

Response ID ANON-8Z9G-EGB9-S

Submitted to **Protection of Vulnerable Groups and the Disclosure of Criminal Information**

Submitted on **2018-07-12 14:47:39**

Section 3 - Reforming the policy underpinning the PVG Scheme

19 How should a mandatory PVG Scheme be introduced and how should it work?

How should a mandatory PVG Scheme be introduced and how should it work?:

We support the introduction of a mandatory PVG scheme and understand that membership will be compulsory for all those who want to work in specific roles with children and protected adults.

This will help remove any confusion or inconsistency that exists around the current scheme (due to its voluntary nature) and ensure that vulnerable groups are provided with the optimum protection from harm.

It will also be necessary to have a targeted communication programme raising awareness among all affected groups of the changed requirement to mandatory membership.

20 Do you agree with the proposal to replace the “regulated work” definition with a list of roles/jobs?

Yes

21 Do you foresee any challenges for organisations from this proposed approach?

No

22 Are there any roles/jobs not within the list in Annex B that you think should be subject to mandatory PVG scheme membership?

Yes

If so, please provide more detail on why.:

Further detail to support Q. 20:

We support replacing the concept of “regulated work” with a clear list of “protected” roles which will be both voluntary and paid. The provision of healthcare by the doctors we regulate has always fallen clearly under the definition of regulated work due to the vulnerability of patients. However, we acknowledge that other activities have been harder to define and there has been confusion among stakeholders about whether the criteria for “regulated work” is met in some circumstances. With the introduction of a mandatory PVG scheme, we agree that it will help to reduce any confusion by establishing a clear list of roles that require membership. These will be defined as “protected roles” and a published list should ensure there is no ambiguity or inconsistency among employers/voluntary groups about whether a PVG disclosure is required for individuals either employed or volunteering in those roles.

We do not foresee any specific challenges for the GMC as “medical doctor” is on the proposed list of protected roles at annex B and we fully support its inclusion. It is clear that the PVG scheme will apply to doctors on the Medical Register who are working or living in Scotland. It will therefore continue to be appropriate for us to make referrals to Disclosure Scotland if the criteria under section 2 of the PVG Act are also met.

Further detail to support Q. 21:

As a point of detail, however, it would be more accurate to refer to “medical practitioner, registered under the Medical Act 1983” instead of “medical doctor” on the list at annex B as the term doctor is not protected and this would replicate the wording in our primary legislation.

More generally, we do foresee a challenge in keeping the list of protected roles, to be published by the Scottish Government, up to date and relevant. This is acknowledged in the consultation which states “It is clear that any such list of protected roles would need to be kept under review.....The ability to update regularly the list of protected roles will ensure that the changing landscape in the care and education sectors can be captured and added to the list.”

We agree that the procedure for reviewing and updating the list will need to be flexible and fast. In particular, the field of healthcare is evolving and there are new roles being created which should be protected as they involve direct contact with patients. Recent examples in England include nursing associates (whom the Nursing and Midwifery Council regulate) and the four roles grouped under the broad heading of medical associate professions (for whom the regulatory framework was recently consulted upon by the four governments in the United Kingdom). We acknowledge however that there are differences between the four UK countries as outlined in the report, commissioned by the Scottish Government, looking at the implications of a healthcare occupation being regulated in fewer than all four UK countries. This report was published by the Professional Standards Authority (PSA) on 28 June 2018 and highlights the possibility that further divergence may occur.

It should be noted that whilst regulation of the medical profession is a reserved power, the GMC operates within the legal and legislative structures of the different jurisdictions within the UK. As an example of this, our guidance for doctors reflects the laws of Scotland, and when a law changes we seek senior counsel's advice on whether we would need to update our guidance.

Further detail to support Q. 22:

As mentioned in our response to Q21, nursing associates and MAPs are not included in the list. Although nursing associates will not be a regulated position in

Scotland, we would therefore recommend their inclusion in the list at Annex B should this position change in future, as they would have direct contact with patients who are protected adults as they are in receipt of a protected service [healthcare] and vulnerable by virtue of this.

On a separate note, we believe the wording 'Any student training for a profession whose members are in protected roles' at annex B could be clarified further to make it clear whether a medical student or for example a student of another healthcare degree (e.g. pharmacy, nursing). Whilst the vast majority will, an undergraduate medical student isn't obliged at the end of their degree to seek registration/go on to work a doctor – hence the phrase 'training for a profession' may not be accurate for absolutely all cases of someone doing an undergraduate degree and some further clarification could be helpful.

We have also sought the views of the Deans of the five Scottish medical schools via the representative body of medical schools in the UK, the Medical Schools Council. The Deans are of the view that PVG checks should be mandatory for medical students and would like this clarified in the regulations.

23 To avoid inappropriate membership, what criteria to you think should be used to decide if an individual is in a protected role?

