



# 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) ”.

PROSPECTIVE

### *Regulated roles*

#### **74 Regulated roles**

- (1) The PVG Act is amended as follows.
- (2) For section 91 (regulated work) substitute—

#### **“91 Regulated roles**

- (1) A regulated role means a regulated role with children or adults.
  - (2) A regulated role with children has the meaning given in schedule 2.
  - (3) A regulated role with adults has the meaning given in schedule 3.
  - (4) In this Act, there are two types of regulated roles—
    - (a) regulated roles with children, and
    - (b) regulated roles with adults.
  - (5) References in this Act to types of regulated roles are to be construed accordingly.”.
- (3) For schedule 2 (regulated work with children) substitute the schedule contained in schedule 3.
- (4) For schedule 3 (regulated work with adults) substitute the schedule contained in schedule 4.

#### **75 Meaning of “protected adult”**

- (1) Section 94 (meaning of “protected adult”) of the PVG Act is amended as follows.
- (2) In subsection (1) for the words from “an individual” to the end of that subsection substitute “—
  - (a) an individual aged 18 or over who, by reason of physical or mental disability, illness, infirmity or ageing—
    - (i) has an impaired ability to protect themselves from physical or psychological harm, or
    - (ii) requires assistance with the activities of daily living,

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- (b) in relation to a regulated role with adults that involves the carrying out of activities mentioned in paragraph 17 of Part 2 of schedule 3, an individual aged 18 or over who—
    - (i) is homeless (within the meaning of section 24 of the Housing (Scotland) Act 1987), or
    - (ii) has experienced, is experiencing or is at risk of experiencing domestic abuse,
  - (c) in relation to a regulated role with adults that involves the carrying out of activities mentioned in one or more of paragraphs 6 to 12 of Part 2 of schedule 3 (health care), an individual aged 18 or over who is being provided with a prescribed health service, or
  - (d) in relation to a regulated role with adults that involves the carrying out of such of the activities mentioned in Part 2 of schedule 3 as may be prescribed, an individual aged 18 or over who is being provided with—
    - (i) a prescribed support service,
    - (ii) a prescribed adult placement service,
    - (iii) a prescribed care home service,
    - (iv) a prescribed housing support service,
    - (v) a prescribed community care service, or
    - (vi) a prescribed welfare service.”.
- (3) After subsection (2) insert—
- “(2A) In subsection (1)(b)(ii), “domestic abuse” means behaviour (whether or not amounting to a criminal offence) that—
- (a) is perpetrated between partners or ex-partners, whether in the home or elsewhere or by means of electronic or other forms of communications, and
  - (b) involves any form of physical, verbal, sexual, psychological, emotional or financial abuse of one of the partners or ex-partners by the other.
- (2B) For the purposes of subsection (2A), a person is a partner of another person if they are—
- (a) married to each other,
  - (b) civil partners of each other,
  - (c) living with each other as if they were married to each other, or
  - (d) otherwise in an intimate relationship with each other,
- and the references to ex-partners are to be construed accordingly.”.
- (4) In subsection (3)—
- (a) in paragraph (a), for “paragraph (a) of subsection (1)” substitute “ sub-paragraphs (i) to (iv) of subsection (1)(d) ”,
  - (b) paragraphs (b) and (c) are repealed.
- (5) In subsection (4)—
- (a) after “In” insert “ sub-paragraph (v) of ”,
  - (b) the definition of “direct payment” is repealed.



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- (6) In subsection (5), for “subsection (1)(d)” substitute “ sub-paragraph (vi) of subsection (1)(d) ”.

### *Scheme members under consideration for listing*

PROSPECTIVE

## **76 Conditions imposed on scheme members under consideration for listing**

(1) The PVG Act is amended as follows.

(2) After section 13 insert—

### **“13A Conditions imposed on scheme members under consideration for listing**

- (1) Where Ministers are considering whether to list a scheme member by virtue of sections 10 to 13 or section 45B(7), they may impose such conditions on the scheme member as—
- (a) may be prescribed, and
  - (b) they consider necessary for the protection of the public or otherwise in the public interest.
- (2) Regulations under subsection (1)(a) may in particular provide that Ministers may—
- (a) restrict the scheme member from carrying out a regulated role,
  - (b) require that the scheme member may carry out a regulated role only under the supervision of another scheme member whom Ministers are not considering whether to list by virtue of sections 10 to 13 or section 45B(7),
  - (c) require that the scheme member may carry out only a regulated role of such description as may be specified by Ministers,
  - (d) require the scheme member to provide to them information relating to any regulated role which the scheme member is carrying out, or is to carry out, for a person or individual who is not an organisation or a personnel supplier.
- (3) Ministers may impose a condition under subsection (1) only on the basis of—
- (a) information which caused them to consider listing the scheme member,
  - (b) information relating to the scheme member which they obtain—
    - (i) in pursuance of a requirement made under any of sections 18 to 20, or
    - (ii) otherwise in performing their functions in relation to the Scheme.
- (4) A condition imposed under subsection (1) applies for the prescribed period beginning with the day on which Ministers impose the condition on the

