POLICY NOTE

THE DISCLOSURE (SCOTLAND) ACT 2020 (COMMENCEMENT NO. 6, CONSEQUENTIAL AMENDMENT, SAVING AND TRANSITIONAL PROVISION) REGULATIONS 2025

SSI 2025/352

The above instrument was made in exercise of the powers conferred on the Scottish Ministers by section 42(1)(c) of the Protection of Vulnerable Groups (Scotland) Act 2007 and sections 92(1) and 97(2) and (3) of the Disclosure (Scotland) Act 2020 and all other powers enabling them to do so.

The instrument is subject to negative procedure.

Summary Box

Commencement

This instrument brings into force section 81 of the Disclosure (Scotland) Act 2020 ("the Disclosure Act"), which repeals sections 7, 11, 32(1), 32(2) and schedule 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") relating to court references ("referrals") for relevant and other offences.

It also brings into force sections 71 and 72 and a small number of provisions in schedule 5 of the Disclosure Act relating to the duration of Protecting Vulnerable Groups (PVG) Scheme membership and failure to apply for renewal of Scheme membership.

Saving and Transitional

This instrument makes saving and transitional provision in relation to how the Scottish Ministers will deal with court referrals made under section 7 of the PVG Act before that section is repealed on 12 January 2026 and which have not been concluded on that date. This includes the circumstances in which Scottish Ministers must consider whether to list an individual in the children's list and/or the adult's list and what they must do when they are no longer considering whether to list an individual.

It also makes transitional provision in relation to duration of scheme membership and the transition of existing PVG Scheme members into the five year time-limited membership cycle.

Consequential

This instrument makes consequential amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010 ("the Consideration for Listing Regulations") to remove references to sections 7 and 11 of the PVG Act and to set out and insert the procedure that applies when Scottish Ministers are considering, under section 45B(7) of the PVG Act, whether to list an individual, in the children's list, adult's list or, where applicable, both lists.

It also makes provision for revocations that are necessary as a result of the commencement of sections 71, 72 and 81 of the Disclosure Act.

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the 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. The majority of the provisions in the Disclosure Act came into force on 1 April 2025, when it repealed Part 5 of the Police Act 1997 as it applied in Scotland and made amendments to the PVG Act under which the Scottish Ministers administer the PVG Scheme.

Background

Section 81 of the Disclosure Act

3. Section 7 of the PVG Act is the mechanism by which a court can refer information[1], to the Scottish Ministers about an individual in circumstances where it has:

    - convicted an individual of a relevant offence (as defined by schedule 1 of the PVG Act[2]), or
    - convicted an individual of any offence other than a relevant offence (and is satisfied that it may be appropriate for the individual to be listed in the children's list or the adults' list (or both lists).

4. Section 11 of the PVG Act is the mechanism by which the Scottish Ministers consider whether to list an individual referred to them under section 7.

5. In all cases where a court has made a referral under section 7 of the PVG Act, the individual can only be listed following a consideration by the Scottish Ministers.

6. Section 81 of the Disclosure Act repeals sections 7 and 11 of the PVG Act (and section 32(1) and (2) and schedule 1 of the PVG Act) meaning court referrals and considerations as a result of those referrals will no longer happen under the PVG Act.

7. Court referrals are no longer necessary in light of the new mandatory requirement for those carrying out regulated roles to be members of the PVG Scheme.

[1] The prescribed information is set out in the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Courts) (Prescribed Information) Regulations 2010 (https://www.legislation.gov.uk/ssi/2010/182/contents/made).
[2] The Protection of Vulnerable Groups (Scotland) Act 2007 schedule 1 (https://www.legislation.gov.uk/asp/2007/14/schedule/1).

8. The PVG Scheme became mandatory when section 73 of the Disclosure Act, which inserted sections 45C to 45G into the PVG Act, was fully commenced on 1 July 2025. Section 45C of the PVG Act makes it an offence for an individual to carry out or agree to carry out any type of regulated role unless they participate in the PVG Scheme in relation to that type of regulated role. Sections 45D and 45F make it an offence for organisations and personnel suppliers to employ or supply any individual for a regulated role without first obtaining a Level 2 disclosure confirming that the individual is a PVG Scheme member in relation to that type of regulated role.