To avoid inappropriate membership, what criteria to you think should be used to decide if an individual is in a protected role?:

24 Do you think that the decision about whether someone who is in a protected role meets an exception which makes them ineligible for the PVG Scheme should be taken by Scottish Ministers?

Not Answered

25 Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?

Are there roles that would not be protected roles and therefore ineligible for membership to the new scheme, that should, however, be eligible for a level 2 disclosure?:

26 Are there any services that should be added, or are there any services that should be removed?

No

If yes, please state what these are.:

We believe the current list of services within the scope of the PVG scheme, including healthcare, is appropriate and should be retained.

27 Is this appropriate?

Not Answered

28 Do you agree with this approach?

Not Answered

29 Do you think these are the correct facilities, or should any be added or removed?

Not Answered

If yes, please state what these are.:

30 Do you think this approach is clear and helpful?

Not Answered

31 Do you think that list of positions is correct?

Not Answered

Should it be amended either by adding to it, or by taking away from it?:

32 How long should scheme membership last in a mandatory scheme?

Not Answered

33 Do you think a membership card would be beneficial to you as a member of the PVG scheme?

Not Answered

34 Do you think a membership card would be beneficial to you as an employer?

Not Answered

35 Do you agree with these proposals?

Not Answered

36 What is your preferred option?

Not Answered

37 Are you in favour of being able to interact with Disclosure Scotland online?

Not Answered

38 Are you in favour of using electronic payment method for fees?

Not Answered

39 Do you have an electronic payment method that you prefer?

Not Answered

If you have answered 'yes' please say what it is.:

40 Do you have any proposals on how the transitional arrangements should work?

Do you have any proposals on how the transitional arrangements should work? :

41 Should volunteers continue to receive free membership?

Not Answered

If no, should they be subject to a reduced fee?:

42 Do you agree that voluntary organisations seeking to benefit from a reduced fee or the fee waiver should be subject to a public interest test?

Not Answered

If so, how should that test be defined?:

43 Do you agree that employees and employers alike (including volunteers and volunteering bodies) who work or allow an individual to work in protected roles without joining the PVG Scheme or to stay in protected roles after membership has expired should be subject to criminal prosecution?

Not Answered

44 Do you agree that any scheme member who fails to pay the relevant fee to renew their PVG Scheme membership and where there are no employers (or volunteering bodies) registered as having an interest in them in a protected role should exit the PVG Scheme automatically at the expiry of their membership?

Not Answered

45 Should a person who joined the Scheme as a volunteer and benefitted from free entry later try and register a paying employer against their volunteer membership then the full fee would become payable and a new 5 years of membership would commence. Do you agree with this?

Not Answered

Section 4 - Removing unsuitable people from work with vulnerable groups

46 Do you agree with our proposals to dispense with the current court referral procedure under section 7 of the 2007 Act?

Not Answered

47 Are there offences missing from the Automatic Listing Order that you think should be included?

Not Answered

If you answered yes to question 47, please list the offences you believe are missing?:

48 Do you agree with proposals to create new referral powers for the Police?

Not Answered

49 Do you agree these powers should be limited to when police have charged a person with unlawfully doing a protected role whilst not a scheme member or where a referral has not been made by a relevant organisation?

Not Answered

50 Do you think this proposal closes the safeguarding gap in terms of self-directed support?

Not Answered

51 Do you think that this list of regulatory organisations should be amended?

Yes

52 If you think the list should be amended, please gives details of additions or removals.

If you think the list should be amended, please gives details of additions or removals.:

We confirm that the General Medical Council should continue to be included in the list of regulatory organisations that can make a referral to Scottish ministers under section 8(1) of the 2007 PVG Act.

This is a power that we use if information about a medical practitioner meets one of the referral grounds in section 2 of the 2007 Act and the regulatory action we have taken is insufficient to manage the risk to children and/or protected adults.

In terms of amendments to the rest of the list, it may be more consistent to give the other healthcare regulatory organisations their full titles as you have done with the General Medical Council and the General Optical Council. These would be:

The registrar of the General Dental Council [currently listed as the registrar of dentists and dental care professionals]

The registrar of the Nursing and Midwifery Council [currently listed as the registrar of nurses and midwives]

The registrar of the Health and Care Professions Council [currently listed as the registrar of health professionals]

The registrar of the General Osteopathic Council [currently listed as the Registrar of Osteopaths]

The registrar of the General Pharmaceutical Council [currently listed as the registrar of pharmacists]

The registrar of the General Chiropractic Council [currently listed as the registrar of Chiropractors]

53 Do you agree with the proposal to provide Disclosure Scotland with powers to impose standard conditions?

Yes

54 If yes, how long should the conditions last before lapsing?

Not Answered

55 Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why?

