

# **DISCLOSURE (SCOTLAND) BILL**

---

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Disclosure (Scotland) Bill, introduced in the Scottish Parliament on 12 June 2019.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 50-EN);
  - a Policy Memorandum (SP Bill 50-PM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 50-LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **THE BILL**

4. The Scottish Government is committed to reforming the disclosure regime to better balance proportionality and safeguarding. The policy of the Bill is to ensure:
  - unsuitable individuals do not gain access to children or protected adults through regulated roles, paid or unpaid;
  - people who are unsuitable are detected early and prevented from doing or seeking to do a regulated role;
  - it strikes the right balance between safeguarding and allowing individuals a right to a private life.
5. The provisions of this Bill will deliver a range of positive and proportionate reforms to the disclosure regime in Scotland whilst also strengthening the Scottish Government's ability to protect the most vulnerable in society. The key policy changes are:
  - reduce the number of disclosures from four main levels (basic, standard, enhanced and PVG) with ten products to two main levels (Level 1 and Level 2) with four products, plus 'confirmation of scheme membership' as a replacement for 'statement of scheme membership';

- end the automatic disclosure of convictions accrued by an individual while aged 12 to 17 years old;
- streamline the process to have certain spent convictions removed from Level 2 disclosures;
- provide Level 2 disclosure applicants with a right to comment on proposed Other Relevant Information (“ORI”) prior to that information being included on a disclosure;
- establish clear procedures for the registration of accredited bodies who can countersign Level 2 applications, including provisions to ensure the protection of individuals’ criminal history information;
- provide clarity on disclosure arrangements for individuals directly employing a PVG scheme member for, for example, personal care or home tuition of children;
- make it a requirement that anyone carrying out a regulated role (paid, or unpaid and voluntary) must be a member of the PVG Scheme;
- end life-time membership of the PVG Scheme and replace it with a five-year membership period;
- replace the concept of ‘regulated work’ in the Protection of Vulnerable Groups Act 2007 (“the PVG Act) with ‘regulated roles’;
- enable Scottish Ministers to impose standard conditions where appropriate on any individual who is under consideration for inclusion on one or both of the lists held under section 1 of the PVG Act, and to permit Ministers to give notice that a person is under consideration for listing and of their barred status;
- provide new referral powers for Police Scotland and Scotland’s councils and integration joint boards; and
- re-state and amend the lists of offences in schedules 8A and 8B of the Police Act 1997 (“the 1997 Act”).

## ***Part 1 of the Bill – sections 1 – 70 – Vetting***

### **COSTS ON THE SCOTTISH ADMINISTRATION**

6. It is anticipated that the provisions of the Bill will lead to an overall increase in costs, however these will reduce over time due to the efficiencies explained in paragraph 7. The expected costs fall into five categories: vetting, introduction of the independent reviewer (the independent reviewer was established under the Age of Criminal Responsibility Act 2019 (the “ACR Act”)), review applications, accredited bodies and digital delivery.

### **Vetting functions**

7. Vetting functions are those functions associated with checking a criminal record, applying all relevant rules and finalising the content of a disclosure certificate. The proposals within the Bill will likely reduce the cost of the vetting service, the efficiencies made from moving from the current paper-based system to a digital by preference system will result in savings. For example, the application process being offered online along with the reduced number of products will

simplify the current system and will yield efficiencies. There will be further savings due to automation in the disclosure certificate production process and, as time goes on, via the successive iteration of new improved technology to disclosure processing and the administration of the barring service. Stakeholders have consistently indicated a strong desire to engage with Disclosure Scotland using digital means. It is expected that the provisions within the Bill to allow a digital by preference service will lead to a significant increase in the numbers using digital services. This will result in a reduction of costs currently associated with vetting functions. It is estimated that efficiency savings of **£2.7 million** per annum will be progressively realised over the next two and a half years, due to investment in new technology and digital delivery. The majority (97%) of these savings will come from a reduction in the levels of staff as we move to a digital environment, for example, a reduction in manual processing which will not be impacted by digital uptake and the remainder through other operating costs, e.g. electricity and postage.

## **Independent reviewer**

### *Start-up costs*

8. The ACR Act 2019 will establish the role of the independent reviewer. This appointee will have already been provided with IT equipment, support and some training per their functional role required under the ACR Act. However, this Bill proposes to widen the remit of the independent reviewer. Additional training will be required on the widened remit. The independent reviewer will require a brief induction and training delivered by Disclosure Scotland staff. This will last no more than ten days at a daily rate of approximately £500 (£5,000), plus potential travel and subsistence costs up to £3,000 total. The maximum cost of this training will therefore be **£8,000**.

9. There are no plans to provide separate office space for the independent reviewer; it is proposed there should be a flexible working arrangement and access to a secure laptop that will allow the independent reviewer to work from their home or another secure building. Disclosure Scotland's IT services have advised that costs to support the process will be a one-off cost of £1,500 for any additional equipment, and then annual costs of approximately £1,200 for maintenance and consumables. These costs (**£2,700** in total) will be met from existing Disclosure Scotland IT and operational budgets.

10. Disclosure Scotland's staff will require initial training to ensure awareness of, and compliance with, the change to processes and procedures. Disclosure Scotland have advised that there is no requirement to backfill for training, and that existing training arrangements will be adapted to include the necessary material. Any additional training costs will be negligible, and subsumed within the existing Disclosure Scotland training budget.

<b>Start-up costs (one-off cost)</b>	<b>£10,700</b>
--------------------------------------	----------------

### *Administrative support for reviewer*

11. Disclosure Scotland will provide the administrative support to the independent reviewer, based on information from colleagues from Access Northern Ireland who have an independent reviewer and provide administrative support it is believed the following staff will be required on a recurring yearly basis:

<b>Role</b>	<b>Salary (range)</b>	<b>Recurring costs inc. Pension &amp; National Insurance (per year).</b>
1 FTE A3 Admin Support	£18,392 - £20,732	£25,296
<b>Estimated Total Costs</b>		<b>£25,296</b>

## **Review applications**

### *Internal applications for List A and List B offences (formerly schedule 8A and 8B convictions)*

12. Disclosure Scotland will have new powers to gather the relevant information from the relevant bodies, such as Police Scotland, to support a defensible decision on removal of convictions. Applicants will be able to provide representations in support of their application to have the conviction removed from their disclosure and there will be an administration fee prescribed to cover the costs of this application.

13. It is anticipated that once the internal appeal is introduced, Disclosure Scotland will process approximately 200 applications per year. Currently around 165 people per year intimate to Disclosure Scotland their intent to make an application to a sheriff to have a schedule 8A or 8B conviction (which will be replaced by conviction for a “List A offence” or a “List B offence” found in schedule 1 and 2 of the Bill) removed from their higher level disclosure certificate.

14. An administration fee will be charged by Disclosure Scotland. It is proposed that this fee will be £30 per application. This compares to £127 for the current application to a sheriff plus any additional legal fees. The fee will cover the administrative cost of the initial application, ensuring that the application is legally competent. The fee will also act to reduce the number of spurious claims. It is expected that expected income will be £6,000 per annum (200 applications multiplied by £30 fee per application).

15. A team will be set up in Disclosure Scotland’s Protection Services to process these appeal cases. The following will be the required staffing on a recurring yearly basis:

<b>Role</b>	<b>Salary (range)</b>	<b>Recurring costs inc. Pension &amp; National Insurance (per year).</b>
1 FTE A3 Admin Support	£18,392 - £20,732	£25,296
0.5 FTE B1 Caseworker	£24,580 - £27,515	£17,293
0.5 FTE B2 Senior Caseworker	£28,891 - £33,094	£20,123
0.5 FTE B3 Supervisor	£36,328 - £43,923	£26,827
<b>Estimated Total Costs</b>		<b>£89,539</b>

16. This is based on similar roles and functions carried out within Disclosure Scotland's Protection Services. The team structure shown allows for varying scales of decision making and scrutiny of decisions.

