POLICY NOTE

THE REGULATED ROLES (PROHIBITIONS AND REQUIREMENTS) (SCOTLAND) REGULATIONS 2024

SSI 2024/XXX

The above instrument was made in exercise of the powers conferred by sections 35(2), 45E(1), 72(1) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act") and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

Summary Box

These Regulations set out prohibitions and requirements that apply to organisations only. Organisations are prohibited from permitting an individual to carry out a regulated role and must remove the individual from the regulated role in the following circumstances:

1. Where an organisation, for which an individual is carrying out a regulated role, is notified by Scottish Ministers under section 30(2)(a) of the PVG Act that the individual has been barred from carrying out regulated roles with children or adults.

2. Where an individual is carrying out a type of regulated role for an organisation and the individual does not participate in the Protecting Vulnerable Groups Scheme ("the PVG Scheme") in relation to that type of regulated role.

It is an offence, under sections 35(4) and 45E(3) of the PVG Act for organisations not to comply with these regulations. The penalties for those offences are set out in sections 37 and 45G of the PVG 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 (Scotland) Act 2020 ("the Disclosure Act") reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to the PVG Act under which the Scottish Ministers administer the PVG Scheme.

3. One of the particular reforms made by the Disclosure Act is the introduction of mandatory PVG Scheme membership for regulated roles. Section 45C of the PVG Act (inserted by section 73 of the Disclosure Act) makes it an offence for an individual to carry out, or agree to carry out, any type of regulated role (with children, adults or both) unless the individual participates in the PVG Scheme. Currently, an individual is not required to be a member of the PVG Scheme in order to carry out

regulated work with children, protected adults or both. Instead, the PVG Act created a number of offences (under sections 34 to 36 of that Act) relating to doing regulated work while barred or employing an individual to do regulated work while that individual is barred. This incentivises the use of the PVG Scheme, but it does not mean that the scheme is mandatory.

4. Regulation 2 restates the prohibition and requirement in relation to barred individuals carrying out regulated work provided for in the Protection of Vulnerable Groups (Scotland) Act 2007(Removal of Barred Individuals from Regulated Work) Regulations 2010 ("the 2010 Regulations")[1] to reflect updates to the changes in terminology introduced by the Disclosure Act. The 2010 Regulations will be revoked when regulation 1(2) of these Regulations comes into force and the prohibition and requirement in regulation 2 will continue to address behaviour by organisations which continue to employ individuals to carry out a regulated role from which they are barred.

5. Regulation 3(1) of these Regulations supports the introduction of the mandatory scheme. It creates a prohibition against an organisation permitting an individual to carry out a type of regulated role for the organisation where the individual does not participate in the PVG Scheme in relation to that type of regulated role. It also requires the organisation to remove the individual from the regulated role concerned. This is to address behaviour by organisations which continue to employ individuals to carry out a regulated role, where they are not a member of the PVG Scheme.

6. It is an offence for an organisation not to comply with these Regulations.

7. In relation to the prohibition in regulation 3 in particular, it will commence slightly later than the prohibition in regulation 2 and the majority of the Disclosure Act provisions. It will commence at the same time as section 45C of the PVG Act, affording a few months grace to individuals who are not currently PVG Scheme members but will need to be, by virtue of the roles they are carrying out, so as to not fall foul of the mandatory offence provision. Transitional provision is also included in paragraph (2) of regulation 3 to ensure that organisations who are encouraging individuals to take steps to join the PVG Scheme up until the relevant date (i.e. the date on which regulation 3 comes into force), do not inadvertently fall foul of this offence if Disclosure Scotland are still processing applications to join.

8. Further details of the policy objectives relating to the Disclosure Act are set out in the Policy Memorandum (https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/disclosure-scotland-bill/introduced/policy-memorandum-disclosure-scotland-bill.pdf) which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the timeline for the passage of the Bill (https://www.parliament.scot/bills-and-laws/bills/s5/disclosure-scotland-bill).

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1 https://www.legislation.gov.uk/ssi/2010/244/contents/made

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

9. The Scottish Ministers have made the following statement regarding children's rights:

   In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of that Act.

EU Alignment Consideration

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

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.

12. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of 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.

13. 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.

14. The results of the consultation informed further development of the policy and (Disclosure) (Scotland) Bill provisions. The Scottish Government published its

response to the consultation on 13 June 2019[2]. The need for a mandatory scheme received overwhelming stakeholder support at various stages of engagement and consultation on the Bill. It was also recommended in the Health and Sport Committee's report on Child Protection in Sport[3].

15. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs.

16. Disclosure Scotland is undertaking targeted engagement with sectors that currently do not use the PVG Scheme. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. Disclosure Scotland use a range of communication channels to inform stakeholders of the new mandatory requirements, the associated offences. Disclosure Scotland will also publish guidance on regulated roles, offering one to one advice to help organisations understand and establish whether their roles are regulated roles, along with providing training.

17. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act

Impact Assessments

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/)

19. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality

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2 https://www.parliament.scot/-/media/files/legislation/bills/s5-bills/disclosure-scotland-bill/introduced/policy-memorandum-disclosure-scotland-bill.pdf

3 https://digitalpublications.parliament.scot/Committees/Report/HS/2017/4/26/Child-Protection-in-Sport#Introduction

impact issues have been identified. No impact on children's rights have been identified.

20. Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not done.

Financial Effects

21. The Minister for Children, Young People and the Promise confirms that a BRIA has been completed for this instrument however it has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Disclosure Scotland

November 2024