

Disclosure (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 14	Schedules 1 and 2
Sections 15 to 75	Schedules 3 and 4
Sections 76 to 89	Schedule 5
Sections 90 to 94	Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 71

Jamie Greene

209 In section 71, page 44, line 7, leave out <aged 16 or over>

Jamie Greene

210 In section 71, page 44, line 19, at end insert—

<(4) Ministers may 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) 12 years of age or older but under 16 years of age,

if it appears to them from the information contained in the application that it is appropriate in the circumstances to allow the individual to participate in the Scheme.”>

Section 72

Maree Todd

127 In section 72, page 44, line 33, after <date”> insert <—

(a)>

Maree Todd

128 In section 72, page 44, line 38, at end insert—

<(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.>

Maree Todd

129 In section 72, page 45, line 1, leave out <(3)> and insert <(3)(a)>

Maree Todd

130 In section 72, page 45, line 6, at end insert—

<() any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.>

Maree Todd

131 In section 72, page 45, line 10, leave out <(3)> and insert <(3)(a)>

Maree Todd

132 In section 72, page 45, line 10, leave out <or personnel supplier> and insert <, personnel supplier or relevant regulatory body>

Maree Todd

133 In section 72, page 45, line 11, after <supplier> insert <, or under subsection (3)(b),>

Maree Todd

134 In section 72, page 45, line 12, leave out <to the organisation or personnel supplier>

Section 73

Maree Todd

135 In section 73, page 45, line 41, after <renewed,> insert—

<(ia) 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,>

Maree Todd

136 In section 73, page 46, line 4, at end insert—

<(3A) Where Ministers decide under subsection (3)(b)(ii) 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 (4)—

(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.>

Maree Todd

137 In section 73, page 46, line 12, at end insert—

- <() any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.>

Maree Todd

138 In section 73, page 46, line 27, leave out <may> and insert <must>

Maree Todd

139 In section 73, page 46, line 27, leave out <relevant list> and insert <children’s list or the adults’ list (or both)>

Maree Todd

140 In section 73, page 46, line 29, at end insert <(or both of those lists).>

Maree Todd

141 In section 73, page 46, leave out lines 30 to 34 and insert—

- <() For the avoidance of doubt, subsection (6) 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.>

Maree Todd

142 In section 73, page 47, line 3, after <section> insert <—

- (a)>

Maree Todd

143 In section 73, page 47, line 3, leave out <(3)> and insert <(3)(a)>

Maree Todd

144 In section 73, page 47, line 4, after <(3)(b)(i)> insert <or (3A)(a)>

Maree Todd

145 In section 73, page 47, line 5, at end insert <, 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)(ia) or (3A)(b) of this section.>

Section 74

Maree Todd

- 146 In section 74, page 47, line 16, leave out <seek or>

Maree Todd

- 147 In section 74, page 47, line 18, at end insert—
- <() 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.>

Jamie Greene

- 211 In section 74, page 47, line 31, after <16> insert <, unless Ministers have, under section 45(4), allowed the individual to participate in the Scheme in relation to the type of regulated role concerned>

Jamie Greene

- 212 In section 74, page 48, line 2, after <16> insert <, unless Ministers have, under section 45(4), allowed the individual to participate in the Scheme in relation to the type of regulated role concerned>

Maree Todd

- 148 In section 74, page 48, line 2, at end insert—
- <45DA 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.>

Maree Todd

- 149 In section 74, page 48, line 19, after <45D> insert <, 45DA>

Schedule 3

Alex Cole-Hamilton

- 222 In schedule 3, page 77, line 19, after <21> insert <or 30A>

Alex Cole-Hamilton

- 223 In schedule 3, page 78, line 28, at beginning insert <except in the case of activities mentioned in paragraph 30A,>

Maree Todd

- 150 In schedule 3, page 78, line 30, leave out <or personal>

Maree Todd

- 151 In schedule 3, page 78, line 31, at end insert <, or
- (c) the activity is carried out for an individual (“A”)—
 - (i) in the course of a personal relationship,
 - (ii) for no commercial consideration, and
 - (iii) for the benefit of A, a member of A’s family or A’s friend.>

Maree Todd

- 152 In schedule 3, page 78, line 38, at end insert—
<(2A) In sub-paragraph (1)(c)—>

Maree Todd

- 153 In schedule 3, page 78, line 39, at end insert <, and
() “benefit” does not include commercial benefit.>

