

PVG Scheme Membership for Members of Boards of Health Bodies

A consultation

August 2018

Contents

	Pages
Responding to this Consultation	2-3
<u>PVG Scheme Membership for members of Boards of Health Bodies</u>	4-9
<u>Background and Context</u>	4
<u>Current Policy</u>	5-8
<u>Proposals</u>	8
<u>Implementation</u>	8 - 9
<u>Consultation Questions</u>	10
<u>Annex A – The Role of Boards</u>	11-12
<u>Annex B – Disclosure Checks</u>	13-14
<u>Annex C – Cost Implications</u>	15
<u>Annex D – Key Functions of Health Boards, The Agency and HIS</u>	16
<u>Annex E – Respondent Information Form</u>	17

Responding to this Consultation

We are inviting responses to this consultation by 23 November 2018.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space (<http://consult.gov.scot>). Access and respond to this consultation online at <https://consult.gov.scot/health-and-social-care/pvg-scheme-for-members-of-boards-of-health>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 23 November 2018.

If you are unable to respond using our consultation hub, please complete and return the Respondent Information Form to:

Laurie Whyte
Office of DG CE NHS Scotland
2 EN
St Andrews House
Regent Road
Edinburgh
EH1 3DG

Or by email to HBPVGConsultation@gov.scot

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document at **Annex E**.

To find out how we handle your personal data, please see our privacy policy: <https://beta.gov.scot/privacy/>

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at HBPVGConsultation@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

PVG Scheme Membership for Members of Boards of Health Bodies

Purpose

1. The purpose of this paper is to explore proposals for members of the Boards of Health Bodies to become members of the Protection of Vulnerable Groups (“PVG”) Scheme.
2. Please note that the term Health Bodies relates to all Health Boards and Special Health Boards as constituted under Section 2 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) as well as the Common Services Agency (“the Agency” otherwise known as NHS National Services Scotland) and Healthcare Improvement Scotland both also constituted under the 1978 Act.

Background

3. Currently, non-executive members of the Boards of Health Bodies are not legally required to undergo any form of disclosure check prior to appointment, instead we rely on declarations made during the appointment process. Furthermore, the role of Board members, is not specifically covered by existing PVG legislation. To address this, the Cabinet Secretary for Health and Sport, approved proposals to make it a requirement for members of the Boards of Health Bodies to be PVG Scheme members.
4. In taking this forward, we would welcome your views on how this policy should be implemented, specifically whether it needs to be applied to all Board Members and all Health Bodies.

Context

5. The Boards of Health Bodies are responsible for ensuring that the organisation delivers its functions in accordance with the Scottish Ministers’ policies and priorities. They are responsible for setting strategy, ensuring accountability and shaping organisational culture. In doing so, Board members have significant power and influence over the way in which healthcare services are delivered and governed and how organisational policies are implemented. Information about the roles of Board Members is attached at **Annex A**.
6. Furthermore, in their role, non-executive members are increasingly encouraged to conduct walk-throughs of front-line services and to speak to service users, which will include staff, volunteers, patients, carers and other partners who work with the NHS to provide services. They are granted access to hospitals and other premises for this purpose. Therefore, the Scottish Ministers and members of the public need to have confidence and trust that those appointed to Boards are of suitable character to undertake these duties.

Current Policy

7. Currently, there is no consistently applied approach to background checks for Board Members. For executive members, who are employees of the Board, guidance on the level of check required is set out in the NHS Scotland PIN Policy on Safer Pre and Post Employment¹. This states that the level of check should be dependent on their role. For Chairs and non-executive members, this guidance does not apply as they are not employees of the Board and there is no legal requirement for them to undertake any form of background check prior to appointment. Instead, people applying to Boards are asked to pass a 'Fit and Proper Persons Test', which is conducted during the appointment process.

8. In the context of public appointments a Fit and Proper Person is an individual who is suitable for appointment because they meet the requirements of the role, and their past or present activities (and/or behaviours) mean that they are suitable to be appointed. Candidates are asked to declare: any conflicts of interest; their conduct to date; that they can meet the time-commitment; and, that they will observe and adhere to the Principles of Public Life in Scotland and the Model Code of Conduct for Members of Devolved Public Bodies in Scotland².

