

EQUALITY IMPACT ASSESSMENT – RESULTS

Title of Policy	The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015
Summary of aims and desired outcomes of Policy	To ensure we have a disclosure regime in Scotland that strikes a fair balance between the individual's right to respect for their private life and the interests of public protection.
Directorate: Division: Team	Policy Team, Protection Services, Disclosure Scotland

Executive Summary

The overarching objective of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 (“the remedial (No.2) order”) is to ensure that the disclosure system in Scotland strikes the right balance between public protection and an individual's right to a private life.

The Government considers the potential effects of this remedial order on groups sharing protected characteristics to be minor and proportionate. The amendments to the disclosure regime may result in less conviction information being disclosed on a higher level certificate for an individual doing either paid or unpaid work, which would benefit the individual when seeking employment opportunities.

To ensure that this EQIA has been as fully informed as possible, the Government sought comments on equalities issues during the 60 day post-making public consultation. Respondents to the consultation did not raise specific issues or concerns about equalities in respect of this remedial order or about the amendments to the disclosure regime in Scotland.

Background

In June 2014, the UK Supreme Court in a judgment relating to the disclosure of cautions issued by the police in England and Wales for minor offences found that the system under the Police Act 1997 (“the 1997 Act”) as it applied in England and Wales breached a person’s Article 8 rights under ECHR. The UKSC was clear that it was appropriate for a system of higher level disclosures to operate when that person wanted to work in certain roles involving contact with vulnerable groups or in other sensitive roles. However, the UKSC accepted that when a conviction becomes spent within the meaning of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”) it should usually become part of private personal history and that the system of automatic disclosure of all such spent convictions in higher level disclosures breached Article 8.

In light of the decision, Scottish Ministers undertook a detailed assessment of the operation of the 1997 Act as it applied in Scotland and concluded that changes should be made to it to take account of the UKSC decision. Scottish Ministers also undertook a detailed assessment of the closely related Protecting Vulnerable Groups

(PVG) Scheme operated under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) and concluded that it should also be amended.

The Scottish Government agreed that a remedial order under the Convention Rights (Compliance) (Scotland) Act 2001 should be used as it allows Ministers to use secondary legislation to address actual or potential ECHR compliance problems, even when these occur in primary legislation. In this case a remedial order had the advantage that at the point when it was made, the amended law was brought into force immediately, resulting in a minimal impact on the operational processes.

The Scottish Government considered there to be no good justification for continuing the previous system of higher level disclosures once the more proportionate regime was able to be put in place. It is for that reason that the Scottish Government used the urgent procedure for the remedial order which involves a 60-day period for interested groups and individuals to make written observations after the order was made, rather than before. The procedure specifies that Parliament will consider the order after it comes into force and any suggested changes could be taken into account in a revised order.

The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 came into force on 10 September 2015. It amended the 1997 Act and the 2007 Act. It also made consequential amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (“the 2010 Regulations”). Due to the parliamentary procedure for the 2015 Order (which is set out in section 14 of the Convention Rights (Compliance) (Scotland) Act 2001), a second modified order can be laid once consideration has been given to written observations received within the 60 day post-making consultation period. If no amendments had been made, the 2015 Order would have remained in force subject to approval by the Scottish Parliament by no later than 8 February 2016. However, Scottish Ministers have decided to make the remedial (No. 2) order to take account of some observations which have been made.

The main aspects of the remedial (No. 2) order are

- certain spent convictions will continue always to be disclosed due to the serious nature of the offence (these are the offences set out in the ‘offences which must always be disclosed’ list);
- rules will be applied to certain spent convictions to determine the content of higher level disclosures when the conviction is for an offence on the ‘offences which are to be disclosed subject to rules’ list;
- the ‘offences which must always be disclosed’ list and the ‘offences which are to be disclosed subject to rules’ list are set out in article 3(8) of the 2015 Order and are inserted into the 1997 Act as new schedules 8A and 8B;
- certain spent convictions which are not for offences on the lists of ‘offences which must always be disclosed’ or ‘offences which are to be disclosed

subject to rules' will generally not be disclosed due to the minor nature of the offence;

- all spent cautions (within the meaning given in schedule 3 of the 1974 Act) will never be disclosed;
- individuals who have a spent conviction for offences on the list of 'offences which are to be disclosed subject to rules' and which have not yet reached the point at which the rules would prevent disclosure of the conviction can indicate to Scottish Ministers that they intend to make an application to a sheriff for a new certificate from which that information has been removed;
- the issue of a higher level disclosure to the person who countersigned the disclosure application or request will not take place until that application to the sheriff is finally determined;
- where the higher level disclosure contains no convictions from the 'offences which are to be disclosed subject to rules' list or where the applicant does not intend to apply to the sheriff for a new certificate for offences on the 'offences which are to be disclosed subject to rules' list, the higher level disclosure will be issued to the person who countersigned the disclosure application or request;
- there is a new test in section 113B(4) of the 1997 Act and section 49(1)(c) of the 2007 Act for the provision of other relevant information by the chief officer of a relevant police force in connection with higher level disclosure applications;
- a short scheme record disclosure issued under section 53 of the 2007 Act will only be available to scheme members who have no vetting information in their PVG scheme record; and that Scottish Ministers must treat a short scheme record disclosure request for a scheme member with vetting information in their scheme record information as a disclosure request for a scheme record (and that will be at no extra cost to the scheme member).

Scope of the EQIA

The Scottish Government considers the potential effects of this remedial order on groups sharing protected characteristics to be minimal. The likely effects of the proposals were assessed through a range of data and evidence. These included:

- Scotland's Population 2013 - The Registrar General's Annual Review of Demographic Trends
- Scottish Household Survey (2013)
- Annual Population Survey, Jan-Dec 2013, ONS
- Disclosure Scotland Management Information Database
- Consultation on the remedial order

Key Findings

A partial EQIA was consulted upon as part of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015. During this consultation no issues or concerns were raised that the order would have a negative impact on the groups sharing protected characteristics. A number of respondents suggested that the remedial order may offer some benefits to individuals within these groups. The Scottish Government is satisfied that this policy applies to all applicants seeking higher level disclosures, and makes no distinction in relation to any of the protected characteristics.

Recommendations and Conclusions

The Scottish Government has found that none of the proposals are discriminatory and that there are no significant issues that we consider would impact negatively upon the various groups.

They will, however, be particularly beneficial to some persons within these groups who have spent convictions that will no longer be disclosed under the amended disclosure system.

As the EQIA process was started as soon as possible in the Convention Compliance Order process, it has ensured that equality considerations have informed the development of policies.