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Changes to legislation: There are currently no known outstanding effects for the  
Disclosure (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)*

PROSPECTIVE

## SCHEDULE 4

*(introduced by section 74)*

### SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 3 OF THE PVG ACT

## “SCHEDULE 3

*(introduced by section 91(3))*

### REGULATED ROLES WITH ADULTS

#### PART 1

##### PRELIMINARY

##### *Regulated roles with adults*

- 1 (1) A regulated role with adults is a role of any description which—
- (a) involves the carrying out of one or more activities mentioned in Part 2 of this schedule, and
  - (b) satisfies the conditions mentioned in sub-paragraph (2).
- (2) The conditions are—
- (a) the activities are carried out—
    - (i) as a necessary part of the role, and
    - (ii) in Scotland, and
  - (b) the carrying out of the activities gives the individual carrying them out, when doing anything permitted or required in connection with the carrying out of the activities, the opportunity to have contact with protected adults.
- (3) A role—
- (a) the normal duties of which include the day-to-day supervision or management of an individual carrying out a regulated role by virtue of sub-paragraph (1), or
  - (b) which involves training or studying in Scotland to carry out one or more activities mentioned in Part 2 of this schedule and which gives the individual undertaking the training or study, when doing anything permitted or required in connection with undertaking the training or study, the opportunity to have contact with protected adults,
- is to be treated as a regulated role with adults for the purposes of sub-paragraph (1).
- (4) For the purposes of sub-paragraph (2)(a)(ii), where—
- (a) an activity is carried out outside the United Kingdom, the Channel Islands and the Isle of Man by an individual who is ordinarily resident in the United Kingdom,
  - (b) the activity is carried out for—
    - (i) an organisation with a place of business in Scotland, or

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- (ii) a personnel supplier with a place of business in Scotland, and
- (c) the organisation's or personnel supplier's functions in relation to the carrying out of the activity by the individual are principally exercised at that place of business,

the activity is to be treated as if it were carried out in Scotland.

(5) For the purposes of sub-paragraph (3)(b), where—

- (a) training or study is undertaken outside the United Kingdom, the Channel Islands and the Isle of Man by an individual who is ordinarily resident in the United Kingdom,
- (b) the person with principal responsibility for the provision of the training or course of study is—
  - (i) an organisation with a place of business in Scotland, or
  - (ii) a personnel supplier with a place of business in Scotland, and
- (c) the organisation's or personnel supplier's functions in relation to the undertaking of the training or study by the individual are principally exercised at that place of business,

the training or study is to be treated as if it were undertaken in Scotland.

#### *Exceptions to regulated roles with adults*

- 2 (1) A role which would be a regulated role with adults by virtue of the carrying out of an activity mentioned in any of the paragraphs of Part 2 of this schedule is not, despite any of those provisions, a regulated role with adults if—
- (a) the activity is carried out in the course of a family relationship, or
  - (b) the activity is carried out for an individual (“A”)—
    - (i) in the course of a personal relationship,
    - (ii) for no commercial consideration, and
    - (iii) for the benefit of A, a member of A's family or A's friend.
- (2) In sub-paragraph (1)(a) a family relationship includes a relationship between two persons who—
- (a) live in the same household, and
  - (b) treat each other as though they were members of the same family.
- (3) In sub-paragraph (1)(b)—
- (a) a personal relationship is a relationship between or among friends, and
  - (b) “benefit” does not include commercial benefit.
- (4) For the purposes of sub-paragraphs (1)(b) and (3)(a), a friend of a member of an individual's family is to be regarded as being the individual's friend.
- (5) Ministers may prescribe circumstances in which an activity is or is not to be treated for the purposes of this paragraph as being done in the course of a family or personal relationship.

#### *Definition of contact with protected adults*

- 3 (1) In paragraph 1(2)(b) “contact with protected adults”—
- (a) means, in relation to an activity, contact that is more than incidental to the carrying out of the activity, and

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- (b) includes physical contact with protected adults, written or verbal communication with protected adults, and exercising power or influence over protected adults.
- (2) In paragraph 1(3)(b) “contact with protected adults”—
- (a) means, in relation to training or study, contact that is more than incidental to the undertaking of the training or study, and
  - (b) includes physical contact with protected adults, written or verbal communication with protected adults, and exercising power or influence over protected adults.
- (3) For the purpose of paragraph (b) of the definitions of “contact with protected adults” in each of sub-paragraphs (1) and (2), “exercising power or influence over protected adults” means—
- (a) assisting, facilitating, permitting or impeding progress towards a desirable objective or outcome for a particular protected adult,
  - (b) making decisions of an operational or strategic nature that could have an impact on a number of protected adults, or
  - (c) persuading or putting pressure on a particular protected adult to behave or act in a certain manner for the financial gain or personal gratification of a person other than the protected adult.