*Disclosure Scotland determination of childhood conviction information*

17. The Bill proposes that both Level 1 disclosures and Level 2 disclosures will not automatically include any criminal convictions for offences committed while aged 12 to 17. Instead, Level 1 and Level 2 disclosures will allow for the inclusion of such information, following a decision of the Scottish Ministers.

18. The Scottish Ministers, acting through Disclosure Scotland, may include text on a disclosure describing childhood conviction information. They may do so only after taking into consideration the specific role applied for<sup>1</sup>, the convictions that are on record and applying a process of structured assessment. Where the Scottish Ministers decide to include such information on a disclosure, the individual will be able to apply to the independent reviewer to review the Scottish Ministers' decision. The individual will also be able to make representations to the independent reviewer which must be taken into account when deciding if the childhood conviction information ought to be included on the disclosure (and if it is relevant to the purpose of the disclosure, if relating to a Level 2 disclosure).

19. It is anticipated that once this internal determination of childhood conviction information is introduced, Disclosure Scotland will process approximately 750 cases per year. The table below shows the number of all disclosure certificates containing convictions for offences committed whilst the applicant was aged 12-17. The number of relevant cases with a conviction (where the applicant was aged 12-17 at the time of the offence) processed by Disclosure Scotland has been in decline over the past three years. This trend can be attributed to the reforms made to the disclosure regime in 2015 which stopped the automatic disclosure of all conviction information. With the additional proposals within the Bill and the proposals within the Management of Offenders (Scotland) Bill, Disclosure Scotland does not expect to see any significant increase in these figures in the coming years, in fact, it is expected these figures will reduce. In view of this trend and reforms, an estimated 750 cases per year is realistic. Estimates for future years are shown in the table below, however it should be noted that these are based on limited data as it is a demand led service. In addition, the reforms in the disclosure regime in 2015 resulted in a notable decrease in higher level disclosures containing conviction information accrued whilst the applicant was aged 12-17, therefore there is a level of uncertainty around these estimates.

---

<sup>1</sup> Given the broad scope of Level 1 disclosures and the fact that no particular purpose is needed before an individual can apply for one, the test is whether information about the childhood conviction ought to be included in the disclosure. But for Level 2 disclosures the test is whether the childhood conviction is relevant for the purpose of the disclosure and whether information about it ought to be included. This two tiered test is appropriate and varies from Level 1 disclosures because there will always be a declared purpose for Level 2 disclosure applications.

**Table:** Applications for all levels of disclosure with a conviction accrued while applicant was aged 12 - 17:

	2015 - 2016	2016 - 2017	2017 - 2018	2018-19 and subsequent years (projected)
<b>Application type</b>				
Basic	300	300	280	230 to 330
Standard	210	70	70	60 to 90
Enhanced	50	20	10	Less than 30
PVG	990	440	450	380 to 480
<b>Total</b>	<b>1,550</b>	<b>830</b>	<b>810</b>	<b>670 to 930</b>

20. A new team will be required to be set up within Disclosure Scotland to deal with these cases. Based on the trend over the last two years, the assumption of 800 cases per year has been used, suggesting there will be an average of 60 cases per month to casework. The following staffing will be required on a recurring yearly basis:

Role	Salary (range)	Recurring costs inc. Pension & National Insurance (per year).
2 FTE A3 Admin Support	£18,392 - £20,732	£50,591
2 FTE B1 Caseworker	£24,580 - £27,515	£69,170
1 FTE B2 Senior Caseworker	£28,891 - £33,094	£40,246
1 FTE B3 Supervisor	£36,328 - £43,923	£53,653
<b>Estimated Total Costs</b>		<b>£213,660</b>

21. This is based on similar roles and functions carried out within Disclosure Scotland's Protection Services. The team structure shown allows for varying scales of decision making and scrutiny of decisions.

22. Total costs to Disclosure Scotland to introduce the first level review of the inclusion of a List A or List B offence on a Level 2 disclosure and the determination of childhood conviction information will be **£303,199**. Due to the reduction in automatic referrals (described in paragraph 93 with an estimated saving of £308,592) and the savings made from the digital service, it is expected that the costs will be covered by existing staff budgets. The additional cost requirement will be zero with a small **saving of £5,393** being realised. This is predicated on the additional

resource requirements needed for the appeals cases being offset against the predicted savings arising from stopping court referrals.

*Independent reviewer determination of childhood conviction information*

23. The Bill aims to limit disclosure of information relating to convictions by children aged 12-17, and that where disclosure is proposed it must be subject to independent review. Following commencement of the Bill, disclosure of this information will only be possible if the Scottish Ministers and the independent reviewer decide that the information should be disclosed. The ACR Act made provision for the appointment of an independent reviewer, who will be required to review all ORI relating to behaviour committed when the subject was under 12, this Bill will extend the role of this independent reviewer who will be required to review the information on those who have a conviction for an offence committed while aged 12-17 which the Scottish Ministers propose to include on a disclosure.

24. For the assessment of the potential costs associated with the independent review of this information, an estimate of one third of cases per year has been used. It is intended that the proposals within the Management of Offenders (Scotland) Bill and this Bill will reduce the number of convictions being disclosed on all disclosure types, along with the addition of Disclosure Scotland assessing information before being ratified by the independent reviewer, this figure is expected to reduce year on year. It is estimated around 250 cases per year will require ratification from the independent reviewer.

25. It is anticipated that the independent reviewer will work on the determination of childhood conviction information cases for no more than three days per month at a daily rate of approximately £500, equating to an estimated recurring annual cost of **£18,000**.

*Independent review of 8A and 8B convictions (List A offences and List B offences)*

26. The current system requires an application to be made to a sheriff to have a schedule 8A or 8B spent conviction removed from a higher level disclosure certificate. Respondents to the consultation on the disclosure regime reiterated that the current application for removal mechanism is complex and lengthy and advocated changes should be made to simplify the process. The Bill introduces a two-step process, allowing individuals to first make an application to Disclosure Scotland to have a conviction removed from their certificate.

27. If an applicant is dissatisfied with the Scottish Ministers' decision to include conviction for List A or List B offence on a Level 2 disclosure, they will now have the right to apply to the independent reviewer to review that decision. This would mean the independent reviewer is responsible for handling all types of appeals in relation to the disclosure of vetting information on disclosure certificates.

28. Unifying the review mechanisms in this way will go further in addressing users' concerns raised regarding cost, length of time and uncertainty about how to make an application. This will improve fairness and transparency and ensure that the process is understandable for applicants and stakeholders. It is also the case that applicants would be saved from paying for a summary application to the sheriff (£127), lodging legal papers or paying solicitor's fees.

*Independent review of Other Relevant Information (ORI)*

29. Currently, an applicant will see ORI at the same time as an employer. The applicant can dispute the content of the ORI but this is usually done once the disclosure has been made. ORI plays an important role in safeguarding. The Scottish Ministers intend that it must continue to be available to protect the public. These proposals aim to put ORI on a firmer and more proportionate footing so as to ensure that it serves a vital purpose for years to come. It is presently used very infrequently; certificates containing ORI are a tiny fraction of all higher level disclosures.

30. The Bill proposes to change the point at which the individual becomes aware of the police intention to include ORI on a Level 2 disclosure so that they have the opportunity to provide representations, first to the police and then to the independent reviewer during a second level review, before it is included in the disclosure they will share with employers or other third parties.

