year olds accounted for 19.4% of all higher level disclosures completed</p> <p>Responses to the consultation highlight the potential benefit of the proposals to individuals with convictions generally but particularly to those who received convictions when under the age of 18.</p>	<ul style="list-style-type: none"> • Disclosure Scotland Information Management Database • Public Consultation Responses 	<p>We feel that the information gathered during the initial framing exercise and the responses from the public consultation have allowed for full consideration of the impact of the proposals on those with this protected characteristics, promotion of equality of opportunity and fostering good relations between groups.</p>

² Refer to Definitions of Protected Characteristics document for information on the characteristics

DISABILITY	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.
SEX	<p>Our initial framing exercise gathered information on the male/female population split in Scotland, the percentage of males and females in employment, volunteering and the membership split of the PVG Scheme.</p> <p>In 2016, 51% of Scotland's population were female and 49% were male.</p> <p>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.</p> <p>Analysis of PVG applications and membership since the inception of the PVG Scheme show that more women are PVG members and more women are applying to the PVG scheme.</p> <p>PVG membership is comprised of 757,000 female members (69.6%) and 330,200 (30.4%) male members. In 2016/17, 206,300 (71%) PVG applications were from female applicants while 82,500 (29%) PVG applications were from male applicants.</p> <p>Overall, in 2015, more women (30 per cent) than men (24 per cent) volunteered in the last 12 months. The consultation results point to a potential benefit to young men who are more likely than young women to have had dealing with the Children’s Hearing system</p>	<ul style="list-style-type: none"> • Disclosure Scotland Information Management System • Scotland’s Population 2016 – The Registrar General’s Annual Review • Scottish Household Survey (2015) • Annual Population Survey Results, results for year to 31 March 2017 ONS • Scottish Government Labour Market Briefing August 2017 • Public Consultation Responses 	We feel that the information gathered during the initial framing exercise and the responses from the public consultation have allowed for full consideration of the impact of the proposals on those with this protected characteristic, promotion of equality of opportunity and fostering good relations between groups.

PREGNANCY AND MATERNITY	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.
GENDER REASSIGNMENT	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.
SEXUAL ORIENTATION	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.
RACE	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.
RELIGION OR BELIEF	No information available as Disclosure Scotland does not collect any information on these characteristics as they have no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to these protected characteristics.
MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	No information available as Disclosure Scotland does not collect any information on this characteristic as it has no bearing on the conduct of disclosure checks.		The consultation responses did not indicate a potential impact to this protected characteristic.

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	✓			The proposals will provide an ECHR compliant disclosure regime in Scotland. The changes will bring an end to automatic disclosures of old, minor or irrelevant convictions without the opportunity for review. This will ensure a balance is struck between respecting an individual's right to private life and public safety.
Advancing equality of opportunity	✓			There is a positive benefits to individuals who received a conviction before the age of 18 to put their past behind them as a result of the possibility of the appeal to a Sheriff. This may encourage individuals with childhood convictions to seek employment or education opportunities they may otherwise have avoided.
Promoting good relations among and between different age groups	✓			The amendment has a potentially positive impact for care experienced people. Care experienced individuals are often more likely to have had interactions with the criminal justice system at a young age than their peers and the changes offer an opportunity to limit the disclosure of criminal convictions to potential employers.

Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			✓	<p>This policy has no specific impact disabled people.</p> <p>Disability was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>
Advancing equality of opportunity			✓	<p>Consultation responses highlight a need to ensure that there is assistance available for people with learning difficulties in navigating the process of making an application to a Sheriff. The accessibility and provision of guidance for the appeals process and the higher level disclosure regime will form part of the PVG review.</p>
Promoting good relations among and between disabled and non-disabled people			✓	<p>Some consultation responses highlight concerns for service users, some of whom may be disabled people, if the full conviction history of those requiring a higher level disclosure for their role is not disclosed due to a successful schedule 8A application to a Sheriff. However, convictions will only be removed where it is determined that they are not relevant to the regulated work sought or the purpose of the higher level disclosure.</p>

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	The proposals will provide an ECHR compliant disclosure regime in Scotland but not more so to either sex.
Advancing equality of opportunity	✓			There is a potential benefit to young men who are more likely than young women to have had dealings with the Children’s Hearing System.
Promoting good relations between men and women	✓			The right of appeal to a Sheriff for conviction removal may encourage interest in employment, education or volunteering from people who may have previously been discouraged due to concerns about conviction information being automatically disclosed on a higher level disclosure.

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no specific impact on women because of pregnancy and maternity.</p> <p>This was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>

Advancing equality of opportunity			✓	As above
Promoting good relations			✓	As above

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no specific impact on transsexual people.</p> <p>This was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>
Advancing equality of opportunity			✓	As above
Promoting good relations			✓	As above

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no specific impact on people on the grounds of their sexual orientation.</p> <p>Sexual orientation was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>
Advancing equality of opportunity			✓	As above
Promoting good relations			✓	As above

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no specific impact on people on the grounds of their race.</p> <p>Race was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p>

				This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.
Advancing equality of opportunity			✓	As above
Promoting good race relations			✓	As above

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no specific impact on people on the grounds of their religion or belief.</p> <p>Religion or belief were not protected characteristics identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>
Advancing equality of opportunity			✓	As above
Promoting good relations			✓	As above

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership³	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			✓	<p>This policy has no impact specific on people on the grounds of their marriage or civil partnership.</p> <p>Marriage and Civil Partnership was not a protected characteristic identified as being potentially affected by the proposals in the initial framing exercise as information relating to this characteristic is not collated by Disclosure Scotland in the course of conducting disclosure checks.</p> <p>This was not a protected characteristic identified by consultation responses as being impacted either positively or negatively by the proposals.</p>

³ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?

The findings of the initial framing exercise of the proposals' potential impact along the lines of age and gender were noted by a number of respondents to the consultation. These are set out below.

The proposals are potentially beneficial to individuals who received convictions before the age of 18, allowing those with childhood convictions to make an application to a Sheriff for conviction removal and move on from past offending.

Further, the proposals may be of particular benefit to care experienced individuals who are more likely than their peers to have had interactions with the police and courts in their childhood.

The consultation results also point to a potential benefit to young men who are more likely than young women to have had dealings with the Children's Hearing System, however, this impact may be lessened by the fewer number of men overall applying for PVG membership.

Some consultation responses noted concerns about the potential risk to the safety of service users if the full conviction history of those requiring a higher level disclosure for their role is not disclosed due to a successful schedule 8A application to a Sheriff. However, convictions will only be removed where it is determined that they are not relevant to the regulated work sought or the purpose of the higher level disclosure. Further, the number of appeals for schedule 8A offences will be small, we anticipate only 24 a year. The amendments apply only to disposals of offences within the scope of the Rehabilitation of Offenders Act 1974 and capable of becoming spent, disposals that can never become spent will continue to be disclosed. It should also be noted that a higher level disclosure is only one of the tools an employer should use when making safe recruitment decisions, employers should be using all the tools at their disposal.

Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁴ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

The equality screening exercise was undertaken identify whether the provisions contained within the proposals will adversely impact any particular group of individuals and to consider how this work can better promote equality of opportunity and foster good relations between groups. No changes have been made to the proposals as a result of the EQIA or the consultation.

Monitoring and Review

Following implementation the appeals process will be monitored for two years. The appeals mechanism will be looked at as part of the wider PVG review.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

⁴ See EQIA – Setting the Scene for further information on the legislation.

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the equality impact assessment that has been undertaken for The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: K L GIBBS K L Gibbs
 Position: CHIEF EXECUTIVE
 Authorisation date: 13/02/18.



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