

# **PARTIAL / FINAL BUSINESS AND REGULATORY IMPACT ASSESSMENT**

## **1. Title of proposal**

The Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020

## **2. Purpose and intended effect**

### **Background**

The disclosure regime in Scotland is implemented under the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). Under the 1997 Act, basic, standard, and enhanced disclosures are issued. The 2007 Act established the Protecting Vulnerable Groups (PVG) Scheme, and also provides for the scheme record, the short scheme record, and the statement of scheme membership to be issued.

### **Objectives**

The Scottish Ministers are laying these Regulations in the Scottish Parliament to prescribe a fee of £0 for applications for disclosures under the 1997 Act, and to waive the fees for application to join the PVG Scheme established under the 2007 Act and related disclosure requests under that Act. The fee of £0 will apply in cases where the application or request is from an individual or an organisation recruiting an individual solely as part of Scotland’s response to the COVID-19 pandemic in the qualifying sectors set out in the Regulations. The Regulations will put the current suspension of disclosure fees by Ministers on a statutory basis.

### **Rationale for Government intervention**

The Scottish Government in responding to the COVID-19 pandemic put in place a range of measures to support individuals and organisations. Among the measures was the suspension of fees for disclosure applications and requests under the 1997 and 2007 Acts. This step was taken to speed up recruitment and remove the burden of disclosure fees on responders to the pandemic.

The policy was initially taken forward by Ministerial decision and was applied from 30 March 2020. Ministers have now decided to set the fee and the qualifying criteria in a SSI. Fees can be prescribed in Regulations made in the Scottish Parliament, and this can only be done by Scottish Ministers introducing proposals.

## **3. Consultation**

The proposals in the Regulations have been discussed as follows:

### **Within Government**

Disclosure Scotland’s Finance Business Partner and Directorate Finance Manager for Children and Families were consulted on the policy behind the original

suspension of fees, and have been sighted on the proposed SSI. The impact on SG finances has also been noted and agreement was given to bridge the funding gap by £4 million; this was agreed by the DG and the Cabinet Secretary for Finance.

Disclosure Scotland officials have discussed the proposals with Scottish Government colleagues covering areas within the Health and Social Care as they have stakeholders who benefit from the current suspension of fees.

### **Public consultation**

There has been limited consultation through a CoSLA-led COVID-19 working group that Disclosure Scotland participate in. Other groups that participate include the Scottish Social Services Council, the Care Inspectorate, and representatives from local authorities and NHS Workforce and higher/further education areas.

### **Business**

There are several representatives from third sector and private sector organisations represented on the CoSLA group. In addition, Disclosure Scotland take part in weekly UK-wide calls with the Criminal Records Trade Body whose members mainly make use of basic disclosures under the Police Act 1997.

## **4. Options**

The proposals in the Regulations will impact on organisations across all sectors in Scotland: public, private and voluntary.

**Option 1** – Do nothing, and continue to rely on a Ministerial decision.

**Option 2** – Introduce the proposed Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020.

### ***Sectors and groups affected***

#### **Option 1 – Do nothing**

Not introducing the Regulations would mean that Ministers would have to continue the current fees suspension in connection with Scotland's response to the coronavirus pandemic on an administrative basis. Ministers' initial and subsequent decisions to suspend fees were immediate responses to a crisis situation. At the times the decisions were taken, the extent of the pandemic was unforeseen.

Having reflected on that approach, Ministers have decided that Regulations should be made that set out clearly the sectors that will qualify for £0 disclosure checks, and that the benefit will accrue only when an individual is recruited solely as part of the response to the pandemic. Ministers have also decided that the benefit should run until 25 December 2020.

## **Option 2 – Introduce the Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020**

The Regulations make provision for organisations in prescribed qualifying sectors to benefit from the £0 fee but only when the application is solely for the purpose of recruiting an individual to respond to the COVID-19 pandemic.

“Do nothing” would continue a degree of uncertainty about qualifying sectors, albeit queries around this have fallen thanks to improving guidance since the outset of the pandemic.

The main benefit for stakeholders as a result of the Regulations would be the expanded and clarified definition which confirms when free disclosure checks should be available. A common theme of queries under the current arrangements is that they are not always considering the Scottish Government key worker guidance. The Regulations would make the eligibility criteria clearer and less open to misuse.

### ***Benefits***

#### **Option 1 – Do nothing**

Not introducing the Regulations would mean that Ministers would have to rely on their decision for suspending fees in connection with Scotland’s response to the coronavirus pandemic. Continuing to rely on the Ministerial decision means that Disclosure Scotland does not have a basis in law to decide whether a disclosure application should benefit from the £0 fee.