9. In addition, section 6A of the PVG Act (which was inserted by section 80 of the Disclosure Act on 1 April 2025) places a duty on the chief constable to provide prescribed information[3] to the Scottish Ministers about any individual who they consider is or has been carrying out a regulated role while not participating in the PVG Scheme in relation to that type of regulated role. This is a safeguarding measure to enhance the effectiveness of the mandatory PVG Scheme.

Sections 71 and 72 of the Disclosure Act

10. Section 71 of the Disclosure Act inserts new section 45A into the PVG Act. This section introduces a time-limit to PVG Scheme membership. Section 45A(1) sets the length of an individual's PVG scheme membership for a type of regulated role at five years from the date of joining or the date of renewal. The Scottish Ministers must notify the scheme member and any organisation, personnel supplier and relevant regulatory body for whom they know the scheme member is carrying out a regulated role or with whom they know the scheme member is registered, three months before the individual's membership is due to expire to alert them that expiry is approaching. The Scottish Ministers may also notify a person other than an organisation (for example, an individual employing a personal carer through self-directed support) three months before the individual's membership is due to expire to alert them that expiry is approaching.

11. Section 72 of the Disclosure Act inserts new section 45B into the PVG Act. This section sets out the rules around what happens when a scheme member fails to apply to renew their membership before the expiry date.

12. The Scottish Ministers cannot end a scheme member's scheme membership unless they are satisfied that the scheme member is no longer carrying out a regulated role. To allow them to satisfy themselves of that fact, the Scottish Ministers must extend the membership of a scheme member in this circumstance by four weeks. This is called the "extended membership period".

13. Before the end of the extended membership period, if the Scottish Ministers are satisfied that the scheme member is no longer carrying out a regulated role, then they must remove them from the Scheme in relation to that type of regulated role.

14. If, however, the Scottish Ministers are not satisfied of this fact before the extended membership period lapses, they must notify the scheme member and any organisation, personnel supplier or relevant regulatory body for whom they know the scheme member

[3] Set out in the Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (https://www.legislation.gov.uk/ssi/2024/313/contents/made).

is carrying out a regulated role, of the expiry of the extended membership period and that the scheme member's membership will end on that date unless it is renewed. They may also notify a person other than an organisation for whom a scheme member is carrying out a regulated role of the type in relation to which the member participates in the PVG Scheme. This notification is intended to notify these persons that renewal of Scheme membership is required. The Scottish Ministers may extend membership for a further period of six months (from the end of the extended membership period). This is called the "discretionary membership period". Where the Scottish Ministers do this, they must notify the scheme member and any organisation, personnel supplier or relevant regulatory body for whom they know the scheme member is carrying out a regulated role. They may also notify a person other than an organisation for whom a scheme member is carrying out a regulated role of the type in relation to which the member participates in the PVG Scheme.

15. If during that discretionary membership period, the scheme member does not apply to renew their membership and the Scottish Ministers are satisfied that the scheme member is no longer carrying out a regulated role then the individual must be removed from the PVG Scheme. If, however, the scheme member does not apply to renew their scheme membership and the Scottish Ministers believe that they are still carrying out a regulated role then the Scottish Ministers must consider listing the individual in the children's list or the adults' list (or both) if they consider that it may be appropriate for the scheme member to be included in that list (or both lists) (section 45B(7) of the PVG Act).

Commencement

16. Regulation 2(1) of this instrument brings into force section 81 of the Disclosure Act on 12 January 2026.

17. Regulation 2(2) and schedule 1 of this instrument bring into force sections 71 and 72 and a small number of provisions in schedule 5 of the Disclosure Act on 1 April 2026.

Saving and Transitional

Court referrals

18. Regulation 3 of this instrument makes saving and transitional provision in relation to how the Scottish Ministers will deal with court referrals that have been made under section 7 of the PVG Act before 12 January 2026, on or after that date.

