

# Disclosure (Scotland) Bill

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## Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Sections 1 to 14	Schedules 1 and 2
Sections 15 to 75	Schedules 3 and 4
Sections 76 to 89	Schedule 5
Sections 90 to 94	Long Title

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 1

#### 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

### Section 2

#### 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.>

### Section 5

#### Maree Todd

- 5 Leave out section 5

### Section 6

#### Maree Todd

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

## Section 7

### 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)

## Section 8

### Maree Todd

- 9 Leave out section 8

## Section 9

### Maree Todd

- 10 Leave out section 9

## Section 10

### Maree Todd

- 11 Leave out section 10

## Section 11

### Maree Todd

- 12 Leave out section 11

## Section 12

### 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)>

### 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)

**Section 13**

**Maree Todd**

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

**Maree Todd**

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

**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,>

**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.>

**Section 14**

**Maree Todd**

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

**Maree Todd**

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

## Schedule 1

### 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—  
<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).>

**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**

- 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),>

**Schedule 2**

**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

**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>

**After section 14**

**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.>

## Section 15

### 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.>

## Section 16

### Maree Todd

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

## Section 17

### 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

- 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,>

### 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

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



**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**

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

**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>

**Section 18**

**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.>

## After section 18

### 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—
  - (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.>

## Section 19

### **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>

### **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>

**Section 20**

**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>

**Maree Todd**

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

## **Section 22**

**Maree Todd**

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

## **Section 23**

**Maree Todd**

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

**Maree Todd**

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

## **Section 25**

**Maree Todd**

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

**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>

**Maree Todd**

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

## **Section 29**

**Maree Todd**

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

## **Section 31**

**Maree Todd**

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

**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**

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

**Section 33**

**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**

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

**Section 34**

**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>

**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.>

**After section 34**

**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).
- (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.>

**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,
  - (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).>

#### **Section 40**

##### **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)>

#### **Section 51**

##### **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.>

#### **Section 52**

##### **Maree Todd**

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

##### **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)

## Section 57

### 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.>

## After section 63

### 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,

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.
- (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).>

## **Section 69**

### **Maree Todd**

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

## **Section 70**

### **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*),>

**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.>

**Section 71**

**Jamie Greene**

209 In section 71, page 44, line 7, leave out <aged 16 or over>

**Jamie Greene**

210 In section 71, page 44, line 19, at end insert—

<(4) Ministers may allow an individual to participate in the Scheme in relation to a  
type of regulated role if the individual is—

(a) not barred from that type of regulated role, and

(b) 12 years of age or older but under 16 years of age,

if it appears to them from the information contained in the application that it is  
appropriate in the circumstances to allow the individual to participate in the  
Scheme.”.>

**Section 72**

**Maree Todd**

127 In section 72, page 44, line 33, after <date”> insert <—

(a)>

**Maree Todd**

128 In section 72, page 44, line 38, at end insert—

<(b) may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type concerned.>

**Maree Todd**

129 In section 72, page 45, line 1, leave out <(3)> and insert <(3)(a)>

**Maree Todd**

130 In section 72, page 45, line 6, at end insert—

<( ) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.>

**Maree Todd**

131 In section 72, page 45, line 10, leave out <(3)> and insert <(3)(a)>

**Maree Todd**

132 In section 72, page 45, line 10, leave out <or personnel supplier> and insert <, personnel supplier or relevant regulatory body>

**Maree Todd**

133 In section 72, page 45, line 11, after <supplier> insert <, or under subsection (3)(b),>

**Maree Todd**

134 In section 72, page 45, line 12, leave out <to the organisation or personnel supplier>

**Section 73**

**Maree Todd**

135 In section 73, page 45, line 41, after <renewed,> insert—

<(ia) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme,>

**Maree Todd**

136 In section 73, page 46, line 4, at end insert—

<(3A) Where Ministers decide under subsection (3)(b)(ii) to extend the scheme member's participation in the Scheme for the discretionary membership period—

(a) they must send written notice to the persons mentioned in subsection (4)—

(i) of that fact, and

- (ii) that the scheme member's participation in the Scheme in relation to the type of regulated role concerned is to end on the expiry of that period unless the scheme member's membership of the Scheme is renewed, and
- (b) they may send written notice of those facts to any person other than an organisation for whom Ministers know the scheme member is carrying out a regulated role of the type in relation to which the member participates in the Scheme.>