Under what circumstances do you think Disclosure Scotland should be able to impose standard conditions and why? :

Further detail in response to Q 53:

We agree that Disclosure Scotland should have the powers to impose standard conditions restricting a person under consideration for listing while this process is ongoing. This will ensure that children and protected adults are better protected from harm while information is gathered during the formal consideration period which can last several months. We also agree that these powers are necessary as a restriction imposed by an individual's professional regulatory body only covers their field of practice/employment. The safeguarding risk may extend into other areas such as voluntary work which would not be covered by any sanction issued by a professional regulator such as the General Medical Council. We note that the duration for which conditions last would be time limited and lapse if Disclosure Scotland does not apply for an extension from a sheriff.

This proposed new power is similar to that already used by the GMC under section 41A of the Medical Act 1983 (as amended) which allows an interim orders tribunal (IOT) to make an order suspending or restricting a doctor's registration via conditions while the allegations against them are resolved. An IOT can make an order when it is necessary to do so for the protection of the public, is in the public interest or in the doctor's own interests. An order can only be imposed for a maximum period of 18 months (with a review every 6 months) and an application must be made to the High Court to extend it beyond that period. We see the ability to restrict a doctor's registration while serious allegations are investigated as crucial to our ability and overarching objectives to protect the public and maintain public confidence in the medical profession. However, we are also careful to use it proportionately as we are aware that the restriction of a person's ability to practise their profession is a significant matter and that during an investigation, generally no findings will yet have been made. Proportionality will also be an important consideration for Disclosure Scotland in exercising the power although there is a significant difference in that information shared with you will often

include findings made by other bodies like ourselves.

Further detail in response to Q54:

The length of time that conditions should last before lapsing is likely to vary depending on the complexity of the information being considered and the amount of further evidence required to make a listing decision. Although 3 months may be adequate in more straightforward cases, 6 months or even longer may be needed in others. While every effort should be made to make listing decisions in a timely manner, we recommend that there is flexibility in the length of time that conditions can last to reflect the varying complexity of issues under consideration. There should however be a maximum period allowed before an application must be made to a sheriff to ensure fairness and proportionality in the process.

Further detail in response to Q55:

Disclosure Scotland should be able to impose proportionate standard conditions in any circumstances where an individual may pose a significant risk of harm to children and/or protected adults and action is necessary to manage this risk e.g. by requiring the individual to be supervised during any contact with children and/or protected adults while under consideration for listing.

Further detail in response to Q56:

Yes, in principle, although there may be exceptional circumstances where a failure to comply has a reasonable explanation and criminal action would not be appropriate.

56 Do you agree that it should be a criminal offence if an individual and employer/voluntary body failed to comply with standard conditions?

Yes

57 Do you agree the age threshold for the shorter prescribed period for a removal application to be made should be raised?

Not Answered

58 Which option do you prefer?

Not Answered

59 Do you think it's appropriate that organisations, irrespective of where the regulated work is to be carried out, should be informed of a listed individual's barred status?

Not Answered

60 Do you agree with our approach for PVG Scheme Members in a protected role overseas or organisations employing PVG members to do a protected role, such as providing aid services?

Not Answered

61 We are proposing that there should be criminal offences in relation to organisations who employ barred persons overseas. Do you think that we should also consider introducing criminal offences in relation to barred individuals offering to undertake a protected role overseas?

Not Answered

Section 5 - Offence Lists and Removal of spent convictions from a disclosure

62 Are there any offences missing from either list that you think should be included?

Not Answered

If so what are they, on what list should they appear and why?:

63 Are there any offences on schedule 8A that you think should be on schedule 8B?

Not Answered

If so, please list them and explain why.:

64 Are there any offences on schedule 8B that you think should be on schedule 8A?

Not Answered

If so, please list them and explain why.:

65 Do you agree with the categorisation of the new offences?

Not Answered

If no, please state how they should be categorised. :

66 Do you believe the rules for disclosure in the current form of 15 years and 7.5 years provide appropriate safeguarding and privacy protections?

Not Answered

67 Do you agree that a reduction in the disclosure periods from 15 & 7.5 years is appropriate considering the changing policy on rehabilitation of offenders?

Not Answered

68 What period between 11 and 15 years do you think is appropriate for disclosure?

Not Answered

69 Do you think the application process to seek removal of a spent conviction should be reviewed?

Not Answered

70 At present, an individual has three months from the date of notification of an intention to appeal to make an application to a Sheriff. Do you think this time period is:

Not Answered

If you indicated that the time period is too long or too short, what do you think the time period should be?:

71 Do you think any of the options set out above offer viable alternatives to an application to a Sheriff?

Not Answered

If yes, which one? :

If not, do you have any other suggestions? :

Specific Response to Q 66-68: We have no comment on the proposed reductions to the disclosure periods. However, the time frame for implementing any new disclosure rules must ensure that professional healthcare regulators have sufficient time to update, publish and communicate revised disclosure guidance to their registrants, registration applicants and stakeholders (for example undergraduate medical students and medical schools in Scotland).

About you

What is your name?

Name:

Jenny Duncan

What is your email address?

Email:

jenny.duncan@gmc-uk.org

Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

General Medical Council

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

It would be helpful to have free text comment boxes directly linked to each question in addition to yes/no tick boxes.