9. The Model Code of Conduct for Members of Devolved Public Bodies forms part of the ethical framework introduced under the Ethical Standards in Public etc.. (Scotland) Act 2000³. Complaints and breaches of the Code of Conduct are investigated by the Commissioner for Ethical Standards in Public Life in Scotland and where appropriate, sanctions are applied by the Standards Commission if it finds that there has been a breach of the Code.

10. The Model Code of Conduct is based on the Principles of Public Life in Scotland, which are: duty; selflessness; integrity; objectivity; accountability and stewardship; openness; honesty; leadership; and, respect. These principles are consistent with the values of NHS Scotland as set out in Everyone Matters⁴ which are: care and compassion; dignity and respect; openness, honesty and accountability; and, quality and teamwork.

¹ Safer Pre and Post Employment Checks in NHS Scotland PIN Policy
<http://www.gov.scot/Publications/2014/03/7176/0>

² The Model Code of Conduct for Members of Devolved Public Bodies -
<http://www.standardscommissionscotland.org.uk/uploads/files/1441975567144195932700442087.pdf>

³ The Ethical Standard of Public Life etc. (Scotland) Act 2000 -
<http://www.legislation.gov.uk/asp/2000/7/contents>

⁴ Everyone Matters 2020 Workforce Vision - <https://beta.gov.scot/publications/everyone-matters-2020-workforce-vision-implementation-plan-2017-18/pages/7/>

11. The new approach to Executive Leadership and Talent Management⁵ in NHS Scotland puts NHS Scotland values at the heart of recruitment for executive level posts. This compliments recent work done to embed values based recruitment in the appointment process for Chairs and non-executive members of Health Bodies. Implementing PVG Scheme membership for all Board level positions is consistent with the values of NHS Scotland.

Lampard Report

12. The Lampard Report⁶, published in 2015, was commissioned by the Department of Health following investigations into the abuse of individuals by Jimmy Savile on NHS premises. The report identified themes and lessons learnt and made recommendations for the NHS in England and Wales, the Department of Health and wider Government. The recommendations focussed on tightening NHS guidelines and procedures governing volunteers, safeguarding arrangements and vetting procedures.

13. In response, Scottish Government officials reviewed the current policy position in view of the recommendations, and confirmed that arrangements to fulfil many of the recommendations were already in place. However, in May 2017, Boards of Health Bodies were asked to consider the themes identified in relation to some of the culture and process issues raised in view of their impact on individual behaviour in the workplace. This included, how individuals' perception, trust and power relate to organisational effectiveness/safety and public protection through ensuring openness and accountability. This should include reviewing the vetting procedures for those at the very top of the organisation and ensuring that the appropriate checks have been carried out.

Types of Disclosure

14. A basic disclosure is the most common and lowest level of disclosure available, whilst it includes information on any 'unspent' convictions, spent convictions are not included and the certificate is only valid when it's created and not for a specific length of time. It provides a 'snapshot in time' and is not updated.

15. Standard and enhanced disclosures involve higher level checks, but are for people doing certain types of work, for example accountants, solicitors or people looking to adopt. Again, like the basic disclosure, standard and enhanced certificates are only valid when created.

⁵ Executive Leadership and Talent Management in NHS Scotland - <https://beta.gov.scot/publications/executive-level-leadership-talent-management-nhsscotland-overview-paper/>

⁶ Lampard Report – Lampard K, 2015, Themes and Lessons Learnt from NHS Investigations into Jimmy Savile https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/407209/KL_lessons_learned_report_FINAL.pdf

16. A PVG scheme record confirms that the individual concerned is not barred from regulated work and includes all unspent and certain spent conviction information. It also contains any other non-conviction information that the police or other government bodies think is relevant. Disclosure Scotland continually monitor PVG scheme members' records for vetting information including criminal convictions that may affect their suitability to work with vulnerable groups.

17. Whilst discussions with Disclosure Scotland concluded that membership of the PVG Scheme for members of the Boards of Health Bodies was appropriate, introducing this policy will require further secondary legislation. A comparison of the different types of disclosure certificate is attached at **Annex B**.

