POLICY NOTE

THE REGULATED ROLES WITH CHILDREN AND ADULTS (SCOTLAND) AMENDMENT REGULATIONS 2025

SSI 2025/XXX

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 33 of schedule 2 and paragraph 25 of schedule 3 of the Protection of Vulnerable Groups (Scotland) Act 2007(**1**) and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

Summary Box

These Regulations modify schedules 2 and 3 of the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act"), as substituted by schedules 3 and 4 of the Disclosure (Scotland) Act 2020 ("the Disclosure Act").

Schedule 2 defines regulated roles with children and schedule 3 defines regulated roles with protected adults.

These modifications:

- substitute and expand the definition of 'contact' with children and protected adults to include visual communication and to make the definition clearer
- insert new activities (including further healthcare professions) which mean that individuals carrying out those activities will be carrying out a regulated role with children or protected adults if the conditions in paragraph 1(2) of each of the schedules are met
- make minor textual amendments to certain activities in each of the schedules to include additional establishments and activities
- re-introduce the concept of unsupervised contact with protected adults into schedule 3 in connection with the carrying out of specific activities

Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme ("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, 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.

(**1**) 2007 asp 14. Schedules 2 and 3 were substituted by section 74(3) and (4) of the Disclosure (Scotland) Act 2020 (asp 13) ("the Disclosure Act").

3. Section 74 of the Disclosure Act substitutes section 91 of the PVG Act. Paragraphs (3) and (4) of section 74 substitute the schedules contained in schedules 2 and 3 of the PVG Act for the schedules contained in schedules 3 and 4 of the Disclosure Act. Section 74 of the Disclosure Act and these Regulations will come into force on the same day.

4. Schedules 2 and 3 of the PVG Act set out the meaning of "regulated roles with children" and "regulated roles with adults". These schedules set the parameters that define contact and unsupervised contact with children and protected adults, and list the activities that require individuals who carry out such activities to be members of the PVG scheme.

Regulated roles with children

5. To be carrying out a regulated role with children, a person must be carrying out one or more activities listed in Part 2 of schedule 2 of the PVG Act. The activities must be carried out as a necessary part of the role and take place in Scotland, or take place outside the UK, the Channel Islands and the Isle of Man and be carried out by an individual who is ordinarily resident in the UK for an organisation or a personnel supplier with a place of business in Scotland, whose functions in relation to carrying out the activity by the individual are principally exercised at that place of business.

6. In addition, carrying out the activities must either give the person the opportunity to have contact with children, **or** in specific locations, the carrying out of activities in an education institution, hospital, nursery, day care premises, hospice, residential care setting or secure accommodation for children, must give the individual carrying them out the opportunity to have unsupervised contact with children.

7. "Contact with children" and "unsupervised contact with children" are defined by paragraph 3 of Schedule 2 of the PVG Act. Contact includes physical contact with children, written or verbal communication and exercising power or influence over children. The schedule provides the definition of "exercising power or influence" over children as:

- assisting, facilitating, permitting or impeding progress towards a desirable objective or outcome for a particular child,
- making decisions of an operational or strategic nature that could have an impact on a number of children, or
- 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.

8. The revised definition of "contact with children" marks an important change in the construct of who is brought into scope of the PVG Scheme. The prerequisite for regulated

roles with children is not confined to the opportunity for *unsupervised contact* with children in relation to all the activities before a role becomes within scope of the PVG Scheme.

9. The reason for this is that some roles allow individuals to exert power or influence over children to such a degree that, even if contact occurs within the presence of a "responsible person" within the meaning of paragraph 3(1) of schedule 2 of the PVG Act, the role should still be one which requires membership of the Scheme. The only prerequisite for all the activities in schedule 2 is that 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" (which is then defined in paragraph 3(1) of schedule 2).

10. For example, the football agent representing a child in regard to their future recruitment, training or employment with a football club possesses significant power or influence over the child. Even if the contact occurs within the presence of a parent or other responsible person in relation to the child, the Act ensures that individuals carrying out such a role would be brought into the PVG Scheme. The same would apply to the official working on behalf of the football club.

11. A person with day-to-day supervision or management of an individual carrying out a regulated role is also to be treated as being in a regulated role.