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scheme member and ceases to apply at the end of that period unless it is confirmed by the sheriff under section 13B.

- (5) Where Ministers decide under subsection (1) to impose a condition on a scheme member, they must notify the persons mentioned in subsection (6) of—
  - (a) that fact, and
  - (b) the details of the condition.
- (6) The persons are—
  - (a) the scheme member,
  - (b) an organisation for whom Ministers know the scheme member is carrying out, or is seeking or agreeing to carry out, a regulated role,
  - (c) a personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role,
  - (d) any relevant regulatory body whom Ministers think it would be appropriate to notify under subsection (5), and
  - (e) the chief constable.
- (7) In addition, Ministers must inform the scheme member of the reason for imposing the condition.
- (8) In subsection (6)(d) (and section 13B(9)(c)), a “relevant regulatory body” is—
 

The General Teaching Council for Scotland,  
 Healthcare Improvement Scotland,  
 The Scottish Social Services Council,  
 Social Care and Social Work Improvement Scotland,  
 any other person specified in regulations made by Ministers.
- (9) In this section (and in sections 13B and 13C), “condition” includes restriction or requirement.

### **13B Application to sheriff for confirmation of conditions**

- (1) Ministers may apply to the sheriff for confirmation of a condition imposed on a scheme member under section 13A(1).
- (2) An application under subsection (1) must be made before the expiry of the period referred to in section 13A(4).
- (3) Where an application under subsection (1) is made, that period is to be treated for the purposes of section 13A(4) as not having ended until the application is determined.
- (4) In considering an application under subsection (1), the sheriff may—
  - (a) confirm the condition (with or without variation),
  - (b) remove the condition, or
  - (c) impose another condition.
- (5) The sheriff may only—
  - (a) make a variation to a condition under subsection (4)(a) if the variation would result in a condition that could have been imposed by Ministers under section 13A(1), or

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- (b) impose a condition under subsection (4)(c) if the condition is one that could have been imposed by Ministers under section 13A(1).
- (6) If the sheriff confirms (with or without variation) the condition under paragraph (a) of subsection (4) or imposes another condition under paragraph (c) of that subsection, that condition applies until Ministers make a decision under section 15 or, as the case may be, 16.
- (7) If the sheriff removes the condition under subsection (4)(b), the condition ceases to apply from the date of the sheriff's decision.
- (8) The scheme member is entitled to be a party to proceedings on an application under subsection (1).
- (9) Ministers must notify the following persons of the sheriff's decision under subsection (4)—
  - (a) the scheme member,
  - (b) an organisation (or other person) for whom they know the scheme member is carrying out, or seeking or agreeing to carry out, a regulated role,
  - (c) any relevant regulatory body whom Ministers think it would be appropriate to notify of the decision,
  - (d) the chief constable.
- (10) For the purposes of subsection (2), an application is made when it is lodged with the sheriff clerk.
- (11) Proceedings on an application under subsection (1) may take place in private if the sheriff considers it appropriate in all the circumstances.

### **13C Breach of conditions: offences**

- (1) It is an offence for a scheme member on whom a condition is imposed under section 13A(1) to fail to comply with the condition.
- (2) It is an offence for a person mentioned in subsection (3) to knowingly do anything, or fail to do anything, that results in a scheme member failing to comply with a condition imposed on the scheme member under section 13A(1).
- (3) The persons referred to in subsection (2) are—
  - (a) an organisation for whom the scheme member is carrying out a regulated role,
  - (b) a personnel supplier who has offered or supplied the scheme member to carry out a regulated role.
- (4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person did not know, and could not reasonably be expected to have known, that a condition was imposed on the scheme member.
- (5) A person who commits an offence under subsection (1) or (2) 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),

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(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), before the entry in the list for section 14(3) insert— “ Section 13A(1)(a) ”.

