

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Part 2: Protection of vulnerable groups

Regulated roles

Section 74: Regulated roles

149. Section 74 substitutes a new section 91 (Regulated roles) into the PVG Act to replace the concept of regulated work in the current section 91. Schedules 3 and 4 in the Act set out the meaning of “regulated roles with children”, and “regulated roles with adults”, substituting the existing schedules 2 and 3 of the PVG Act. Part 2 of schedule 5 of the Act makes various consequential amendments arising from the substituted concept of regulated roles.

Section 75: Meaning of “protected adult”

150. Section 75 amends the meaning of ‘protected adult’ in section 94 of the PVG Act. There is a move away from the previous lengthy and complex definition to a narrower range of issues affecting a person’s wellbeing, capabilities and capacity. Section 75(2) of the Act substitutes into section 94 of the PVG Act a new subsection (1)(a) to (d). This provides the criteria which if satisfied will mean a person is a protected adult for the purpose of the PVG Act; these are alternatives and not cumulative.
151. The age a person must have attained to be regarded as a protected adult is changed from someone aged 16 or older, to someone aged 18 or older. This is to prevent an overlap between the children’s and protected adult’s workforces under the PVG Scheme.
152. New subsection (1)(a) provides that an individual who as a result of physical or mental disability, illness, infirmity or ageing has an impaired ability to protect themselves from physical or psychological harm or who requires assistance with activities of daily living, such as, personal care, is a protected adult for the purpose of the PVG Act.
153. New subsection (1)(b) makes provision for individuals who are homeless, or have experienced, are experiencing or are at risk of experiencing domestic abuse. However, such individuals are only brought within the meaning of protected adult in relation to a role that involves the carrying out of activities mentioned in paragraph 17 of the new schedule 3 of the PVG Act substituted by schedule 4 of the Act (provision of counselling, therapy, advice or guidance for protected adults).
154. New subsection (2A) defines “domestic abuse” for the purpose of subsection (1)(b) (ii). Domestic abuse is defined as behaviour, whether or not amounting to criminal behaviour, that is perpetrated between partners or ex-partners, whether in the home or elsewhere or by means of electronic or other forms of communications, and involves any form of physical, verbal, sexual, psychological, emotional or financial abuse of one of the partners or ex-partners by the other. New subsection (2B) makes clear that an individual is a person’s “partner” if they are married to each other, civil partners of each

*These notes relate to the Disclosure (Scotland) Act 2020
(asp 13) which received Royal Assent on 14 July 2020*

other, living with each other as if they were married to each other or otherwise in an intimate relationship with each other. “Ex-partner” is to be construed accordingly.

155. Individuals accessing health services provided by certain registered health professionals (to be prescribed by Ministers by regulations subject to the negative procedure) will also be protected adults while being provided with those services, by virtue of subsection (1) (c).
156. Individuals in receipt of a prescribed service of the type listed in new subsection (1)(d) will also be protected adults when being provided with any of those services. These are the same types of services provided under the section 94 definition of protected adult in the PVG Act.