12. Training or studying in Scotland for the activities mentioned in Part 2 of schedule 2 of the PVG Act will also amount to a regulated role with children, as will training or study for one of those activities that is undertaken outside the UK, the Channel Islands and the Isle of Man by an individual who is ordinarily resident in the UK for an organisation or a personnel supplier with a place of business in Scotland, whose functions in relation to the carrying out the activity by the individual are principally exercised at that place of business.

13. For example, a person ordinarily resident in Glasgow going to Trinity College in Dublin to study medicine would not have to join the PVG Scheme. However, the provisions bring into scope any training provided overseas where a person is doing a placement or secondment with a non-Scottish organisation, but their training is still subject to overall supervision and sign-off by a training provider in Scotland. Therefore, a Scottish-domiciled medical student at University of Glasgow on exchange to Trinity College and working in a children's hospital in Dublin would still need to be a scheme member for the period of the placement/exchange.

14. There are exceptions to regulated roles with children set out in paragraph 2 of the schedule. A person will not be carrying out a regulated role when the interaction with a child is a result of the child being in paid employment. This means, for example, that a shop manager recruiting or supervising children aged 16 or 17 as assistants (whether paid or unpaid) is not within the scope of regulated roles with children and does not need to become a member of the PVG Scheme.

15. There is also an exclusion for activities carried out in the course of a family or personal relationship. These exclude, for example, a brother providing childcare services for his sister whether or not there is payment or a friend providing unpaid childcare services to another friend. The exclusions are the same as those provided by the definition of "work" in section 95(3) and (4) of the PVG Act (which are to be repealed as a result of the move from regulated work to regulated roles).

Regulated roles with protected adults

16. To be carrying out a regulated role with protected adults, a person must be carrying out one or more of the activities listed in Part 2 of schedule 3 of the PVG Act. The activities must be a necessary part of the role and take place in Scotland (or take place outside the UK, the Channel Islands and the Isle of Man and be carried out by an individual who is ordinarily resident in the UK for an organisation or a personnel supplier with a place of business in Scotland, whose functions in relation to the carrying out of the activity by the individual are principally exercised at that place of business).

17. The carrying out of the activities must give the individual the opportunity to have "contact with protected adults" (defined in paragraph 3 of schedule 3 of the PVG Act). Contact includes physical contact with protected adults, written or verbal communication and exercising power or influence over protected adults. Power and influence are defined by the Disclosure Act as:

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.

18. A person with day-to-day supervision or management of an individual carrying out a regulated role with adults is also to be treated as being in a regulated role (see paragraph 1(3)(a) of schedule 3).

19. Those involved in training or studying in Scotland for the activities listed in Part 2 of schedule 3 of the PVG Act will also be treated as carrying out a regulated role with adults, as will individuals who are ordinarily resident in the UK who are undertaking training or study for a regulated role with adults outside the UK, the Channel Islands and the Isle of Man for an organisation or a personnel supplier with a place of business in Scotland, whose functions in relation to the carrying out the activity by the individual are principally exercised at that place of business.

20. There are exceptions to regulated roles with adults set out in paragraph 2 of Schedule 3 of the PVG Act. An activity carried out in the course of a family relationship (either paid or unpaid) or in the course of a personal relationship where there is no payment is not a regulated role. This preserves the exclusions to what was considered "work" under section 95(3) and (4) of the PVG Act (which is repealed by the Disclosure Act as a result of the shift from regulated work to regulated roles).

Amendments by these Regulations

21. Regulation 2 makes amendments to schedule 2 of the PVG Act in the following ways:

- substituting the definition of contact with children within paragraph 3(1)(b) and 3(b) of the schedule to extend the definition to include visual communication with children and ensure that the definition is clear. The policy intent is to ensure that the use of British Sign Language is captured by the meaning of contact in relation to regulated roles with children.
- inserting into the list of activities in Part 2 of the schedule further healthcare professions that are to be regulated roles. This includes: anaesthesia associates, physician associates, dental care professionals, pharmacy technicians, optometrists, dispensing opticians and any profession practising in a pursuant to registration with the Health and Care Professions Council. This amendment ensures that current and emerging roles are captured and follows engagement with health regulators.
- making minor textual amendments to certain activities in Part 2 of the schedule to include additional establishments and activities. This ensures consistency in related activities in the schedule and also in relation to activities which appear in both schedules 2 and 3.