**Maree Todd**

137 In section 73, page 46, line 12, at end insert—

- <( ) any relevant regulatory body (within the meaning of section 13A(8)) whom Ministers think it would be appropriate to notify.>

**Maree Todd**

138 In section 73, page 46, line 27, leave out <may> and insert <must>

**Maree Todd**

139 In section 73, page 46, line 27, leave out <relevant list> and insert <children's list or the adults' list (or both)>

**Maree Todd**

140 In section 73, page 46, line 29, at end insert <(or both of those lists).>

**Maree Todd**

141 In section 73, page 46, leave out lines 30 to 34 and insert—

- <( ) For the avoidance of doubt, subsection (6) applies in relation to the scheme member regardless of the type of regulated role in relation to which the scheme member participates in the Scheme.>

**Maree Todd**

142 In section 73, page 47, line 3, after <section> insert <—  
(a)>

**Maree Todd**

143 In section 73, page 47, line 3, leave out <(3)> and insert <(3)(a)>

**Maree Todd**

144 In section 73, page 47, line 4, after <(3)(b)(i)> insert <or (3A)(a)>

**Maree Todd**

145 In section 73, page 47, line 5, at end insert <, and

- (b) to a notice given under subsection (3)(b) of that section is to be read as a reference to a notice given under subsection (3)(b)(ia) or (3A)(b) of this section.>

## Section 74

### 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.>

### Jamie Greene

- 211 In section 74, page 47, line 31, after <16> insert <, unless Ministers have, under section 45(4), allowed the individual to participate in the Scheme in relation to the type of regulated role concerned>

### Jamie Greene

- 212 In section 74, page 48, line 2, after <16> insert <, unless Ministers have, under section 45(4), allowed the individual to participate in the Scheme in relation to the type of regulated role concerned>

### 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>

**Schedule 3**

**Maree Todd**

- 150 In schedule 3, page 78, line 30, leave out <or personal>

**Maree Todd**

- 151 In schedule 3, page 78, line 31, at end insert <, or
- (c) the activity is carried out for an individual (“A”)—
    - (i) in the course of a personal relationship,
    - (ii) for no commercial consideration, and
    - (iii) for the benefit of A, a member of A’s family or A’s friend.>

**Maree Todd**

- 152 In schedule 3, page 78, line 38, at end insert—  
<(2A) In sub-paragraph (1)(c)—>

**Maree Todd**

- 153 In schedule 3, page 78, line 39, at end insert <, and
- ( ) “benefit” does not include commercial benefit.>

**Maree Todd**

- 154 In schedule 3, page 78, line 40, leave out <sub-paragraph (2)(c)> and insert <sub-paragraphs (1)(c) and (2A)(c)>

**Maree Todd**

- 155 In schedule 3, page 79, line 10, leave out <making decisions that affect> and insert <exercising power or influence over>

**Maree Todd**

- 156 In schedule 3, page 80, line 35, leave out <making decisions that affect> and insert <exercising power or influence over>

**Maree Todd**

157 In schedule 3, page 80, line 35, at end insert—

<( ) For the purpose of paragraph (b) of the definitions of “contact with children” in each of sub-paragraphs (1) and (3), “exercising power or influence over children” means—

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

**Maree Todd**

158 In schedule 3, page 81, line 21, leave out <, employability, health or wellbeing> and insert <or education>

**Maree Todd**

159 In schedule 3, page 82, line 3, leave out <exclusively>

**Maree Todd**

160 In schedule 3, page 82, line 13, leave out <support services> and insert <advice or guidance in relation to health or wellbeing>

**Maree Todd**

161 In schedule 3, page 82, line 14, leave out <services are> and insert <counselling, therapy, advice or guidance is>

**Maree Todd**

162 In schedule 3, page 82, line 19, leave out <Being engaged in the provision of> and insert <Providing>

**Alasdair Allan**

213 In schedule 3, page 82, line 21, leave out paragraph 27

**Maree Todd**

163 In schedule 3, page 82, line 21, leave out <Being engaged in the provision of> and insert <Providing>

**Alasdair Allan**

214 In schedule 3, page 82, line 22, at end insert—

*<Religious activities*

Providing religious activities or services for children.>

#### **Schedule 4**

##### **Maree Todd**

- 164** In schedule 4, page 85, line 42, after <if> insert <—  
(a)>

##### **Maree Todd**

- 165** In schedule 4, page 85, line 43, leave out <or personal>

##### **Maree Todd**

- 166** In schedule 4, page 85, line 43, at end insert <, or  
(b) the activity is carried out for an individual (“A”)—  
(i) in the course of a personal relationship,  
(ii) for no commercial consideration, and  
(iii) for the benefit of A, a member of A’s family or A’s friend.>