Maree Todd

- 154 In schedule 3, page 78, line 40, leave out <sub-paragraph (2)(c)> and insert <sub-paragraphs (1)(c) and (2A)(c)>

Maree Todd

- 155 In schedule 3, page 79, line 10, leave out <making decisions that affect> and insert <exercising power or influence over>

Maree Todd

- 156 In schedule 3, page 80, line 35, leave out <making decisions that affect> and insert <exercising power or influence over>

Maree Todd

- 157 In schedule 3, page 80, line 35, at end insert—
- <() For the purpose of paragraph (b) of the definitions of “contact with children” in each of sub-paragraphs (1) and (3), “exercising power or influence over children” means—
 - (a) assisting, facilitating, permitting or impeding progress towards a desirable objective or outcome for a particular child,
 - (b) making decisions of an operational or strategic nature that could have an impact on a number of children, or
 - (c) persuading or putting pressure on a particular child to behave or act in a certain manner for the financial gain or personal gratification of a person other than the child.>

Maree Todd

- 158 In schedule 3, page 81, line 21, leave out <, employability, health or wellbeing> and insert <or education>

Maree Todd

- 159 In schedule 3, page 82, line 3, leave out <exclusively>

Maree Todd

- 160 In schedule 3, page 82, line 13, leave out <support services> and insert <advice or guidance in relation to health or wellbeing>

Maree Todd

- 161 In schedule 3, page 82, line 14, leave out <services are> and insert <counselling, therapy, advice or guidance is>

Maree Todd

- 162 In schedule 3, page 82, line 19, leave out <Being engaged in the provision of> and insert <Providing>

Alasdair Allan

- 213 In schedule 3, page 82, line 21, leave out paragraph 27

Maree Todd

- 163 In schedule 3, page 82, line 21, leave out <Being engaged in the provision of> and insert <Providing>

Alasdair Allan

- 214 In schedule 3, page 82, line 22, at end insert—
<Religious activities
Providing religious activities or services for children.>

Alex Cole-Hamilton

- 224 In schedule 3, page 82, line 22, at end insert—
<Elected representatives
30A(1) Being engaged in activity as an elected representative which—
(a) involves meeting children in the course of a session or event where the elected representative is available to hear representations on concerns raised by constituents,
(b) otherwise involves the opportunity to have unsupervised contact with children.
(2) For the avoidance of doubt, nothing in sub-paragraph (1) is to be taken to mean that being an elected representative involves a regulated role other than in respect of being engaged in activities described in that sub-paragraph.>

Alex Cole-Hamilton

- 225 In schedule 3, page 82, line 22, at end insert—
<Political activities
Being in charge of, supervising or directing the activities of children in the course of holding a position of responsibility in a political party (including, but not limited to, being a candidate for election, an election agent or an office-bearer).>

Alex Cole-Hamilton

- 226 In schedule 3, page 84, line 13, at end insert—
<Power to make provision in relation to elected representatives carrying out a regulated role
32A Ministers may by regulations disapply or modify the application of—
(a) Part 1 of this schedule,
(b) sections 34 to 37,
(c) sections 45C to 45F,
for the purpose of ensuring their effective application to the activities of elected representatives described in paragraph 30A(1).

- 32B Before laying a draft of regulations under paragraph 32A before the Scottish Parliament, Ministers must consult—
- (a) the Scottish Parliamentary Corporate Body,
 - (b) the Commissioner for Ethical Standards in Public Life in Scotland,
 - (c) the Standards Commission for Scotland,
 - (d) bodies representing the interests of local authorities in Scotland,
 - (e) bodies representing the interests of elected representatives in Scotland, and
 - (f) such other persons as they consider appropriate.>

Schedule 4

Maree Todd

- 164 In schedule 4, page 85, line 42, after <if> insert <—
(a)>

Maree Todd

- 165 In schedule 4, page 85, line 43, leave out <or personal>

Maree Todd

- 166 In schedule 4, page 85, line 43, at end insert <, or
(b) the activity is carried out for an individual (“A”)—
(i) in the course of a personal relationship,
(ii) for no commercial consideration, and
(iii) for the benefit of A, a member of A’s family or A’s friend.>

Maree Todd

- 167 In schedule 4, page 86, line 1, leave out <(1)> and insert <(1)(a)>

Maree Todd

- 168 In schedule 4, page 86, line 4, at end insert—
<(2A) In sub-paragraph (1)(b)—>