*Cost of independent review of 8A and 8B convictions and ORI*

31. For the assessment of the potential costs associated with the independent review of this information, an estimate of 180 cases per year has been used. This assumption is based in the current notifications to Disclosure Scotland in relation to schedule 8A and 8B applications and ORI disputes. The proposals within the Management of Offenders (Scotland) Bill and the Disclosure Bill seek to reduce the number of convictions being disclosed on all disclosure types, along with the addition of the first step of an internal appeal to Disclosure Scotland, it is anticipated that this figure will reduce year on year.

32. It is anticipated that the independent reviewer will work no more than one day per month on these two categories of review at a daily rate of approximately £500, equating to an estimated recurring annual cost of **£6,000**.

33. It will be necessary for public-facing material to be updated to reflect these new procedures and changes in the disclosure system. Disclosure Scotland estimates that this will require one-off expenditure of approximately £2,000 to allow for information to be updated as required. Disclosure Scotland are in the processing of developing extensive guidance on the current system in conjunction with stakeholders, the intention being that only minor updates to content will be required.

**Table:** Costs for independent reviewer – childhood conviction information, 8A and 8B conviction information and ORI disputes

<b>Independent reviewer</b>	Recurring cost (per year)	£24,000
<b>Induction and IT for independent reviewer</b>	One-off cost	£10,700
<b>Admin for independent reviewer</b>	Recurring cost (per year)	£25,296
<b>Public Facing Materials</b>	One-off cost	£2,000



## **Fees**

34. The Bill makes provision to allow the Scottish Ministers to make regulations for the charging of fees for Level 1 and Level 2 (non-scheme membership) disclosures and fees for accredited bodies.

### *Accredited bodies*

35. Accredited bodies will replace ‘registered persons’, under the 1997 Act, for access to Level 2 disclosures. An individual can apply without an accredited body to obtain a certificate confirming their PVG scheme membership status. When an organisation wants to become an accredited body they must register with Disclosure Scotland. Disclosure Scotland will then carry out checks to ensure the suitability of countersignatories to handle personal data, this is similar to the process currently and will result in no additional costs to Disclosure Scotland.

36. Disclosure Scotland provides businesses with the ability to obtain basic disclosures for a large number of job applicants using special arrangements that allow for bulk applications. This is known as Business 2 Business (B2B). Disclosure Scotland intends to continue to offer a B2B service for Level 1 disclosures to organisations that require it but are proposing these organisations should be brought within the scope of accredited bodies, as is the case just now for organisations who can see standard, enhanced and PVG disclosures. This will replace the current non-statutory definition of ‘responsible body’ for B2B customers.

37. Currently, registered persons pay an annual registration fee of £75, which entitles them to sign applications and allocate a further four persons as countersignatories. Additional countersignatories beyond this are an additional £15. There is an assumption that the structure of these fees will not change for accredited bodies. These fees have remained static since 2011. The proposal is to increase these fees in line with inflation, that means that accredited bodies will pay a registration fee of £100, with four additional countersignatories included. It would be £20 to apply to add additional countersignatories. It is estimated, based on the signatories that each body has now, that income received for all accredited bodies in line with the above will be £485,000 per annum.

### *Level 1 and Level 2 (non-scheme membership) fees*

38. Under the current system an applicant applying for a basic, standard or enhanced disclosure certificate will incur a fee for each application. The policy intent has been that individuals generally pay for their own basic, standard and enhanced disclosure applications, although in practice employers and organisations often pay this on behalf of the individual. A basic disclosure can be requested by an individual for any reason. The roles in which one may apply for a standard and enhanced disclosure are set out in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013. The Bill proposes that this will continue going forward in respect of the new Level 1 and Level 2 disclosure products.

39. A final decision has yet to be made in relation to fees for Level 1 and Level 2 (non-scheme membership) disclosure checks. There are a number of factors which will determine the final fee level, for example efficiencies from digital delivery could result in changes to the fees. For illustrative purposes the fee levels that would be required have been calculated using two models:

- (a) Model 1. Status Quo – all Part 1 disclosures cost £25
- (b) Model 2. Level 1 £25 (or £30 with subsequent disclosures at £17) and Level 2 £30.

40. Model 1 assumes that the cost of checks for Level 1 and Level 2 (non-scheme membership) stay the same as the current fee for basic, standard and enhanced checks. An applicant pays the stated fee for each disclosure, every time they need to get one. i.e. an applicant may have to pay for four basic checks when applying for various jobs, or they may change jobs that now requires a standard or enhanced disclosure.

41. Model 2 assumes the one-off cost of for a Level 1 disclosure will remain at £25. It also assumes a multiple application option where an applicant can pay a higher initial fee of £30 but a reduced fee (£17) for subsequent Level 1 disclosures. It would better reflect the current rise in short-term contract and freelance work to offer a higher initial fee, with a reduced fee for subsequent applications.

42. Model 2 assumes that the cost of a Level 2 (non-scheme membership) disclosure fee will increase to £30. This is because there is additional processing for a Level 2 disclosure including the possibility of having to process police information as ORI will be disclosable on every Level 2 (non-scheme membership) variation. A higher fee for Level 2 (non-scheme membership) is justifiable on this basis. It is the case in England and Wales that all higher level disclosures cost substantially more than the basic product.

43. The current intention is to adopt a fee structure for Level 1 and Level 2 (non-scheme membership), and most accurately reflects the full cost of providing each check. Fees will be set in regulations and will require a formal consultation, and Disclosure Scotland will continue to engage with stakeholders on fees. Actual income generated will be dependent upon the eventual fee level, the overall demand for services and the number of customers taking the multiple application option. The income estimate for Model 2 described would be in the region of £6,929,015; including £6,334,715 for Level 1 disclosures and £594,300 for Level 2 (non-scheme) disclosures. Model 1 income would be lower as the cost of a Level 2 (non-scheme) disclosure would be less (£25 compared to £30).

#### *Digital delivery*

44. Disclosure Scotland has been undertaking a digital transformation programme for a number of years to deliver a customer-focused digital platform designed around the needs of users. This transformation is separate from the Bill and has been built around the constraints of the current legislation. The Bill allows Disclosure Scotland to build on this transformation programme and offer a fully digital service co-designed with users that would not have been available under the previous legislation.

45. The programme to deliver the required digital functions to implement the Disclosure Bill will be developed on an agile basis. Agile programmes will generally operate from the basis of a user driven service design. The aim of the programme would be to deliver small pieces of working software as quickly as possible and use this as the basis of learning on how the service can be improved. This is delivered by small teams with all the necessary skills required to produce working software.

46. Disclosure Scotland will shortly commission work for the initial phases (the discovery and alpha parts) of a programme which will work with stakeholders to produce detailed options on how the principles of the Bill can best be delivered. This will result in a set of detailed requirements. These will inform the development work required to implement the Disclosure Bill. The initial phases will also identify the capital investment required for the years ahead, with a focus on best value and ensuring that new technology eliminates inefficiencies and generates savings. The initial investment required for the discovery and alpha phase is estimated as **£1.5 million**.

47. At this early stage, it is not possible to provide an exact position of the total cost of investment beyond the alpha work or how these costs will be phased. It has been estimated, based on the resources (operating costs) and capital investment required for Disclosure Scotland's current transformation programme, that a further minimum of **£17.5 million** will be needed. Although not a direct consequence of the Bill, the intention is to use digital delivery of services as the main method to implement the Bill's proposals. The capital investment (estimated as a minimum of £13.5 million) will be required to be fully funded by the Scottish Government. It is anticipated that the additional costs (a minimum of £4.0 million) will also be funded by Scottish Government although some resource-based costs may be able to be covered from the fee income generated by Disclosure Scotland. The final cost will depend upon the engagement with users which will determine the scope and specification of the work to be carried out, and the outcomes of any competitive tender with suppliers which aims to deliver these requirements in a way that obtains optimal public value.

