

Disclosure (Scotland) Act 2020

2020 asp 13

PART 2

PROTECTION OF VULNERABLE GROUPS

PROSPECTIVE

Scheme membership

70 Participation in Scheme

For section 45 (participation in Scheme) of the PVG Act substitute—

“45 Participation in Scheme

- (1) An individual aged 16 or over may apply to Ministers—
 - (a) to join the Scheme and become a member of the Scheme (a “scheme member”), or
 - (b) if the individual is an existing scheme member, to renew that membership.
- (2) An individual may participate in the Scheme in relation to—
 - (a) regulated roles with children,
 - (b) regulated roles with adults, or
 - (c) both types of regulated role.
- (3) Ministers must allow an individual to participate in the Scheme in relation to a type of regulated role if the individual is—
 - (a) not barred from that type of regulated role, and
 - (b) aged 16 or over.”.

71 Duration of Scheme membership

After section 45 of the PVG Act insert—

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“45A Duration of Scheme membership

- (1) A scheme member participates in the Scheme (unless earlier removed from the Scheme) in relation to a type of regulated role until the end of the period of 5 years beginning with the day on which—
 - (a) the scheme member joins the Scheme in relation to that type of regulated role, or (as the case may be)
 - (b) the scheme member's membership of the Scheme in relation to that type of regulated role is renewed.
- (2) In this section and section 45B, the period mentioned in subsection (1) is referred to as the “membership period”.
- (3) No later than 3 months before the end of the membership period (the “expiry date”)—
 - (a) Ministers must send written notice to the persons mentioned in subsection (4)—
 - (i) of the expiry date, and
 - (ii) that the scheme member's participation in the Scheme in relation to the type of regulated role concerned will end on that date unless the scheme member's membership of the Scheme is renewed,
 - (b) may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type concerned.
- (4) The persons referred to in subsection (3)(a) are—
 - (a) the scheme member,
 - (b) any organisation for whom Ministers know the scheme member is carrying out a regulated role of the type concerned,
 - (c) any personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role of the type concerned,
 - (d) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.
- (5) Subsection (6) applies where—
 - (a) a scheme member participates in the Scheme in relation to both types of regulated role, and
 - (b) notice is given under subsection (3)(a) to an organisation, personnel supplier or relevant regulatory body, or under subsection (3)(b), in relation to only one of the types of regulated role.
- (6) Where this subsection applies, the notice must not disclose any information relating to the scheme member's participation in the Scheme in relation to the other type of regulated role (or that the scheme member participates in the Scheme in relation to that other type of regulated role).
- (7) If a scheme member has applied to renew the scheme member's membership of the Scheme in relation to a type of regulated role before the expiry date but Ministers have not, as at the expiry date, determined the application,

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the scheme member's participation in the Scheme in relation to that type of regulated role is to continue in effect until the application is determined.”.

72 Failure to apply for renewal of Scheme membership

After section 45A of the PVG Act (inserted by section 71) insert—

“45B Failure to apply for renewal of Scheme membership

- (1) This section applies where a scheme member does not apply to renew the scheme member's membership of the Scheme in relation to a type of regulated role before the end of the membership period.
- (2) Ministers must extend the scheme member's participation in the Scheme in relation to that type of regulated role for a period of 4 weeks beginning with the end of the membership period (the “extended membership period”).
- (3) If before the end of the extended membership period—
 - (a) Ministers are satisfied that the scheme member is not carrying out a regulated role of that type, Ministers must remove the scheme member from the Scheme in relation to that type of regulated role, or
 - (b) Ministers are not so satisfied—
 - (i) they must send written notice to the persons mentioned in subsection (5) of the expiry of the extended membership period and that the scheme member's participation in the Scheme in relation to that type of regulated role is to end on the expiry of that period unless the scheme member's membership of the Scheme is renewed,
 - (ii) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme, and
 - (iii) they may extend the scheme member's participation in the Scheme in relation to that type of regulated role for an additional period of 6 months beginning with the end of the extended membership period (the “discretionary membership period”).
- (4) Where Ministers decide under subsection (3)(b)(iii) to extend the scheme member's participation in the Scheme for the discretionary membership period—
 - (a) they must send written notice to the persons mentioned in subsection (5)—
 - (i) of that fact, and
 - (ii) that the scheme member's participation in the Scheme in relation to the type of regulated role concerned is to end on the expiry of that period unless the scheme member's membership of the Scheme is renewed, and
 - (b) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme.

