

PART 2

PROTECTION OF VULNERABLE GROUPS

Scheme membership

71 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.”.

72 Duration of Scheme membership

After section 45 of the PVG Act insert—

“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”), Ministers must send written notice to the persons mentioned in subsection (4)—
 - (a) of the expiry date, and
 - (b) 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.

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

45E 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 21(1)(a) of the Disclosure (Scotland) Act 2019 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.

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

A person who commits an offence under section 45C, 45D or 45E 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).”.

Regulated roles

75 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.

76 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 or old age—

(i) has significantly impaired ability to protect themselves from physical or psychological harm, or

(ii) requires assistance with the activities of daily living, and

(b) 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.”.

- (3) Subsections (3) to (5) are repealed.

Scheme members under consideration for listing

77 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(6), 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(6),

(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 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 (or another person) for whom Ministers know the scheme member is carrying out, or is seeking or agreeing to carry out, a regulated role,
 - (c) any relevant regulatory body whom Ministers think it would be appropriate to notify under subsection (5), and
 - (d) the chief constable.
- (7) In addition, Ministers must inform the scheme member of the reason for imposing the condition.
- (8) In subsection (6)(c) (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 (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
 - 10 (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.
- 15 (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).
- 20 (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,
 - 25 (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.
- 30 (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.
- 35 (2) It is an offence for a person for whom a scheme member carries out, or seeks or agrees to carry out, a regulated role to knowingly do anything, or fail to do anything, that results in the scheme member failing to comply with a condition imposed on the scheme member under section 13A(1).
- 40 (3) 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.

- (4) 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),
 - (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)”.

78 Notice of consideration for listing

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

- (2) 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(6), 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.”.

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

79 Withdrawal from Scheme when under consideration for listing

- (1) The PVG Act is amended as follows.

- (2) After section 59 insert—

“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(6),

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 section 30(4) (and accordingly no notice of the decision under subsection (1) is to be given under that subsection).”.

Combined offences

70 An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 69 of this schedule.

Corresponding offences elsewhere in the UK or abroad

5 71 An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 70 of this schedule.

SCHEDULE 2
(introduced by section 14(1)(b)(i))

LIST B OFFENCES

PART 1

COMMON LAW OFFENCES

- 1 An offence of perverting, or attempting to pervert, the course of justice (by whatever means and however the offence is described), including in particular—
- 15 (a) false accusation of a crime,
 (b) perjury,
 (c) prevarication on oath,
 (d) prison breaking,
 (e) subornation of perjury.
- 20 2 Assault excluding any assault that is a List A offence.
- 3 Breach of the peace.
- 4 Clandestinely taking possession.
- 5 Culpable and reckless conduct.
- 6 Culpable and reckless endangering of the public.
- 25 7 Culpable and reckless fire-raising.
- 8 False accusation of a crime.
- 9 Fraud.
- 10 Hijacking.
- 11 Housebreaking with intent to steal.
- 30 12 Opening a lockfast place with intent to steal.
- 13 Piracy.
- 14 Public indecency.
- 15 Reset (excluding reset of plagium).
- 16 Robbery.
- 35 17 Theft (excluding plagium).

- 18 Treason.
19 Uttering.
20 Uttering threats.

PART 2

STATUTORY OFFENCES

5

Adult support and protection

- 21 An offence under section 49 of the Adult Support and Protection (Scotland) Act 2007 (obstruction).

Armed forces

- 10 22 An offence under section 42 of the Armed Forces Act 2006 (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this schedule.

Assaulting or hindering public officials

- 23 An offence under section 89 of the Police Act 1996 (assaults on constables).
15 24 An offence under section 32 of the Commissioners for Revenue and Customs Act 2005 (assault).
25 An offence under the Emergency Workers (Scotland) Act 2005.
26 An offence under section 85 of the Fire (Scotland) Act 2005 (false alarms).
27 An offence under section 90 of the Police and Fire Reform (Scotland) Act 2012
20 (assaulting or impeding police).