## **COSTS ON THE SCOTTISH COURTS AND TRIBUNALS SERVICE**

48. It is anticipated that Part 1 of the Bill will result in some additional costs for the Scottish Courts and Tribunals Service ("the SCTS").

49. In respect of the provisions proposed in relation to conviction information for convictions accrued while aged 12 to 17, where applicants will be able to apply to the sheriff on a point of law only, the SCTS has indicated that it would incur additional costs of **£2,520** per year on the assumption of two appeals per month, this figure is based on assumptions made by the SCTS. Disclosure Scotland believe the number will be much lower than this.

50. The proposal to decrease the current disclosure periods from 15 years to 11 years will result in List A offences) schedule 8A convictions (currently schedule 8A offences becoming reviewable earlier, resulting in an increase in the number of applicants able to apply for removal of the conviction from their Level 2 disclosure. However, it will also result in List B convictions (currently schedule 8B offences) becoming removable sooner, resulting in a reduction in the number of convictions that will fall within scope of the application process. Therefore it is unlikely this change will impact on the number of applications to have convictions removed from certain disclosure certificates.

51. Under the current system applicants can apply to the sheriff to have a conviction removed from certain disclosure certificates. Since the introduction of the application mechanism in 2015 there have been 46 applications to a sheriff – 11 in 2016, 16 in 2017, 14 in 2018 and five to date in 2019. The Bill proposes to introduce allow applicants to apply to the Scottish Ministers to have List A and List B convictions removed, rather than to a sheriff, with a further review by the

independent reviewer available if the applicant is dissatisfied with the decision made by the Scottish Ministers. Applicants will be able to apply to the sheriff on a point of law only. The SCTS has indicated that it would incur additional costs of **£2,520** per year on the assumption of two appeals per month. Disclosure Scotland believe the number will be much lower than this as the current appeals numbers are very small, the additional steps prior to this will result in even fewer appeal cases going to the SCTS.

52. It is also proposed in the Bill that applicants will be able to appeal to the sheriff on a point of law only in relation to the disclosure of ORI on a disclosure certificate. For the purposes of the Financial Memorandum, the SCTS have made an assumption of two appeals per month which would give rise to additional costs to the SCTS of **£2,520** per year.

53. The independent reviewer, appointed as part of the changes to the disclosure system, will be able to request relevant information from the SCTS. Disclosure Scotland will also be able to request information. There will be ongoing costs on the SCTS for responding to these requests. It is anticipated that this will be required not more than 3 days per month for administrative staff to compile the information requested. The SCTS will incur additional costs which are expected to be **£4,050** per year.

54. Therefore the proposals within Part 1 of the Bill, based on the assumptions made, will result in a maximum cost per year of **£11,610** for the SCTS.

## **COSTS ON LOCAL AUTHORITIES AND HEALTH BOARDS**

### **Local authorities**

55. Part 1 of the Bill provides for the ability to charge fees for Level 1 and Level 2 disclosures as well registration fees for accredited bodies. These fees will be set in regulations.

56. An increase in accredited body fees from the current registered body fees will result in an increase in cost to local authorities. This increase is small and it is expected that the impact on local authorities will be minimal. Currently a local authority will pay £75, this will increase to £100. Local Authorities already incur administration costs in relation to discharging their registration duties set out in the code of practice, these duties will remain. However, there is likely to be a saving to local authorities with a move away from a paper-based system to a digital one.

57. With regard to replacing the current disclosures provided under the 1997 Act with Level 1 and Level 2 (non-scheme membership) disclosures, the table below shows the number of basic, standard and enhanced disclosures requested by local authorities in Scotland from 2015 to 2017. The 1997 Act does not specify the source of funding when paying the disclosure fee. Across Scotland, practice varies now as to whether the applicant or the local authority pays the fee; some local authorities will pay the fee initially then recoup the cost from the applicant over time. In light of that, it is not possible to identify to whom any additional cost will fall based on the fees proposals set out at paragraph 38 above. Based on an analysis of the 2018 numbers, it is anticipated that the Level 1 volumes may decrease further in coming years before reaching their “steady state” level, whereas Level 2 (non-scheme) are likely to continue at similar levels to those seen in 2017.

<b>Application Type</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Basic	5,758	3,291	2,785
Standard	180	192	150
Enhanced	1,132	1,120	941
<b>Total</b>	<b>7,070</b>	<b>4,603</b>	<b>3,876</b>

58. Minimal additional cost will be incurred by local authorities as a result of the amendments proposed within this Bill. If accepted there will be a small increase of £25 in registration fees. If the local authority decides to reimburse their employees for basic, standard or enhanced disclosures, this will result in no additional cost or a small increase of £5 for the costs of a standard or enhanced disclosure.

59. The simplification of the disclosure regime, as well as the digital delivery, will make the system more streamlined and less administratively onerous on local authorities. It is expected that the new regime will streamline the disclosure process and provide an online facility for requesting and sharing information which should cut administration costs for employers. It is expected that training in the use of the scheme will be integrated into ongoing recruitment training and existing policies.

### **Health boards**

60. Part 1 of the Bill provides for the ability to charge fees for Level 1 and Level 2 disclosures as well registration fees for accredited bodies. These fees will be set in regulations.

61. An increase in accredited body fees from the current registered body fees will result in an increase in cost to health boards. This increase is small and it is expected that the impact on health boards will be minimal. All health boards in Scotland are registered persons, and therefore it is expected they will become accredited bodies. Each health board will pay registration fees of £75 per year, and this will increase to £100 per year. Health boards already incur administration costs in relation to discharging their registration duties set out in the code of practice, these duties will remain. However, there may be a saving to health boards with a move away from a paper-based system to a digital one.

62. With regard to replacing the current disclosures provided under the 1997 Act with Level 1 and Level 2 (non-scheme membership) disclosures, the table below shows the number of basic, standard and enhanced disclosures requested by Scotland's health boards from 2015-2017. Across Scotland, practice varies now as to whether the applicant or the health board pays the fee, some will pay the fee initially and recoup the cost from the applicant over time. In light of that, it is not possible to identify to whom any additional cost will fall based on the fees proposals set out at paragraph 38 above.

<b>Application Type</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Basic	515	356	247
Standard	3,329	3,051	3,314
Enhanced	32	41	60
<b>Total</b>	<b>3,876</b>	<b>3,448</b>	<b>3,621</b>

63. Minimal additional cost will be incurred by health boards as a result of the amendments proposed within this Bill. If accepted there will be a small increase of £25 in registration fees. If the health board decides to reimburse their employees for basic, standard or enhanced disclosures, this will result in no additional cost or a small increase of £5 for the costs of each standard or enhanced disclosure.

64. The simplification of the disclosure regime as well as the digital delivery will make the system more streamlined and less administratively onerous on health boards. It is expected that the new regime will streamline the disclosure process and provide an online facility for requesting and sharing information which should cut administration costs for employers. It is expected that if any training in the use of the scheme is required it will be integrated into ongoing recruitment training and existing policies.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

### **Employers**

65. The increase of or the inclusion of accredited body fees will result in an increase in costs to employers. There are 1,613 responsible bodies (organisations which use basic disclosures as part of their recruitment process and are provided with a credit facility for payment) who will now fall within the definition of accredited bodies. These bodies will be impacted as they will now have to pay £100 per year in registration fees. Responsible bodies already incur an administrative cost in discharging their duties set out in the OPA (operational agreement they sign with Disclosure Scotland), and many of these duties replicate those provided for in the code of practice. There may also be a small administrative burden on these organisations in ensuring the discharge of any additional duties appropriately.