## PROSPECTIVE

### 77 Notice of consideration for listing

(1) Section 30 (notice of listing etc.) of the PVG Act is amended as follows.

(2) In subsection (3)—

- (a) in paragraph (b), at the end insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with children, ”,
- (b) in paragraph (c), at the end (and before the word “and” immediately following that paragraph) insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with adults, ”.

(3) After subsection (3) insert—

“(3A) Subsection (3B) applies where—

- (a) Ministers are considering whether to list an individual by virtue of sections 10 to 13 or section 45B(7), and
- (b) they know that the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults for a person other than an organisation.

(3B) Where this subsection applies, Ministers may notify the person—

- (a) that they are considering whether to list the individual in the children's list or, as the case may be, in the adults' list, and
- (b) of the details of any conditions that Ministers have imposed under section 13A(1) or, if no such conditions have been imposed, of that fact.”.

(3C) After considering whether to list an individual as mentioned in subsection (3A)(a), Ministers may notify their decision (whether to list the individual or not to do so) to any person other than an organisation for whom they know the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults.”.

(4) In subsection (5), after “(2)” insert “ , (3B), (3C) ”.

### 78 Withdrawal from Scheme when under consideration for listing

(1) The PVG Act is amended as follows.

(2) After section 59 insert—

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### **“59A Withdrawal from Scheme when under consideration for listing**

- (1) Where—
- (a) Ministers remove an individual who is a scheme member from the Scheme under section 59, and
  - (b) at the time of the removal, they are considering whether to list the individual by virtue of sections 10 to 13 or section 45B(7),
- they may decide not to continue to consider whether to list the individual.
- (2) Where Ministers decide under subsection (1) not to continue to consider whether to list an individual, that decision is not to be treated as a decision not to list the individual after considering whether to do so for the purposes of subsection (3C) or (4) of section 30 (and accordingly no notice of the decision under subsection (1) is to be given under either of those subsections of that section).”.
- (3) In section 60 (notice of removal), after subsection (2) insert—
- “(2A) Where Ministers decide under section 59A(1) not to continue to consider whether to list the individual a notice under subsection (1) must also give notice of that fact.”.

#### **Commencement Information**

**II** S. 78 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 3)

PROSPECTIVE

#### *Notice of barred status*

### **79 Notice of barred status**

After section 46 of the PVG Act insert—

#### **“46A Notice of barred status**

- (1) Subsection (2) applies where—
- (a) an accredited body has countersigned an application for a Level 2 disclosure,
  - (b) the individual applying for the disclosure seeks to participate in the Scheme,
  - (c) the purpose of the disclosure is to enable the accredited body (or any person for whom the body acts) to consider the individual's suitability to carry out, or to be offered or supplied for, a type of regulated role, and
  - (d) Ministers have refused to allow the individual to participate in the Scheme in relation to that type of regulated role because the individual is—

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- (i) barred from regulated roles with children, or (as the case may be)
- (ii) barred from regulated roles with adults.
- (2) Where this subsection applies, Ministers must notify the accredited body that they have refused to allow the individual to participate in the Scheme in relation to that type of regulated role because the individual is—
  - (a) barred from regulated roles with children, or (as the case may be)
  - (b) barred from regulated roles with adults.
- (3) In this section—
  - “accredited body” has the meaning given in section 46(2) of the Disclosure (Scotland) Act 2020,
  - “Level 2 disclosure” has the meaning given in section 8 of that Act.”.

### *Listing*

#### PROSPECTIVE

#### **80 Reference by chief constable**

- (1) The PVG Act is amended as follows.
- (2) After section 6 insert—

##### **“6A Reference by chief constable**

The chief constable must give Ministers any prescribed information that the chief constable holds in relation to an individual whom the chief constable considers is or has been carrying out a type of regulated role while not participating in the Scheme in relation to that type of regulated role.”.

- (3) After section 10(1)(a) (consideration whether to list: organisational referrals etc.) insert—
  - “(aa) where prescribed information relating to an individual has been given to Ministers in pursuance of section 6A, or”.

#### PROSPECTIVE

#### **81 Removal of references by court**

- (1) The PVG Act is amended as follows.
- (2) The following provisions are repealed—
  - (a) section 7,
  - (b) section 11,
  - (c) section 32(1) and (2),
  - (d) schedule 1,

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- (e) in the table in schedule 5, the entry relating to “relevant offence”.
- (3) In section 32 (relevant offences etc.)—
  - (a) in subsection (4), the word “7,” is repealed,
  - (b) the title of the section becomes “ Individual not criminally responsible or unfit for trial: order treated as conviction ”.