Aviation, maritime and spaceflight

- 28 An offence under the Piracy Act 1837.
29 An offence under any of the following provisions of the Aviation Security Act 1982—
25 (a) section 1 (hijacking),
30 (b) section 2 (destroying, damaging or endangering safety of aircraft),
30 (c) section 3 (other acts endangering or likely to endanger safety of aircraft),
30 (d) section 4 (offences in relation to certain dangerous articles).
31 An offence under section 9 of the Aviation and Maritime Security Act 1990 (hijacking of ships).
30 31 An offence under article 265 of the Air Navigation Order 2016 in respect of a contravention of article 240 of that Order (endangering safety of aircraft).
32 An offence under any of the following paragraphs of schedule 4 of the Space Industry Act 2018—
35 (a) paragraph 1 (hijacking of spacecraft),
35 (b) paragraph 2 (destroying, damaging or endangering safety of spacecraft),
35 (c) paragraph 3 (other acts endangering or likely to endanger safety of spacecraft),

(d) paragraph 5 (offences in relation to certain dangerous articles).

Bribery

33 An offence under the Bribery Act 2010.

Care services

5 34 An offence under any of the following provisions of the Regulation of Care (Scotland) Act 2001—

(a) section 45 (application for registration under Part 3),

(b) section 52 (use of title “social worker” etc.).

10 35 An offence under any of the following provisions of the Public Services Reform (Scotland) Act 2010—

(a) section 80(1) (offences in relation to registration under Chapter 3),

(b) section 81 (false statements in application under Chapter 3),

(c) section 90 (offences under Chapter 4).

15 36 An offence under article 27 of the Public Services Reform (General Teaching Council for Scotland) Order 2011 (offences).

37 An offence under regulation 19 of the Social Care and Social Work Improvement (Scotland) (Requirements for Care Services) Regulations 2011 (offences).

Charities

38 An offence under the Charities and Trustee Investment (Scotland) Act 2005.

20 *Child Support*

39 An offence under section 50 of the Child Support Act 1991 (unauthorised disclosure of information).

Children

25 40 An offence under section 6 of the Child Abduction Act 1984 (offence in Scotland of parent, etc. taking or sending child out of United Kingdom).

Computer misuse

41 An offence under any of the following provisions of the Computer Misuse Act 1990—

(a) section 1 (unauthorised access to computer material),

30 (b) section 2 (unauthorised access with intent to commit or facilitate commission of further offences),

(c) section 3 (unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer etc.),

(d) section 3A (making, supplying or obtaining articles for use in an offence under section 1, 3 or 3ZA).

35 *Crossbows*

42 An offence under section 1 of the Crossbows Act 1987 (sale and letting on hire).

Drugs

43 An offence under any of the following provisions of the Misuse of Drugs Act 1971—

- (a) section 3 (restriction of importation and exportation of controlled drugs),
- (b) section 4 (restriction of production and supply of controlled drugs),
- 5 (c) section 4A (aggravation of offence of supply of controlled drug),
- (d) section 5(3) (restriction of possession of controlled drugs),
- (e) section 6 (restriction of cultivation of cannabis plant),
- (f) section 8(a) and (b) (occupiers etc. of premises to be punishable for certain activities taking place there),
- 10 (g) section 12 (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners etc. convicted of certain offences),
- (h) section 13 (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners in other cases),
- 15 (i) section 17 (power to obtain information from doctors, pharmacists etc. in certain circumstances),
- (j) section 19 (attempts etc. to commit offences), but only in relation to an offence listed in sub-paragraphs (a) to (i) of this paragraph,
- (k) section 20 (assisting in or inducing commission outside United Kingdom of offence punishable under corresponding law).

20 44 An offence under any of the following provisions of the Customs and Excise Management Act 1979 in relation to goods prohibited to be imported or exported under section 3(1) of the Misuse of Drugs Act 1971 (restriction of importation and exportation of controlled drugs)—

- (a) section 50(2) or (3) (penalty for improper importation of goods),
- 25 (b) section 68(2) (offences in relation to exportation of prohibited or restricted goods),
- (c) section 170 (fraudulent evasion of duty).

45 An offence under the Criminal Justice (International Co-operation) Act 1990.

30 46 An offence under any of the following provisions of the Psychoactive Substances Act 2016—

- (a) section 5 (supplying, or offering to supply, a psychoactive substance),
- (b) section 7 (possession of psychoactive substance with intent to supply),
- (c) section 8 (importing or exporting a psychoactive substance),
- (d) section 9 (possession of a psychoactive substance in a custodial institution),
- 35 (e) section 48 (offence in relation to enforcement officers).