Maree Todd

- 169 In schedule 4, page 86, line 5, at end insert <, and
() “benefit” does not include commercial benefit.>

Maree Todd

- 170 In schedule 4, page 86, line 6, leave out <sub-paragraph (2)(b)> and insert <sub-paragraphs (1)(b) and (2A)(b)>

Maree Todd

- 171 In schedule 4, page 86, line 16, leave out <making decisions that affect> and insert <exercising power or influence over>

Maree Todd

- 172 In schedule 4, page 86, line 22, leave out <making decisions that affect> and insert <exercising power or influence over>

Maree Todd

- 173 In schedule 4, page 86, line 23, at end insert—
- <() For the purpose of paragraph (b) of the definitions of “contact with protected adults” in each of sub-paragraphs (1) and (2), “exercising power or influence over protected adults” means—
 - (a) assisting, facilitating, permitting or impeding progress towards a desirable objective or outcome for a particular protected adult,
 - (b) making decisions of an operational or strategic nature that could have an impact on a number of protected adults, or
 - (c) persuading or putting pressure on a particular protected adult to behave or act in a certain manner for the financial gain or personal gratification of a person other than the protected adult.>

Maree Todd

- 174 In schedule 4, page 86, line 29, leave out <, career development, employability, health or wellbeing> and insert <or employability>

Maree Todd

- 175 In schedule 4, page 87, line 7, leave out <exclusively>

Maree Todd

- 176 In schedule 4, page 87, line 8, after <home> insert <, day care centre>

Iain Gray

- 215 In schedule 4, page 87, line 12, at end insert—
- <15A Providing support to a protected adult under a shared lives scheme.>

Iain Gray

- 216 In schedule 4, page 87, line 12, at end insert—
- <15B Being an adult (other than a shared lives carer or a protected adult who is placed with the shared lives carer) whose sole or main residence is the same dwelling as that of a shared lives carer providing personal care to a protected adult.>

Maree Todd

- 177 In schedule 4, page 87, line 13, leave out <support services> and insert <advice or guidance in relation to health or wellbeing>

Maree Todd

- 178 In schedule 4, page 87, line 14, leave out <services are> and insert <counselling, therapy, advice or guidance is>

Maree Todd

- 179 In schedule 4, page 87, line 20, leave out <Being engaged in the provision of> and insert <Providing>

Alasdair Allan

- 217 In schedule 4, page 87, line 22, leave out paragraph 19

Maree Todd

- 180 In schedule 4, page 87, line 22, leave out <Being engaged in the provision of> and insert <Providing>

Alasdair Allan

- 218 In schedule 4, page 87, line 24, at end insert—

<Religious activities

Providing religious activities or services for protected adults.>

Alex Cole-Hamilton

- 227 In schedule 4, page 87, line 24, at end insert—

<Elected representatives

22A(1) Being engaged in activity as an elected representative which—

- (a) involves meeting a protected adult in the course of a session or event where the elected representative is available to hear representations on concerns raised by constituents,
 - (b) otherwise involves the opportunity to have contact with protected adults.
- (2) For the avoidance of doubt, nothing in sub-paragraph (1) is to be taken to mean that being an elected representative involves a regulated role other than in respect of being engaged in activities described in that sub-paragraph.>

Alex Cole-Hamilton

- 228 In schedule 4, page 87, line 24, at end insert—

<Political activities

Being in charge of, supervising or directing the activities of protected adults in the course of holding a position of responsibility in a political party (including, but not limited to, being a candidate for election, an election agent or an office-bearer).>

Iain Gray

219 In schedule 4, page 87, line 33, at end insert—

<“adult”, for the purposes of paragraph 15B, means an individual aged 18 or over,>

Iain Gray

220 In schedule 4, page 88, line 28, at end insert—

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

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

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

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

Alex Cole-Hamilton

229 In schedule 4, page 88, line 30, at end insert—

<Power to make provision in relation to elected representatives carrying out a regulated role

23A Ministers may by regulations disapply or otherwise modify the application of—

- (a) Part 1 of this schedule,
- (b) sections 34 to 37,
- (c) sections 45C to 45F,

for the purpose of ensuring their effective application to the activities of elected representatives described in paragraph 22A(1).