It also means that organisations could misuse the suspension of fees to submit inappropriate applications and that Disclosure Scotland would have limited means to reject them.

#### **Option 2 – Introduce the Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020**

The Regulations will make the extent of the benefit of the £0 much clearer, and will have definite end date.

### ***Costs***

#### **Option 1 – Do nothing**

Not introducing the Regulations would mean that Ministers would have to rely on their decision for suspending fees in connection with Scotland’s response to the coronavirus pandemic. Scottish Ministers will have to meet the cost of disclosure checks for COVID-19 purposes from the Scottish Government budget. Disclosure Scotland estimate this cost to be in the region of £160,000 per week.

## **Option 2 – Introduce the Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020**

The Scottish Ministers will be able to generate income from organisations using disclosure checks for recruitment purposes that are unrelated to the COVID-19 response. Disclosure Scotland estimate the loss of revenue from business as usual work to be around £200,000 per week. It should be made clear that the existing waiver of the prescribed PVG fees for individuals being recruited into voluntary regulated work of any type by a qualifying voluntary organisation will remain in place.

In addition, having Regulations in place about who will benefit from the £0 once relaxation begins will make Disclosure Scotland's decision-making about whether an application is business as usual much simpler.

### **5. Scottish Firms Impact Test**

Due to the urgency of the situation, there has not been time to engage with a wide range of stakeholders. Disclosure Scotland have, however, engaged with some stakeholders, including businesses. There are signs from industry and public sector in particular about the re-introduction of channels for non-Covid checks. High volume business as usual customers are providing Disclosure Scotland with information that indicates their projected applications volumes remain healthy although lower than their forecast before the pandemic.

### **6. Competition Assessment**

Having applied the Competitions and Markets Authority competition filter, the proposals will not have a negative impact on competition. The proposals are being applied in the same way to all organisations in Scotland responding to the COVID-19 pandemic. Many of the main responding organisations are in the public sector, namely, health boards and local councils, and as such are carrying out statutory functions within defined geographical areas. As such, they tend to co-operate rather than compete with each other. Professional regulatory bodies also have defined roles and are co-operating with all organisations as appropriate. There should be no negative impact on private businesses or the voluntary sector in their contribution to the response.

### **7. Test run of business forms**

Disclosure Scotland carried out limited user testing on the forms devised for online application service deployed to deal with disclosure applications for COVID-19 purposes. The application forms were modified in response to the comments, and subsequently re-formatted to simplify their use.

Impact of changes – positively received as a process and, more recently, forms have been positively received by users – for example, MyGov feedback scores have increased significantly (62% to 78% positive as a result of recent changes).

## **8. Legal Aid Impact Test**

There is no legal aid impact from the proposals.

## **9. Enforcement, sanctions and monitoring**

Disclosure Scotland officials will monitor applications and in cases where inappropriate applications are being submitted these will be rejected, and the individual or organisation recruiting the individual will be advised that they will have to pay the prescribed fee.

## **10. Implementation and delivery plan**

It is intended that the Regulations will remain in force for a period of six months from the date of commencement. The Regulations are subject to negative procedure and will come into force 28 days after they are made.

Disclosure Scotland will send information to stakeholders in the period between the Regulations being made and laid in the Parliament, and their coming into force. The communications will explain how the powers will be used, the sectors that they will affect, and the duration of the £0 fee.

## **11. Post-implementation review**

Disclosure Scotland officials and Ministers will keep under review the number of applications made that are properly entitled to the benefit of these Regulations.

The advice to Scottish Ministers about the progress or retreat of the spread of coronavirus will also be considered.

Together this factor will inform any Ministerial decision about whether new Regulations should be prepared to put in place a further period of £0 fees, or alternatively terminated earlier than the prescribed expiry date.

## **12. Summary and recommendation**

It is recommended to proceed with **Option 2 – Introduce The Police Act 1997 and Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020**

The Regulations, which are time-limited and will automatically expire on 25 December 2020, prescribe a fee of £0 to be applied by Disclosure Scotland in connection with a disclosure application or request, including application to join the PVG Scheme when the application or request is made by an individual or an organisation recruiting an individual solely for the purpose of deploying that person to work on the response to the COVID-19 pandemic.

### **13. Declaration and publication**

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: MAREE TODD**

**Date: 27<sup>th</sup> May 2020**

**Scottish Government contact:**

James Laing, Policy Manager, Disclosure Scotland  
[DSPolicyTeam@disclosurescotland.gov.scot](mailto:DSPolicyTeam@disclosurescotland.gov.scot)