##### **Maree Todd**

- 167** In schedule 4, page 86, line 1, leave out <(1)> and insert <(1)(a)>

##### **Maree Todd**

- 168** In schedule 4, page 86, line 4, at end insert—  
<(2A) In sub-paragraph (1)(b)—>

##### **Maree Todd**

- 169** In schedule 4, page 86, line 5, at end insert <, and  
( ) “benefit” does not include commercial benefit.>

##### **Maree Todd**

- 170** In schedule 4, page 86, line 6, leave out <sub-paragraph (2)(b)> and insert <sub-paragraphs (1)(b) and (2A)(b)>

##### **Maree Todd**

- 171** In schedule 4, page 86, line 16, leave out <making decisions that affect> and insert <exercising power or influence over>

##### **Maree Todd**

- 172** In schedule 4, page 86, line 22, leave out <making decisions that affect> and insert <exercising power or influence over>

**Maree Todd**

173 In schedule 4, page 86, line 23, at end insert—

<( ) For the purpose of paragraph (b) of the definitions of “contact with protected adults” in each of sub-paragraphs (1) and (2), “exercising power or influence over protected adults” means—

- (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.>

**Maree Todd**

174 In schedule 4, page 86, line 29, leave out <, career development, employability, health or wellbeing> and insert <or employability>

**Maree Todd**

175 In schedule 4, page 87, line 7, leave out <exclusively>

**Maree Todd**

176 In schedule 4, page 87, line 8, after <home> insert <, day care centre>

**Iain Gray**

215 In schedule 4, page 87, line 12, at end insert—

<15A Providing support to a protected adult under a shared lives scheme.>

**Iain Gray**

216 In schedule 4, page 87, line 12, at end insert—

<15B Being an adult (other than a shared lives carer or a protected adult who is placed with the shared lives carer) whose sole or main residence is the same dwelling as that of a shared lives carer providing personal care to a protected adult.>

**Maree Todd**

177 In schedule 4, page 87, line 13, leave out <support services> and insert <advice or guidance in relation to health or wellbeing>

**Maree Todd**

178 In schedule 4, page 87, line 14, leave out <services are> and insert <counselling, therapy, advice or guidance is>

**Maree Todd**

- 179 In schedule 4, page 87, line 20, leave out <Being engaged in the provision of> and insert <Providing>

**Alasdair Allan**

- 217 In schedule 4, page 87, line 22, leave out paragraph 19

**Maree Todd**

- 180 In schedule 4, page 87, line 22, leave out <Being engaged in the provision of> and insert <Providing>

**Alasdair Allan**

- 218 In schedule 4, page 87, line 24, at end insert—  
*<Religious activities*  
Providing religious activities or services for protected adults.>

**Iain Gray**

- 219 In schedule 4, page 87, line 33, at end insert—  
<“adult”, for the purposes of paragraph 15B, means an individual aged 18 or over,>

**Iain Gray**

- 220 In schedule 4, page 88, line 28, at end insert—  
<“shared lives agreement” means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to a protected adult together with, where necessary, accommodation in the individual's home,  
“shared lives carer” means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for protected adults together with, where necessary, accommodation in the individual's home,  
“shared lives scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—  
(a) recruiting and training shared lives carers,  
(b) making arrangements for the placing of protected adults with shared lives carers, and  
(c) supporting and monitoring placements.>

## Section 76

### Maree Todd

- 181 In section 76, page 49, line 8, leave out <or old age> and insert <, infirmity or ageing>

### Maree Todd

- 182 In section 76, page 49, line 9, leave out <significantly> and insert <an>

### Maree Todd

- 183 In section 76, page 49, line 11, leave out <and> and insert—
- <(aa) in relation to a regulated role with adults that involves the carrying out of activities mentioned in paragraph 16 of Part 2 of schedule 3, an individual aged 18 or over who—
    - (i) is homeless (within the meaning of section 24 of the Housing (Scotland) Act 1987), or
    - (ii) has experienced, is experiencing or is at risk of experiencing domestic abuse,>

