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PROSPECTIVE

SCHEDULE 5 CONSEQUENTIAL AND MINOR MODIFICATIONS

PART 1

MODIFICATIONS OF ENACTMENTS IN CONSEQUENCE OF PART 1

Caravan Sites and Control of Development Act 1960

- 1 In section 32P of the Caravan Sites and Control of Development Act 1960 (fit and proper person: criminal conviction certificate)—
- (a) in subsection (1), for the words from “criminal” to the end substitute “ Level 1 disclosure (within the meaning of section 1 of the Disclosure (Scotland) Act 2020). ”,
 - (b) in subsection (2), for “criminal conviction certificate” substitute “ Level 1 disclosure ”,
 - (c) the title of the section becomes “ Fit and proper person: Level 1 disclosure ”.

Rehabilitation of Offenders Act 1974

- 2 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5 (disclosure periods for particular sentences), after subsection (2A) insert—
- “(2AA) Subsection (2A)(a) is subject to section 5J(1)(ba).”.
- (3) In section 5A(1) (disclosure periods: ordinary cases), in Table A, in each of the following entries, for the period specified in the third column (disclosure period – aged under 18) substitute “ Nil (see section 5J(1)(ba)) ”
- (a) the first entry (a custodial sentence not exceeding 12 months),
 - (b) the fourth entry (a fine),
 - (c) the fifth entry (a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995),
 - (d) the sixth entry (an order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988),
 - (e) the seventh entry (any sentence not mentioned in the entries above or in Table B other than one to which section 5(2D) or any of sections 5C to 5J applies).
- (4) In section 5B (disclosure periods: service disciplinary offences), in Table B, in each of the entries, for the period specified in the third column (disclosure period – aged under 18) substitute “ Nil (see section 5J(1)(ba)) ”.
- (5) In section 5C (disclosure period: caution for good behaviour), in subsection (2), paragraph (b) is repealed.

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- (6) In section 5D (disclosure period: particular court orders)—
- (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3), the words “and (b)(ii)” are repealed.
- (7) In section 5I (disclosure period: service disciplinary orders)—
- (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3)—
 - (i) in paragraph (a), for “15” substitute “ 18 ”,
 - (ii) paragraph (b) is repealed.
- (8) In section 5J (sentences to which no disclosure period applies)—
- (a) in subsection (1), after paragraph (b) insert—
 - “(ba) any sentence other than an excepted sentence mentioned in subsection (1A) imposed on a person in respect of a conviction for an offence committed when the person was under 18 years of age,”,
 - (b) after subsection (1) insert—
 - “(1A) The excepted sentences referred to in subsection (1)(ba) are—
 - (a) an excluded sentence,
 - (b) in the case of a conviction for an offence listed in any of paragraphs 52 to 59 of schedule 1 of the Disclosure (Scotland) Act 2020 (sexual offences), a custodial sentence (within the meaning of section 5(12)) for a term exceeding 12 months.
 - (1B) For the purposes of subsection (1)(ba), it is to be presumed, in the absence of evidence to the contrary, that a person convicted of an offence was of the same age at the time the offence was committed as the person was at the date of conviction.”.

Police Act 1997

- 3 In the Police Act 1997, Part 5 (certificates of criminal records etc.) is repealed.

Antisocial Behaviour etc. (Scotland) Act 2004

- 4 In section 85A of the Antisocial Behaviour etc. (Scotland) Act 2004 (fit and proper person: criminal record certificate)—
- (a) in subsection (1), for the words from “criminal” to the end substitute “ Level 2 disclosure (within the meaning of section 8(1) of the Disclosure (Scotland) Act 2020). ”,
 - (b) in each of subsections (2) and (3), for “criminal record certificate” substitute “ Level 2 disclosure ”,
 - (c) in subsection (3), in each of paragraphs (a) and (b), for “certificate” substitute “ Level 2 disclosure ”,
 - (d) the title of the section becomes “ Fit and proper person: Level 2 disclosure ”.