PROSPECTIVE

## **82 Reference by councils or integration joint boards**

- (1) Section 8 (reference by certain other persons) of the PVG Act is amended as follows.
- (2) In subsection (2)—
  - (a) before the entry in the list for the General Teaching Council for Scotland insert — “ Councils ”,
  - (b) after the entry in the list for Healthcare Improvement Scotland insert— “ An integration joint board established by order under section 9 of the Public Bodies (Joint Working) (Scotland) Act 2014 ”.
- (3) In subsection (3), before paragraph (a) insert—
  - “(za) in relation to a council or an integration joint board mentioned in subsection (2), such functions as are conferred on either of them by the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, the Adults with Incapacity (Scotland) Act 2000, the Adult Support and Protection (Scotland) Act 2007 or the Children and Young People (Scotland) Act 2014,”.

## **83 Application for removal from list**

- (1) Section 25 (application for removal from list) of the PVG Act is amended as follows.
- (2) In subsection (3), for paragraph (b) substitute—
  - “(b) Ministers are satisfied that there has been a relevant change in the applicant's circumstances since the applicant—
    - (i) was listed, or
    - (ii) last made an application for removal from the list under this section.”.
- (3) After subsection (4) insert—
  - “(4A) For the purposes of subsection (3)(b), a change in the applicant's circumstances is relevant if it is relevant to the question whether the applicant is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”.
- (4) Subsections (5) and (6) are repealed.

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**Changes to legislation:** There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020, PART 2. (See end of Document for details)

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**Commencement Information**

**I2** S. 83 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

**84 Ministers' powers to remove from list**

- (1) The PVG Act is amended as follows.
- (2) In section 28 (late representations), after subsection (1) insert—
  - “(1A) This section also applies where an individual listed under section 15 or 16 (other than one mentioned in subsection (1))—
    - (a) seeks to make representations to Ministers as to why the individual should not have been listed, and
    - (b) Ministers consider that it is appropriate in all the circumstances to allow the representations to be made.”.
- (3) In section 29 (removal from list), in subsection (1)(b)—
  - (a) the words “they are satisfied that the individual should not have been listed” become sub-paragraph (i), and
  - (b) at the end of that sub-paragraph insert “, or
    - (ii) they are otherwise satisfied that the individual is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”.

**Commencement Information**

**I3** S. 84 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

**85 Appeals and removals: information power**

- (1) The PVG Act is amended as follows.
- (2) In section 26 (determination of application for removal from list), subsection (3) is repealed.
- (3) After section 29 insert—

*“Appeals and removals: information powers*

**29A Appeals and removals: application of sections 18 to 20**

- (1) Sections 18 to 20 apply—
  - (a) for any of the purposes specified in subsection (2) as they apply for the purpose of enabling or assisting Ministers to decide whether to list an individual,
  - (b) with the modifications that are specified in subsection (2) in relation to the purpose.
- (2) The purposes (and modifications) are—



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- (a) enabling or assisting Ministers to consider, in relation to an appeal under section 21, 22 or 23, whether an individual should have been listed (with references to deciding whether to list an individual being read as references to deciding whether the individual should have been listed),
- (b) enabling or assisting Ministers to determine under section 26 an application for removal from the children's list or the adults' list (with references to deciding whether to list an individual being read as references to determining whether to remove an individual from the list),
- (c) enabling or assisting Ministers to consider, in relation to an appeal under section 27, whether an application for removal from the children's list or the adults' list should have been refused under section 26 (with references to deciding whether to list an individual being read as references to deciding whether an application for removal from the list should have been refused),
- (d) enabling or assisting Ministers to decide under section 28 or 29 whether to remove an individual from the children's list or the adults' list (with references to deciding whether to list an individual being read as references to deciding whether an individual should not have been listed or is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults).”. Confirmation of PVG Scheme membership”.

