

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Schedule 5: Consequential and minor modifications

247. This schedule is introduced by section 93. It repeals Part 5 of the Police Act 1997 (certificates of criminal records etc.) and makes various consequential and minor modifications to other Acts (including the PVG Act) as a result of changes to the disclosure system and the operation of the PVG Scheme and barring service made by the Act.
248. By virtue of the amendments made to the 1974 Act by paragraph 2 of the schedule, the majority of childhood convictions will become spent immediately. Sub-paragraph (8) amends section 5J (sentences to which no disclosure period applies) of the 1974 Act, as inserted by the Management of Offenders (Scotland) Act 2019. The effect of sub-paragraph (8)(a) is that there is no disclosure period for any sentence, other than an excepted sentence mentioned in the new subsection (1A) of section 5J, imposed on a person in respect of a conviction for an offence committed when the person was under the age of 18 years. Sub-paragraph (8)(b) then inserts subsection (1A) which sets out the excepted sentences, namely excluded sentences and custodial sentences of over 12 months in respect of sexual offences (which are listed in paragraphs 52 to 59 of schedule 1 of the Act). This paragraph also adds a new subsection (1B) to section 5J of the 1974 Act, providing for an age presumption similar to that in section 40 of the Act, where for the purposes of the definition of childhood conviction only, it will be presumed that a person convicted of an offence was of the same age at the time when the offence was committed as at the date of conviction, in the absence of evidence to the contrary.
249. To avoid possible inconsistencies or scope for confusion in the 1974 Act, sub-paragraphs (2) to (7) of paragraph 2 of schedule 5 make a number of consequential technical amendments to sections 5 to 5I of the 1974 Act. This includes amendments to the specific disclosure periods for sentences imposed when a person was under the age of 18 at the date of conviction. Sub-paragraph (2) makes it clear that section 5(2A)(a) is subject to section 5J(1)(ba). Sub-paragraph (3) amends the relevant entries in the third column in Table A so that the disclosure periods are reduced to nil, as a consequence of the new section 5J(1)(ba). Sub-paragraphs (4) to (7) amend sections 5B, 5C, 5D and 5I, removing obsolete references to disclosure periods in respect of these sentences.
250. Paragraph 5(3)(b) of the schedule applies section 33 of the Act which sets out the list of decision making matters (see paragraphs 70 to 75 of these notes) for the purposes of section 49 of the PVG Act, which is concerned with the provision of ORI to Scottish Ministers. Sub-paragraphs (a) to (d) of the new subsection (1A) inserted by paragraph 5(3) provide that references in section 33 of the Act to a conviction or children's hearing outcome are omitted, and references to other information are to be considered as references to the chief constable considering whether to include ORI in the scheme member's scheme record. Similarly, paragraph 7(8)(b) of the schedule extends the same decision-making principles to decisions made on the inclusion of relevant behaviour in a disclosure certificate under section 18 of the Age of Criminal Responsibility (Scotland)

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

Act 2019. However, references to convictions and children's hearing outcomes are omitted and references to other information are to be taken as references to information mentioned under section 14(1)(a) of that Act.