66. There are currently 3,935 registered bodies (employers which use higher level disclosures and are eligible to receive disclosure information, bound by a Code of Practice for the handling and use of disclosure products) and these organisations will see a small increase in registration fees from £75 to £100. Registered bodies already incur administration costs in relation to discharging their registration duties set out in the code of practice, these duties will remain. However, there may be a saving with a move away from a paper-based system to a digital one.

67. The policy intent has been that individuals generally pay for their own basic, standard and enhanced disclosure applications. However, if an employer chooses to reimburse their employee they will see either no additional cost for Level 1 disclosures or a small increase of £5 in their costs for each Level 2 disclosure application compared with standard and enhanced disclosure applications.

68. It is expected that the new regime will streamline the disclosure process and provide an online facility for requesting and sharing information which should cut administration costs for employers. It is expected that training in the use of the scheme will be integrated into ongoing recruitment training and existing policies. The inclusion of accredited body fees will increase the cost to those bodies by £161,300 (1,613 multiplied by £100 registration fee). If the fee doesn't change there will be no cost to registered bodies. However, if after further consultation there is an increase in fee levels the additional cost to those bodies will increase in line with the fee increase. Registered bodies may have the ability to offset this cost from a reduction in the administration cost for streamlining the disclosure process.

### **Professional regulatory bodies**

69. The proposals within the Bill should not result in any additional costs for professional regulatory bodies. A digital system will streamline the disclosure process, including the referral process, which should cut administration costs for regulatory bodies.

### **Police Scotland**

70. As the powers of the independent reviewer have yet to be outlined by Scottish Ministers, it is difficult to predict exact costs, therefore, the following calculations have been based on the current PVG dispute process and the projected number of disputes that will be raised by the independent reviewer in respect of ORI supplied by Police Scotland as a result of new applications for the PVG Scheme.

71. The annual figure provided of 150 such disputes relates only to new applications, it is anticipated that this figure could rise as a result of ORI being disclosed in respect of ongoing monitoring and subsequently challenged by a scheme member on learning of its existence through consideration for listing or when requesting an update.

72. When a dispute under the 2007 Act is received by Police Scotland, this requires a new enquiry to be raised so that the police information assessed in the original process leading to disclosure is reviewed and police information systems checked to ascertain if there is any additional or changed information held. In addition any representations made by the scheme member are considered and also researched against information held. The delegated signatories of the Chief Constable within Police Scotland are Lead Disclosure Officers, Disclosure Managers and the Information Manager (Disclosure). Disputes are reviewed by members of police staff who have not previously been involved in the original disclosure process.

73. It is therefore estimated that the additional recurring resources required would be:

<b>Role</b>	<b>Salary (range)</b>	<b>Recurring costs inc. Pension &amp; National Insurance (per year).</b>
1 FTE Disclosure Manager	£37,434 - £42,249	£53,933
1 FTE Lead Disclosure Officer	£32,778 - £37,247	£43,942

<b>Role</b>	<b>Salary (range)</b>	<b>Recurring costs inc. Pension &amp; National Insurance (per year).</b>
1 FTE Disclosure Officer	£25,132 - £28,558	£33,421
<b>Estimated Total Costs</b>		<b>£131,296</b>

74. These costs will be reviewed with Police Scotland once the powers of the independent reviewer are set out and guidance has been produced.

### **Volunteer Scotland Disclosure Services (VSDS)**

75. VSDS currently undertake a countersignatory function for all free checks and for paid checks for those smaller voluntary organisations not registered directly with Disclosure Scotland. Scottish Ministers provide a yearly grant to VSDS, it is proposed that this grant will continue as VSDS will be required to provide training and support to voluntary organisations in delivering the Disclosure Bill.

76. The grant for 2019/2020 is £752,000. It is anticipated this will increase by inflation year on year, with this increase being offset by future efficiency savings, although it is expected that the role of VSDS will evolve in line with the Transformation Programme being undertaken by Disclosure Scotland. Any additional costs associated with transition are anticipated to be contained within current levels of grant funding where possible.

### **Voluntary sector organisations**

77. All checks for volunteers working in a regulated role in qualifying voluntary organisations will continue to be provided free, unless the individual also has paid employment in a regulated role. This will be achieved through continuing subsidy from the Scottish Ministers. Voluntary sector bodies will receive training and other support to ensure they can carry out the obligations placed on them proposed in the Bill.

### **Scottish Legal Aid Board (SLAB)**

78. No additional costs to SLAB are anticipated in relation to the application to a sheriff for the removal of a conviction from a Level 2 disclosure. It is anticipated there will be a reduction in the current costs to SLAB as applicants will be making their application for review to the independent reviewer, not the sheriff. An appeal will be available to the sheriff on the point of law only, it is believed that these figures will be very low, costs are predicted to be no more than **£8,000** per year. This is based on the fact that these would be similar to other civic government appeals, where costs are limited to £1,000.

### **Individuals**

79. Under the current system individuals generally pay for their own basic, standard or enhanced disclosures. It is not envisaged this will change if the proposals within the Bill are enacted. The revised fee structure would reduce the burden on people who, due to the transitory



nature of their employment, have to apply several times over a period of time. For Level 1 disclosures, individuals who create an account for multiple applications would benefit from a reduced charge in subsequent applications.

80. If there is an increase in a Level 2 (non-scheme membership) cost from £25 to £30, this will result in an increase in costs for applicants using this disclosure. However, the digital delivery of Level 2 (non-scheme membership) disclosures will make the system more efficient, flexible and easier for the applicant to navigate. There will also be a saving for those individuals who wish to appeal or dispute the information on their certificate.

#### **SUMMARY OF COSTS RELATING TO PART 1 OF THE BILL**

<b>COSTS FALLING ON THE SCOTTISH GOVERNMENT</b>		
<b>Provision</b>	<b>Anticipated costs</b>	<b>Any recurring, additional costs/reasons for anticipated costs</b>
<b>Vetting (paragraph 7 )</b>	None (no additional cost is anticipated)	
<b>Independent reviewer costs (paragraphs 8 – 11)</b>	£35,996	£25,296 recurring cost
<b>Disclosure Scotland review applications (paragraphs 12 - 22)</b>	None (it is expected that these costs will be offset by savings from stopping automatic referrals and digital efficiencies)	
<b>Independent reviewer review applications (paragraphs 23 – 33)</b>	£26,000	£24,000 recurring cost
<b>Digital delivery (paragraphs 44 – 47)</b>	£1,500,000	Additional investment will be required (£17,500,000 estimate)
<b>COSTS FALLING ON THE SCOTTISH COURTS AND TRIBUNAL SERVICE</b>		
<b>Point of Law appeals &amp; Info requests (paragraphs 48 – 54)</b>	£11,610	£11,610 recurring cost
<b>COSTS FALLING ON LOCAL AUTHORITIES &amp; HEALTH BOARDS</b>		
<b>Registration fees</b>	Minimal	Increase in registration fee from £75 to £100. Potential savings through digital services

