

**Education, Children and Young People Committee**  
**Wednesday 19 February 2025**  
**6<sup>th</sup> Meeting, 2025 (Session 6)**

## **Subordinate Legislation**

### **Affirmative instruments**

1. At its meeting today, the Committee will be considering the following affirmative instruments, related to the:
  - Draft SSI: Disclosure (Scotland) Act 2020 (Incidental, Supplementary and Consequential Provision) Regulations 2025 (**Annexe A**)
  - Draft SSI: Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 (**Annexe B**)
  - Draft SSI: Regulated Roles with Children and Adults (Scotland) Amendment Regulations 2025 (**Annexe C**)
  - Draft SSI: Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025 (**Annexe D**)
2. More information about the instruments is set out in the annexes to this paper.

**Clerks to the Committee**  
**February 2025**

## Annexe A

# Note by the Clerk on The Disclosure (Scotland) Act 2020 (Incidental, Supplementary and Consequential Provision) Regulations 2025 [draft]

## Overview

1. At this meeting, the Committee will take evidence from the Minister for Children, Young People and The Promise and officials on The Disclosure (Scotland) Act 2020 (Incidental, Supplementary and Consequential Provision) Regulations 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
2. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Disclosure \(Scotland\) Act 2020 \(Incidental, Supplementary and Consequential Provisions\) Regulations 2025](#)

**Laid under:** [Disclosure \(Scotland\) Act 2020](#)

**Laid on:** 21 January 2025

**Procedure:** Affirmative

**Lead committee to report by:** 10 March 2025

## Procedure

3. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
4. Once laid, the instrument is referred to:
  8. the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  9. a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
6. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  10. an evidence session with the Minister and officials, followed by

11. a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
7. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

## **Delegated Powers and Law Reform Committee consideration**

8. The DPLR Committee considered the instrument on Tuesday 28 January and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee report on 28 January 2025](#). The DPLR Committee agreed that no points arose in relation to the instrument.

## **Purpose of the instrument**

9. The Disclosure (Scotland) Act 2020 (“the Disclosure Act”) reforms the system of disclosure of criminal records administered by the Scottish Ministers. Prior to the Disclosure Act, disclosure functions were performed in accordance with Part 5 of the Police Act 1997 (“the Police Act”) and Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”). The Disclosure Act repeals Part 5 of the Police Act as it applies in Scotland and amends the PVG Act.
10. This instrument makes various incidental, supplementary and consequential modifications to primary and secondary legislation to ensure that the disclosure system operates as the Disclosure Act intended and to reflect the changes made to the disclosure system by that Act.
11. It also revokes various enactments which, as a consequence of the changes made by the Disclosure Act, are no longer required.
12. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Report**

13. Following today’s proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate to the Convener responsibility for finalising its report on this instrument.

**Clerks to the Committee  
February 2025**

# Annexe: Scottish Government Policy Note

## POLICY NOTE

### THE DISCLOSURE (SCOTLAND) ACT 2020 (INCIDENTAL, SUPPLEMENTARY AND CONSEQUENTIAL PROVISION) REGULATIONS 2025

#### SSI 2025/XXX

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 92(1) and section 92(2) of the Disclosure (Scotland) Act 2020<sup>1</sup> and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

## Summary Box

The Disclosure (Scotland) Act 2020 (“the Disclosure Act”) reforms the system of disclosure of criminal records administered by the Scottish Ministers. Prior to the Disclosure Act, disclosure functions were performed in accordance with Part 5 of the Police Act 1997 (“the Police Act”) and Part 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”). The Disclosure Act repeals Part 5 of the Police Act as it applies in Scotland and amends the PVG Act.

This instrument makes various incidental, supplementary and consequential modifications to primary and secondary legislation to ensure that the disclosure system operates as the Disclosure Act intended and to reflect the changes made to the disclosure system by that Act.

It also revokes various enactments which, as a consequence of the changes made by the Disclosure Act, are no longer required.

## Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and protected adults on behalf of the Scottish Ministers.
2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act as it applies in Scotland and also making amendments to PVG Act under which the Scottish Ministers administer the PVG Scheme.
3. Part 1 of the Disclosure Act reforms the system of disclosure of criminal records administered by the Scottish Ministers. Prior to the Disclosure Act, disclosure functions were performed in accordance with Part 5 of the Police Act and Part 2 of the PVG Act. The Disclosure Act repeals and replaces Part 5

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<sup>1</sup> 2020 asp 13

of the Police Act and amends the PVG Act and makes provision for new disclosure products. New Level 1 and Level 2 disclosures replace criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under the Police Act and PVG scheme records and short scheme records under the PVG Act.

