POLICY NOTE

THE DISCLOSURE (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 5, SAVING AND TRANSITIONAL PROVISION) AMENDMENT REGULATIONS 2025

SSI 2025/73

The above instrument was made in exercise of the powers conferred by section 97(2) and (3) of the Disclosure (Scotland) Act 2020 ("the Disclosure Act"). The instrument is not subject to a procedure.

Summary Box

This instrument amends the Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Regulations 2025 ("the Principal Regulations").

It inserts transitional provision relating to sections 77 and 86 and paragraph 10(46) of schedule 5 of the Disclosure Act, which are brought into force by the Principal Regulations on 1 April 2025.

It modifies sections 30(3A)(a), 30(3B) and 46(2)(c) of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") for a transitional period so that references to other new provisions, inserted by sections 72 and 76 of the Disclosure Act, are omitted until such time as those sections are brought into force.

It also amends the commencement table in the schedule of the Principal Regulations to set out the specific provisions in certain sections of the Disclosure Act that are coming into force on 1 April 2025.

Policy Objectives

Background

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme ("PVG Scheme") and keeps lists of individuals barred from working with children and 'protected' adults on behalf of Scottish Ministers.

2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 ("the Police Act") as it applies in Scotland and making amendments to the PVG Act under which the Scottish Ministers administer the PVG Scheme.

3. While some of the Disclosure Act provisions are already in force, and further provisions are to be commenced on 1 April 2025, this does not include section 72 of the Dislcosure Act, which inserts section 45B (failure to apply for renewal of Scheme membership) into the PVG Act, and section 76 of the Dislcosure Act, which inserts

section 13A (conditions imposed on scheme members under consideration for listing) into the PVG Act[1]. These sections will be commenced in due course.

Amendments to the Principal Regulations

4. A small number of provisions, which are being amended by provisions that are being commenced by the Principal Regulations, make reference to sections 45B (failure to apply for renewal of Scheme membership) and 13A (conditions imposed on scheme members under consideration for listing) of the PVG Act.

5. The Scottish Ministers consider that these references could cause unnecessary confusion for stakeholders when the related substantive provisions for those references are not being commenced at this stage. They have, therefore, concluded that it is preferable to make this amendment instrument to amend the Principal Regulations in relation to the specific provisions.

6. Regulation 1 sets out that this instrument will come into force on 31 March 2025, the day before the Principal Regulations.

7. Section 77 of the Disclosure Act amends section 30 (notice of listing etc.) of the PVG Act, section 86 of the Disclosure Act amends section 46 of the PVG Act (statement of scheme membership) and paragraph 10(46) of schedule 5 of the Disclosure Act amends section 77 (statements of scheme membership: disclosure of whether individual under consideration for listing) of the PVG Act.

8. Regulation 2(2) of this instrument inserts transitional provision relating to sections 77 and 86, and paragraph 10(46) of schedule 5, of the Disclosure Act so that sections 30(3A)(a), 30(3B), 46(2)(c) and section 77 of the PVG Act are modified for a transitional period to omit any references to sections 45B and 13A (as inserted by sections 72 and 76 of the Disclosure Act) until such time as those sections are brought into force.

9. Regulation 2(3) of this instrument amends the table in the schedule of the Principal Regulations to set out which specific provisions in certain sections of the Disclosure Act come into force on 1 April 2025.

EU Alignment Consideration

10. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

[1] The Disclosure (Scotland) Act 2020 (Commencement No. 1 and Transitory Provision) Regulations 2021; The Disclosure (Scotland) Act 2020 (Commencement No. 2) Regulations 2023; The Disclosure (Scotland) Act 2020 (Commencement No. 3) Regulations 2024; The Disclosure (Scotland) Act 2020 (Commencement No. 4) Regulations 2025; The Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Regulations 2025

Consultation

11. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to many stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector, and individual scheme members.

12. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016, the user research team carried out a significant amount of research, which has included a range of users, including:

    • individuals with and without experience of using Disclosure Scotland's services,
    • individuals with convictions,
    • care experienced people,
    • people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
    • organisations – including various roles e.g. HR, admin staff, countersignatories,
    • charities, and
    • voluntary organisations.

13. The results of the consultation informed further development of the policy and the Disclosure (Scotland) Bill provisions. The Scottish Government published its response to the consultation on 13 June 2019[2].

14. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. A key focus of this communication campaign is the move to the PVG scheme becoming a legal requirement, and the offences for individuals and organisation that will take effect from 1 July 2025, as included in the Principal Regulations. Disclosure Scotland use a range of communication channels to inform stakeholders of the changes the Disclosure Act will bring.

15. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the simplified, modern, and proportionate disclosure regime in Scotland under the Disclosure Act.

Impact Assessments

[2] fullreportonconsultationresponses-disclosureofcriminalinformation.pdf

16. No impact assessments were considered to be required for this instrument.

17. An Equalities Impact Assessment, Business and Regulatory Impact Assessment, and Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening were undertaken in relation to the Principal Regulations. A Children's Rights and Wellbeing Impact Assessment was considered for the Principal Regulations and deemed not necessary.

18. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

    • Disclosure (Scotland) Bill: Fairer Scotland Duty assessment
    https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-fairer-scotland-duty/
    • Disclosure (Scotland) Bill: children rights and wellbeing impact assessment
    https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-crwia/
    • Disclosure (Scotland) Bill: data protection impact assessment
    https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-dpia/
    • Disclosure (Scotland) Bill: equality impact assessment
    https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-eqia/
    • Disclosure (Scotland) Bill: partial Business and Regulatory Impact Assessment
    https://www.gov.scot/publications/disclosure-scotland-bill-impact-assessment-partial-bria/

Financial Effects

19. The Minister for Children, Young People and the Promise confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland

March 2025