19. Paragraph (1) of regulation 3 provides that paragraph (2) applies to court referrals where the Scottish Ministers were given the prescribed information under section 7 of the PVG Act before 12 January 2026, but on that date are not yet considering whether to list the individual (under section 11(3) or (4) of the PVG Act) or have not yet made a final decision in relation to listing after considering the individual.

20. Paragraph (2) of regulation 3 preserves section 11(1), (3) and (4) of the PVG Act, with modifications, so that it can continue to operate after 12 January 2026 notwithstanding its repeal. This means that on 12 January 2026, the Scottish Ministers must consider listing

an individual about whom they've received prescribed information from a court in pursuance of section 7 of the PVG Act before 12 January 2026, where:

- they are satisfied that the information indicates that it may be appropriate to include the individual in the children's list, the adults' list or both lists, and
- that the individual carries out, has carried out or is likely to carry out a regulated role with children, adults or both.

21. These provisions are required to provide the basis for the Scottish Ministers, after 12 January 2026, to consider whether to list an individual where the information, already provided to them under section 7 before 12 January 2026, indicates that it may be appropriate for the individual to be included in one or both lists, and the individual has a link to regulated roles. For the purposes of safeguarding these provisions permit such considerations to occur and conclude.

22. Paragraph (2) of regulation 3 does not preserve section 11(2) of the PVG Act, which provides that where the individual has been convicted of a relevant offence, the Scottish Ministers must consider listing the individual in the children's list. However, where, on 12 January 2026, the Scottish Ministers were considering listing an individual under section 11(2) but have not yet finally concluded the case, they must assess the information against the criteria in section 11(3) and (4) of the PVG Act (as saved) and make a decision about whether the information (that was referred to them before 12 January 2026) indicates it may be appropriate for the individual to be listed in either or both lists and whether the individual has a link to regulated roles. If the criteria in section 11(3) or (4) (or both) is met, the Scottish Ministers must, by virtue of the savings provision, consider those individuals. If the criteria is not met, however, the Scottish Minister may no longer consider those individuals.

23. This is consistent with the policy intent to end court referrals as a result of the new mandatory PVG Scheme requirement.

24. Paragraphs (3) and (4) of regulation 3 make transitional provision in relation to those considerations which will not continue. They require the Scottish Ministers to notify, in writing, certain individuals who were being considered under section 11(2) of the PVG Act and to whom a notification was sent by the Scottish Ministers under section 30(2)(b) and (3)(a) of the PVG Act confirming that fact before 12 January 2026. The notification under paragraph (4) of regulation 3 is to confirm that the individual is no longer being considered for listing and the certain individuals are those who do not carry out, have not carried out or are not likely to carry out, a regulated role with children and who have not yet been notified by the Scottish Ministers that they have been listed or not.

25. This notification requirement ensures that the individuals concerned, who were previously notified that they were being considered for listing, gains closure.

26. Paragraph (5) of regulation 3 makes clear that a notification under paragraph (4) 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(3C) and (4) of the PVG Act.

27. Paragraph (6) of regulation 3 preserves the Consideration for Listing Regulations (as they were immediately before 12 January 2026) for the purposes of the Scottish

Ministers considering whether to list an individual in either list (or both lists) under section 11 of the PVG Act as saved by regulation 3.

28. This ensures that the procedure for court referrals set out in the Consideration for Listing Regulations continues to apply where Ministers are considering an individual under section 11 as saved by this instrument, despite references to sections 7 and 11 of the PVG Act having been removed from the Consideration for Listing Regulations by regulation 5 of this instrument.

Duration of scheme membership

29. When sections 71 and 72 of the Disclosure Act are commenced on 1 April 2026, inserting sections 45A and 45B into the PVG Act, any individual joining the PVG Scheme in relation to a type of regulated role will participate in the PVG Scheme until the end of the period of five years beginning with the day on which they joined (unless they are removed from the PVG Scheme earlier than that). Scheme members will then be required to renew their membership on a five yearly basis while they participate in the Scheme.

