



# Disclosure (Scotland) Act 2020

## 2020 asp 13

### PART 2

#### PROTECTION OF VULNERABLE GROUPS

##### *Scheme membership*

#### 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),

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*Status: This is the original version (as it was originally enacted).*

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- (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—
  - (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—

- (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)”.