<b>Application costs</b>	Minimal	Increase in £5 on current fees.
<b>COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES</b>		
<b>Employers</b>	Minimal	Increase in registration fee from £75 to £100. Increase in £5 for application costs. Savings through digital services
<b>Professional regulatory bodies</b>	None	
<b>Police Scotland</b>	£131,296	£262,592 – could increase is number of appeals increase due to ORI submitted from ongoing monitoring of current scheme members
<b>Volunteer Scotland Disclosure Services (VSDS)</b>	None	
<b>Voluntary sector organisations</b>	None	
<b>SLAB</b>	£8,000	£8,000 recurring cost
<b>Individuals</b>	Minimal	Increase in £5 for application costs. System will be more streamlined and flexible
<b>Total Costs</b>	<b>£1,712,902</b>	

**SUMMARY OF INCOME RELATING TO PART 1 OF THE BILL**

Level 1 disclosures (Model 2)	(£6,334,715)	Income shown is an estimated average over a five-year period based on Model 2 in para. 39, commencing in Financial Year 22/23. The final amounts generated will be dependent upon fees payable and demand for services.
Level 2 (non-scheme) disclosures (Model 2)	(£594,300)	
Accredited bodies	(£484,000)	
Review applications	(£6,000)	

<b>Total Income Estimate</b>	<b>(£7,419,515)</b>	
------------------------------	---------------------	--

## ***Part 2 of the Bill – sections 71 - 86***

81. Part 2 of the Bill makes a number of changes to the Protection of Vulnerable Groups (Scotland) Act 2007. It is anticipated that the provisions of the Bill will lead to an increase in overall costs. These expected costs fall into 3 categories: scheme membership, consideration for listing and barring provisions.

### **COSTS ON THE SCOTTISH ADMINISTRATION**

#### *PVG scheme membership*

82. The Bill makes provision for a mandatory Scheme with a recurring membership period. The Bill also replaces regulated work with regulated roles (with reference to the activities carried out as a necessary part of a role).

83. Currently the Scheme is not mandatory, however, membership is a requirement for a number of professional regulatory bodies as well as a condition of employment in a number of professions. The Scheme is often treated as mandatory by employers, as it is an existing offence under the PVG Act to offer work to an individual who is barred and the way of checking that an individual is not barred is to receive confirmation that the individual is member of the PVG Scheme. The current PVG Scheme is a lifetime membership scheme with minimum scope to leave the Scheme. Extensive customer research in recent years confirms that a large number of those presently in the PVG Scheme are no longer doing regulated work with children or protected adults because they joined the Scheme to undertake a short-term role or have otherwise chosen to leave regulated work. Disclosure Scotland estimates that as many as 20% of the current scheme membership of over one million members fall into this category. This is supported by the research carried out by Progressive, a company commissioned by Disclosure Scotland to carry out customer research on the services provided by Disclosure Scotland, who found that of those asked 79% were still in regulated work, both voluntary and paid<sup>2</sup>.

84. The 2007 Act does not currently give the Scottish Ministers a power to remove a member from the Scheme unless the person is barred from regulated work which is clearly an inappropriate approach in the vast majority of cases. Scheme members can ask to be removed from the Scheme if they stop doing regulated work but very few do ask. The research carried out by Progressive, on behalf of Disclosure Scotland, found that 35% of those asked did not know they could leave the PVG Scheme and 44% never thought about leaving, even if no longer doing regulated work.

85. Disclosure Scotland has attempted to contact many thousands of inactive scheme members in 2016 and 2017, experiencing a very low rate of customer response and only a very limited reduction in inactive membership. As a result of the reasons set out in paragraphs 83 and 84, there is an inbuilt tendency in the present design of the PVG Scheme to inflate in size, with those who join the Scheme subject to ongoing monitoring for life. Introducing a recurrent membership period ensures that the membership self-adjusts to the right size because people who do not need to be in

---

<sup>2</sup> <https://www.progressivepartnership.co.uk/stakeholder-research.html>

it have the incentive and easy possibility to safely leave. In the consultation a range of options for membership length were suggested. The Bill proposes a recurrent five year scheme membership which reflects the most popular option from the consultation.

86. Disclosure Scotland staff will need some training on the changes to the current fee structure. New procedures will need to be developed to ensure applicants renew their membership or are removed safely from the scheme. Existing training arrangements will be adapted to include the necessary material. Any additional training costs will be negligible, and subsumed within the existing Disclosure Scotland training budget.

*Digital delivery*

87. Paragraphs 44 – 47 covers digital delivery in relation to both parts of the Bill.

*Communication and marketing*

88. Costs incurred for communications and marketing will be met from current communications and training budgets.

*Training and guidance*

89. The Customer Engagement Team within Disclosure Scotland currently provide various training courses for stakeholders, as well as providing guidance and advice. The training and guidance during the implementation of this Bill will be delivered by the customer engagement team. Additional staff requirements to enable delivery is:

<b>Role</b>	<b>Salary (range)</b>	<b>Recurring costs inc. Pension &amp; National Insurance (per year).</b>
<b>1 FTE A3 Admin Assistant</b>	£18,392 - £20,732	£25,296
<b>2 FTE B1 Stakeholder Events Officer</b>	£24,580 - £27,515	£69,170
<b>3 FTE B2 Stakeholder Manager</b>	£28,891 - £33,094	£120,738
<b>1 FTE B3 Customer Engagement Manager</b>	£36,328 - £43,923	£53,653
<b>Estimated Total Costs</b>		<b>£268,857.00</b>

90. These staffing requirements are based on current grades and roles within the Customer Engagement Team who carry out similar duties. It is unclear at this stage if the efficiencies in the digital transformation already taking place within Disclosure Scotland, as well as, any other efficiencies made from the Bill will result in additional staff being recruited to carry out this work or whether the staff requirement can be met within the current staffing costs within Disclosure Scotland.

91. Taking account of the proposed changes to the current disclosure regime, costs, based upon recent events of a similar nature and therefore representing robust estimates with little margin of error, as follows:

<b>Category</b>	<b>Additional costs for implementing Bill</b>
<b>Hospitality</b>	£10,000
<b>Event hire (external to SG building)</b>	£20,000
<b>Travel costs and travel &amp; subsistence</b>	£5,000
<b>Conferences (hiring exhibition space)</b>	£2,500
<b>Merchandise, printed guidance etc.</b>	£10,000
<b>Total</b>	£47,500

92. It is estimated that the maximum cost that will be required to ensure that adequate training and guidance is developed and delivered is approximately **£316,357**, each year for two years following commencement of the Bill. This will be less if some or all of the staff costs can be met from within existing staff costs. This will become clearer as the transformation programme continues to progress.

#### *Barring functions*

93. Under the current system, Protection Services receives approximately 1,200 relevant offences court referrals per year (approximately a quarter of the Protection Services caseload). This volume equates to around a fifth of the total time spent processing barring cases. It is anticipated that removing these referrals will result in a saving in staff costs of £308,592. However, these will be offset by the costs stated in paragraph 22 and the cost of delivering the new referral powers for police and local authorities, the increase in age to 25 for applications to be removed from the barred lists and the delivery of standard conditions. Proposals for Disclosure Scotland to act as the secretariat for the independent reviewer considering whether to disclose information about convictions accrued while aged 12-17 and whether to remove ORI from disclosures will also impact on these savings. This is further discussed below with projected costs.

94. Although the relevant offences court referrals will end, the new referral powers for Police Scotland and local authorities will result in an increase in organisational referrals. Although difficult to predict it is not anticipated that these referrals will be anywhere near the 1,200 that Protection Services currently receives per year from Scottish courts.

95. Under the current system an individual may apply for removal from the barred list(s) at any time if they can demonstrate that their circumstances have changed. In addition, individuals may apply for removal after a certain prescribed time period has elapsed. The Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late

Representations) Regulations 2010 set this period at 10 years from the date of inclusion in the list in question for those aged 18 or over and a period of 5 years for those listed under the age of 18 years. The new provisions to be made in regulations to be made under section 25(3)(a) of the PVG Act propose the age threshold for the shorter prescribed period of five years should be raised to those listed under the age of 26 years.