23B Before laying a draft of regulations under paragraph 23A before the Scottish Parliament, Ministers must consult—

- (a) the Scottish Parliamentary Corporate Body,
- (b) the Commissioner for Ethical Standards in Public Life in Scotland,

- (c) the Standards Commission for Scotland,
- (d) bodies representing the interests of local authorities in Scotland,
- (e) bodies representing the interests of elected representatives in Scotland,
and
- (f) such other persons as they consider appropriate.>

Section 76

Maree Todd

- 181** In section 76, page 49, line 8, leave out <or old age> and insert <, infirmity or ageing>

Maree Todd

- 182** In section 76, page 49, line 9, leave out <significantly> and insert <an>

Maree Todd

- 183** In section 76, page 49, line 11, leave out <and> and insert—
- <(aa) in relation to a regulated role with adults that involves the carrying out of activities mentioned in paragraph 16 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,>

Maree Todd

- 184** In section 76, page 49, line 15, at end insert—
- <(c) 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.”.>

Maree Todd

- 185** In section 76, page 49, line 16, leave out subsection (3) and insert—
- <(3) After subsection (2), insert—
 - “(2A) For the purposes of subsection (1)(aa)(ii)—

- (a) an individual has experienced or is experiencing domestic abuse if the individual has experienced or is experiencing behaviour that is—
 - (i) abuse within the meaning of the Protection from Abuse (Scotland) Act 2001, or
 - (ii) abusive of the individual within the meaning of section 2 of the Domestic Abuse (Scotland) Act 2018,
 from another person with whom the individual resides or used to reside,
 - (b) an individual is at risk of experiencing domestic abuse if the individual is at risk of experiencing such behaviour—
 - (i) from another person with whom, but for the risk of the behaviour, the individual might reasonably be expected to reside, or
 - (ii) from another person with whom the individual resides or used to reside.”.
- (4) In subsection (3)—
- (a) in paragraph (a), for “paragraph (a) of subsection (1)” substitute “sub-paragraphs (i) to (iv) of subsection (1)(c)”,
 - (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.
- (6) In subsection (5), for “subsection (1)(d)” substitute “sub-paragraph (vi) of subsection (1)(c)”.>

Section 77

Maree Todd

- 186 In section 77, page 50, line 17, leave out <(or another person)>

Maree Todd

- 187 In section 77, page 50, line 19, at end insert—
- <() a personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role,>

Maree Todd

- 188 In section 77, page 51, line 35, leave out from second <for> to <role> in line 36 and insert <mentioned in subsection (2A)>

Maree Todd

- 189 In section 77, page 51, line 37, leave out <the> and insert <a>

Maree Todd

190 In section 77, page 51, line 38, at end insert—

<(2A) 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.>

Section 78

Maree Todd

191 In section 78, page 52, line 10, at end insert—

<() 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.”>

Maree Todd

192 In section 78, page 52, line 23, at end insert—

<(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.”>

Maree Todd

193 In section 78, page 52, line 24, after <(3B)> insert <, (3C)>

Section 79

Maree Todd

194 In section 79, page 52, line 38, leave out <section 30(4)> and insert <subsection (3C) or (4) of section 30>

Maree Todd

195 In section 79, page 52, line 39, leave out <that subsection> and insert <either of those subsections of that section>

After section 83

Maree Todd

196 After section 83, insert—

<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.>

Maree Todd

197 After section 83, insert—

<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.”.>

Maree Todd

198 After section 83, insert—

<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—
 - (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).”>

After section 85

Maree Todd

- 199** After section 85, insert—

<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 45F (as inserted by section 74) insert—
- “47G Offences outside Scotland**
- (1) This section applies where an offence is committed under section 45C, 45D or 45E 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.”.>

Maree Todd

200 After section 85, insert—

<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.
- (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.”>

Section 87

Daniel Johnson

- 221 In section 87, page 56, line 22, after <40(1)> insert <or (*Disclosure: regard to be had to certain matters in making determinations*)(8)>

Schedule 5

Maree Todd

- 201 In schedule 5, page 89, line 14, at end insert—

<*Rehabilitation of Offenders Act 1974*

- (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5 (disclosure periods for particular sentences), after subsection (2A) insert—

