



**Police Act 1997 and the Protection of Vulnerable Groups
(Scotland) Act 2007 Remedial Order 2015**

Response from the Scottish Council of Jewish Communities

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The Scottish Council of Jewish Communities (SCoJeC) is the representative body of all the Jewish communities in Scotland. SCoJeC advances public understanding about the Jewish religion, culture and community, by providing information and assistance to educational, health, and welfare organisations, representing the Jewish community in Scotland to Government and other statutory and official bodies, and liaising with Ministers, MSPs, Churches, Trades Unions, and others on matters affecting the Jewish community. SCoJeC also provides a support network for the smaller communities and for individuals and families who live outwith any Jewish community or are not connected with any Jewish communities, and assists organisations within the Scottish Jewish community to comply with various regulatory requirements. SCoJeC also promotes dialogue and understanding between the Jewish community and other communities in Scotland, and works in partnership with other organisations and stakeholders to promote equality, good relations, and understanding among community groups.

SCoJeC is the registered body with Disclosure Scotland to submit Protection of Vulnerable Groups (PVG) Scheme Record applications on behalf of the large majority of organisations, including almost all voluntary organisations, in the Jewish Community.

In preparing this response we have consulted widely among members of the Scottish Jewish community.

1. Do you have any views/observations on this Order?

We are generally supportive of the Supreme Court decision, and with the Scottish Government decision to amend the Protection of Vulnerable Groups (Scotland) Act 2007 to ensure compliance with ECHR. We do, however, have a number of concerns about the detail of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015, and the impact this will have both on individual applicants to and members of the PVG Scheme, and employing organisations.

a. Deadline for notifying Disclosure Scotland of an application to the sheriff

We note that the Order is inconsistent about the time allowed to notify Scottish Ministers, in the person of Disclosure Scotland, that an individual intends to submit an application to the sheriff:

Article 3(4) 116ZB(3)(a) states that an individual is allowed “10 working days beginning with the date of the issue of the certificate”,

but

Article 4(5) 52A(3)(a) states that the relevant period will be “10 working days beginning with the date on which the scheme record was sent to the scheme member”.

It is probable that not all Scheme Records are posted on the same day they are issued, particularly when they are issued late in the afternoon, and even more especially if that is the day before a public holiday, so the two articles quoted above are not synonymous. The Order should, therefore, be amended to ensure consistency, and prevent confusion about the deadline by which an intention to submit an application must be notified to Disclosure Scotland.

However, we are also concerned that ten working days from either the date of issue or posting is an unreasonably short time. Under the previous system, when both the individual's and the organisation's copies of the Scheme Record were sent simultaneously, we have frequently not received our copy until a week or more after the issue date printed on the Scheme Record. During the Christmas and New Year period, because of postal delays, we have sometimes not received our copy until ten or more working days after the stated issue date, and the same must be true of the copies sent to individuals. The ten day deadline also makes no allowance for holidays: if someone begins a fortnight's winter holiday on the day the certificate is delivered, it may be a month between the stated issue date and the date of receipt.

Many people are, therefore, likely to have much less than the envisaged ten working days in which to decide whether or not to make an application to the sheriff, and in some cases, will not even receive their Scheme Record until after the deadline has already passed. We therefore recommend that both of the above articles should be amended to allow a period of 20 working days from the date of issue of the Scheme Record.

b. Delays to organisations' copies of Scheme Records

Since an applicant is allowed six months in which to submit an application to the sheriff, and since court decisions may take up to two months even to be listed, several more months to be heard, and then around a month for the judgement to be issued, organisations may have to wait for almost a year to receive a Scheme Record. That is not reasonable for any organisation, but will be particularly problematic for small Third Sector organisations, especially if they have been awarded a time-limited grant to carry out a project that must be completed within six months or a year. We anticipate that many organisations will have no option but to withdraw a job offer if a Scheme Record is not received timeously, and we are concerned that this may have the opposite effect to the intention of the legislation, and in fact inhibit the employment, and therefore the rehabilitation, of offenders.

The six month window in which to submit an application is, in our view, far too long, since it invites procrastination by the applicant, who will have already notified Disclosure Scotland of the intention to submit an application. There is no need for so long a period in which to make that intention good, and since it contributes to the overall delay in obtaining a Scheme Record, it makes it more likely that the potential employer will withdraw the offer of work, thereby frustrating the intention of the

legislation by making it more rather than less difficult for convicted offenders to make a fresh start. Since delays within the courts can not be limited, the only stage of this process that can be reduced is the time limit for submitting an application, and we therefore suggest that this should be reduced to 20 working days from the date of notifying Disclosure Scotland of the intention to submit an application.

c. Separate consideration of several items of disclosed information

We are concerned that “*Any applicant whose record contains multiple spent convictions will have each conviction considered separately and the rules will be applied to each conviction as though it is the only conviction on the record.*”¹ This is particularly problematic in the case of someone with a series of similar convictions, since, while one offence may not be concerning, a course of conduct leading to multiple convictions may indicate traits that would make the individual unsuitable to work with vulnerable groups.

d. Provision of evidence to the sheriff

There is no indication as to the basis on which a sheriff will be required to make a decision about the potential exclusion of information from a Scheme Record. The space available on PVG application forms for a job description is very limited, so, in most cases, the form alone will not provide sufficient information on which to base a decision. Disclosure Scotland must, therefore, be permitted to provide additional evidence to the Court, and, in order to be able to do this effectively, they will have to approach the organisation that has requested a Scheme Record to ask for a detailed job description thereby adding more delays.