4. The Disclosure Act also replaces the concept of “regulated work with children and adults” with “regulated roles with children and adults”.
5. Part 1 of schedule 1 of this instrument makes modifications to primary legislation which are consequential, incidental and supplementary in nature to ensure that the disclosure system operates as the Disclosure Act intended.

#### **Rehabilitation of Offenders Act 1974**

6. Paragraph 1 of Part 1 of schedule 1 of this instrument modifies section 3 of the Rehabilitation of Offenders Act 1974 (“the 1974 Act”).
7. Section 3 of the 1974 Act was amended by paragraph 1(5) of schedule 2 of the Management of Offenders (Scotland) Act 2019 and section 4(3) of the Age of Criminal Responsibility (Scotland) Act 2019)). Section 3 of the 1974 Act currently has effect (by virtue of article 2(3) of the Children’s Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013 (“the 2013 Order”)), as follows:

(1) *Where-*

a) *a ground for the referral of a child’s case to a children’s hearing under the Children (Scotland) Act 1995 is that mentioned in section 52(2)(i) of that Act (commission by the child of an offence) and that ground has either been accepted by the child and where necessary, by his parent or been established (or deemed established) to the satisfaction of the sheriff under section 68 or 85 of that Act;*

*or*

b) *one or more of the section 67 grounds under the Children’s Hearings (Scotland) Act 2011 is that mentioned in section 67(2)(j) of that Act (meaning of “section 67 ground”) and that ground has either been accepted by the child and, where necessary, by any person who is a relevant person, or has been established to the satisfaction of the sheriff under section 108 or section 114 of that Act*

*the acceptance, establishment (or deemed establishment) of that ground shall be treated for the purposes of this Act (but not otherwise) as a conviction, and any disposal of the case thereafter by a children’s hearing shall be treated for those purposes as a sentence; and references in this Act to a person’s being charged or prosecuted for an offence shall be construed accordingly.*

(2) *In subsection (1)(b), “relevant person” has the meaning given in section 200 of the Children’s Hearings (Scotland) Act 2011 and includes any*

*individual who is deemed a relevant person under section 81(3), or by virtue of an order under section 160(4)(b), of that Act.*

*(3) This section does not apply where the acts or omissions constituting the ground mentioned in subsection (1) occurred when the child was under 12 years of age.*

8. The 2013 Order was made by the Scottish Ministers under section 205 of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). Article 2(3) of the 2013 Order made temporary provision in article 2(3) which means that section 3 of the 1974 Act, in relation to the disclosure of children's hearing disposals for offences, is to be read as including disposals under the 2011 Act, as well as disposals under the Children (Scotland) Act 1995. This is to ensure that such a disposal would be treated as a criminal conviction for the purposes of the 1974 Act.
9. Article 1 of the 2013 Order makes clear that the 2013 Order was transitory in nature and was to cease to have effect on the day section 187 of the 2011 Act came into force.
10. Section 187 and 188 of the 2011 Act set out how "alternatives to prosecution" under the 2011 Act will be treated under the disclosure regime, namely that these will become spent after 3 months of the offence grounds being accepted or established, or of a compulsory supervision order being made, and that alternatives to prosecution are brought into the meaning of "relevant matter" for the purposes of the 1997 Act.
11. It was accepted, at the time of the Disclosure (Scotland) Bill's inception, that amendments already made to the disclosure regime in Scotland by the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 and the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 together with further provision made in the Disclosure Act in relation to childhood conviction/hearing information, go further than would ever have been achieved through sections 187 and 188 of the 2011 Act. Accordingly, paragraph 13 of schedule 5 of the Disclosure Act repeals sections 187 and 188 of the 2011 Act.
12. The definition of "children's hearing outcome" in section 69 of the Disclosure Act relies on section 3 of the 1974 Act, as it currently has effect.
13. To ensure that there is no uncertainty as to the effect of section 3 of the 1974 Act when sections 187 and 188 of the 2011 Act are repealed by the Disclosure Act, paragraph 16 of schedule 2 of this instrument revokes the 2013 Order and paragraph 1 of Part 1 of schedule 1 of this instrument makes a permanent textual modification to section 3 of the 1974 Act which replicates what was provided for in article 2(3) of the 2013 Order. The revocation and amendment are in consequence of the Disclosure Act's repeal of sections 187 and 188 and are necessary to ensure that the definition of "children's hearing outcome" in section 69 of the Disclosure Act works as it is intended to work.
14. A "children's hearing outcome" is defined as anything treated as a conviction for the purposes of the 1974 Act, by virtue of section 3 of that Act. This definition