#### Commencement Information

**I4** S. 85 in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch. (with reg. 4)

PROSPECTIVE

### *Confirmation of PVG Scheme membership*

#### **86 Confirmation of scheme membership under the PVG Act**

- (1) The PVG Act is amended as follows.
- (2) For section 46 (statement of scheme membership) substitute—

#### **“46 Confirmation of scheme membership**

- (1) Ministers must provide a confirmation of scheme membership to each scheme member.
- (2) A confirmation of scheme membership is a document which—
  - (a) specifies the type of regulated role in relation to which the scheme member participates in the Scheme,
  - (b) confirms that the scheme member is not barred from that type of role,
  - (c) if Ministers are considering whether to list the member in relation to that type of role—

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- (i) states that fact, and
  - (ii) sets out details of any conditions that Ministers have imposed under section 13A(1) or, if no such conditions have been imposed, states that fact, and
  - (d) contains such other information about the scheme member as may be prescribed.
- (3) Ministers need not comply with subsection (1) where, at the same time as the individual applies to join the scheme, the individual makes an application under section 11 of the Disclosure (Scotland) Act 2020 for a Level 2 disclosure where section 17 of that Act applies.”.
- (3) For section 54 (disclosure of scheme membership) substitute—

**“54 Provision of confirmation of scheme membership to third parties**

- (1) Where—
- (a) a scheme member requests that Ministers make a confirmation of scheme membership available to such other person (a “third party”) as the member specifies in the request, and
  - (b) the conditions in subsection (2) are satisfied,
- Ministers must comply with the request.
- (2) The conditions are that—
- (a) the request includes a statement referred to in subsection (3),
  - (b) the request specifies the type of regulated role in relation to which it is made, and
  - (c) the scheme member participates in the Scheme in relation to that type of regulated role.
- (3) The statement is a statement by the scheme member that the confirmation of scheme membership is requested for the purpose of enabling or assisting the third party (or any other person for whom the third party acts) to consider the member's suitability to carry out, or to be offered or supplied for, the type of regulated role in relation to which the member participates in the Scheme.”.

*Miscellaneous*

**87 Retention of scheme records after removal**

In section 61 (retention of scheme records after removal) of the PVG Act, after subsection (2) insert—

- “(3) Where Ministers decide under section 59A(1) not to continue to consider whether to list an individual, Ministers may keep any information received by them when considering whether to list the individual for the purposes of enabling or assisting them to perform their functions under this Act.”.

**Commencement Information**

**I5** S. 87 in force at 10.12.2021 by [S.S.I. 2021/380, reg. 2, sch.](#)

*Status: Point in time view as at 10/12/2021. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020, PART 2. (See end of Document for details)*

## **88 Offences outside Scotland**

- (1) The PVG Act is amended as follows.
- (2) After section 37 insert—

### **“37A Offences outside Scotland**

- (1) This section applies where an offence is committed under section 34, 35 or 36 outside Scotland.
  - (2) The person committing the offence may be prosecuted, tried and punished for the offence—
    - (a) in a sheriff court district in which the person is apprehended or in custody, or
    - (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
  - (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”
- (3) After section 45G (as inserted by section 73) insert—

### **“47H Offences outside Scotland**

- (1) This section applies where an offence is committed under section 45C, 45D, 45E or 45F outside Scotland.
- (2) The person committing the offence may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
- (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”

#### **Commencement Information**

**I6** S. 88(1)(2) in force at 10.12.2021 by S.S.I. 2021/380, reg. 2, sch.

## **89 Guidance for chief constable**

After section 84 of the PVG Act insert—

### **“84A Guidance for chief constable**

- (1) The Scottish Ministers must issue guidance to the chief constable about the exercise of the chief constable's functions under Parts 1 and 2 of this Act.
- (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.

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- (3) Before issuing guidance under this section, the Scottish Ministers must consult the chief constable.
- (4) The chief constable must have regard to guidance issued under this section in exercising functions under Part 1 or 2 of this Act.
- (5) This section does not affect the generality of section 84.”.

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**Commencement Information**

**17** S. 89 in force at 10.12.2021 for specified purposes by [S.S.I. 2021/380](#), [reg. 2](#), [sch.](#)

**90 Meaning of “conviction”**

- (1) The PVG Act is amended as follows.
- (2) In section 97(1) (general interpretation), after the definition of “conduct” insert—
 

““conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974; and references to “convicted” (other than in section 14) are to be construed accordingly.”.
- (3) In schedule 5 (index), at the appropriate place insert—

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“conviction, convicted (other than in section 14) section 97(1)”.

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**Commencement Information**

**18** S. 90 in force at 10.12.2021 by [S.S.I. 2021/380](#), [reg. 2](#), [sch.](#)

**Status:**

Point in time view as at 10/12/2021. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Disclosure (Scotland) Act 2020, PART 2.