96. Since the commencement of the 2007 Act, Disclosure Scotland has listed 5,295 individuals. Just over 100 people were under the age of 18 at the time of inclusion in the list(s), and almost 600 were aged between 18 and 25 years at the time of inclusion in the list(s). Disclosure Scotland has received less than 50 applications for removal since the commencement of the 2007 Act. It is not expected that the increase in the age threshold will result in a significant increase of removal applications, therefore having a minimal financial impact.

97. Disclosure Scotland will have new powers to impose standard conditions on people who are under consideration for listing, where it is considered to be necessary for the protection of the public or is otherwise in the public interest. Disclosure Scotland will issue an interim decision to the individual with details of the conditions imposed on them, and Disclosure Scotland will apply to the sheriff for a final determination.

98. Standard conditions will only be imposed in the most serious cases, and it is anticipated that there will be between 50 - 100 cases per year. Disclosure Scotland considers around 3000 individuals per year for suitability to work with vulnerable adults and children, these figures are based on intelligence gathered from decision makers within the protection unit. Disclosure Scotland staff will require initial training to ensure awareness of, and compliance with, the change to processes and procedures. Existing training arrangements will be adapted to include the necessary material. Any additional training costs will be negligible, and subsumed within the existing Disclosure Scotland training budget.

## **SCOTTISH COURT AND TRIBUNAL SERVICE**

99. The Scottish Court and Tribunal Service (SCTS) has indicated that the provisions relating to standard conditions and the mandatory scheme within Part 2 of the Bill will result in some financial costs to the SCTS, however, based on the assumptions made, some of these additional costs will be met within current budgets.

100. The SCTS notes that provisions create new offences and penalties relating to breach of standard conditions and the mandatory scheme. The SCTS will incur additional costs in relation to the prosecution of these new offences in respect of:

- court time and relative court programming
- associated staff and accommodation resources
- costs involved in any relevant IT changes.

101. The cost to the SCTS of processing additional cases will be dependent on the level of court in which the new offence is tried. The Bill proposes that these will be tried summary level. The Scottish Government publication 'Costs of the Criminal Justice System in Scotland 2014/15' estimates the average cost of criminal cases in the sheriff court under summary procedure at **£385**.

102. However, given the low volume of cases in which conditions will be imposed and thus possibly breached, it is anticipated that any additional costs would fall within current programming and budgets. This would include post sentencing costs such as enforcement of financial penalties or applications in relation to community based disposals (for example breaches and variation/revocation etc.).

103. Part 2 of the Bill proposes to remove the provisions under section 7 (mandatory and discretionary referrals by the court to the Scottish Ministers). The SCTS will require to make changes to its IT systems which were configured to facilitate the referral process. The additional cost for this work to be carried out will be met within current budgets.

104. There are a number of proposals within the Bill that could result in increased costs. The SCTS estimates that the proposals to allow a sheriff to approve standard conditions would have an impact on court time and associated staff and accommodation resources. The SCTS has indicated, based on the figures provided by Disclosure Scotland for applications of eight per month, would result in an additional recurring estimated cost of **£10,080** per year.

#### *Savings*

105. The SCTS anticipate that the Bill will give rise to some savings. The removal of the section 7 referrals by the court will result in a saving. According to the SCTS case management system, there is an average of around 100 such referrals by the courts to Disclosure Scotland each month. This will potentially generate some ‘time releasing’ savings for SCTS staff.

106. The SCTS also anticipate savings, based on Disclosure Scotland’s assumption that as a consequence of the mandatory scheme, requests under section 19 of the 2007 Act will decrease. Disclosure Scotland indicate that there is a likelihood of a reduction of 25% in such requests which will potentially generate ‘time releasing’ savings for the SCTS.

#### **LOCAL AUTHORITIES AND HEALTH BOARDS**

107. The cost of administrating recurring scheme membership for their employees is expected to be minimal as individuals will be responsible for their scheme membership. The only cost incurred by a local authority or health board in relation to scheme membership will be when an individual does not renew their membership and Disclosure Scotland check with employers that the individual is no longer working for them, as is currently done. This is to ensure individuals are no longer doing the work they joined for and can be safely removed from the Scheme. Disclosure Scotland have engaged with some health boards and local authorities to try and understand the costs of administrating the current scheme. This is difficult as each organisation does it differently, some employ FTE who solely administer the scheme, whilst others include the duties within other roles. The current system is paper-based, which is time-consuming and complex, and can often result in recurring engagement with the applicant to ensure the information being submitted to Disclosure Scotland is correct. During engagement with local authorities and health boards and in the response to the statutory consultation, many organisations stated that a move to a digital system would make savings in resource and time. It is thought that the movement to a more individual focused regime and digital delivery of the Scheme will result in savings for local authorities and health boards.

### *Providing information to Disclosure Scotland*

108. Local authorities will continue to need to be in a position to provide information to Disclosure Scotland and comply with requests for further information in respect of any particular case. The proposals within the Bill give local authorities a power to refer when acting in a role other than as regulated role provider, i.e. when undertaking a safeguarding role. For example, following a child protection investigation a local authority may find that a parent has harmed a child. The local authority is also aware that the parent is employed in a regulated role and thinks Disclosure Scotland may consider it appropriate for the person to be included in a barred list. There was a lot of support from local authorities during engagement sessions, as well as, the formal statutory consultation. The number of additional referrals for this proposal alone are not expected to be high. The proposals within the Bill will not increase the burden on local authorities to provide information to Disclosure Scotland. Indeed, it is expected that the new Scheme will streamline the request and submission of information and provide an online facility which should cut administration costs for employers.

## **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

### **Employers**

109. It is expected that the new regime will streamline the disclosure process and provide an online facility for requesting and sharing information which will cut administration costs for employers.

110. The Scottish Government believe that the cost of administering recurring scheme membership for their employees will be minimal as individual scheme members will be responsible for renewing their membership. The current system is paper-based, which is time-consuming and complex, and can often result in recurring engagement with the applicant to ensure the information being submitted to Disclosure Scotland is correct. The movement to a more individual focused regime and the digital delivery of the scheme will result in savings for employers. It is clear from stakeholder engagement that there is a real desire for a digital service, however, if an employer chooses to continue with non-digital system there will be no additional costs than currently.

### **Professional regulatory bodies**

111. The proposals within the Bill will not result in any additional costs for professional regulatory bodies. A digital system will streamline the disclosure process, including the referral process, which should cut administration costs for regulatory bodies.

### **Police Scotland**

112. Under the 2007 Act, the police can only provide relevant non-conviction information about a person who is already a PVG scheme member. There was strong support from stakeholders to do more to close that safeguarding gap by further widening the powers available to Police Scotland so that they can provide non-conviction information about people who were not, but should have been, PVG scheme members.



113. The Disclosure Bill provides that Police Scotland will in future be able to make referrals to Disclosure Scotland. This will apply in circumstances where a person is working with vulnerable groups unlawfully because they did not join the PVG Scheme as required. In this scenario, the police could make a report to the Procurator Fiscal for the offence of failing to join the PVG Scheme and at the same time could also provide information to Disclosure Scotland about the individual working without being a scheme member which could be capable of triggering that person being considered for listing. These numbers are expected to be very low, resulting in some additional costs to Police Scotland that are difficult to quantify at this stage but will be reflected in discussions relating to Disclosure Scotland's annual payment to Police Scotland.