Escape from custody etc.

47 An offence under section 316 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (inducing and assisting absconding etc.).

48 An offence under section 91 of the Police and Fire Reform (Scotland) Act 2012 (escape from custody).

Financial services

49 An offence under the Financial Services and Markets Act 2000.

5 50 An offence under the Financial Services Act 2012.

Fire safety

51 An offence under section 72(1) or (3) of the Fire (Scotland) Act 2005 (offences).

Firearms

52 An offence under any of the following provisions of the Firearms Act 1968—

- 10 (a) section 1 (requirement of firearm certificate),
- (b) section 2 (requirement of certificate for possession of shot guns),
- (c) section 3 (business and other transactions with firearms and ammunition),
- (d) section 22 (acquisition and possession of firearms by minors),
- (e) section 23 (exceptions from section 22(4)),
- 15 (f) section 28A(7) (certificates: supplementary),
- (g) section 29 (variation of firearm certificates),
- (h) section 30D(3) (revocation of certificates: supplementary),
- (i) section 39 (offences in connection with registration),
- (j) section 40 (compulsory register of transactions in firearms).

20 53 An offence under section 50(5) of the Civic Government (Scotland) Act 1982 (drunk in possession of firearm).

54 An offence under the Firearms (Amendment) Act 1997.

55 An offence under any of the following provisions of the Violent Crime Reduction Act 2006—

- 25 (a) section 28 (using someone to mind a weapon),
- (b) section 32 (sales of air weapons by way of trade or business to be face to face),
- (c) section 35 (restriction on sale and purchase of primers),
- (d) section 36 (manufacture, import and sale of realistic imitation firearms).

30 56 An offence under section 31 of the Air Weapons and Licensing (Scotland) Act 2015 (false statements, certificates and permits).

Food safety and standards

57 An offence under any of the following provisions of the Food Safety Act 1990—

- (a) section 7 (rendering food injurious to health),
- (b) section 9 (inspection and seizure of suspected food).

35 58 An offence under regulation 4(b) of the General Food Regulations 2004 (food safety requirements).

Fraud and forgery

- 59 An offence under the Forgery and Counterfeiting Act 1981.
- 60 An offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995 (false monetary instruments).
- 5 61 An offence under the Fraud Act 2006.
- 62 An offence under section 993 of the Companies Act 2006 (offence of fraudulent trading).
- 63 An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in fraud).
- 10 64 An offence under section 92 of the Police and Fire Reform (Scotland) Act 2012 (impersonation etc.).

Immigration etc.

- 65 An offence under any of the following provisions of the Immigration and Asylum Act 1999—
- 15 (a) section 105 (false representations),
(b) section 106 (dishonest representations),
(c) any of the following paragraphs of schedule 11—
(i) paragraph 1 (obtaining certificates of authorisation by false pretences),
(ii) paragraph 4 (assaulting a detainee custody officer),
20 (iii) paragraph 5 (obstructing detainee custody officers).
- 66 An offence under section 35 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (deportation or removal: cooperation).
- 67 An offence under section 21 of the Immigration, Asylum and Nationality Act 2006 (offence).

25 *Insolvency*

- 68 An offence under any of the following provisions of the Insolvency Act 1986—
(a) section 131 (company's statement of affairs),
(b) section 206 (fraud, etc. in anticipation of winding up),
(c) section 208 (misconduct in course of winding up),
30 (d) section 216 (restriction on re-use of company names),
(e) section 235 (duty to co-operate with office-holder).

Landmines

- 69 An offence under section 2 of the Landmines Act 1998 (prohibited conduct).

Medicines

- 35 70 An offence under section 67(2) or (3) of the Medicines Act 1968 (offences under Part 3).
- 71 An offence under any of the following provisions of the Human Medicines Regulations 2012—

- (a) regulation 34(1) (offences: breach of regulations and false information and defence concerning starting materials),
- (b) regulation 255(1)(a), (b), (c) or (d) (offences relating to dealings with medicinal products).