relies on section 3 as it currently has effect (i.e. as modified by article 2(3) of the 2013 Order). Therefore, it is necessary for section 3 of the 1974 Act to include children's hearing disposals under both the Children (Scotland) Act 1995 and the 2011 Act so that the disclosure of this information for the purposes of sections 8, 10 and 13 of the Disclosure Act operate correctly and as intended. Otherwise, a safeguarding gap would be created as well as a difference in treatment in relation to the way in which the Disclosure Act's provisions apply to individuals who have accrued children's hearings disposals under the Children (Scotland) Act 1995 (which would be subject to the Disclosure Act's provisions, meaning they may be disclosed) and individuals who have children's hearings disposals under the 2011 Act (which would not be subject to the Disclosure Act's provisions, meaning they could not be disclosed at all).

15. The other amendments made to the 1974 Act by article 2 of the 2013 Order no longer have operative effect in relation to the disclosure regime due to subsequent amendments made by the Management of Offenders (Scotland) Act 2019 which came into effect in November 2020.

### **The Protection of Vulnerable Groups (Scotland) Act 2007 ("PVG Act")**

16. Paragraph 2 of Part 1 of schedule 1 of this instrument modifies various sections of the PVG Act.

#### *Section 18*

17. Paragraph 5(2) of schedule 5 of the Disclosure Act amends section 18 of the PVG Act in relation to information that can be obtained by the Scottish Ministers for the purpose of enabling or assisting them to decide whether to list an individual when exercising their barring functions under the PVG Act. Paragraph 5(2)(a) substitutes subsection (4)(b) of section 18 and removes reference to the repealed Police Act 1997. It refers instead to the Disclosure Act's definition of central records in section 69 - that is, such records of convictions, cautions or other information held for the use of police forces generally as may be prescribed. Paragraph 5(2)(b) inserts new provision in section 18 to define "relevant matter" for the purposes of the section because currently that definition is also rooted in section 113A of the Police Act 1997.
18. Collectively, these amendments mean that the Scottish Ministers will be able, for the purposes of their barring functions, to request all convictions (except non-disclosable convictions) that are held on police forces' records and all children's hearing outcomes (regardless of whether or not they are non-disclosable). The meaning of conviction, for the purposes of the PVG Act, is taken from section 97(1) of the PVG Act, which is that a conviction within the meaning of the 1974 Act includes children's hearing outcomes in accordance with section 3 of the 1974 Act.
19. This does not accord with the way in which spent childhood convictions and all children's hearing outcomes will be disclosed on Level 2 disclosures under the Disclosure Act. Childhood convictions and children's hearing outcomes will be subject to a 2-stage filtering process:

- firstly, under sections 9 and 10 of the Disclosure Act in relation to whether they are disclosable or not, and
  - secondly, under section 13 of the Disclosure Act in relation to whether the information is relevant and proportionate to disclose before they can be included in a Level 2 disclosure.
20. Paragraph 2(2) of Part 1 of schedule 1 of this instrument modifies section 18 of the PVG Act to insert “a conviction that is not a non-disclosable children’s hearing outcome within the meaning of section 10 of that Act” to the definition of “relevant matter” in subsection (5). This modification ensures that the Scottish Ministers are unable to consider non-disclosable children’s hearing outcomes for purposes of their barring functions. This matches the provisions in Part 1 of the Disclosure Act in relation to their vetting functions that mean non-disclosable children’s hearing outcomes cannot be included on Level 2 disclosures.
21. Paragraph 2(1) of Part 1 of schedule 1 of this instrument modifies section 18 of the PVG Act to correct a typographical error.

*Section 30(4)*

22. Section 30 of the PVG Act requires the Scottish Ministers to notify specified persons when Disclosure Scotland are considering whether to list an individual for the purposes of the PVG scheme. Section 77(2) of the Disclosure Act amends section 30(2) of the PVG Act (in relation to notifications about barring or consideration for listing) to extend the Scottish Ministers’ notification duties to personnel suppliers.
23. The same amendment has not been made to section 30(4) of the PVG Act, meaning that personnel suppliers will be notified when an individual is placed under consideration for listing by Disclosure Scotland, and if the individual is barred, but will not be notified if Disclosure Scotland decide not to bar the individual. This means that the notification procedures do not apply equally to organisational employers and personnel suppliers.
24. Paragraph 2(3) of Part 1 of schedule 1 of this instrument makes a supplementary modification to section 30 of the PVG Act to insert provision which requires the Scottish Ministers to notify personnel suppliers in circumstances where they have decided not to list an individual following a Disclosure Scotland consideration of that individual for listing. This supplementary provision gives full effect to the intention of the amendments made by the Disclosure Act to section 30(2) of the PVG Act, and means that personnel suppliers are included as persons who ought to be notified when a consideration for listing ends without listing.

