



Education and Skills Committee
Disclosure (Scotland) Bill – Stage 1
Submission from Police Scotland, October 2019

Purpose

The purpose of this report is to provide information to the Scottish Parliament Education and Skills Committee evidence session on the Disclosure (Scotland) Bill on Wednesday 9 October 2019.

Background

This is the first review of the primary legislation since its enactment in February 2011 and Police Scotland is generally supportive of its revised terms. Police Scotland has worked closely with Disclosure Scotland from the introduction of Part V/PVG legislation and they continue to work together on this Bill and related legislative changes.

Current processes

Disclosure Scotland trigger PVG applications to Police Scotland where there is certain, primarily new information identified eg a pending case or intelligence. Police Scotland will then assess the information held in respect of relevancy, proportionality, necessity and accuracy. Prior to any disclosure, the human rights of the applicant are considered in conjunction with the same considerations for the children and/or vulnerable adults under their care or supervision. Disclosure Scotland is responsible for extracting conviction information for inclusion on a PVG certificate – there is no change proposed in the Disclosure Bill.

People who are members of the scheme are also subject of Ongoing Monitoring to assess behaviours of concern for their continued suitability to be in regulated work.

All information is assessed using the Home Office Quality Assurance Framework.

Any disclosures made are known as Other Relevant Information.

Individuals have a right to dispute information included on their PVG Certificate, initially through Disclosure Scotland then through a second dispute direct to Police Scotland. Thereafter an applicant could challenge before a Sheriff in a court of law.

Proposed Changes

There are a number of proposed changes which should impact positively to Police Scotland and members of the PVG Scheme alike.

Membership will move from lifetime to 5 years renewable, thus reducing the number of scheme members and the duty of Ongoing Monitoring.

Current membership is defined by the scheme within which the member engages in regulated work ie child scheme and/or vulnerable adult scheme. This will change to being role or post specific. The concept of regulated work will be replaced with regulated roles.

The scheme will become mandatory for identified post/job holders, addressing the shortfall in the current legislation which is not mandatory.

The existing dispute process will be replaced by representations which will be overseen by the role of the Independent Reviewer. This process and role will be similar to that of the Independent Monitor in England and Wales. The role of Independent Reviewer is first introduced by the Age of Criminal Responsibility (Scotland) Act 2019 however if Other Relevant Information is being proposed for a Level 2 application, the applicant has the opportunity to comment prior to disclosure and the Independent Reviewer will determine whether the Other Relevant Information is relevant for disclosure and ought to be disclosed.

The exact nature of the working relationship between the Independent Reviewer and Police Scotland is one of the issues yet to be clarified as are the changes from the dispute/appeal process to representations. For example, if the Independent Reviewer overturns the decision of the Chief Constable to disclose Other Relevant Information, clarity regarding vicarious responsibility thereafter is required.

Disclosure Scotland has assured Police Scotland that they will be fully consulted in the process of defining the roles and responsibilities of the Independent Reviewer and the preparation of the guidance for the interaction between the Chief Constable and Disclosure Scotland.

Police Scotland will become a referral agency and be able to advise regarding persons detected whilst carrying out work in a regulated role or post ie committing an offence under the new legislation.

Scottish Government will produce statutory guidance to the Chief Constable of Police Scotland with regards to what information should be disclosed under Other Relevant Information. In the Bill, the Independent Reviewer will review decisions taken by Police Scotland which will require statutory guidance for both Police Scotland and the Independent Reviewer to follow to ensure a consistent decision-making rationale.

There are potential financial implications for the Chief Constable with regards to the new Bill, specifically with regards to the introduction of representations and the relationship with the Independent Reviewer.

Police Scotland is very supportive of the review of existing PVG legislation and would welcome the opportunity to discuss the specific aspects of the Disclosure (Scotland) Bill in more detail as required by the Education and Skills Committee.