30. Regulation 4 of this instrument makes transitional provision which sets out that the membership period (for the purposes of section 45A(1)(a) of the PVG Act which brings into force time-limited PVG Scheme membership) for an individual who joined the PVG Scheme before 1 April 2026 and continues to participate in the Scheme on 1 April 2026 (existing Scheme member), begins on the date on which that individual is notified, in writing, by the Scottish Ministers.

31. Regulation 4 supports the transition of existing PVG Scheme members into the time-limited membership cycle. This affords clarity and certainty for existing PVG Scheme members.

<u>Consequential amendments</u>

32. Regulation 5 of this instrument makes consequential amendments to the Consideration for Listing Regulations, which will come into force on 12 January 2026, to remove references to sections 7 and 11 of the PVG Act. This is necessary because sections 7 and 11 of the PVG Act are being repealed by section 81 of the Disclosure Act on 12 January 2026 and (subject to regulation 3) will no longer form part of the consideration for listing procedures to which the Scottish Ministers must have regard.

33. Regulation 6 of this instrument makes various consequential amendments to the Consideration for Listing Regulations, which will come into force on 1 April 2026, to set out the procedure that applies when the Scottish Ministers are considering, under section 45B(7) of the PVG Act, whether to list an individual in the children's list, adults' list or, where applicable, both lists.

34. The Consideration for Listing Regulations were made under section 42(1)(c) of the PVG Act to make further provision regarding the procedure which will be followed when an individual is being considered for listing in the children's list, in the adults' list, or where applicable both lists.

35. Section 45B(7) of the PVG Act introduces a new type of consideration for listing for the Scottish Ministers and therefore the Consideration for Listing Regulations must be amended to set out the procedure that applies to that type of consideration for listing. The same procedure will be followed whether the individual is being considered for the children's list, the adults' list, or both lists.

36. Regulation 6(2) amends regulation 2 of the Consideration for Listing Regulations to extend the definition of "individual" to a person who has not applied to renew their membership of the PVG Scheme in relation to the type of regulated role before the end of their discretionary membership period and whom Ministers have reasonable grounds to believe is carrying out a regulated role. This is the basis upon which the Scottish Ministers must consider whether to list a scheme member under section 45B(7) of the PVG Act.

37. Regulation 6(5) inserts:

- reference to section 45B(7) of the PVG Act into paragraph 1(1) of the schedule of the Consideration for Listing Regulations to ensure that where the Scottish Ministers decide to consider whether to list an individual under section 45B(7), they must record the date on which they made that decision.

- Part 5A into the schedule itself to set out the procedure that the Scottish Ministers will follow where they are considering whether to list an individual under section 45B(7) of the PVG Act.

38. New Paragraph 15A (of new Part 5A) sets out the information which the Scottish Ministers must give to the individual when notifying them (in accordance with section 30 of the PVG Act) they are under consideration for listing under section 45B(7) of the PVG Act. This information is:

- details of the date on which the individual's membership period (within the meaning of section 45A(2) of the Act) commenced, or was renewed, for the type of regulated role in relation to which the individual participates in the PVG Scheme;
- a copy of any notifications, sent by Ministers, to the individual setting out the date on which the individual's membership period (including any extended membership period (as defined in section 45B(2) of the Act) or discretionary membership period (as defined in section 45B(3)(b)(iii)) expired;
- a notice inviting the individual to, within 28 days:
    i. make representations as to why the individual should not be listed in the children's list, in the adults' list or, where applicable, in both lists;
    ii. submit any comments on the information provided to the individual under sub-paragraph (a) or (b); and
    iii. submit any further information to Ministers which the individual wishes to be taken into account by Ministers in deciding whether to list

the individual in the children's list, in the adults' list or, where applicable, in both lists.

39. New Paragraph 15B (of new Part 5A) provides the Scottish Ministers with powers to, by notice, invite further representations, comments or other information from the individual or any other person the Scottish Ministers consider appropriate for the purpose of enabling or assisting them to decide whether to list an individual. Where this is necessary, the Scottish Ministers will determine the manner in which a response is to be provided and the timescale within which it is to be provided.