### Maree Todd

- 184 In section 76, page 49, line 15, at end insert—
- <(c) in relation to a regulated role with adults that involves the carrying out of such of the activities mentioned in Part 2 of schedule 3 as may be prescribed, an individual aged 18 or over who is being provided with—
    - (i) a prescribed support service,
    - (ii) a prescribed adult placement service,
    - (iii) a prescribed care home service,
    - (iv) a prescribed housing support service,
    - (v) a prescribed community care service, or
    - (vi) a prescribed welfare service.”>

### Maree Todd

- 185 In section 76, page 49, line 16, leave out subsection (3) and insert—
- <(3) After subsection (2), insert—
    - “(2A) For the purposes of subsection (1)(aa)(ii)—
      - (a) an individual has experienced or is experiencing domestic abuse if the individual has experienced or is experiencing behaviour that is—
        - (i) abuse within the meaning of the Protection from Abuse (Scotland) Act 2001, or
        - (ii) abusive of the individual within the meaning of section 2 of the Domestic Abuse (Scotland) Act 2018,
- from another person with whom the individual resides or used to reside,

- (b) an individual is at risk of experiencing domestic abuse if the individual is at risk of experiencing such behaviour—
  - (i) from another person with whom, but for the risk of the behaviour, the individual might reasonably be expected to reside, or
  - (ii) from another person with whom the individual resides or used to reside.”.
- (4) In subsection (3)—
  - (a) in paragraph (a), for “paragraph (a) of subsection (1)” substitute “sub-paragraphs (i) to (iv) of subsection (1)(c)”,
  - (b) paragraphs (b) and (c) are repealed.
- (5) In subsection (4)—
  - (a) after “In” insert “sub-paragraph (v) of”,
  - (b) the definition of “direct payment” is repealed.
- (6) In subsection (5), for “subsection (1)(d)” substitute “sub-paragraph (vi) of subsection (1)(c)”.>

## Section 77

### Maree Todd

- 186 In section 77, page 50, line 17, leave out <(or another person)>

### Maree Todd

- 187 In section 77, page 50, line 19, at end insert—
- <( ) a personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role,>

### Maree Todd

- 188 In section 77, page 51, line 35, leave out from second <for> to <role> in line 36 and insert <mentioned in subsection (2A)>

### Maree Todd

- 189 In section 77, page 51, line 37, leave out <the> and insert <a>

### Maree Todd

- 190 In section 77, page 51, line 38, at end insert—
- <(2A) The persons referred to in subsection (2) are—
- (a) an organisation for whom the scheme member is carrying out a regulated role,
  - (b) a personnel supplier who has offered or supplied the scheme member to carry out a regulated role.>

## Section 78

### Maree Todd

191 In section 78, page 52, line 10, at end insert—

<( ) In subsection (3)—

- (a) in paragraph (b), at the end insert “and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with children,”
- (b) in paragraph (c), at the end (and before the word “and” immediately following that paragraph) insert “and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with adults.”.>

### Maree Todd

192 In section 78, page 52, line 23, at end insert—

<(3C) After considering whether to list an individual as mentioned in subsection (3A)(a), Ministers may notify their decision (whether to list the individual or not to do so) to any person other than an organisation for whom they know the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults.”.>

### Maree Todd

193 In section 78, page 52, line 24, after <(3B)> insert <, (3C)>

## Section 79

### Maree Todd

194 In section 79, page 52, line 38, leave out <section 30(4)> and insert <subsection (3C) or (4) of section 30>

### Maree Todd

195 In section 79, page 52, line 39, leave out <that subsection> and insert <either of those subsections of that section>

## After section 83

### Maree Todd

196 After section 83, insert—

#### <Application for removal from list

- (1) Section 25 (application for removal from list) of the PVG Act is amended as follows.
- (2) In subsection (3), for paragraph (b) substitute—
  - “(b) Ministers are satisfied that there has been a relevant change in the applicant’s circumstances since the applicant—



- (i) was listed, or
  - (ii) last made an application for removal from the list under this section.”.
- (3) After subsection (4) insert—
  - “(4A) For the purposes of subsection (3)(b), a change in the applicant’s circumstances is relevant if it is relevant to the question whether the applicant is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”.
- (4) Subsections (5) and (6) are repealed.>

