POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (PRESCRIBED SERVICES AND ACTIVITIES) (PROTECTED ADULT) (SCOTLAND) REGULATIONS 2025

SSI 2025/4

The above instrument was made in exercise of the powers conferred by section 94(1)(c) and (d) of the Protection of Vulnerable Groups (Scotland) Act 2007 as substituted by section 75(2) of the Disclosure (Scotland) Act 2020, and all other powers enabling them to do so.

The instrument is subject to negative procedure.

Summary Box

These Regulations set out the health and community care services an individual must be receiving in order to be a protected adult under the Protection of Vulnerable Groups (Scotland) Act 2007 ("the PVG Act").

1. An individual is a protected adult if they are aged 18 or over and being provided with a "health service" by a person who is carrying out a regulated role that involves one or more of the activities mentioned in paragraphs 6 to 12 of Part 2 of schedule 3 of the PVG Act. The health service is a service provided or arranged by:

    - A Health Board or Special Health Board acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978
    - A person providing a service on behalf of a Health Board in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014
    - An independent hospital
    - A private psychiatric hospital
    - An independent clinic
    - An independent medical agency
    - An independent ambulance service

2. An individual is a protected adult if they are aged 18 or over and being provided with a "community care service" by a person who is carrying out a regulated role that involves any of the activities mentioned in paragraphs 15 or 17 of Part 2 of schedule 3 of the PVG Act. The community care service is a service provided or arranged by:

    - A council under the Social Work (Scotland) Act 1968 or the Mental Health (Care and Treatment) (Scotland) Act 2003
    - A person providing a service under either of those Acts, on behalf of a council in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014

A person providing a community care service must be carrying out one of these activities before the person receiving it can be considered a protected adult. These are:

- Being engaged by or on behalf of a protected adult to support the protected adult to live independently, including providing personal care services, food preparation or recreational services.
- Providing counselling, therapy, advice, guidance or advocacy support in relation to health or wellbeing to children, other than where such counselling, therapy, advice, guidance or advocacy support is provided in a prison by a prisoner to another prisoner

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 the 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. The meaning of protected adult is set out in section 94 of the PVG Act. Section 94 was substituted by section 75(2) of the Disclosure Act. These Regulations relate to section 94 as it was substituted. These amendments reflect a move away from the previous lengthy and complex definition to a narrower range of issues affecting a person's wellbeing, capabilities and capacity. The revisions made by the Disclosure Act alter the definition of a protected adult to include consideration for the individual's capacity to care for and protect themselves as a result of disability, illness, infirmity or ageing. It includes consideration of an individual's personal circumstances, such as homelessness or domestic abuse where they are in receipt of counselling, therapy or guidance in relation to their health or wellbeing.

4. For these circumstances, namely paragraphs (a) or (b) of section 94 of the PVG Act as amended, the individual's status as a protected adult is not affected by the nature of the activity carried out under schedule 3 of the PVG Act.

5. For those in receipt of services detailed in section 94(1)(c) of the PVG Act individuals only become protected adults if the person carrying out the role is undertaking one or more of the activities at paragraphs 6 to 12 of Part 2 of schedule 3 (health care). This means that an individual can be a protected adult on a transient basis, for example when seeing a GP or dentist.

6. For those in receipt of services detailed in section 94(1)(d) of the PVG Act, individuals only become protected adults if the person carrying out the role is undertaking one or more of the activities at paragraphs 15 or 17 of Part 2 of schedule 3 (health and care services). For example, where the individual receives support with the activities of daily life, such as dressing or preparing meals or where the individual receives counselling, therapy or advice in relation to their health or wellbeing.

7. The amendments by the Disclosure Act also alter the age a person must have attained to be regarded as a protected adult from someone aged 16 or older, to someone aged 18 or older. This is to prevent an overlap between the children's and protected adults' workforces under the PVG Scheme.

8. Regulation 2 of these Regulations sets out that a health service, for the purposes of section 94(1)(c) of the PVG Act (as substituted by section 75(2) of the Disclosure Act), is a service provided or arranged by:

    - A Health Board or Special Health Board acting in exercise of functions conferred by the 1978 Act
    - A person acting on behalf of a Health Board, in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working) (Scotland) Act 2014
    - An independent hospital
    - A private psychiatric hospital
    - An independent clinic
    - An independent medical agency
    - An independent ambulance service

9. The type of facility which constitutes an independent hospital, clinic, medical agency or ambulance service or a private psychiatric hospital for the purposes of these Regulations are as defined in section 10F of the National Health Service (Scotland) Act 1978.

10. The health services set out in regulation 2 largely replicates the prescribed health services set out in the current definition of 'protected adult' in section 94(1)(b) of the PVG Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services) (Protected Adults) Regulations 2010 ("the 2010 Regulations"). Independent ambulance services are included as health services under the PVG Act for the purpose of the meaning of protected adult, to ensure a safeguarding gap does not emerge. This also ensures consistency with the inclusion of paramedics regulated by the Health and Care Professions Council as a regulated role, as is incorporated within The Regulated Roles with Children and Adults (Scotland) Amendment Regulations 2025.

11. Regulation 3 of these Regulations sets out that a community care service, for the purposes of section 94(1)(d)(v) of the PVG Act (as substituted by section 75(2) of the Disclosure Act), is a service provided or arranged by:

    - A council under the Social Work (Scotland) Act 1968 or the Mental Health (Care and Treatment)(Scotland) Act 2003
    - A person acting on behalf of a council in pursuance of an integration scheme prepared under section 1 or 2 of the Public Bodies (Joint Working)(Scotland) Act 2014, providing a service under either of those Acts.

12. The definition of a community care service set out in regulation 3 of these Regulations replicates the prescribed community care services set out in the current definition of

protected adult in section 94(1)(d) of the PVG Act. This ensures that individuals who are currently considered to be protected adults if they are in receipt of community care services which have been arranged by or on behalf of the protected adult with the purpose of supporting them to live independently continue to be considered protected adults. These services can include providing personal care services, food preparation or recreational service or by providing counselling, therapy, advice or guidance in relation to health or wellbeing.

13. These Regulations also set out the relevant activities that a person providing a community care service must be carrying out before the person receiving it can be considered a protected adult. These are:

    - being engaged by or on behalf of a protected adult to support the protected adult to live independently, including providing personal care services, food preparation or recreational services.
    - providing counselling, therapy, advice, guidance or advocacy support in relation to health or wellbeing to children, other than where such counselling, therapy, advice, guidance or advocacy support is provided in a prison by a prisoner to another prisoner

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

14. 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 Protection of Vulnerable Groups (Scotland) Act 2007 (Prescribed Services and Activities) (Protected Adults) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

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

Consultation

16. 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.

17. 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.

18. 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.

19. The results of the consultation generally informed further development of the policy and Disclosure (Scotland) Bill provisions. The definition of protected adult, as substituted, maintains the status quo in respect of adults being provided with health services to ensure that they benefit from the safeguarding measures of the PVG Act and in addition, expands the previous definition to include individuals who are inherently vulnerable due to physical or mental disability, illness or old age, which significantly impairs their ability to protect themselves from harm or which results in them requiring assistance to support their daily lives and a "protected adult" will now also include an individual aged 18 years or over who has experienced homelessness or domestic abuse where they are in receipt of counselling, therapy or guidance in relation to their health or wellbeing.

20. Following Royal Assent, alongside further engagement on regulated roles, Disclosure Scotland held 4 further online engagement events that specifically addressed the change to the definition of protected adults. These were attended by 27 stakeholders targeted due to the nature of their organisation meaning they were affected by the substituted definition. Stakeholders reported no concerns with the substituted definition during that engagement.

21. Disclosure Scotland will continue developing guidance for stakeholders to help their understanding and clarify their understanding of the revised Schedules 2 and 3 of the PVG Act, and the revised definition of protected adult brought about by these Regulations. This will help to ensure that the PVG scheme is only used where it is appropriate to do so. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. 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.

22. 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

23. 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/)

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

25. A Fairer Scotland Duty Assessment and an Island Communities Impact Assessment screening exercise was undertaken. No impacts were identified during screening as relate to the package of SSIs that this falls within and, therefore, a full impact assessment was not done.

Financial Effects

26. 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

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