5 *Mental health*

72 An offence under section 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (false statements).

Neglect of duty

10 73 An offence under Part 4 (shipping: alcohol and drugs) or Part 5 (aviation: alcohol and drugs) of the Railways and Transport Safety Act 2003.

74 An offence under section 22 of the Police and Fire Reform (Scotland) Act 2012 (failure to perform duty).

Obscene material etc.

15 75 An offence under section 1(1) of the Indecent Displays (Control) Act 1981 (indecent displays).

76 An offence under section 51 of the Civic Government (Scotland) Act 1982 (obscene material).

77 An offence under section 85(3) of the Postal Services Act 2000 (prohibition on sending certain articles by post).

20 78 An offence under section 127(1) of the Communications Act 2003 (improper use of public electronic communications network).

Offences in relation to children

79 An offence under any of the following provisions of the Children and Young Persons (Scotland) Act 1937—

- 25 (a) section 15 (causing or allowing persons under 16 to be used for begging),
- (b) section 22 (exposing children under seven to risk of burning),
- (c) section 31(1) (penalties and legal proceedings in respect of general provisions as to employment),
- 30 (d) section 33 (prohibition of persons under sixteen taking part in performances endangering life or limb),
- (e) section 34 (restrictions on training for performances of a dangerous nature).

80 An offence under section 40(1) of the Children and Young Persons Act 1963 (offences).

81 An offence under section 50(2) of the Civic Government (Scotland) Act 1982 (drunk in charge of a child).

35 82 An offence under section 81 of the Children (Scotland) Act 1995 (offences in connection with orders etc. for the protection of children).

83 An offence under any of the following provisions of the Children's Hearings (Scotland) Act 2011—

- (a) section 59 (offences),

SCHEDULE 3
(introduced by section 75)

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 2 OF THE PVG ACT

“SCHEDULE 2
(introduced by section 91(2))”

REGULATED ROLES WITH CHILDREN

PART 1

PRELIMINARY

Regulated roles with children

- 1 (1) A regulated role with children 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) in the case of—
 - (i) activities mentioned in paragraph 21 of Part 2 of this schedule, 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 unsupervised contact with children,
 - (ii) other activities mentioned in Part 2 of this schedule, 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 children.
- (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 children,
- is to be treated as a regulated role with children for the purposes of sub-paragraph (1).

- (ii) 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,

5 “secure accommodation for children” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children.

10 32 Ministers may by regulations amend the definition of “further education institution” in paragraph 31 so as to include or exclude bodies listed in schedule 2 of the Further and Higher Education (Scotland) Act 2005.

PART 3

GENERAL

Power to amend schedule

15 33 Ministers may by regulations modify this schedule as they think appropriate.

34 Regulations under paragraph 33 may disapply or otherwise modify the application of sections 34 to 37 and sections 45C to 45F in relation to particular kinds of regulated roles with children.”.

SCHEDULE 4

(introduced by section 75)

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

“SCHEDULE 3

(introduced by section 91(3))

REGULATED ROLES WITH ADULTS

25 PART 1

PRELIMINARY

Regulated roles with adults

1 (1) A regulated role with adults is a role of any description which—

30 (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

35 (ii) in Scotland, and

(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 13(1) of the Disclosure (Scotland) Act 2019) where section 20 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.”,

(c) in subsection (4), for “Part 5 of the 1997 Act” substitute “Part 1 of the Disclosure (Scotland) Act 2019”.

(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

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 2019)”.

PART 2

MODIFICATIONS OF ENACTMENTS IN CONSEQUENCE OF PART 2

Education (Scotland) Act 1980

(1) The Education (Scotland) Act 1980 is amended as follows.

(2) In section 98A (application for registration of independent school)—

(a) in subsection (5)(a)(ii), for “work” substitute “roles”,

- (b) in subsection (6), for the definition of “barred from regulated work with children” substitute—

““barred from regulated roles with children” is to be construed in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007;”.

- (3) In section 99 (complaints), in each of paragraphs (g)(ii) and (h)(ii) of subsection (1A) for “work” substitute “roles”.