[The Protection of Vulnerable Groups \(Scotland\) Act 2007⁷](#)

18. The Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) was created in response to recommendations of the Bichard Inquiry Report⁸ published in June 2004, following Sir Michael Bichard’s inquiry into the murder of two schoolgirls in Soham in 2002. The PVG Act created the legislative framework for a strengthened, robust and streamlined vetting and barring scheme for those working with children and protected adults in Scotland. This scheme is referred to as the PVG Scheme. It prevents people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detects those who become unsuitable while in the workplace.

19. Only those who have regular contact with vulnerable groups through the workplace, or who otherwise fall within the description of ‘regulated work’ are required to be PVG Scheme members. It is not possible to provide a definitive list of roles, or types of employment that constitute regulated work, not least because the structure and description of people’s work is constantly changing. Instead, the 2007 Act defines regulated work by reference to the activities a person does, the establishments in which a person works, the **position** that they hold (this being particularly relevant for the proposals in relation to Board members), or the people for whom they have day to day supervision or management responsibility.

20. Whilst members of the Boards of Health Bodies are not routinely required to undertake regulated work with children and/or protected adults, they are in positions, which, by their very nature, put them in a **position** of power and trust in respect of those who work with vulnerable groups. They can access a range of premises, including hospitals and are in a position to influence organisational policy and practice.

⁷ The Protection of Vulnerable Groups (Scotland) Act 2007 - <http://www.legislation.gov.uk/asp/2007/14/contents>

⁸ The Bichard Inquiry Report 2004 - <http://dera.ioe.ac.uk/6394/1/report.pdf>

21. Part 4 of Schedules 2 and 3 of the PVG Act specifies a list of **positions** for those who, while not routinely carrying out duties with children or protected adults that would otherwise bring them within the definition of “regulated work”, are to be treated as being in regulated work. Positions which are specified include:

- Manager or member of a governing body, body of trustees or other body responsible for the management of a school, further education institution or hostel; and,
- Member of a council committee (or sub-committee) which is concerned with the provision of education, accommodation, social services or healthcare services to children or protected adults.

22. We intend to follow the precedent already set for members of council committees by amending the legislation to include members of the Boards of Health Bodies within the lists of positions in Schedule 2 (regulated work with children) and Schedule 3 (regulated work with protected adults).

Proposals

23. The overarching aim of this policy is to safeguard the most vulnerable in society (children and protected adults). We have recognised that there is some degree of inconsistency across NHS Scotland with regards to background checks for Board members. For non-executive members, there is no requirement for any form of background check to be carried out prior to appointment, and for executive members, the level of check is dependent on their role.

24. Whilst the roles of executive and non-executive members are very different, both have elements which are similar with regards to the implied level of power and influence held by their positions:

- for executive members, these individuals represent the most senior leaders in the organisation, responsible for day to day operations and service delivery. Whilst they themselves may not be undertaking regulated work, they are at the top of the supervisory chain of those who do and are in positions which hold significant power and influence over others.
- for non-executive members, their role requires them to seek assurance where necessary, this includes visits to a range of premises. They are in positions which require them to provide assurance that policies are being implemented and followed by staff and they have significant power over shaping the culture of the organisation.

25. The functions of Health Bodies vary. Health Boards are responsible for the protection and the improvement of their population's health and for the delivery of frontline services, working with a range of partners.

26. The National Waiting Times Centre Board (known as the Golden Jubilee Foundation), Scottish Ambulance Service Board and State Hospitals Board for Scotland all have functions which involve direct contact with service users. For these Special Health Boards, all Board members are in positions of authority and influence over the services provided to vulnerable groups and their roles are similar to those on Health Boards.

27. Further information on the functions of Special Health Boards, the Common Services Agency and HIS is attached at **Annex D**.

Implementation

28. We intend that, following the policy being implemented, all existing members would be required to become PVG Scheme members, if they are not already so required. Health Bodies will be given notice as to when this will need to be completed and transitional arrangements will be put in place.

29. A breakdown of the anticipated costs for existing non-executive members per Health Body is attached at **Annex C**. Initial funding will be provided for this by the Scottish Government.