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Protection of Vulnerable Groups (Scotland) Act 2007

- 5 (1) The PVG Act is amended as follows.
- (2) In section 18 (police information etc.)—
- (a) in subsection (4), for paragraph (b) substitute—
- “(b) any person who holds central records to provide them with the prescribed details of every relevant matter relating to the individual that is recorded those records.”,
- (b) after subsection (4) insert—
- “(5) In subsection (4)(b)—
- “central records” has the meaning given in section 69 of the Disclosure (Scotland) Act 2020,
- “relevant matter” means—
- (a) a conviction that is not a non-disclosable conviction within the meaning of section 9 of the Disclosure (Scotland) Act 2020,
- (b) a caution within the meaning given in section 69 of that Act that is not spent by virtue of schedule 3 of the Rehabilitation of Offenders Act 1974, and
- (c) a prescribed civil court order.”.
- (3) In section 49 (vetting information)—
- (a) in subsection (1), for paragraph (a) substitute—
- “(a) the prescribed details of every relevant matter relating to the scheme member that is recorded in central records.”,
- (b) after subsection (1) insert—
- “(1A) Section 33 of the Disclosure (Scotland) Act 2020 (Level 2 disclosure: considering relevance and whether to include certain information) applies for the purposes of subsection (1)(c) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—
- (a) references to a person considering whether a conviction, children's hearing outcome or other information is relevant for the purpose of a Level 2 disclosure were references to the chief constable considering whether information is relevant to the type of regulated role in relation to which the scheme member participates in the Scheme,
- (b) references to a person considering whether a conviction, children's hearing outcome or other information ought to be included in a Level 2 disclosure were references to the chief constable considering whether information ought to be included in the scheme member's scheme record,
- (c) references to a conviction or children's hearing outcome were omitted, and
- (d) references to other information were references to information mentioned in subsection (1)(c) of this section.”,
- (c) after subsection (2) insert—

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- “(3) In subsection (1)(a), “central records” and “relevant matter” have the same meanings as in section 18(5).”.
- (4) In section 51 (correction of inaccurate scheme record)—
- (a) in subsection (1), after “section 50” insert “ or a review under section 21 of the Disclosure (Scotland) Act 2020, ”,
 - (b) subsections (2) to (7) are repealed.
- (5) Section 52ZA (procedure following correction of inaccurate scheme record) is repealed.
- (6) Section 52 (disclosure of scheme records) is repealed.
- (7) Section 52A (review of vetting information in scheme record) is repealed.
- (8) Section 53 (disclosure of short scheme records) is repealed.
- (9) Section 55 (disclosure conditions) is repealed.
- (10) Section 56 (Crown work) is repealed.
- (11) Section 57 (disclosure restrictions) is repealed.
- (12) Section 57A (meaning of “conviction” and “protected conviction”) is repealed.
- (13) In section 97 (general interpretation)—
- (a) in subsection (1)—
 - (i) in the definition of “prescribed” the words “(except where used in sections 18(4)(b) and 49(1)(a))” are repealed,
 - (ii) the following definitions are repealed—
 - “disclosure declaration”,
 - “disclosure record”,
 - “disclosure request”,
 - (b) in subsection (2), for the words from “doing” in the first place it occurs to the end of that subsection substitute “carrying out a regulated role for an organisation if they—
 - (a) have made available, in respect of the individual—
 - (i) a confirmation of scheme membership under section 54,
 - (ii) a Level 2 disclosure (within the meaning of section 8(1) of the Disclosure (Scotland) Act 2020) where section 17 of that Act applies,
 in relation to that regulated role,
 - (b) know that the confirmation of scheme membership or (as the case may be) the Level 2 disclosure was sought for the purpose of enabling or assisting the organisation to consider the scheme member's suitability to carry out that type of regulated role for the organisation (or to be offered such a role by the organisation), and
 - (c) have not been satisfied that the individual has not been engaged to carry out, or has stopped carrying out, that type of regulated role for the organisation.”,

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- (c) in subsection (4), for “Part 5 of the 1997 Act” substitute “ Part 1 of the Disclosure (Scotland) Act 2020 ”,
- (d) in subsection (5), for “in relation to an application under section 113B of the 1997 Act” substitute “ for the purposes of section 49 of the Disclosure (Scotland) Act 2020 ”.

(14) In schedule 5 (index), the following entries are repealed—

- disclosure condition,
- disclosure declaration,
- disclosure information,
- disclosure record,
- disclosure request,
- short scheme record.

Housing (Scotland) Act 2014

- 6 In section 35 of the Housing (Scotland) Act 2014 (fit and proper person: criminal record information), in subsection (2), for the words from “criminal” to “1997 (c. 50)” substitute “ Level 1 disclosure (within the meaning of section 1 of the Disclosure (Scotland) Act 2020) ”.