- (4) In section 135(1) (interpretation), for the definition of “barred from regulated work with children” substitute—

““barred from regulated roles with children” has the meaning given in section 98A(6) of this Act;”.

Foster Children (Scotland) Act 1984

- 7 In section 7(4) (persons disqualified from keeping foster children) of the Foster Children (Scotland) Act 1984 for “work” substitute “roles”.

Protection of Vulnerable Groups (Scotland) Act 2007

- 8 (1) The PVG Act is amended as follows.

- (2) In section 2 (referral ground)—

- (a) in paragraph (a), for the opening words substitute—

“(a) in relation to an individual who is or has been carrying out (or has been offered or supplied for) a regulated role with children, is that the individual has, whether or not in the course of the individual carrying out that role—”,

- (b) in paragraph (b), for the opening words substitute—

“(b) in relation to an individual who is or has been carrying out (or has been offered or supplied for) a regulated role with adults, is that the individual has, whether or not in the course of the individual carrying out that role—”.

- (3) In section 3 (reference following disciplinary action etc.)—

- (a) in subsection (1)—

(i) in the opening words for “doing regulated work” substitute “carrying out a regulated role”,

(ii) in paragraph (a)(ii) for “work” substitute “role”,

(iii) in paragraph (b)(i) for “doing regulated work” substitute “carrying out the regulated role”,

- (b) in subsection (2)—

(i) in the opening words for “doing regulated work” substitute “carrying out a regulated role”,

(ii) in paragraph (a) for “doing the regulated work” substitute “carrying out the regulated role”,

- (iii) in paragraph (b) for “doing regulated work” substitute “carrying out the regulated role”,
 - (iv) in paragraph (c)(ii) for “doing regulated work” substitute “carrying out the regulated role”,
- 5 (c) in subsection (3)—
 - (i) in paragraph (a) for the words from “regulated” to the end of that paragraph substitute “a regulated role is not to be treated as having stopped carrying out that role,”,
 - (ii) in paragraph (b) for “work” substitute “role”.
- 10 (4) In section 4 (reference by employment agency)—
 - (a) in the opening words for “doing regulated work” substitute “carrying out a regulated role”,
 - (b) in paragraph (b)(i) for “further regulated work” substitute “another regulated role”,
 - 15 (c) in paragraph (b)(ii) for “such work” substitute “another regulated role”.
- (5) In section 5 (reference by employment business)—
 - (a) in the opening words for “regulated work” substitute “a regulated role”,
 - (b) in paragraph (b) for “doing regulated work” substitute “carrying out the regulated role”,
 - 20 (c) in paragraph (c) for “further regulated work” substitute “another regulated role”.
- (6) In section 6(1) (reference relating to matters occurring before provisions come into force) for “doing the regulated work” substitute “carrying out the regulated role”.
- (7) In section 8(1) (reference by certain other persons) for “doing regulated work” substitute “carrying out a regulated role”.
- 25 (8) In section 10(4) (consideration whether to list: organisational referrals etc.) for the words from “work” to the end of that subsection substitute “role (if any) which the individual is or has been carrying out.”.
- (9) In section 12 (consideration whether to list: vetting information etc.) in each of subsections (1)(b) and (2)(b) for “do regulated work” substitute “carry out a regulated role”.
- 30 (10) In section 13 (consideration whether to list: inquiries)—
 - (a) in each of paragraphs (a) and (b) of subsection (1) for “doing regulated work” substitute “carrying out a regulated role.”,
 - (b) in subsection (4) for the words from “work” to the end of that subsection substitute “role which the individual was carrying out”.
- 35 (11) In section 15 (inclusion in children’s list after consideration) for “work” substitute “carry out regulated roles”.
- (12) In section 16 (inclusion in adults’ list after consideration) for “work with protected” substitute “carry out regulated roles with”.
- 40 (13) In section 18 (police information etc.) in each of subsections (1) and (4)(a) for “work” substitute “role”.