22. Regulation 3 makes amendments to schedule 3 of the PVG Act in the following ways:

- substitutes the definition of contact with protected adults within paragraph 3(1)(b) of the schedule with the intention of setting out the definition more clearly. These regulations also extend the definition of 'contact with protected adults' to include visual communication with protected adults. The policy intent here is to ensure that the use of British Sign Language is captured by the meaning of contact in relation to regulated roles with protected adults.
- paragraph 3(1)(b) also introduces the concept of unsupervised contact with protected adults in connection with the carrying out of activities in care homes, day centre premises, adult placement settings and hospitals; for activities other than in these named locations, the carrying out of these activities must require the individuals to have contact with protected adults and such contact requires to take place in the absence of other responsible people, namely those who would be responsible for the care or safety of protected adults. This mirrors the arrangements for similar roles with children.
- adds to the list of health care professionals named in the Act as regulated roles. These roles are: anaesthesia associates, physician associates, dental care professionals, pharmacy technicians, optometrists, dispensing opticians and any roles practising in a profession pursuant to registration with the Health and Care Professions Council. These amendments, which arose from health regulators, ensures that current and emerging roles are captured across this sector.
- inserts a further activity which states that roles that involve having responsibility for the safety and welfare of protected adults would be regulated roles under the Disclosure Act, subject to meeting the conditions in paragraph 1(2) of schedule 3 of the PVG Act. It mirrors arrangements for similar services for children.
- introduces the role of providing advocacy support in relation to health or wellbeing of protected adults as an activity that would form part of a regulated role. This emanates from a request from stakeholders in this sector that such roles are considered regulated roles under the Disclosure Act. It mirrors arrangements for similar services for children.
- amends the wording of an activity in order that it mirrors the wording for the relevant activity in schedule 2 for children. This ensures that individuals who hold positions of responsibility in organisations who provide benefits for or to protected adults are not excluded from the PVG scheme because the organisation has other purposes.

23. 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 (https://www.parliament.scot/bills-and-laws/bills/s5/disclosure-scotland-bill) also sets out the timeline for the passage of the Bill.

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

24. 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 Act), the Scottish Ministers certify that, in their view, the Regulated Roles with Children and Adults (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

26. 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.

27. 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.

28. After the Disclosure Act received Royal Assent, further engagement was undertaken to take the views of customers from all sectors on schedules 2 and 3 of the PVG Act. This involved engagement with different sectors, including local authorities, regulatory bodies, sports organisations, care organisations and charities. In total, 115 organisations participated in this sessions, which were a combination of in-person and online sessions and facilitated by Disclosure Scotland to examine the wording of each schedule and activity.

29. Disclosure Scotland also engaged directly with representatives from professional regulators, including the General Medical Council, the General Optical Council, the Nursing and Midwifery Council, the General Pharmaceutical Council and the Health and Care Professions Council to ensure that all relevant professions are captured as regulated roles under the Disclosure Act.

30. Consultation with an organisation supporting women experiencing, or who have experienced, domestic abuse identified that advocacy work was a key role in the services provided by their sector. Accordingly, stakeholder views were that such roles should be considered regulated roles under the Disclosure Act.

31. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. They have engaged with stakeholders specifically on the development of guidance on regulated roles. 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

32. 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/)

33. The Children's Rights and Wellbeing Impact Assessment for these Regulations identified that there was a neutral impact in relation to children's rights.

34. Equality Impact Assessment, 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 completed.

Financial Effects

35. The Minister for Children, Young People and the Promise confirms that a Business and Regulatory Impact Assessment has been completed for this instrument. However, it has no financial effects on the Scottish Government, local government or on business. While there are clear financial implications on the Scottish Government of the widening of the scope of the scheme, this will be mitigated by the move to a time limited scheme. The financial effects on businesses and individuals were considered at the time of the passage of the Disclosure (Scotland) Bill and expected to be minimal.

Scottish Government
Disclosure Scotland

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