Age of Criminal Responsibility (Scotland) Act 2019

- 7 (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 8 (disapplication of sections 6 and 7)—
- (a) in subsection (1), for the words from “in—” to the end substitute “ in a Level 2 disclosure. ”,
 - (b) in subsection (3)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “ a Level 2 disclosure ”,
 - (c) in subsection (4)—
 - (i) in paragraph (a), for “for which the certificate or, as the case may be, scheme record is provided” substitute “ of the disclosure ”,
 - (ii) in paragraph (b), for “certificate or record” substitute “ Level 2 disclosure ”,
 - (d) subsection (5) is repealed,
 - (e) in subsection (6), for “certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”,
 - (f) in subsection (7), for “certificate or record” substitute “ Level 2 disclosure ”.
- (3) In section 10 (disclosure of information relating to time when person under 12), subsections (1), (2) and (4) are repealed.
- (4) In section 11 (independent reviewer), in paragraph (a), for the words from “information—” to the end substitute “ information in a Level 2 disclosure, and ”.
- (5) In section 12 (period and terms of appointment), in subsection (7)(a), for “8A or 8B of the 1997 Act” substitute “ 1 or 2 of the 2020 Act ”.
- (6) In section 14 (referral of information to independent reviewer)—
- (a) in subsection (1), in paragraph (a)—
 - (i) for “113B(4) of the 1997 Act” substitute “ 14(1) of the 2020 Act ”,

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- (ii) for “an enhanced criminal record certificate issued under section 113B(1) of that Act” substitute “ a Level 2 disclosure ”,
- (b) in subsection (1), paragraph (b) is repealed,
- (c) in subsection (2)—
 - (i) in paragraph (a), for the words from “described” to the end substitute “ of the disclosure, ”,
 - (ii) paragraph (b) is repealed,
 - (iii) in paragraph (c), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.
- (7) In section 16 (notification to applicant or scheme member), in subsection (2)(b), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.
- (8) In section 18 (review of information referred under section 14)—
 - (a) in subsection (1)—
 - (i) in paragraph (a), for the words from “in relation to” to the end substitute “ for the purpose of the disclosure, and ”,
 - (ii) in paragraph (b), for “that certificate” substitute “ the disclosure ”,
 - (b) after subsection (1) insert—
 - “(1A) Section 33 of the 2020 Act (Level 2 disclosure: considering relevance and whether to include certain information) applies for the purposes of subsection (1) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—
 - (a) references to a conviction or a children's hearing outcome were omitted, and
 - (b) references to other information were references to information mentioned in section 14(1)(a) of this Act.”,
 - (c) subsection (2) is repealed,
 - (d) in subsection (4)(a), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “ Level 2 disclosure ”.
- (9) After section 20 insert—

“20A Removal of information from scheme record following review or appeal

“20A “20A Removal of information from scheme record following review or appeal

- (1) This section applies where, in the case of a scheme member—
 - (a) information that is the subject of a review under section 18 is also contained in the scheme member's scheme record in relation to a type of regulated role to which the purpose of the disclosure referred to in section 18(1)(a) relates, and
 - (b) subsection (2) or (3) applies in relation to the review.
- (2) This subsection applies if the independent reviewer determines under section 18(4)(a) that the information ought not to be included in the disclosure and—

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- (a) no appeal under section 20 is taken, or
 - (b) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a).
 - (3) This subsection applies if the sheriff, on an appeal under section 20, determines under subsection (3)(b) of that section that the information ought not to be included in the disclosure.
 - (4) The Scottish Ministers must remove the information from the scheme member's scheme record so far as relating to the type of regulated role mentioned in subsection (1)(a).
 - (5) The information is to be treated for the purposes of the 2007 Act as not being vetting information.”.
- (10) In section 23 (regulation of procedure for review)—
- (a) in subsection (1), for “enhanced criminal record certificates and scheme records” substitute “ Level 2 disclosures ”,
 - (b) in subsection (2)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “ a Level 2 disclosure ”.
- (11) Section 25 (amendments consequential on Chapter 2) is repealed.
- (12) In section 26 (interpretation of Part 2)—
- (a) the definitions of “1997 Act” and “enhanced criminal record certificate” are repealed,
 - (b) after the definition of “2007 Act” insert—
 - ““2020 Act” means the Disclosure (Scotland) Act 2020,”,
 - (c) in the definition of “applicant” for “113B of the 1997 Act for an enhanced criminal record certificate” substitute “ 11 of the 2020 Act for a Level 2 disclosure ”,
 - (d) after the definition of “independent reviewer” insert—
 - ““Level 2 disclosure” means a Level 2 disclosure under section 8 of the 2020 Act,
 - “purpose of the disclosure”, in relation to a Level 2 disclosure, has the meaning given in section 69 of the 2020 Act.”.

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