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- (5) The persons referred to in subsections (3)(b)(i) and (4)(a) are—
- (a) the scheme member,
 - (b) any organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the scheme member participates in the Scheme,
 - (c) any personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role of the type in relation to which the scheme member participates in the Scheme,
 - (d) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.
- (6) If—
- (a) the scheme member does not apply to renew the scheme member's membership of the Scheme in relation to that type of regulated role before the end of the discretionary membership period, and
 - (b) Ministers are satisfied that the scheme member is not carrying out a regulated role of that type,
- Ministers must remove the scheme member from the Scheme in relation to that type of regulated role.
- (7) If—
- (a) the scheme member does not apply to renew the scheme member's membership of the Scheme in relation to that type of regulated role before the end of the discretionary membership period, and
 - (b) Ministers have reasonable grounds to believe that the scheme member is carrying out a regulated role of that type,
- Ministers must consider listing the scheme member in the children's list or the adults' list (or both) if they consider that it may be appropriate for the scheme member to be included in that list (or both of those lists).
- (8) For the avoidance of doubt, subsection (7) applies in relation to the scheme member regardless of the type of regulated role in relation to which the scheme member participates in the Scheme.
- (9) If the scheme member has applied, during the extended membership period or the discretionary membership period, to renew the scheme member's membership of the Scheme in relation to a type of regulated role but Ministers have not by the end of such a period determined the application, the scheme member's participation in the Scheme in relation to that type of regulated role is to continue in effect until the application is determined.
- (10) Subsections (5) and (6) of section 45A apply for the purposes of this section as they apply for the purposes of that section except that the reference in subsection (5)(b) of that section—
- (a) to a notice given under subsection (3)(a) of that section is to be read as a reference to a notice given under subsection (3)(b)(i) or (4)(a) of this section, and
 - (b) to a notice given under subsection (3)(b) of that section is to be read as a reference to a notice given under subsection (3)(b)(ii) or (4)(b) of this section.
- (11) Ministers need not consider—

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- (a) an application for a Level 2 disclosure (within the meaning of section 8(1) of the Disclosure (Scotland) Act 2020) where section 17 of that Act applies, or
- (b) a request for confirmation of scheme membership under section 54, that is made by the scheme member during any discretionary membership period of the scheme member.”.

73 Compulsory Scheme membership

- (1) The PVG Act is amended as follows.
- (2) After section 45B (inserted by section 72) insert—

“45C Individuals must be scheme members to carry out regulated roles

- (1) It is an offence for an individual to carry out, or to agree to carry out, any type of regulated role unless the individual participates in the Scheme in relation to that type of regulated role.
- (2) For the purposes of subsection (1), an individual is not to be treated as having agreed to carry out a regulated role if the individual's agreement is subject to the individual's participating in the Scheme in relation to that type of role.
- (3) It is a defence for an individual charged with an offence under subsection (1)
 - (a) to prove that the individual did not know, and could not reasonably be expected to have known, that the role concerned was a regulated role, and
 - (b) where the individual participated in the Scheme in relation to the type of regulated role concerned and the individual's membership of the Scheme in relation to that type of regulated role was not renewed, to prove that the individual did not know, and could not reasonably be expected to have known, that the individual's membership of the Scheme had not been renewed.
- (4) Subsection (1) does not apply to an individual who is—
 - (a) barred from the type of regulated role concerned (but see section 34),
 - (b) aged under 16.

45D Organisations not to use individuals for regulated roles without confirming scheme membership

- (1) It is an offence for an organisation to offer any type of regulated role to an individual unless the organisation has received a Level 2 disclosure in pursuance of a request under section 18(1)(a) of the Disclosure (Scotland) Act 2020 containing a statement confirming that the individual participates in the Scheme in relation to that type of regulated role.
- (2) For the purposes of subsection (1), an organisation is not to be treated as having offered a regulated role to an individual if the offer is subject to the organisation receiving a Level 2 disclosure as mentioned in subsection (1).
- (3) Subsection (1) does not apply in relation to an individual who is—

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- (a) barred from the type of regulated role concerned (but see section 35),
- (b) aged under 16.

45E Power to require organisations to stop using individuals for regulated roles without scheme membership

- (1) Ministers may by regulations—
 - (a) prohibit an organisation from permitting an individual to carry out a regulated role,
 - (b) require an organisation to remove an individual from a regulated role, where the individual does not participate in the Scheme in relation to that type of regulated role.
- (2) Regulations under subsection (1) may in particular—
 - (a) impose prohibitions or requirements—
 - (i) in relation to particular types of organisations,
 - (ii) in relation to particular kinds of regulated roles,
 - (b) otherwise limit the purposes for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.
- (3) An organisation which fails to comply with regulations made under subsection (1) commits an offence.
- (4) It is a defence for an organisation charged with an offence under subsection (3) to prove that it did not know, and could not reasonably be expected to have known, that the individual does not participate in the Scheme in relation to that type of regulated role.

45F Personnel suppliers not to supply individuals for regulated roles without confirming scheme membership

- (1) Subsection (2) applies where a personnel supplier knows or has reason to believe that an organisation will make arrangements for an individual to carry out a type of regulated role.
- (2) Where this subsection applies, it is an offence for the personnel supplier to offer or supply the individual to the organisation in relation to that type of regulated role unless the personnel supplier has received a Level 2 disclosure in pursuance of a request under section 18(1)(a) of the Disclosure (Scotland) Act 2020 containing a statement confirming that the individual participates in the Scheme in relation to that type of regulated role.
- (3) Subsection (2) does not apply in relation to an individual who is—
 - (a) barred from the type of regulated role concerned (but see section 36),
 - (b) aged under 16.

45G Penalties for offences relating to regulated roles by individuals not in Scheme

A person who commits an offence under section 45C, 45D, 45E or 45F is liable—

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- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”
- (3) In section 100 (orders and regulations), in subsection (4), after the entry in the list for section 35(2) insert— “ Section 45E(1) ”.

Status:

This version of this cross heading contains provisions that are prospective.

Changes to legislation:

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