Part 2 - Consultation

30. This proposal was first discussed with the NHS Board Chairs Group in 2014, when the Cabinet Secretary for Health Sport was considering various options for strengthening governance and accountability of Boards. The NHS Board Chairs Group was supportive of the proposals.

31. On this basis it is recommended that the policy should be applied to all Board members and to all Health Bodies. However, given the different functions of the various Health Bodies, it may be worthwhile considering whether, this is appropriate.

Q1. Do you agree that this policy should apply to all members of Boards of all Health Bodies?

Yes No Don't Know

If you don't agree with this policy, or are unsure, we would like you to tell us why.

We welcome your views on the proposals and issues outlined in this paper.

Role of Boards of Health Bodies

NHS Scotland

1. NHS Scotland is the term used to describe the health service in Scotland. There are 22 Health Bodies (14 Territorial Health Boards; 6 Special Health Boards; the Common Services Agency (known as NHS National Services Scotland) and Healthcare Improvement Scotland. Together they are responsible for expenditure of around £13 billion per year, (of which £5.8 billion is delegated to 31 Integrated Joint Boards (IJBs) and employ around 150,000 staff. Each Health Body has its own Board of governance.

Role of Boards

Three main roles of Boards of governance are:

- **formulating strategy;**
- **ensuring accountability (including financial stewardship); and,**
- **shaping a healthy culture for the Board and the organisation**

adapted from On Board: a guide for board members of public bodies in Scotland, 2015, Scottish Government

2. The overall purpose of the Boards of Health Bodies is to govern effectively and in doing so build patient, public and stakeholder confidence that their health and healthcare is in safe hands. All Boards are responsible for ensuring that the organisation delivers its functions in accordance with Scottish Ministers' policies and priorities.

3. The key functions of the Board include:

- strategic leadership, vision and direction setting;
- ensuring that the organisation is focused on agreed outcomes which reflects and responds to the needs of the Scottish population;
- securing assurance on the organisation's performance, delivery and deployment of resources;
- fostering robust, rigorous and effective governance and accountability;
- ensuring that the organisation's business is conducted to high standards of propriety and regularity; and
- ensuring that an appropriate level of risk management and scrutiny are in place.

Composition of Boards

4. Boards are composed of a combination of executive and non-executive members, all of which are appointed by the Scottish Ministers.
5. The Executive Team is usually made up of 5 core members: the Chief Executive, Director of Finance, Medical Director, Nurse Director and Director of Public Health. There are some differences on Special Health Boards and only the Chief Executive is a member of the Board of Healthcare Improvement Scotland.
6. Non-executive members includes both lay and stakeholder members. Lay members are appointed through a process which is regulated by the Office of the Commissioner for Ethical Standards in Public Life in Scotland. Stakeholder members are nominated for appointment and include, for example, Local Authority Councillors, Chair of Area Clinical Forum and Chair of Area Partnership Forum.
7. The Chair works with the Board to ensure the overall vision and leadership of the organisation are in place, and promotes effective decision-making and constructive debate. The Executive Team, led by the NHS Board Chief Executive, remain responsible for the day to day running of the organisation and the delivery of the strategic direction set by the Board. Non-executive members hold the executive to account for the delivery of strategy, ensure value for money and that risks are managed and mitigated effectively. All members have a collective responsibility for the performance of the organisation.
8. The Board is held to account through the Chair of the Board, by Scottish Ministers' for the overall performance of the organisation.

Disclosure Checks

1. A **basic disclosure** is the most common and lowest level of disclosure available. It includes information on any 'unspent' convictions the person has. Under the Rehabilitation of Offenders Act 1974, some criminal convictions can be treated as 'spent' – meaning they're not relevant to basic disclosure – after a certain length of time. Spent convictions are not included on a basic disclosure. Disclosure Scotland doesn't monitor people with basic disclosure, so the certificate is only valid when it's created and not for a specific length of time.
2. **Standard and enhanced disclosures** involve higher level checks. They are for people doing certain types of work or looking to adopt and are applied for by the employer or a registered body. For example, standard disclosures are for specific roles such as solicitors, accounts and enhanced disclosure for checking if people are suitable for adoption.
3. The table below compares the different types of background check.