### **Volunteer Scotland Disclosure Services (VSDS)**

114. Paragraphs 75 - 76 set out the costs for VSDS in relation to both parts of the Bill.

### **Voluntary sector organisations**

115. All checks for volunteers working in a regulated role in qualifying voluntary organisations will continue to be provided free, unless the individual also has paid employment in a regulated role. This will be achieved through continuing subsidy from the Scottish Ministers. Voluntary sector bodies will receive training and other support to ensure they can carry out the obligations placed on them proposed in the Bill. The ongoing move from an onerous paper based system to a digital system should result in a lower administrative burden for voluntary organisations resulting in savings in time and/or staffing.

116. There may be some cost to voluntary organisations in the implementation of standard conditions for people being considered for barring. It is expected that the number of cases with standard conditions will be so low that the burden on voluntary organisations will be low.

### **Scottish Legal Aid Board**

117. Legal aid will be available in relation to legal advice and representation in appealing standard conditions. It is predicted that these numbers will be very low, this assumption is based on the number of individuals who have appealed their inclusion on the barred list. Since the inception of the PVG Act in 2011 there have been 52 appeals. The number of people listed each year is far higher than the predicted number of cases with standard conditions, Costs are predicted to be no more than £7,000 per year. This is based on the fact that these would be similar to other civic government appeals, where costs are limited to £1,000.

### **Individuals**

118. The current Scheme provides for a lifetime membership, currently some employers will pay for scheme membership, some employers pay for scheme membership initially and recoup costs over time from employees and some individuals pay for their own membership. It is proposed that individuals will be responsible for their scheme membership. The current scheme costs £59 for lifetime scheme membership and a subsequent £18 for additional updates; good practice amongst many organisations is to get an update every three years.

119. The Bill proposes a time limited scheme membership, the current scheme is a lifetime membership scheme, which has resulted in the scheme size to inflate as people are reluctant to remove themselves from the scheme when they are no longer doing regulated work. Scottish Ministers may charge a recurring fee for time limited membership. The proposals in the Bill intend to make the disclosure system in Scotland more individual-focused, allowing individuals more control over their own information and how and when it is shared. The policy preference is that individuals will be responsible for their own PVG scheme membership, the individual will commit an offence if they do any regulated role whilst not in the PVG Scheme and it is therefore right that they have personal responsibility to ensure their membership is up to date. Members will accrue significant personal benefits such as being able to use the disclosure system as many times as they need during the five year period of membership, including with multiple different employers, a saving to both individuals and (where they would have previously paid) the employer.

120. Time limited membership may be linked to a recurring fee, the following examples are for illustrative purposes to show some varying costs to for one scheme member over a 20 year working period, depending on how they use the current scheme and a five year membership with current fees.

(a) Example 1. Lifetime membership – No updates

This would result in a one off cost of **£59** for that individual. There would be no ongoing costs.

(b) Example 2. Lifetime membership – three yearly updates

This would result in an initial cost of £59 for each employee, with an additional £126 for three yearly updates in that 20 year period. This would result in a total of **£185** during a 20 year working period

(c) Example 3. Five year recurring scheme membership (using the current £59 fee for illustrative purposes)

This would result in a total cost of **£236** over a 20 year period.

121. Disclosure Scotland figures are around 435,000 individuals pay for their own membership and any updates; for those that don't currently pay, the provisions within the Bill may result in increased costs for them. For some individuals the current fee of £59 lifetime membership is all they will pay in their membership of the scheme. However, it is known that a number of scheme members request additional full scheme records at £59 or scheme updates at £18, that is an update checking whether there is any new information held on the applicant. An example is a current scheme member who is a care worker working with protected adults. This scheme member made 11 applications for an update of their scheme record in a five year period (between 1<sup>st</sup> April 2014 and 1<sup>st</sup> April 2019) for different organisations. Each update costs £18 (£198 total). The scheme member also made four full scheme record applications during this time for different organisations at a cost of £59 each (£236 total). The total cost in using this scheme membership, over the five year period, was **£434**. This shows that individuals can benefit from the recurring membership that allows them to access and disclose their information at no extra cost over that five year period.

122. The current intention is to adopt a fee structure for PVG scheme membership that most accurately reflects the full cost of providing the service, i.e. full cost recovery. Fees will be set in regulations which will require further consultation prior to being laid before the Parliament.

Stakeholder engagement will continue to help determine appropriate fees and payment methods, exploring options which might provide more flexibility in how people can pay for their disclosure.

## **SUMMARY OF COSTS RELATING TO PART 2 OF THE BILL**

<b>COSTS FALLING ON THE SCOTTISH GOVERNMENT</b>		
<b>Provision</b>	<b>Anticipated costs</b>	<b>Any additional costs/reasons for anticipated costs</b>
<b>Scheme membership</b>	Minimal (no additional cost is anticipated)	
<b>Digital delivery</b>	See digital delivery costs in Part 1	See digital delivery costs in Part 1
<b>Training and guidance</b>	£316,357	It is likely to the actual cost to the Scottish Government will be less. The expectation is that a proportion of the staff costs will be met within current staff budgets.
<b>Barring functions</b>	Minimal	
<b>COSTS FALLING ON THE SCOTTISH COURTS AND TRIBUNAL SERVICE</b>		
<b>Referrals and standard conditions</b>	£10,080	£10,080 recurring cost
<b>COSTS FALLING ON LOCAL AUTHORITIES &amp; HEALTH BOARDS</b>		
<b>Scheme membership</b>	Minimal	
<b>Referrals</b>	Minimal	
<b>COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES</b>		
<b>Employers</b>	Minimal	
<b>Professional regulatory bodies</b>	None	
<b>Police Scotland</b>	Minimal	Will be reviewed with Police Scotland.
<b>Volunteer Scotland Disclosure Services (VSDS)</b>	None	

<b>Voluntary sector organisations</b>	None	Will receive training and support to carry out their obligations
<b>SLAB</b>	£7,000	£7,000 recurring cost
<b>Individuals</b>	Possible recurring scheme membership fee	Savings long term for applicants who are in transient jobs, or work across different local authorities, health boards etc
<b>Total Costs</b>	<b>£333,437</b>	

#### **SUMMARY OF COSTS RELATING TO PARTS 1 AND 2 OF THE BILL**

PART 1	£1,712,907
PART 2	£333,437
<b>TOTAL COSTS</b>	<b>£2,046,344</b>

#### **SUMMARY OF INCOME RELATING TO PART 1 OF THE BILL \***

Level 1 disclosures (Model 2)	(£6,334,715)	Income shown is an estimated average over a five-year period based on Model 2 in paragraph 39, commencing in Financial Year 22/23. The final amounts generated will be dependent upon fees payable and demand for services.
Level 2 (non-scheme) disclosures (Model 2)	(£594,300)	
Accredited bodies	(£484,000)	
Review applications	(£6,000)	
<b>Total Income Estimate</b>	<b>(£7,419,515)</b>	

\* It is not possible to estimate the income for Part 2 of the Bill. As is set out in paragraph 121, fees will be set in regulations which will require further consultation prior to being laid before the Parliament. Stakeholder engagement will continue to help determine appropriate fees and payment methods, exploring options which might provide more flexibility in how people can pay for their disclosure.



*This document relates to the Disclosure (Scotland) Bill (SP Bill 50) as introduced in the Scottish Parliament on 12 June 2019*

# **DISCLOSURE (SCOTLAND) BILL**

## **FINANCIAL MEMORANDUM**

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -  
[www.scottish.parliament.scot](http://www.scottish.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:  
[www.scottish.parliament.scot/documents](http://www.scottish.parliament.scot/documents)