- (14) In section 19(2)(a) (information held by public bodies etc.) for “work” substitute “role”.
- (15) In section 20 (information held by regulated work providers)—
- (a) in subsection (2)—
- (i) in paragraph (a) for “doing, or has done, regulated work” substitute “carrying out, or has carried out, a regulated role”,
- (ii) in paragraph (b) for the words from “regulated” to the end of that paragraph substitute “a regulated role by the person (whether or not the individual subsequently carried out the role),”,
- (iii) in paragraph (c) for “regulated work” substitute “a regulated role”,
- (iv) in paragraph (d) for “do regulated work” substitute “carry out a regulated role”,
- (b) the title of the section becomes “Information held by providers of regulated roles”.
- (16) In section 21 (appeals against inclusion in children’s list), in subsection (3)(a) for “work” substitute “carry out regulated roles”.
- (17) In section 22 (appeals against inclusion in adults’ list), in subsection (3)(a) for “work with protected” substitute “carry out regulated roles with”.
- (18) In section 26 (determination of application for removal from list)—
- (a) in subsection (1)(a) for “work” substitute “carry out regulated roles”,
- (b) in subsection (2)(a) for “work with protected” substitute “carry out regulated roles with”.
- (19) In section 27 (appeals against refusal to remove individual from list)—
- (a) in subsection (2)(a) for “work” substitute “carry out regulated roles”,
- (b) in subsection (3)(a) for “work with protected” substitute “carry out regulated roles with”.
- (20) In section 30 (notice of listing etc.)—
- (a) in subsection (1)(c), after “13” insert “or section 45B(6)”,
- (b) in each of subsections (1)(b) and (2)(a) for “doing regulated work” substitute “regulated roles”,
- (c) in subsection (3)(b)—
- (i) in sub-paragraph (i) for “work” substitute “roles”,
- (ii) in the closing words for “doing regulated work” substitute “carrying out a regulated role”,
- (d) in subsection (3)(c)—
- (i) in sub-paragraph (i) for “work” substitute “roles”,
- (ii) in the closing words for “doing regulated work” substitute “carrying out a regulated role”,
- (e) in each of paragraphs (b) and (c) of subsection (4) for “doing regulated work” substitute “carrying out a regulated role”.
- (21) The italic heading before section 34 becomes “Offences relating to regulated roles”.

(22) In section 34 (barred individuals not to do regulated work)—

(a) in subsection (1), for “do, or to seek or agreed to do, any regulated work” substitute “carry out, or to seek or agree to carry out, any regulated role”,

(b) in subsection (2)—

(i) in paragraph (a), for “work” substitute “role”,

(ii) in paragraph (b), for “work concerned was regulated work” substitute “role concerned was a regulated role”,

(c) the title of the section becomes “Barred individuals not to carry out regulated roles”.

(23) In section 35 (organisations not to use barred individuals for regulated work)—

(a) in subsection (1), for “regulated work to an individual barred from that work” substitute “a regulated role to an individual barred from that role”,

(b) in subsection (2)—

(i) for “do” substitute “carry out”,

(ii) for “regulated work” substitute “a regulated role”,

(c) in subsection (3)(a)(ii), for “work” substitute “roles”,

(d) in subsection (5), for “regulated work” substitute “a regulated role”,

(e) in subsection (6), for “doing that regulated work” substitute “that regulated role”,

(f) in subsection (7)—

(i) for “regulated work” substitute “a regulated role”,

(ii) for “do that work” substitute “carry out that role”,

(g) the title of the section becomes “Organisations not to use barred individuals for regulated roles”.

(24) In section 36 (personnel suppliers not to supply barred individuals for regulated work)—

(a) in subsection (1)—

(i) in paragraph (a) for “doing regulated work” substitute “regulated roles”,

(ii) in paragraph (b) for “do regulated work” substitute “carry out a regulated role”,

(b) in subsection (2) for “doing the regulated work” substitute “the regulated role”,

(c) The title of the section becomes “Personnel suppliers not to supply barred individuals for regulated roles”.

(25) The title of section 37 becomes “Penalties for offences relating to regulated roles”.

(26) In section 39(1) (restrictions on listing in children’s list) for “work” substitute “roles”.

(27) In section 40(1) (restrictions on listing in adults’ list) for “work” substitute “roles”.

(28) In section 44 (the Scheme) for “do, or wish to do, regulated work” substitute “carry out, or wish to carry out, regulated roles”.