Vetting Information	Basic	Standard	Enhanced	PVG
Unspent Convictions	x	x	x	x
Spent Convictions		relevant	relevant	Certain Offences
Unspent Cautions		x	x	x
Sex Offenders Register				x
Relevant Information held by the police			x	x
Prescribed civil orders				x
Inclusion on Children/Adults lists/confirmation that individual isn't barred from regulated work			If relevant	x
Monitored	No	No	No	Yes
Period Covered	Time of Application	Time of Application	Time of Application	No time limit
Who applies	Individual	Employer or Registered Body	Employer or Registered Body	Employer or Registered Body

4. The **PVG Scheme** is for people doing 'regulated work' with children and protected adults. A PVG certificate contains all unspent and certain spent conviction information. It also contains any other non-conviction information that the police or other government bodies think is relevant. Disclosure Scotland continually monitor PVG scheme members' records for vetting information including criminal convictions that may affect their suitability to work with vulnerable groups.

5. More information on disclosure can be found at <https://www.mygov.scot/disclosure-types/>.

Cost Implications

6. PVG Scheme costs are £59 for new registrants and £18 for Scheme Updates. They can be met by the individual or employer. Executive members of Health Boards are also employees of the Board and may already be members of the PVG Scheme. Therefore, the initial cost of implementing this policy has been worked out on basis of requiring all existing non-executives to be entered onto the PVG Scheme.

Health Board	Projected Cost of PVG Scheme Membership for existing non-executive members
NHS Ayrshire & Arran	£767
NHS Borders	£531
NHS Dumfries & Galloway	£590
NHS Fife	£649
NHS Forth Valley	£708
NHS Grampian	£885
NHS Greater Glasgow & Clyde	£1,593
NHS Highland	£826
NHS Lanarkshire	£590
NHS Lothian	£1,003
NHS Orkney	£531
NHS Shetland	£531
NHS Tayside	£1,003
NHS Western Isles	£531
NHS 24	£649
NHS Education for Scotland	£472
NHS Health Scotland Board	£531
NHS National Waiting Times Centre Board	£472
Scottish Ambulance Service	£590
The State Hospitals Board for Scotland	£354
The Common Services Agency (known as National Services Scotland)	£472
Healthcare Improvement Scotland	£708
Total	£14,986

7. Most Health Bodies undertake an appointment round each year to replace between 1 and 4 members. Therefore ongoing costs are likely to be between £59 - £236 per annum.

Key Functions of Special Health Boards, the Agency and HIS

Health Body	Key Functions
NHS Education for Scotland	providing, co-ordinating, developing, funding and advising on education and training for persons providing or intending to provide services under the 1978 Act.
NHS Health Scotland	provision of research and development services in the field of public health conferred upon the Scottish Ministers by the 1978 Act.
NHS 24	providing advice, guidance and information on health and care services.
The National Waiting Times Centre Board (known as the Golden Jubilee Foundation)	to provide goods and services for the purpose of the Health Service, including in particular surgical, medical and related services at hospital accommodation and ancillary facilities.
Scottish Ambulance Service	providing ambulances and other means of transport for the conveyance of persons suffering from illness or of expectant or nursing mothers or of other persons for whom such transport is reasonably required to avail themselves of any service under the 1978 Act.
State Hospitals Board for Scotland	management of a state hospital for persons subject to detention under the Criminal Procedure (Scotland) Act 1995 or the Mental Health (Care and Treatment)(Scotland) Act 2003 who require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.
The Common Services Agency (known as National Services Scotland)	a variety of functions conferred on it by the 1978 Act and delegated to it by the Scottish Ministers, (which may include matters referred to it from Health Boards by the Scottish Ministers). It also has power to provide services to, and carry out tasks for bodies associated with the health service in Scotland and other bodies including local authorities and government departments.
Healthcare Improvement Scotland	Functions conferred on it by the 1978 Act which include supporting, ensuring and monitoring the quality of health care provided or secured by the health service including, without prejudice to the foregoing generality, providing quality assurance and accreditation.



PVG Scheme Membership for Members of Boards of Health Bodies

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:

<https://beta.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

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

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again

in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No



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