“(2AA) Subsection (2A)(a) is subject to section 5J(1)(ba).”.
- (3) In section 5A(1) (disclosure periods: ordinary cases), in Table A, in each of the following entries, for the period specified in the third column (disclosure period – aged under 18) substitute “Nil (see section 5J(1)(ba))”—
 - (a) the first entry (a custodial sentence not exceeding 12 months),
 - (b) the fourth entry (a fine),
 - (c) the fifth entry (a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995),
 - (d) the sixth entry (an order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988),
 - (e) the seventh entry (any sentence not mentioned in the entries above or in Table B other than one to which section 5(2D) or any of sections 5C to 5J applies).
- (4) In section 5B (disclosure periods: service disciplinary offences), in Table B, in each of the entries, for the period specified in the third column (disclosure period – aged under 18) substitute “Nil (see section 5J(1)(ba))”.
- (5) In section 5C (disclosure period: caution for good behaviour), in subsection (2), paragraph (b) is repealed.
- (6) In section 5D (disclosure period: particular court orders)—
 - (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3), the words “and (b)(ii)” are repealed.
- (7) In section 5I (disclosure period: service disciplinary orders)—
 - (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3)—
 - (i) in paragraph (a), for “15” substitute “18”,
 - (ii) paragraph (b) is repealed.
- (8) In section 5J (sentences to which no disclosure period applies)—
 - (a) in subsection (1), after paragraph (b) insert—

“(ba) any sentence other than an excepted sentence mentioned in subsection (1A) imposed on a person in respect of a conviction for an offence committed when the person was under 18 years of age,”,

(b) after subsection (1) insert—

“(1A) The excepted sentences referred to in subsection (1)(ba) are—

(a) an excluded sentence,

(b) in the case of a conviction for an offence listed in any of paragraphs 43 to 50 of schedule 1 of the Disclosure (Scotland) Act 2020 (sexual offences), a custodial sentence (within the meaning of section 5(12)) for a term exceeding 12 months.

(1B) For the purposes of subsection (1)(ba), it is to be presumed, in the absence of evidence to the contrary, that a person convicted of an offence was of the same age at the time the offence was committed as the person was at the date of conviction.”.>

Maree Todd

202 In schedule 5, page 90, line 15, at end insert—

<() after subsection (1) insert—

“(1A) Section (*Level 2 disclosure: considering relevance and whether to include certain information*) of the Disclosure (Scotland) Act 2020 (*Level 2 disclosure: considering relevance and whether to include certain information*) applies for the purposes of subsection (1)(c) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—

(a) references to a person considering whether a conviction, children’s hearing outcome or other information is relevant for the purpose of a Level 2 disclosure were references to the chief constable considering whether information is relevant to the type of regulated role in relation to which the scheme member participates in the Scheme,

(b) references to a person considering whether a conviction, children’s hearing outcome or other information ought to be included in a Level 2 disclosure were references to the chief constable considering whether information ought to be included in the scheme member’s scheme record,

(c) references to a conviction or children’s hearing outcome were omitted, and

(d) references to other information were references to information mentioned in subsection (1)(c) of this section.”.>

Maree Todd

203 In schedule 5, page 91, line 19, at end insert—

<() in subsection (5), for “in relation to an application under section 113B of the 1997 Act” substitute “for the purposes of section 50 of the Disclosure (Scotland) Act 2020”.>

Maree Todd

204 In schedule 5, page 91, line 31, at end insert—

<Age of Criminal Responsibility (Scotland) Act 2019

- (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 8 (disapplication of sections 6 and 7)—
 - (a) in subsection (1), for the words from “in—” to the end substitute “in a Level 2 disclosure.”,
 - (b) in subsection (3)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “a Level 2 disclosure”,
 - (c) in subsection (4)—
 - (i) in paragraph (a), for “for which the certificate or, as the case may be, scheme record is provided” substitute “of the disclosure”,
 - (ii) in paragraph (b), for “certificate or record” substitute “Level 2 disclosure”,
 - (d) subsection (5) is repealed,
 - (e) in subsection (6), for “certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”,
 - (f) in subsection (7), for “certificate or record” substitute “Level 2 disclosure”.
- (3) In section 10 (disclosure of information relating to time when person under 12), subsections (1), (2) and (4) are repealed.
- (4) In section 11 (independent reviewer), in paragraph (a), for the words from “information—” to the end substitute “information in a Level 2 disclosure, and”.
- (5) In section 12 (period and terms of appointment), in subsection (7)(a), for “8A or 8B of the 1997 Act” substitute “1 or 2 of the 2020 Act”.
- (6) In section 14 (referral of information to independent reviewer)—
 - (a) in subsection (1), in paragraph (a)—
 - (i) for “113B(4) of the 1997 Act” substitute “18(1) of the 2020 Act”,
 - (ii) for “an enhanced criminal record certificate issued under section 113B(1) of that Act” substitute “a Level 2 disclosure”,
 - (b) in subsection (1), paragraph (b) is repealed,
 - (c) in subsection (2)—
 - (i) in paragraph (a), for the words from “described” to the end substitute “of the disclosure.”,
 - (ii) paragraph (b) is repealed,
 - (iii) in paragraph (c), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (7) In section 16 (notification to applicant or scheme member), in subsection (2)(b), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (8) In section 18 (review of information referred under section 14)—
 - (a) in subsection (1)—