**Maree Todd**

**197** After section 83, insert—

**<Ministers’ powers to remove from list**

- (1) The PVG Act is amended as follows.
- (2) In section 28 (late representations), after subsection (1) insert—
  - “(1A) This section also applies where an individual listed under section 15 or 16 (other than one mentioned in subsection (1))—
    - (a) seeks to make representations to Ministers as to why the individual should not have been listed, and
    - (b) Ministers consider that it is appropriate in all the circumstances to allow the representations to be made.”.
- (3) In section 29 (removal from list), in subsection (1)(b)—
  - (a) the words “they are satisfied that the individual should not have been listed” become sub-paragraph (i), and
  - (b) at the end of that sub-paragraph insert “, or
    - (ii) they are otherwise satisfied that the individual is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults.”.>

**Maree Todd**

**198** After section 83, insert—

**<Appeals and removals: information power**

- (1) The PVG Act is amended as follows.
- (2) In section 26 (determination of application for removal from list), subsection (3) is repealed.
- (3) After section 29 insert—

*“Appeals and removals: information powers*

**29A Appeals and removals: application of sections 18 to 20**

- (1) Sections 18 to 20 apply—

- (a) for any of the purposes specified in subsection (2) as they apply for the purpose of enabling or assisting Ministers to decide whether to list an individual,
  - (b) with the modifications that are specified in subsection (2) in relation to the purpose.
- (2) The purposes (and modifications) are—
- (a) enabling or assisting Ministers to consider, in relation to an appeal under section 21, 22 or 23, whether an individual should have been listed (with references to deciding whether to list an individual being read as references to deciding whether the individual should have been listed),
  - (b) enabling or assisting Ministers to determine under section 26 an application for removal from the children’s list or the adults’ list (with references to deciding whether to list an individual being read as references to determining whether to remove an individual from the list),
  - (c) enabling or assisting Ministers to consider, in relation to an appeal under section 27, whether an application for removal from the children’s list or the adults’ list should have been refused under section 26 (with references to deciding whether to list an individual being read as references to deciding whether an application for removal from the list should have been refused),
  - (d) enabling or assisting Ministers to decide under section 28 or 29 whether to remove an individual from the children’s list or the adults’ list (with references to deciding whether to list an individual being read as references to deciding whether an individual should not have been listed or is no longer unsuitable to carry out regulated roles with children or, as the case may be, regulated roles with adults).”>

**After section 85**

**Maree Todd**

**199** After section 85, insert—

**<Offences outside Scotland**

- (1) The PVG Act is amended as follows.
- (2) After section 37 insert—

**“37A Offences outside Scotland**

- (1) This section applies where an offence is committed under section 34, 35 or 36 outside Scotland.
- (2) The person committing the offence may be prosecuted, tried and punished for the offence—
  - (a) in a sheriff court district in which the person is apprehended or in custody, or
  - (b) in a sheriff court district determined by the Lord Advocate,
as if the offence had been committed in that district.

- (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”.
- (3) After section 45F (as inserted by section 74) insert—
- “47G Offences outside Scotland**
- (1) This section applies where an offence is committed under section 45C, 45D or 45E outside Scotland.
- (2) The person committing the offence may be prosecuted, tried and punished for the offence—
- (a) in a sheriff court district in which the person is apprehended or in custody, or
- (b) in a sheriff court district determined by the Lord Advocate, as if the offence had been committed in that district.
- (3) The offence is, for all purposes incidental to or consequential on the trial and punishment, deemed to have been committed in that district.”.>

**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.”.>

**Section 87**

**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)>

**Schedule 5**

**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,
      - (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.”.>

**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.”.>

**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”.>

**Maree Todd**

**204** In schedule 5, page 91, line 31, at end insert—

<*Age of Criminal Responsibility (Scotland) Act 2019*

- (1) The Age of Criminal Responsibility (Scotland) Act 2019 is amended as follows.
- (2) In section 8 (disapplication of sections 6 and 7)—
  - (a) in subsection (1), for the words from “in—” to the end substitute “in a Level 2 disclosure.”,
  - (b) in subsection (3)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “a Level 2 disclosure”,
  - (c) in subsection (4)—

