

**Disclosure (Scotland) Bill
Call for Views
August 2019**

Background

1. COSLA welcomes the opportunity to respond to the call for views for the Disclosure (Scotland) Bill and we trust our response will be of assistance to the Education and Skills Committee in their considerations.

Principles of the Bill

2. We welcome the broad principles of the bill to simplify the process of applying for disclosure and the continued importance of retaining the balance between ensuring that children and protected adults are safeguarded and providing individuals the opportunity to take the next step after a conviction and enter employment, education or training.
3. Employment is considered as one of the most strongly correlated predictors of reduced reoffending and entering employment, education or training allows individuals with previous convictions to re-integrated back into their communities and wider society.
4. For individuals where the nature of the conviction is less serious, this may address some of the recruitment challenges currently being experienced by local authorities, other public sector partners and businesses, which have the potentially to be compounded by Brexit.

Comments on Key Policy Changes Within the Bill

- **Reducing four main levels of disclosure to two.**

Simplifying the number of disclosure products available is a welcome step. However, the products and processes will remain complex. The new process for establishing which type of Level 2 Disclosure appears closely linked to the development of a new digital system, which has the possibility of requiring greater input from local authorities (in their role as accredited bodies) during the application process than at present.

We would expect that support will be available to both local authorities and individuals to navigate the new disclosure products and the digital system during implementation, and that any resource required to interface with the new system will be met.

- **Introducing a mandatory PVG Scheme**
- **Creating ‘regulated roles’ that trigger mandatory PVG scheme membership as opposed to ‘doing regulated work’**
- **Ending life-time PVG scheme membership**

- **Enabling the Scottish Ministers to impose standard conditions individuals who are under consideration for inclusion in one or both of the lists held under section 1 of the PVG Act**

We are supportive of the changes to the PVG Scheme, including:

- Making the scheme mandatory, which would ensure children and protected adults are safeguard and public confidence in the system is strengthened.
 - Ending life-time membership of the PVG scheme and replacing with a requirement to renew every 5 years, which should decrease the financial burden on Disclosure Scotland and remove the unnecessary monitoring individuals who are no longer doing regulated work. However, if the renewal process requires any additional input for local authorities, resourcing this must be met by the Scottish Government.
 - A move to ‘regulated roles’ (from ‘regulated work’) which should provide greater clarity on who requires PVG Scheme membership. We are broadly in agreement with the descriptions of ‘regulated roles’ under Schedule 2 and Schedule 3 provide a clear overview of which what jobs should be covered by the PVG scheme.
 - Allowing Disclosure Scotland to impose temporary limitations and conditions for individuals being considered for listing, as this should ensure safeguarding concerns are addressed.
- **Reforming the provision of police ‘Other Relevant Information’ (“ORI”) to end the current process of disclosures being issued to employers before the applicant has had an opportunity to challenge the disclosure of ORI.**

As set out in the Policy Memorandum for the Bill less than 1% of PVG applications include Other Relevant Information (ORI). We are broadly supportive of allowing applicants to see and challenge the relevance of ORI before it is shared with third parties and providing guidance for police chief officers in relation to the disclosure of ORI.

- **Ending the automatic disclosure of convictions accrued while aged between 12 and 17 years and introducing an assessment by Disclosure Scotland as to whether these convictions are disclosed.**

COSLA has supported the principle of raising the Age of Criminal Responsibility to 16, recognising that in many cases convictions accrued during this period could not be considering in the same light as convictions accrued as an adult, and that involvement with the justice system at a young age was associated with poorer outcomes later in life. Therefore, we are supportive of the provisions within the Disclosure (Scotland) Bill to remove the automatic disclosure of these convictions. We welcome the role of Disclosure Scotland in assessing if convictions should be disclosed, and the proposed independent review process, to ensure that public protection is safeguarded in relevant cases. COSLA and our member authorities are happy to work with Disclosure Scotland and other interested parties to ensure this is implemented consistently in the spirit of the Bill.

- **Changing the period after which an application for removal of a conviction for an offence can be made.**

We are supportive of the proposal for individuals to apply for a conviction to be removed 11 years after the date of conviction and the proposed measures to simplify the processes of removing convictions. These processes outlined in the bill will ensure that individuals are not unnecessarily held back from making progress in their personal development following certain convictions.

- **Establishing clear procedures for the registration of accredited bodies who can countersign Level 2 applications.**

We are supportive of increased clarity around the role of accredited bodies and believe the proposed code of practice should be developed with in partnership with accredited bodies, included local authorities.

- **Providing new referral powers for Scottish councils and integration joint boards.**

The provisions within the Bill for local authorities and integration joint boards to have new referral powers to reflect the changes in adult social care since the introduction of self-directed support require further consideration. At its core self-directed support is aimed at empowering individuals to take control of their care arrangements including acting as an employer directly. This means that the local authority does not have a role in the direct provision of care for these individuals, in some cases Councils do not hold any information on those employed directly by SDS budget-holders. As such we are concerned that:

- i) this provision creates the expectation that the local authorities will act as a sort of regulatory body for those employed through self-directed support within their area, which is not consistent with the aims of SDS and we would be concerned of the possible liabilities that this may place upon local authorities.
- ii) The practical operation of the proposal in light of information available to local authorities on those employed through self-directed support and the possible challenges of sharing information with local authorities to make referrals in light of GDPR regulations.

We expect further engagement with the Scottish Government on the provision ahead of consideration of the Bill at Stage 2.

Resources

5. The Financial Memorandum for the Bill estimates that the impact on local authorities will be relatively small, with an increase of £25 per Local Authority to register in their role as an accredited body and a possible increase of £5 per disclosure for local authorities who opt to fund the disclosure for employees.
6. We would expect Scottish Government to meet any additional resources required for local authorities to discharge the new referral powers and would look for this to be reviewed after a full year of operation.
7. Whilst the costs identified so far are relatively minor increase in fees, they must be set against the significant ongoing financial constraints which Councils are currently working within, especially in relation to reductions in core funding.

Other Considerations

8. The Bill contains a number of mechanisms to review and challenge the inclusion of information and convictions. There should be regular monitoring and evaluation of the use of these mechanisms and this information to should be available publicly.
9. We welcome the intention of the Bill to update and simplify the legal framework for disclosures. It is helpful that the List A and List B Offences are clearly defined for ease of reference
10. As care-experienced individuals are likely to have a different perspective on convictions and their impact, the Education and Skills committee should consider engaging with the Independent Care Review on the intentions and provisions within the Bill.
11. Noting that the proposed new system of disclosure appears to be driven by a new digital system, we welcome the recognition within the Policy Memorandum that other methods of delivery and payment will be retained to ensure that the disclosure process remains open to all.