40. New Paragraph 15C (of new Part 5A) requires the Scottish Ministers to provide all further information, gathered in the course of their consideration, to the individual with the opportunity for them to provide representations which they wish the Scottish Ministers to take into account when deciding whether to list them in the children's list, in the adults' list, or both lists. In practice, this means that before reaching a final listing decision in any consideration, the Scottish Ministers will ensure that the individual has been provided with all of the information that is to be relied upon by them in making their decision and has had adequate opportunity to submit any final representations and comments.

41. The procedure set out in the new Part 5A mirrors the procedure for other types of consideration for listing set out in the schedule of the Consideration for Listing Regulations.

42. Part 6 of the schedule of the Consideration for Listing Regulations enables the Scottish Ministers to obtain expert advice or request suitably qualified individuals to provide a report on the individual's unsuitability to work with vulnerable groups. The Scottish Ministers will consider such reports when deciding whether to list the individual. Regulation 6(5)(d) to (f) of this instrument extend the application of Part 6 of the schedule of the Consideration for Listing Regulations to include the consideration procedure under new Part 5A.

Revocations

43. Regulation 7 and schedule 2 of this instrument make provision for revocations that are necessary in light of this instrument bringing sections 71, 72 and 81 of the Disclosure Act into force:

- The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Courts) (Prescribed Information) Regulations 2010 will no longer be necessary after 12 January 2026 because referrals under section 7 will no longer be made.
- The transitory provisions in regulation 3 of the Disclosure (Scotland) Act 2020 (Commencement No. 1 and Transitory Provision) Regulations 2021 and the transitional provisions in regulations 13(1) and (2) and 15(1) and (2) of the Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Regulations 2025 are no longer needed when section 72 of the Disclosure Act is commenced.

44. The transitory provision in regulation 4 of the Disclosure (Scotland) Act 2020 (Commencement No. 1 and Transitory Provision) Regulations 2021 is no longer needed now that section 74 of the Disclosure Act is in force (since 1 April 2025). This revocation is being made at the same time as the revocation of regulation 3 explained above to ensure clarity in the disclosure legislation.

EU Alignment Consideration

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

Consultation

Court referrals

46. A formal consultation which led to the Disclosure Act was undertaken in 2018. Since then, there has been informal stakeholder engagement targeted to the Scottish Courts and Tribunal Service. The coming into force date has been agreed following this engagement.

Duration of scheme membership

47. Disclosure Scotland identified stakeholders from earlier engagement on the Disclosure Act, including the formal consultation on the Protection of Vulnerable Groups and Disclosure of Criminal Information in 2018, and engagement throughout the implementation period prior to April 2025, to target for discussions regarding the transition to time-limited membership scheme. Learning from this period helped identify key stakeholders.

48. Due to the broad scope of sectors and businesses covered by the PVG scheme, initial engagement in 2025 has focussed on broad sector-based engagement with organisations to carry out discovery on general concerns and questions about the transition of moving existing PVG Scheme members into the time-limited membership cycle. This also included engagement on the processes needed in relation to renewal of PVG Scheme membership and removal from the Scheme. Consultation will continue as the approach is refined and will include engagement with individuals and the development of business rules to support the transitional approach with a focus on targeting small or harder to reach parts of the customer base. Disclosure Scotland will continue to communicate regular updates with their stakeholders on time-limited membership scheme in the run up to, and beyond, its commencement on 1 April 2026.

49. Professional regulators have also been engaged to discuss their experience of managing membership cycles and changes to membership, and the impact of managing membership on their relationship with the registrants. This also included engagement on the process in relation to renewal of Scheme membership and removal from the Scheme.

Impact Assessments

50. 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/)

51. Fairer Scotland Duty Impact Assessment and Island Communities Impact Assessment screenings were undertaken for this instrument with no impact found and as such full impact assessments were not undertaken.

52. An Equality Impact Assessment was undertaken for this instrument and no impact found. A copy of the results is attached.

Financial Effects

53. A Business and Regulatory Impact Assessment has been completed and is attached. This policy has no relevant impacts on business.

Scottish Government
Disclosure Scotland
17 November 2025