- (i) in paragraph (a), for “for which the certificate or, as the case may be, scheme record is provided” substitute “of the disclosure”,
    - (ii) in paragraph (b), for “certificate or record” substitute “Level 2 disclosure”,
  - (d) subsection (5) is repealed,
  - (e) in subsection (6), for “certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”,
  - (f) in subsection (7), for “certificate or record” substitute “Level 2 disclosure”.
- (3) In section 10 (disclosure of information relating to time when person under 12), subsections (1), (2) and (4) are repealed.
- (4) In section 11 (independent reviewer), in paragraph (a), for the words from “information—” to the end substitute “information in a Level 2 disclosure, and”.
- (5) In section 12 (period and terms of appointment), in subsection (7)(a), for “8A or 8B of the 1997 Act” substitute “1 or 2 of the 2020 Act”.
- (6) In section 14 (referral of information to independent reviewer)—
- (a) in subsection (1), in paragraph (a)—
    - (i) for “113B(4) of the 1997 Act” substitute “18(1) of the 2020 Act”,
    - (ii) for “an enhanced criminal record certificate issued under section 113B(1) of that Act” substitute “a Level 2 disclosure”,
  - (b) in subsection (1), paragraph (b) is repealed,
  - (c) in subsection (2)—
    - (i) in paragraph (a), for the words from “described” to the end substitute “of the disclosure,”,
    - (ii) paragraph (b) is repealed,
    - (iii) in paragraph (c), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (7) In section 16 (notification to applicant or scheme member), in subsection (2)(b), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (8) In section 18 (review of information referred under section 14)—
- (a) in subsection (1)—
    - (i) in paragraph (a), for the words from “in relation to” to the end substitute “for the purpose of the disclosure, and”,
    - (ii) in paragraph (b), for “that certificate” substitute “the disclosure”,
  - (b) after subsection (1) insert—
    - “(1A) Section (*Level 2 disclosure: considering relevance and whether to include certain information*) of the 2020 Act (*Level 2 disclosure: considering relevance and whether to include certain information*) applies for the purposes of subsection (1) 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 conviction or a children’s hearing outcome were omitted, and

- (b) references to other information were references to information mentioned in section 14(1)(a) of this Act.”,
  - (c) subsection (2) is repealed,
  - (d) in subsection (4)(a), for “enhanced criminal record certificate or, as the case may be, scheme record” substitute “Level 2 disclosure”.
- (9) After section 20 insert—
- “20A Removal of information from scheme record following review or appeal**
- (1) This section applies where, in the case of a scheme member—
    - (a) information that is the subject of a review under section 18 is also contained in the scheme member’s scheme record in relation to a type of regulated role to which the purpose of the disclosure referred to in section 18(1)(a) relates, and
    - (b) subsection (2) or (3) applies in relation to the review.
  - (2) This subsection applies if the independent reviewer determines under section 18(4)(a) that the information ought not to be included in the disclosure and—
    - (a) no appeal under section 20 is taken, or
    - (b) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a).
  - (3) This subsection applies if the sheriff, on an appeal under section 20, determines under subsection (3)(b) of that section that the information ought not to be included in the disclosure.
  - (4) The Scottish Ministers must remove the information from the scheme member’s scheme record so far as relating to the type of regulated role mentioned in subsection (1)(a).
  - (5) The information is to be treated for the purposes of the 2007 Act as not being vetting information.”.
- (10) In section 23 (regulation of procedure for review)—
- (a) in subsection (1), for “enhanced criminal record certificates and scheme records” substitute “Level 2 disclosures”,
  - (b) in subsection (2)(a), for “an enhanced criminal record certificate or, as the case may be, a scheme record” substitute “a Level 2 disclosure”.
- (11) Section 25 (amendments consequential on Chapter 2) is repealed.
- (12) In section 26 (interpretation of Part 2)—
- (a) the definitions of “1997 Act” and “enhanced criminal record certificate” are repealed,
  - (b) after the definition of “2007 Act” insert—
    - ““2020 Act” means the Disclosure (Scotland) Act 2020,”,
  - (c) in the definition of “applicant” for “113B of the 1997 Act for an enhanced criminal record certificate” substitute “15 of the 2020 Act for a Level 2 disclosure”,
  - (d) after the definition of “independent reviewer” insert—

““Level 2 disclosure” means a Level 2 disclosure under section 13 of the 2020 Act,

“purpose of the disclosure”, in relation to a Level 2 disclosure, has the meaning given in section 70 of the 2020 Act.”.>

**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.”.>

**Maree Todd**

- 207** In schedule 5, page 101, line 15, at end insert—  
<*Age of Criminal Responsibility (Scotland) Act 2019*  
In section 26 of the Age of Criminal Responsibility (Scotland) Act 2019 (interpretation of Part 2), in the definition of “regulated work”, for “work” substitute “role”.>



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