## PART 2

### ACTIVITIES

#### *Education, training and guidance*

- 4 Teaching, instructing, training or supervising protected adults.
- 5 Providing advice or guidance to a protected adult in relation to education, training or employability.

#### *Care, health and accommodation services*

- 6 Practising as a registered medical practitioner.
- 7 Practising as a registered nurse, midwife or health visitor.
- 8 Practising as a chiropractor pursuant to registration with the General Chiropractic Council.
- 9 Practising as a dentist pursuant to registration with the General Dental Council.
- 10 Practising as an optician pursuant to registration with the General Optical Council.
- 11 Practising as an osteopath pursuant to registration with the General Osteopathic Council.
- 12 Practising as a pharmacist pursuant to registration with the General Pharmaceutical Council.
- 13 Being engaged in the provision of a domestic service (including cleaning, preparing food, acting as a caretaker of premises or carrying out maintenance of premises) that

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is provided for protected adults in a hospital, hospice, care home, day care centre or adult placement setting.

14 Being in charge of protected adults.

15 Being engaged by or on behalf of a protected adult to support the protected adult to live independently, including providing personal care services, food preparation or recreational services.

16 Providing support to a protected adult under a shared lives scheme.

17 Providing counselling, therapy or advice or guidance in relation to health or wellbeing to protected adults, other than where such counselling, therapy, advice or guidance is provided in a prison by a prisoner to another prisoner.

18 Having the ability to directly influence the operational delivery of medical or care services for protected adults, other than in the capacity of an elected representative or as the holder of a judicial office.

*Leisure activities*

19 Providing cultural, leisure, social or recreational activities for protected adults.

*Sports activities*

20 Coaching protected adults in relation to sports or physical activity.

*Religious activities*

21 Providing religious activities or services for protected adults.

*Miscellaneous*

22 Driving or escorting protected adults in connection with transport services provided exclusively or mainly for use by protected adults.

23 Holding a position of responsibility in an organisation whose main purpose is to provide benefits for or to protected adults (regardless of whether the organisation has an additional purpose of providing benefits for or to another group of persons).

*Interpretation*

24 In this schedule—

“adult placement setting” means a residential establishment or accommodation occupied exclusively or mainly by individuals aged 18 or over which is—

(a) provided by a council in exercise of its functions under section 59 (provision by councils of residential and other establishments) of the Social Work (Scotland) Act 1968 or section 25 (provision of care and support services by councils) of the Mental Health (Care and Treatment) (Scotland) Act 2003, or

(b) provided or secured by a person to whom such a function is delegated by a council in pursuance of an integration scheme under section 1 or 2 (integration schemes) of the Public Bodies (Joint Working) (Scotland) Act 2014,

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“care home” means accommodation occupied exclusively or mainly by individuals aged 18 or over which is provided by an organisation carrying on a care home service (within the meaning of schedule 12 of the Public Services Reform (Scotland) Act 2010),

“elected representative” means—

- (a) a member of the House of Commons,
- (b) a member of the Scottish Parliament,

“hospital” has the meaning given in section 108(1) of the National Health Service (Scotland) Act 1978,

“judicial office” means—

- (a) the office of judge of any court,
- (b) the office of member of any tribunal,
- (c) any other office, or appointment, consisting of functions of a judicial nature,

“prison” means a prison, young offenders institution or remand centre that is under the general superintendence of the Scottish Ministers under the Prisons (Scotland) Act 1989 and includes any contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994,

“prisoner” means a person committed to prison for trial, safe custody, punishment or otherwise,

“shared lives agreement” means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to a protected adult together with, where necessary, accommodation in the individual's home,

“shared lives carer” means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for protected adults together with, where necessary, accommodation in the individual's home,

“shared lives scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—

- (a) recruiting and training shared lives carers,
- (b) making arrangements for the placing of protected adults with shared lives carers, and
- (c) supporting and monitoring placements.

### PART 3

#### GENERAL

##### *Power to amend schedule*

- 25 Ministers may by regulations modify this schedule as they think appropriate.
- 26 Regulations under paragraph 25 may disapply or otherwise modify the application of sections 34 to 37 and sections 45C to 45G in relation to particular kinds of regulated roles with adults.”.

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