- (i) in paragraph (a), for the words from “in relation to” to the end substitute “for the purpose of the disclosure, and”,
 - (ii) in paragraph (b), for “that certificate” substitute “the disclosure”,
- (b) after subsection (1) insert—
- “(1A) Section (*Level 2 disclosure: considering relevance and whether to include certain information*) of the 2020 Act (*Level 2 disclosure: considering relevance and whether to include certain information*) applies for the purposes of subsection (1) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—
- (a) references to a conviction or a children’s hearing outcome were omitted, and
 - (b) references to other information were references to information mentioned in section 14(1)(a) of this Act.”,
- (c) subsection (2) is repealed,
- (d) in subsection (4)(a), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (9) After section 20 insert—
- “20A Removal of information from scheme record following review or appeal**
- (1) This section applies where, in the case of a scheme member—
 - (a) information that is the subject of a review under section 18 is also contained in the scheme member’s scheme record in relation to a type of regulated role to which the purpose of the disclosure referred to in section 18(1)(a) relates, and
 - (b) subsection (2) or (3) applies in relation to the review.
 - (2) This subsection applies if the independent reviewer determines under section 18(4)(a) that the information ought not to be included in the disclosure and—
 - (a) no appeal under section 20 is taken, or
 - (b) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a).
 - (3) This subsection applies if the sheriff, on an appeal under section 20, determines under subsection (3)(b) of that section that the information ought not to be included in the disclosure.
 - (4) The Scottish Ministers must remove the information from the scheme member’s scheme record so far as relating to the type of regulated role mentioned in subsection (1)(a).
 - (5) The information is to be treated for the purposes of the 2007 Act as not being vetting information.”.
- (10) In section 23 (regulation of procedure for review)—
- (a) in subsection (1), for “enhanced criminal record certificates and scheme records” substitute “Level 2 disclosures”,
 - (b) in subsection (2)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “a Level 2 disclosure”.

- (11) Section 25 (amendments consequential on Chapter 2) is repealed.
- (12) In section 26 (interpretation of Part 2)—
- (a) the definitions of “1997 Act” and “enhanced criminal record certificate” are repealed,
 - (b) after the definition of “2007 Act” insert—
 - ““2020 Act” means the Disclosure (Scotland) Act 2020,”,
 - (c) in the definition of “applicant” for “113B of the 1997 Act for an enhanced criminal record certificate” substitute “15 of the 2020 Act for a Level 2 disclosure”,
 - (d) after the definition of “independent reviewer” insert—
 - ““Level 2 disclosure” means a Level 2 disclosure under section 13 of the 2020 Act,
 - “purpose of the disclosure”, in relation to a Level 2 disclosure, has the meaning given in section 70 of the 2020 Act.”.>

Maree Todd

- 205** In schedule 5, page 99, line 6, leave out from <“paid”> to the end of line 7 and insert < “Scheme” insert “or to renew membership of the Scheme,”.>

Maree Todd

- 206** In schedule 5, page 99, line 9, at end insert—
- <(iii) in the closing words, after “paid” insert “in the manner provided for in the regulations.”.>

Alex Cole-Hamilton

- 230** In schedule 5, page 100, line 34, after <“Paragraph”> insert <32A or>

Alex Cole-Hamilton

- 231** In schedule 5, page 100, line 35, after second <“Paragraph”> insert <23A or>

Maree Todd

- 207** In schedule 5, page 101, line 15, at end insert—
- <*Age of Criminal Responsibility (Scotland) Act 2019*
- In section 26 of the Age of Criminal Responsibility (Scotland) Act 2019 (interpretation of Part 2), in the definition of “regulated work”, for “work” substitute “role”.>

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament's copyright policy can be found on the website - www.scottish.parliament.uk or by contacting Public Information on 0131 348 5000.

Published in Scotland by the Scottish Parliamentary Corporate Body

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk
