

Disclosure (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Level 1 and level 2 disclosures: childhood convictions: alignment of state and self-disclosure provisions

1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 52, 53, 58, 62, 90, 92, 98, 201

Minor and drafting

3, 4, 22, 50, 51, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 97, 102, 121, 125, 126, 200, 205, 206

Level 2 disclosure: children's hearing outcomes

18, 23, 49, 54, 55, 56, 57, 59, 60, 61, 63, 64, 65, 91, 93, 94, 95, 96, 99, 100, 101, 105, 113, 122, 123, 124

Level 2 disclosure: other relevant information

19, 66, 67, 203

List A and List B offences: miscellaneous amendments

24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

PVG Act: carrying out a regulated role without being a scheme member

36, 146, 147, 148, 149

Level 2 disclosure: process after independent review

103, 104, 106, 107, 108, 109, 110

Level 2 disclosure: spent childhood convictions and children's hearing outcomes: disapplication of section 4 of the Rehabilitation of Offenders Act 1974

111

Disclosures: principles for decision-making

112, 208, 221, 202

Accredited bodies

114, 115, 116, 117, 118, 119, 120

PVG Act: participation of persons aged 12 to 15 in the Scheme

209, 210, 211, 212

PVG Act: renewal of scheme membership

127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145

PVG Act: regulated roles with children or adults: miscellaneous

150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 213, 163, 214, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 215, 216, 177, 178, 179, 217, 180, 218, 219, 220

Notes on amendments in this group

Amendment 213 pre-empts amendment 163

Amendment 217 pre-empts amendment 180

PVG Act: meaning of “protected adult”

181, 182, 183, 184, 185

PVG Act: consideration for listing

186, 187, 188, 189, 190, 191, 192, 193, 194, 195

PVG Act: removal from the lists

196, 197, 198

PVG Act: offences outside Scotland

199

Consequential amendments to the Age of Criminal Responsibility Act 2019

204, 207

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Amendments in debating order

Level 1 and level 2 disclosures: childhood convictions: alignment of state and self-disclosure provisions

Maree Todd

- 1 In section 1, page 1, line 9, leave out from <conviction> to <conviction> in line 10 and insert <unspent conviction (including an unspent childhood conviction) of the individual>

Maree Todd

- 2 In section 1, page 1, leave out lines 12 and 13

Maree Todd

- 5 Leave out section 5

Maree Todd

- 6 In section 6, page 3, leave out lines 23 and 24

Maree Todd

- 7 In section 7, page 3, line 34, leave out from <, and> to end of line 36

Maree Todd

- 8 In section 7, page 4, line 1, leave out subsection (5)

Maree Todd

- 9 Leave out section 8

Maree Todd

- 10 Leave out section 9

Maree Todd

- 11 Leave out section 10

Maree Todd

- 12 Leave out section 11

Maree Todd

- 13 In section 12, page 5, leave out line 37 and insert—

<() the Scottish Ministers have made a decision under section 7(3) in relation to the application.>

Maree Todd

- 14 In section 12, page 6, line 3, leave out <proceedings on the application finally concluded> and insert <the Scottish Ministers made the decision under section 7(3)>

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Maree Todd

- 15 In section 12, page 6, line 4, leave out <final outcome of the proceedings> and insert <Scottish Ministers' decision under section 7(3)>

Maree Todd

- 16 In section 12, page 6, line 8, leave out subsections (4) to (7)

Maree Todd

- 17 In section 13, page 7, line 9, after <any> insert <spent>

Maree Todd

- 20 In section 13, page 7, line 27, after <disposal"> insert <—
(a)>

Maree Todd

- 21 In section 13, page 7, leave out lines 28 to 32 and insert—
(i) a conviction (other than a childhood conviction), whether spent or unspent,
(ii) an unspent childhood conviction,
(iii) an unspent caution (other than a childhood caution), but
(b) does not include a non-disclosable conviction.>

Maree Todd

- 52 In section 17, page 9, line 9, after <any> insert <spent>

Maree Todd

- 53 In section 17, page 9, line 9, leave out <(including a spent conviction)>

Maree Todd

- 58 In section 17, page 9, line 17, after <a> insert <spent>

Maree Todd

- 62 In section 17, page 9, line 23, after <a> insert <spent>

Maree Todd

- 90 In section 23, page 13, line 4, after <a> insert <spent>

Maree Todd

- 92 In section 25, page 14, line 2, after <a> insert <spent>

Maree Todd

- 98 In section 31, page 18, line 1, after second <a> insert <spent>

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Maree Todd

201 In schedule 5, page 89, line 14, at end insert—

<Rehabilitation of Offenders Act 1974

- (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5 (disclosure periods for particular sentences), after subsection (2A) insert—

“(2AA) Subsection (2A)(a) is subject to section 5J(1)(ba).”.
- (3) In section 5A(1) (disclosure periods: ordinary cases), in Table A, in each of the following entries, for the period specified in the third column (disclosure period – aged under 18) substitute “Nil (see section 5J(1)(ba))”—
 - (a) the first entry (a custodial sentence not exceeding 12 months),
 - (b) the fourth entry (a fine),
 - (c) the fifth entry (a compensation order under section 249 of the Criminal Procedure (Scotland) Act 1995),
 - (d) the sixth entry (an order for endorsement made by a court in relation to an offence mentioned in schedule 2 of the Road Traffic Offenders Act 1988),
 - (e) the seventh entry (any sentence not mentioned in the entries above or in Table B other than one to which section 5(2D) or any of sections 5C to 5J applies).
- (4) In section 5B (disclosure periods: service disciplinary offences), in Table B, in each of the entries, for the period specified in the third column (disclosure period – aged under 18) substitute “Nil (see section 5J(1)(ba))”.
- (5) In section 5C (disclosure period: caution for good behaviour), in subsection (2), paragraph (b) is repealed.
- (6) In section 5D (disclosure period: particular court orders)—
 - (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3), the words “and (b)(ii)” are repealed.
- (7) In section 5I (disclosure period: service disciplinary orders)—
 - (a) in subsection (1), paragraph (b) is repealed,
 - (b) in subsection (3)—
 - (i) in paragraph (a), for “15” substitute “18”,
 - (ii) paragraph (b) is repealed.
- (8) In section 5J (sentences to which no disclosure period applies)—
 - (a) in subsection (1), after paragraph (b) insert—

“(ba) any sentence other than an excepted sentence mentioned in subsection (1A) imposed on a person in respect of a conviction for an offence committed when the person was under 18 years of age,”,
 - (b) after subsection (1) insert—

“(1A) The excepted sentences referred to in subsection (1)(ba) are—

 - (a) an excluded sentence,

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(b) in the case of a conviction for an offence listed in any of paragraphs 43 to 50 of schedule 1 of the Disclosure (Scotland) Act 2020 (sexual offences), a custodial sentence (within the meaning of section 5(12)) for a term exceeding 12 months.

(1B) For the purposes of subsection (1)(ba), it is to be presumed, in the absence of evidence to the contrary, that a person convicted of an offence was of the same age at the time the offence was committed as the person was at the date of conviction.”.>

Minor and drafting

Maree Todd

3 In section 2, page 2, line 3, after <the> insert <information that would be contained in the>

Maree Todd

4 In section 2, page 2, line 3, at end insert—

<() A Level 1 disclosure provided under subsection (1) or (2) may relate only to the applicant.>

Maree Todd

22 In section 14, page 8, line 1, after <a> insert <conviction for a>

Maree Todd

50 In section 15, page 8, line 33, at end insert—

<() A Level 2 disclosure provided under subsection (1) or (2) may relate only to the applicant.>

Maree Todd

51 In section 16, page 9, line 3, after <order> insert <made by the Scottish Ministers>

Maree Todd

68 In section 19, page 10, line 10, leave out <individual> and insert <applicant>

Maree Todd

69 In section 19, page 10, line 13, leave out <individual> and insert <applicant>

Maree Todd

70 In section 19, page 10, line 15, leave out <individual> and insert <applicant>

Maree Todd

71 In section 19, page 10, line 16, leave out <individual> and insert <applicant>

Maree Todd

72 In section 19, page 10, line 18, leave out <individual> and insert <applicant>

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Maree Todd

73 In section 19, page 10, line 19, leave out <individual> and insert <applicant>

Maree Todd

74 In section 19, page 10, line 24, leave out <individual> and insert <applicant>

Maree Todd

75 In section 19, page 10, line 26, leave out <individual> and insert <applicant>

Maree Todd

76 In section 19, page 10, line 28, leave out <individual> and insert <applicant>

Maree Todd

77 In section 19, page 10, line 29, leave out <individual> and insert <applicant>

Maree Todd

78 In section 19, page 10, line 31, leave out <individual> and insert <applicant>

Maree Todd

79 In section 19, page 10, line 32, leave out <individual> and insert <applicant>

Maree Todd

80 In section 19, page 10, line 37, leave out <individual> and insert <applicant>

Maree Todd

81 In section 20, page 11, line 2, leave out <individual's> and insert <applicant's>

Maree Todd

82 In section 20, page 11, line 5, leave out <individual> and insert <applicant>

Maree Todd

83 In section 20, page 11, line 7, leave out <individual> and insert <applicant>

Maree Todd

84 In section 20, page 11, line 10, leave out <individual> and insert <applicant>

Maree Todd

85 In section 20, page 11, line 11, leave out <individual> and insert <applicant>

Maree Todd

86 In section 20, page 11, line 16, leave out <individual> and insert <applicant>

Maree Todd

87 In section 20, page 11, line 22, leave out <scheme member's> and insert <applicant's>

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Maree Todd

- 88 In section 20, page 11, line 22, leave out <scheme member> and insert <applicant>

Maree Todd

- 89 In section 22, page 12, line 17, after <order> insert <made by the Scottish Ministers>

Maree Todd

- 97 In section 29, page 16, line 35, leave out <purposes> and insert <purpose>

Maree Todd

- 102 In section 31, page 18, line 5, leave out <individual> and insert <applicant>

Maree Todd

- 121 In section 69, page 42, leave out lines 10 and 11

Maree Todd

- 125 In section 70, page 43, leave out lines 34 and 35 and insert—
 <<“spent”, in relation to a conviction (including a childhood conviction) or caution, means spent for the purpose of the Rehabilitation of Offenders Act 1974; and “unspent”, in relation to a conviction (including a childhood conviction) or caution, is to be construed accordingly.>>

Maree Todd

- 126 In section 70, page 43, line 37, at end insert—
 <<“type of regulated role” is to be construed in accordance with section 91(4) and (5) of the PVG Act.>>

Maree Todd

- 200 After section 85, insert—
 <<**Guidance for chief constable**
 After section 84 of the PVG Act insert—
 “**84A Guidance for chief constable**
 (1) The Scottish Ministers must issue guidance to the chief constable about the exercise of the chief constable’s functions under Parts 1 and 2 of this Act.
 (2) The Scottish Ministers may from time to time issue revised guidance, and references in this section to guidance include revised guidance.
 (3) Before issuing guidance under this section, the Scottish Ministers must consult the chief constable.
 (4) The chief constable must have regard to guidance issued under this section in exercising functions under Part 1 or 2 of this Act.
 (5) This section does not affect the generality of section 84.”>>

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Maree Todd

- 205 In schedule 5, page 99, line 6, leave out from <“paid”> to the end of line 7 and insert < “Scheme” insert “or to renew membership of the Scheme,”>

Maree Todd

- 206 In schedule 5, page 99, line 9, at end insert—
<(iii) in the closing words, after “paid” insert “in the manner provided for in the regulations.”>

Level 2 disclosure: children’s hearing outcomes

Maree Todd

- 18 In section 13, page 7, line 9, after <convictions> insert <and children’s hearing outcomes>

Maree Todd

- 23 In section 14, page 8, line 10, leave out subsection (3)

Maree Todd

- 49 After section 14, insert—

<Non-disclosable children’s hearing outcomes

- (1) For the purposes of this Part, a children’s hearing outcome of an individual is a non-disclosable children’s hearing outcome if—
 - (a) the offence which led to the children’s hearing outcome is not a List A offence or a List B offence, or
 - (b) the offence which led to the children’s hearing outcome is a List B offence and either of the conditions in subsection (2) is satisfied.
- (2) The conditions are—
 - (a) the referral to the children’s hearing which led to the children’s hearing outcome was discharged under—
 - (i) section 69(1)(b) and (12) of the Children (Scotland) Act 1995, or
 - (ii) section 91(3)(b), 93(2)(b), 108(3)(b) or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011,(as the case may be),
 - (b) at least 5 years and 6 months have passed since the date of the children’s hearing outcome.>

Maree Todd

- 54 In section 17, page 9, line 11, after <conviction,> insert—
<() ascertain whether there is any children’s hearing outcome of the applicant that is recorded in central records and that is not a non-disclosable children’s hearing outcome.>

THIS IS NOT THE MARSHALLED LIST

Maree Todd

- 55 In section 17, page 9, line 12, after <is> insert <such a childhood conviction or children's hearing outcome>

Maree Todd

- 56 In section 17, page 9, line 13, leave out <childhood conviction> and insert <conviction or outcome>

Maree Todd

- 57 In section 17, page 9, line 15, leave out <childhood conviction> and insert <conviction or outcome>

Maree Todd

- 59 In section 17, page 9, line 17, after <conviction> insert <or children's hearing outcome>

Maree Todd

- 60 In section 17, page 9, line 18, leave out <childhood conviction> and insert <conviction or outcome>

Maree Todd

- 61 In section 17, page 9, line 20, after <conviction> insert <or outcome>

Maree Todd

- 63 In section 17, page 9, line 23, after <conviction> insert <or children's hearing outcome>

Maree Todd

- 64 In section 17, page 9, line 26, leave out <childhood conviction> and insert <conviction or outcome>

Maree Todd

- 65 In section 17, page 9, line 27, after <conviction> insert <or outcome>

Maree Todd

- 91 In section 23, page 13, line 4, after <conviction> insert <or children's hearing outcome>

Maree Todd

- 93 In section 25, page 14, line 2, after <conviction> insert <or children's hearing outcome>

Maree Todd

- 94 In section 25, page 14, line 7, after <conviction> insert <or children's hearing outcome>

Maree Todd

- 95 In section 25, page 14, line 8, leave out <childhood conviction> and insert <conviction or outcome>

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Maree Todd

- 96 In section 25, page 14, line 10, leave out <conviction> and insert <childhood conviction or children’s hearing outcome>

Maree Todd

- 99 In section 31, page 18, line 2, after <conviction> insert <or children’s hearing outcome>

Maree Todd

- 100 In section 31, page 18, line 4, after <conviction> insert <or children’s hearing outcome>

Maree Todd

- 101 In section 31, page 18, line 5, leave out <childhood conviction> insert <conviction or outcome>

Maree Todd

- 105 In section 33, page 19, line 24, after <conviction> insert <or children’s hearing outcome>

Maree Todd

- 113 In section 40, page 23, line 20, after <individual> insert <—
(a) information about a children’s hearing outcome of the individual, and
(b)>

Maree Todd

- 122 In section 70, page 42, line 36, at end insert—
<“children’s hearing outcome” means anything treated as a conviction for the purposes of the Rehabilitation of Offenders Act 1974 by virtue of section 3 of that Act (special provision with respect to certain disposals by children’s hearings),>

Maree Todd

- 123 In section 70, page 42, line 39, at end insert <but does not include a children’s hearing outcome,>

Maree Todd

- 124 In section 70, page 43, line 15, at end insert—
<“non-disclosable children’s hearing outcome” has the meaning given in section (*Non-disclosable children’s hearing outcomes*),>

Level 2 disclosure: other relevant information

Maree Todd

- 19 In section 13, page 7, line 13, at end insert—
<() containing information relating to the individual provided by the chief officer of a relevant overseas police force that may be included in the disclosure in accordance with section (*Provision of relevant overseas police information*) or, if no such information has been provided, stating that fact,>

THIS IS NOT THE MARSHALLED LIST

Maree Todd

66 In section 18, page 9, line 40, at end insert—

- <() For the avoidance of doubt, information mentioned in subsection (1) may include information with respect to relevant behaviour within the meaning of section 5(1)(a) of the Age of Criminal Responsibility (Scotland) Act 2019.
- () However, the chief constable may provide information mentioned in subsection (1) relating to a time when the applicant was under 12 years of age only where—
 - (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the Level 2 disclosure and—
 - (i) no appeal under section 20 of that Act is taken, or
 - (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a) of that Act, or
 - (b) the sheriff, on an appeal under section 20 of that Act, determines under subsection (3)(b) of that section that the information ought to be included in the Level 2 disclosure.>

Maree Todd

67 After section 18, insert—

<Provision of relevant overseas police information

- (1) Before providing a Level 2 disclosure to an applicant, the Scottish Ministers must request the chief officer of every relevant overseas police force to provide—
 - (a) any information relating to the applicant which—
 - (i) the chief officer reasonably believes to be relevant for the purpose of the disclosure, and
 - (ii) in the chief officer's opinion ought to be included in the disclosure, and
 - (b) a statement of the chief officer's reasons for—
 - (i) the chief officer's belief that the information is relevant for the purpose of the disclosure, and
 - (ii) the chief officer's opinion that the information ought to be included in the disclosure.
- (2) Where information is received by the Scottish Ministers from the chief officer of a relevant overseas police force in response to a request under subsection (1), the Scottish Ministers must arrange for the independent reviewer to carry out a review of the information.
- (3) In the review the independent reviewer must decide—
 - (a) whether the information is relevant for the purpose of the disclosure, and
 - (b) whether the information ought to be included in the disclosure.
- (4) The Scottish Ministers may include the information in a Level 2 disclosure only if the effect of the final outcome of proceedings in the review carried out by the independent reviewer (including any appeal against the independent reviewer's decision by virtue of regulations under subsection (5)) is that the information—

THIS IS NOT THE MARSHALLED LIST

- (a) is relevant for the purpose of the disclosure, and
 - (b) ought to be included in the disclosure.
- (5) The Scottish Ministers may by regulations make further provision in connection with the carrying out of a review by the independent reviewer under this section including, in particular, provision for or about—
- (a) the provision of information to the independent reviewer for the purpose of a review (including the conferral of powers on the independent reviewer to require the provision of information),
 - (b) giving the applicant an opportunity to make representations,
 - (c) notification of the independent reviewer’s decision in a review,
 - (d) an appeal to a sheriff on a point of law against the independent reviewer’s decision,
 - (e) what constitutes the final outcome of proceedings for the purposes of subsection (4).
- (6) In this section—
- “chief officer”, in relation to an overseas police force, means the person responsible for the direction of the overseas police force,
- “overseas police force” means—
- (a) the States of Jersey Police Force,
 - (b) the salaried police force of the Island of Guernsey,
 - (c) the Isle of Man Constabulary,
 - (d) a body with functions in any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man that correspond to those of a police force in any part of the United Kingdom,

“relevant overseas police force” means such overseas police force as may be prescribed.>

Maree Todd

203 In schedule 5, page 91, line 19, at end insert—

<() in subsection (5), for “in relation to an application under section 113B of the 1997 Act” substitute “for the purposes of section 50 of the Disclosure (Scotland) Act 2020”.>

List A and List B offences: miscellaneous amendments

Maree Todd

24 In schedule 1, page 59, line 14, at end insert—

<Defeating the ends of justice.>

Maree Todd

25 In schedule 1, page 59, line 18, at end insert—

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<Perverting the course of justice (by whatever means and however the offence is described), including in particular—

- (a) false accusation of a crime,
- (b) perjury,
- (c) prevarication on oath,
- (d) prison breaking,
- (e) subornation of perjury.>

Maree Todd

26 In schedule 1, page 59, line 27, at end insert—

<Bribery

An offence under the Bribery Act 2010.>

Maree Todd

27 In schedule 1, page 60, line 9, at end insert—

<False statements and declarations

An offence under section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations).>

Maree Todd

28 In schedule 1, page 60, line 10, at end insert—

<An offence under section 1A of the Prevention of Crime Act 1953 (threatening with offensive weapon in public).>

Maree Todd

29 In schedule 1, page 60, line 26, at end insert—

<An offence under section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon).>

Maree Todd

30 In schedule 1, page 60, line 31, at end insert—

<Fraud and forgery

An offence under any of the following provisions of the Forgery and Counterfeiting Act 1981—

- (a) Part 1 (forgery and kindred offences),
- (b) section 14 (offences of counterfeiting notes and coins),
- (c) section 15 (offences of passing etc. counterfeit notes and coins),
- (d) section 16 (offences involving custody or control of counterfeit notes and coins),
- (e) section 17 (offences involving the making or custody or control of counterfeiting materials and implements).>

THIS IS NOT THE MARSHALLED LIST

Maree Todd

31 In schedule 1, page 61, line 19, at end insert—

<Insolvency

An offence under any of the following provisions of the Insolvency Act 1986—

- (a) section 206 (fraud, etc. in anticipation of winding up),
- (b) section 207 (transactions in fraud of creditors),
- (c) section 208 (misconduct in course of winding up),
- (d) section 209 (falsification of company's books),
- (e) section 210 (material omissions from statement relating to company's affairs),
- (f) section 211 (false representations to creditors).>

Maree Todd

32 In schedule 1, page 61, line 31, at end insert—

<Proceeds of crime and money laundering

An offence under any of the following provisions of the Proceeds of Crime Act 2002—

- (a) Part 7 (money laundering), other than section 339(1A),
- (b) Part 8 (investigations).>

Maree Todd

33 In schedule 1, page 63, line 10, at end insert—

<Solicitors

An offence under the Solicitors (Scotland) Act 1980.>

Maree Todd

34 In schedule 1, page 63, line 15, at end insert—

<Taxation

An offence under any of the following provisions of the Criminal Finances Act 2017—

- (a) section 45(1) (failure to prevent facilitation of UK tax evasion offences),
- (b) section 46(1) (failure to prevent facilitation of foreign tax evasion offences).>

Maree Todd

35 In schedule 1, page 63, line 34, at end insert—

<() section 58B (entering or remaining in a designated area),>

Maree Todd

37 In schedule 2, page 66, line 13, leave out paragraph 1

Maree Todd

38 In schedule 2, page 66, line 26, leave out paragraph 8

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Maree Todd

- 39 In schedule 2, page 68, line 3, leave out paragraph 33

Maree Todd

- 40 In schedule 2, page 71, line 2, after <under> insert <any of the following provisions of>

Maree Todd

- 41 In schedule 2, page 71, line 2, at end insert <—
(a) section 18 (offence of reproducing British currency notes),
(b) section 19 (offences of making etc. imitation British coins).>

Maree Todd

- 42 In schedule 2, page 71, leave out lines 28 and 29

Maree Todd

- 43 In schedule 2, page 71, line 33, at end insert—
<Lasers
An offence under the Laser Misuse (Vehicles) Act 2018.>

Maree Todd

- 44 In schedule 2, page 73, line 23, at end insert—
<An offence under any of the following provisions of the Offensive Weapons Act 2019—
(a) section 1 (sale of corrosive products to persons under 18),
(b) section 6 (offence of having a corrosive substance in a public place),
(c) section 11(5) (offences of obstruction and concealment relating to a search for corrosive substances: Scotland).>

Maree Todd

- 45 In schedule 2, page 73, leave out lines 30 and 31 and insert—
<() section 339(1A) (making disclosure otherwise than in the prescribed form and manner),>

Maree Todd

- 46 In schedule 2, page 75, line 5, leave out paragraph 99

Maree Todd

- 47 In schedule 2, page 75, line 7, leave out paragraph 100

Maree Todd

- 48 In schedule 2, page 75, line 12, after <uniform> insert <and publication of images>

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PVG Act: carrying out a regulated role without being a scheme member

Maree Todd

36 In schedule 1, page 64, line 38, at end insert—

<() section 45DA (power to require organisations to stop using individuals for regulated roles without scheme membership),>

Maree Todd

146 In section 74, page 47, line 16, leave out <seek or>

Maree Todd

147 In section 74, page 47, line 18, at end insert—

<() For the purposes of subsection (1), an individual is not to be treated as having agreed to carry out a regulated role if the individual's agreement is subject to the individual's participating in the Scheme in relation to that type of role.>

Maree Todd

148 In section 74, page 48, line 2, at end insert—

<45DA Power to require organisations to stop using individuals for regulated roles without scheme membership

(1) Ministers may by regulations—

(a) prohibit an organisation from permitting an individual to carry out a regulated role,

(b) require an organisation to remove an individual from a regulated role,

where the individual does not participate in the Scheme in relation to that type of regulated role.

(2) Regulations under subsection (1) may in particular—

(a) impose prohibitions or requirements—

(i) in relation to particular types of organisations,

(ii) in relation to particular kinds of regulated roles,

(b) otherwise limit the purposes for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.

(3) An organisation which fails to comply with regulations made under subsection (1) commits an offence.

(4) It is a defence for an organisation charged with an offence under subsection (3) to prove that it did not know, and could not reasonably be expected to have known, that the individual does not participate in the Scheme in relation to that type of regulated role.>

Maree Todd

149 In section 74, page 48, line 19, after <45D> insert <, 45DA>

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Level 2 disclosure: process after independent review

Maree Todd

- 103 In section 33, page 19, line 18, after <period> insert <—
(a)>

Maree Todd

- 104 In section 33, page 19, line 20, at end insert—
<(b) the chief constable notifies the Scottish Ministers that the chief constable does not intend to take an appeal under this section, the chief constable loses the right to take an appeal on the date on which the notification is given.>

Maree Todd

- 106 In section 34, page 20, line 22, at end insert—
<() Subsection (5) does not prevent the applicant from specifying the information in any review application made in relation to a subsequent Level 2 disclosure provided for the same purpose as the original Level 2 disclosure if—
(a) the review application in relation to the subsequent Level 2 disclosure is made after the end of such period beginning with the final outcome of proceedings as the Scottish Ministers may by regulations specify, or
(b) the Scottish Ministers are satisfied that the applicant’s circumstances have changed in a material respect since the final outcome of proceedings.>

Maree Todd

- 107 In section 34, page 20, line 40, leave out from <date> to end of line 42 and insert <the relevant date,>

Maree Todd

- 108 In section 34, page 21, line 7, at end insert—
<() In subsection (6)(c), the “relevant date” is—
(a) where—
(i) the review carried out by the independent reviewer included a review under section 27 of information relating to the applicant provided by the chief constable in accordance with section 18, and
(ii) both the applicant and the chief constable notify the Scottish Ministers under subsection (5) of section 33 that they do not intend to take an appeal under subsection (1) of that section,
the date on which the later of those notifications is made,
(b) in any other case, the date on which the applicant notifies the Scottish Ministers under subsection (5) of 33 that the applicant does not intend to take an appeal under subsection (1) of that section.>

Maree Todd

- 109 In section 34, page 21, line 18, leave out <Subsection (9) applies> and insert <Subsections (9) and (10) apply>

THIS IS NOT THE MARSHALLED LIST

Maree Todd

110 In section 34, page 21, line 27, at end insert—

<(10) The information is to be treated for the purposes of the PVG Act as not being vetting information.>

Level 2 disclosure: spent childhood convictions and children' hearing outcomes: disapplication of section 4 of the Rehabilitation of Offenders Act 1974

Maree Todd

111 After section 34, insert—

<Disapplication of provisions of section 4 of the Rehabilitation of Offenders Act 1974

- (1) Subsection (2) applies where a review is to be carried out by the independent reviewer under section 25 of information included in a Level 2 disclosure about—
 - (a) a spent childhood conviction of an applicant, or
 - (b) a children's hearing outcome of an applicant.
- (2) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) of section 4 of the Rehabilitation of Offenders Act 1974 (effect of becoming a protected person) (the "1974 Act") do not apply—
 - (a) for the purpose of the review and any appeal under section 33 against the independent reviewer's decision in the review,
 - (b) in relation to the information about the spent childhood conviction or the children's hearing outcome that is the subject of the review.
- (3) Subsection (4) applies where—
 - (a) a review is carried out by the independent reviewer under section 25 of information included in a Level 2 disclosure about—
 - (i) a spent childhood conviction of an applicant, or
 - (ii) a children's hearing outcome of an applicant, and
 - (b) any of the following applies in relation to the review—
 - (i) the independent reviewer decides that the information is relevant for the purpose of the disclosure and ought to be included in the disclosure and no appeal under section 33 is taken against the independent reviewer's decision,
 - (ii) the independent reviewer decides as mentioned in sub-paragraph (i) and, on an appeal under section 33 having been taken against the independent reviewer's decision, the sheriff confirms the decision under subsection (6)(a) of that section,
 - (iii) the sheriff, on an appeal under section 33 against the independent reviewer's decision in the review, decides under subsection (6)(b) of that section that the information is relevant for the purpose of the disclosure and ought to be included in the disclosure, and
 - (c) the information is included in a new Level 2 disclosure provided to the applicant by virtue of section 34(2).

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- (4) Subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act do not apply—
 - (a) in relation to the purpose of the Level 2 disclosure, and
 - (b) in relation to the spent childhood conviction or children’s hearing outcome information about which is included in the disclosure.
- (5) Subsection (6) applies where information about—
 - (a) a spent childhood conviction of an applicant, or
 - (b) a children’s hearing outcome of an applicant,is included in a Level 2 disclosure as mentioned in subsection (3)(c).
- (6) Subject to subsections (1) and (2), the application of subsections (1)(a) and (b), (2)(a) and (b) and (3)(a) and (b) of section 4 of the 1974 Act is not excluded in relation to the spent childhood conviction or children’s hearing outcome, or any circumstances ancillary to it, during the period before the Level 2 disclosure was provided to the applicant.>

Disclosures: principles for decision-making

Maree Todd

112 After section 34, insert—

<Level 2 disclosures: considering relevance and whether to include information

Level 2 disclosure: considering relevance and whether to include certain information

- (1) This section applies where a person is considering for the purposes of section 17(1)(b), 18(1), (*Provision of relevant overseas police information*)(3), 25(3), 26(4), 27(4), 28(3) or 29(4)—
 - (a) whether a conviction, children’s hearing outcome or other information is relevant for the purpose of a Level 2 disclosure to be provided to an individual, and
 - (b) whether information about, or details of, the conviction or outcome or the other information (as the case may be) ought to be included in the disclosure.
- (2) In considering whether the conviction, children’s hearing outcome or other information is relevant for the purpose of the disclosure, the person may take account of any of the following matters (amongst other matters)—
 - (a) the nature and seriousness of the conviction, outcome or other information,
 - (b) the circumstances giving rise to the conviction, outcome or other information,
 - (c) in the case of a conviction, the level of any sentence imposed in respect of the conviction,
 - (d) the time that has elapsed since the behaviour giving rise to the conviction, outcome or other information occurred,
 - (e) the age of the individual at the time when the behaviour giving rise to the conviction, outcome or other information occurred,
 - (f) any previous or subsequent offences committed by the individual,

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- (g) in the case of other information, the reliability of the information.
- (3) In considering whether information about, or details of, the conviction, children's hearing outcome or the other information (as the case may be) ought to be included in the disclosure, the person may take account of any of the following matters (amongst other matters)—
 - (a) the nature and seriousness of the conviction, outcome or other information,
 - (b) the circumstances giving rise to the conviction, outcome or other information,
 - (c) in the case of a conviction, the level of any sentence imposed in respect of the conviction,
 - (d) the time that has elapsed since the behaviour giving rise to the conviction, outcome or other information occurred,
 - (e) the age of the individual at the time when the behaviour giving rise to the conviction, outcome or other information occurred,
 - (f) any particular events or circumstances in the individual's life at the time when the behaviour giving rise to the conviction, outcome or other information occurred which the person considers to be relevant to the behaviour,
 - (g) any previous or subsequent offences committed by the individual,
 - (h) in the case of other information, the reliability of the information,
 - (i) in the case of other information, whether the individual has had an opportunity to challenge the information or make representations about the circumstances which gave rise to it,
 - (j) the impact on the individual of including information about, or details of, the conviction or outcome or the other information in the disclosure.
- (4) In this section, "other information" means information—
 - (a) provided or to be provided in accordance with section 18,
 - (b) provided in accordance with section (*Provision of relevant overseas police information*).
- (5) The Scottish Ministers may by regulations modify subsection (2) or (3).>

Daniel Johnson

208 After section 63, insert—

<Disclosure: regard to be had to certain matters in making determinations

- (1) In determining whether information about a childhood conviction ought to be included in the disclosure under section 5, the Scottish Ministers must have regard to the matters in subsection (4).
- (2) In determining—
 - (a) whether a childhood conviction is relevant for the purpose of the disclosure and whether information about the childhood conviction ought to be included in the disclosure under section 17,
 - (b) whether a removable conviction is relevant for the purpose of the disclosure and whether details of the removable conviction ought to be included in the disclosure under section 28,

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the Scottish Ministers must have regard to the matters in subsections (4) and (5).