- (29) In section 48 (scheme record), for paragraph (a) substitute—
 “(a) the information to be contained in a confirmation of scheme membership under section 46(2), and”.
- (30) In section 49(1)(c)(i) (vetting information) for “work” substitute “role”.
- 5 (31) In section 58(1) (removal from scheme)—
 (a) in the opening words for “work” substitute “role”,
 (b) in paragraph (a) for “doing that work” substitute “carrying out that type of role”,
 (c) in paragraph (b) for “doing that work” substitute “that type of regulated role”.
- (32) In section 59 (withdrawal from scheme)—
 10 (a) in the opening words for “work” substitute “role”,
 (b) in paragraph (b) for “doing that type of regulated work” substitute “carrying out that type of regulated role”.
- (33) In section 60 (notice of removal)—
 (a) in subsection (1), after “section” insert “45B(3)(a) or (5),”,
 15 (b) in subsection (2)(a), for “work” substitute “role”.
- (34) In section 62 (evidence of identity), in subsection (1), for paragraph (c) substitute—
 “(c) a request for confirmation of scheme membership under section 54,”.
- (35) The italic heading before section 65 becomes “Offences relating to confirmation of scheme membership”.
- 20 (36) In section 65 (falsification of scheme records etc.)—
 (a) in subsection (1)—
 (i) in paragraph (a), for “disclosure record” substitute “confirmation of scheme membership made available under section 54”,
 (ii) in each of paragraphs (b) and (c), for “a disclosure record” substitute “such a confirmation”,
 25 (iii) in paragraph (c), for “disclosed” substitute “made available”,
 (b) in subsection (2)—
 (i) in paragraph (a), for “disclosure record” substitute “confirmation of scheme membership under section 54”,
 (ii) in paragraph (b), for “doing regulated work” substitute “carrying out a regulated role”,
 30 (c) the title of the section becomes “Falsification of confirmation of scheme membership”.
- (37) In section 66 (unlawful disclosure of scheme records etc.)—
 35 (a) in subsection (1), for “disclosure information is disclosed under section 51, 52, 53 or 54” substitute “a confirmation of scheme membership is made available under section 54”,

- (b) in subsection (2)—
- (i) for “disclosure information” substitute “confirmation of scheme membership”,
 - (ii) in paragraph (c), for “disclosure was made” substitute “confirmation of scheme membership was made available”,
- (c) in each of subsections (2)(c) and (4)(b) for “do, or to be offered or supplied for, regulated work” substitute “carry out, or to be offered or supplied for, a regulated role”,
- (d) in subsection (3), for “disclosure information” substitute “a confirmation of scheme membership”,
- (e) in subsection (4)—
- (i) for “disclosure information” substitute “confirmation of scheme membership”,
 - (ii) in paragraph (a), for “corresponding disclosure was made under section 52, 53 or 54” substitute “confirmation of scheme membership was made available under section 54”,
 - (iii) in paragraph (b), for “disclosure was made” substitute “confirmation of scheme membership was made available”,
- (f) in subsection (5), for “disclosure information” substitute “a confirmation of scheme membership made available under section 54”,
- (g) in subsection (6), for “disclosure information” substitute “confirmation of scheme membership”,
- (h) in subsection (7), for “disclosure information” substitute “a confirmation of scheme membership made available under section 54”,
- (i) in subsection (8)—
- (i) for “disclosure information” substitute “confirmation of scheme membership”,
 - (ii) for “corresponding disclosure was made under section 52, 53 or 54” substitute “confirmation of scheme membership was made available under section 54”,
- (j) in subsection (9), for “disclosure information” substitute “a confirmation of scheme membership made available under section 54”,
- (k) the title of the section becomes “Unlawful disclosure of confirmation of scheme membership”.
- (38) In section 67 (unlawful requests for scheme records etc.)—
- (a) in subsection (1), for “disclosure record” substitute “confirmation of scheme membership under section 54”,
 - (b) in subsection (2), for “disclosure information” substitute “a confirmation of scheme membership made available under section 54”,

Disclosure (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to the disclosure of criminal history and other information by the Scottish Ministers; to make amendments to the Protection of Vulnerable Groups (Scotland) Act 2007; and for connected purposes.

Introduced by: John Swinney
Supported by: Maree Todd
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