e. Inclusion of information on subsequent Scheme Records

We are concerned with the practicalities of determining whether a decision by the sheriff to exclude particular information from one Scheme Record is applicable to a subsequent Scheme Record application. Articles 3(2)(a) and 3(3)(a) state that:

(3A) ... a criminal record certificate must not give the details of a relevant matter if—

(a) those details were excluded from another criminal record certificate by virtue of an order under section 116ZB(9)(b), and

(b) it appears to the Scottish Ministers that the application under subsection (1) is made for the same purpose for which the application for the other certificate was made.;

For example, it is clearly irrelevant whether a youth club football coach, whose entire responsibility is providing training on the pitch, has had any Road Traffic convictions under section 108 of Schedule 8B (Offences which are to be disclosed subject to rules); however such offences are extremely relevant in the case of a youth club football coach whose responsibilities include driving team members to and from ‘away’ matches, and we question how Scottish Ministers, or Disclosure Scotland as

¹ Policy Note, paragraph 27. <http://www.gov.scot/Resource/0048/00484976.pdf>

their agents, will be able to determine whether an application has been “*made for the same purpose for which the application for the other certificate was made*”.

The space available on PVG application forms for a job description is extremely limited, so that organisations will not be able to provide a detailed description of all responsibilities (even if they are aware that it will be necessary to do so). It is, of course, possible to enclose a separate sheet with the application form, but we already do this with every application, and our experience is that it frequently becomes separated from the form and mislaid, so that Disclosure Scotland has had to contact us for details. It cannot be assumed that a football coach, befriender, or youth leader at one organisation has the same responsibilities as a football coach, befriender, or youth leader at another, but if Disclosure Scotland will be obliged to contact every sports club to ask whether the role of coaches includes driving the team around, and every befriending organisation to find out whether their volunteers simply visit people in their own homes or also drive them to the shops, to various activities, or on days out, the time required to process applications will inevitably be substantially increased.

f. Decision not to submit or to withdraw an application to the Sheriff

There is no provision in the Order covering a subsequent decision not to submit, or else to withdraw, an application to the Sheriff after having notified Disclosure Scotland of an intention to submit such an application. Having received the initial notification, Disclosure Scotland will, therefore, have no alternative but to wait for the full six month (plus) period and before enquiring why no decision has been notified to them. This will unnecessarily delay the provision of some Scheme Records to organisations, and may result in job offers being withdrawn, inhibiting the employment, and therefore the rehabilitation, of offenders.

We therefore suggest that the Order should be amended to require individuals who have advised Disclosure Scotland of their intention to submit an application to the Sheriff but subsequently decide not to proceed, to notify Disclosure Scotland of their decision.

g. Applications for Short Scheme Records

Despite the above serious reservations about the implementation of the Order, we very much welcome the measures introduced by articles 4(6) and 11, that applications for a short scheme record will be regarded as applications for a full scheme record if there is any vetting information about the applicant, and that no additional fee will be charged, since these will reduce administration and cost to organisations.

2. In relation to the Equality Impact Assessment, please tell us about any potential impacts, either positive or negative; you feel the amendments to legislation in this consultation document may have on any particular groups of people?

In our view, the Order will not impact on people with protected characteristics differently from on the wider population.

While the legislation may “ensure protection of Article 8 right of individuals with a criminal record”, we are, however, concerned that it may not “ensure those with minor non-relevant convictions are not hampered in finding jobs”² since, as we have described above, organisations may withdraw a job offer if there is a lengthy delay to issuing the organisation’s copy of a Scheme Record, especially if they have been awarded a grant that must be spent within a particular time frame.

3. In relation to the Equality Impact Assessment, please tell us what potential there may be within these amendments to legislation to advance equality of opportunity between different groups and to foster good relations between different groups?

In our view, the Order will neither contribute to nor hinder good relations between different groups. As we have already stated, the Order may be an obstacle to equality of opportunity if job offers are withdrawn due to a lengthy delay in issuing the organisations copy of a Scheme Record.

4. In relation to the Business Regulatory Impact Assessment, please tell us about any potential impacts you think there may be to particular business or organisations?

As we have already stated, we are concerned by the potentially very long delays to an organisation receiving a Scheme Record for an applicant who chooses to apply to the sheriff for the removal of information from his or her Scheme Record, the more so if there should be two or more consecutive applications to the sheriff. Although they will not incur any direct charges in connection with the new procedures, we disagree that “businesses will not incur any additional costs as a result of these changes”³ since, the substantial delays that may be associated with an application to the sheriff may have a negative impact on their work, particularly in the case of small Third Sector organisations that may be required to complete a project within a short time-scale or else forfeit all or part of a grant received for the relevant project.

Summary

While we are in general agreement with the intention of the Order, we urge that it should be amended both to provide individuals with a realistic amount of time in which to notify their intention to submit an application to the sheriff, and to reduce the impact that a long drawn-out application, or consecutive applications, will inevitably have on both employers and potential employees, and, in particular, the negative impact that long delays will have on the employment, and therefore rehabilitation, of offenders. As we have suggested above, a partial solution to these contradictory objectives would be to reduce the six month window for applications to the sheriff to 20 working days, and thus the delay to organisations receiving Scheme Records to around a (still lengthy) six months.

² Partial Equality Impact Assessment <http://www.gov.scot/Resource/0048/00484978.pdf>

³ Partial Business and Regulatory Impact Assessment <http://www.gov.scot/Resource/0048/00484977.pdf>