- (3) In discharging their functions under this Part—
 - (a) the independent reviewer,
 - (b) the chief constable, and
 - (c) any person to whom functions are delegated under section 67,must have regard to the matters in subsections (4) and (5).
- (4) The matters are—
 - (a) the seriousness of the childhood conviction or removable conviction in respect of—
 - (i) serious harm to a person,
 - (ii) significant breach of trust and responsibility,
 - (iii) exploitative or coercive behaviour,
 - (iii) dishonesty against an individual,
 - (iv) abuse of a position of trust,
 - (b) the amount of time elapsed since the childhood conviction or removable conviction occurred,
 - (c) where there is more than one childhood conviction or removable conviction, the number of childhood convictions or removable convictions,
 - (d) where there is more than one childhood conviction or removable conviction, or where there is both a childhood conviction and other conviction information, the similarity of these convictions in respect of the matters in paragraph (a),
 - (e) the accuracy of the information,
 - (f) the impact of disclosure on the Convention Rights of the individual or of a third party.
- (5) The matters are—
 - (a) the purposes of the disclosure by an accredited body under section 16,
 - (b) the prescribed purposes under section 19,
 - (c) the purposes of disclosure under section 20,
 - (d) the relevance of the childhood conviction or removable conviction to the purposes stated in paragraphs (a) to (c) in respect of risk of—
 - (i) serious harm to a person,
 - (ii) significant breach of trust and responsibility,
 - (iii) exploitative or coercive behaviour,
 - (iii) dishonesty against an individual,
 - (iv) abuse of a position of trust,
 - (e) the impact of disclosure on the Convention Rights of the individual or of a third party.
- (6) The Scottish Ministers may from time to time issue guidance to the persons listed in subsection (3) on how they are to discharge their functions in accordance with this Part.

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- (7) Guidance issued under subsection (6) must be published in such manner as the Scottish Ministers consider appropriate.
- (8) The Scottish Ministers may by regulations modify subsection (3), (4), (5) or (6).>

Daniel Johnson

- 221 In section 87, page 56, line 22, after <40(1)> insert <or (*Disclosure: regard to be had to certain matters in making determinations*)(8)>

Maree Todd

- 202 In schedule 5, page 90, line 15, at end insert—

<() after subsection (1) insert—

“(1A) Section (*Level 2 disclosure: considering relevance and whether to include certain information*) of the Disclosure (Scotland) Act 2020 (*Level 2 disclosure: considering relevance and whether to include certain information*) applies for the purposes of subsection (1)(c) of this section as it applies for the purposes of the sections mentioned in subsection (1) of that section, but as if—

- (a) references to a person considering whether a conviction, children’s hearing outcome or other information is relevant for the purpose of a Level 2 disclosure were references to the chief constable considering whether information is relevant to the type of regulated role in relation to which the scheme member participates in the Scheme,
- (b) references to a person considering whether a conviction, children’s hearing outcome or other information ought to be included in a Level 2 disclosure were references to the chief constable considering whether information ought to be included in the scheme member’s scheme record,
- (c) references to a conviction or children’s hearing outcome were omitted, and
- (d) references to other information were references to information mentioned in subsection (1)(c) of this section.”>

Accredited bodies

Maree Todd

- 114 In section 51, page 31, line 3, after <(2)> insert <or (2A)>

Maree Todd

- 115 In section 51, page 31, line 11, at end insert—

<(2A) In the case of an accredited body that is a body corporate or unincorporated or a statutory office-holder, further grounds are that the accredited body does not have a lead signatory.>

Maree Todd

- 116 In section 52, page 31, line 30, leave out <, the applicant must in the application>

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Maree Todd

117 In section 52, page 31, line 32, at the beginning insert <the applicant must in the application>

Maree Todd

118 In section 52, page 31, line 34, after <(c),> insert <the applicant may in the application>

Maree Todd

119 In section 52, page 32, line 21, leave out subsections (8) and (9)

Maree Todd

120 In section 57, page 37, line 4, leave out from second <the> to end of line 5 and insert <disclosure to the person would comply with the code of practice published under section 56.>

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