*Sections 47H, 49 and 94(4)*

25. Paragraph 2(4), (5) and (7) of Part 1 of schedule 1 of this instrument makes incidental provision to correct typographical errors in respect of provisions inserted, or substituted, into the PVG Act to ensure clarity in the legislation and to enable those provisions to operate as intended.



*Section 75*

26. Paragraph 7(3) of schedule 5 of the Disclosure Act makes provision to repeal section 10(1), (2) and (4) of the Age of Criminal Responsibility (Scotland) Act 2019 (“the 2019 Act”). These sections of the 2019 Act deal with the inclusion of other relevant information held by police forces that relates to pre-12 behaviour in an enhanced disclosure or scheme record. At the time of Royal Assent for the Disclosure (Scotland) Bill, section 10 of the 2019 Act was not in force.
27. Section 10 of the 2019 Act has since come into force and amendments were made to section 75 of the PVG Act in November 2020 in accordance with section 10(4) of the 2019 Act. Paragraph 2(6) of Part 1 of schedule 1 of this instrument makes provision to repeal subsections (2A) and (6) of section 75 of the PVG Act to give full effect to paragraph 7(3) of schedule 5 of the Disclosure Act and ensure that the disclosure system operates as intended.

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

28. Paragraphs 7 and 11 of schedule 5 of the Disclosure Act make amendments to Part 2 of the 2019 Act (disclosure of convictions and other information in relation to time when person under 12) in consequence of the changes made to the disclosure regime by the Disclosure Act.
29. In December 2021, the Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021 further modified sections 16, 18, 19 and 20 in Part 2 of the 2019 Act in consequence of the Age of Criminal Responsibility (Scotland) Act 2019 (Consequential Provisions and Modifications) Order 2021.
30. Paragraph 3 of Part 1 of schedule 1 makes consequential provision to amend sections 16, 18, 19 and 20 in Part 2 of the 2019 Act to give full effect to the amendments made by paragraphs 7 and 11 of schedule 5 of the Disclosure Act, by repealing provisions that were inserted by the Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021 which will become redundant when the paragraphs 7 and 11 of schedule 5 of the Disclosure Act are commenced.

**Subordinate legislation made under the PVG Act**

31. Part 2 of schedule 1 of this instrument makes consequential amendments to subordinate legislation made under the PVG Act which reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act.

**The Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) Regulations 2010, the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010**

32. The Disclosure Act replaces the concept of “regulated work” with “regulated roles”. The amendments made by paragraphs 4, 5 and 7 of Part 2 of schedule 1

of this instrument reflect this update in terminology. This is necessary to ensure that the provisions contained in each of the Regulations continue to apply to individuals carrying out a regulated role.

**The Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010**

33. In addition to amendments that update outdated references to regulated work, provision is made in paragraph 6 of Part 2 of schedule 1 of this Instrument to insert reference, where appropriate, to the new referral power under section 6A of the PVG Act into the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010.
34. Section 6A of the PVG Act was inserted by section 80 of the Disclosure Act and places a duty on the chief constable to give Scottish Ministers any prescribed information that the chief constable holds in relation to an individual whom the chief constable considers is or has been carrying out a type of regulated role while not participating in the Scheme in relation to that type of regulated role. This amendment ensures that those regulations apply to individuals who are the subject of such a referral.

**Other subordinate legislation**

35. The amendments made by paragraphs 8 to 21 of this instrument are to reflect the update in terminology from “regulated work” to “regulated roles” and in relation to relevant disclosure products that will no longer be available under the Police or the PVG Acts when the relevant repeals in paragraphs 3 and 5 of schedule 5 of the Disclosure Act come into force. New Level 1 and Level 2 disclosures replace criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under the Police Act and PVG scheme records and short scheme records under the PVG Act.

**Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991, the Debt Arrangement Scheme (Scotland) Regulations 2011 and the Enhanced Enforcement Areas Scheme (Scotland) Regulations 2015**

36. The amendments in paragraphs 8, 15 and 18 of Part 3 of schedule 1 of this instrument will ensure that a Level 2 disclosure can be sought and provided instead of an enhanced criminal record certificate issued under section 113B of the Police Act 1997. This will ensure that existing practice in relation to various circumstances is maintained and equivalent access to disclosure information is provided.

**The Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001, the Public Services Reform (General Teaching Council for Scotland) Order 2011, the Children’s Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 and the Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021**

The amendments in paragraphs 9, 14, 16 and 21 of Part 3 of schedule 1 of this instrument update various references from “regulated work” to “regulated roles”. This is necessary to ensure that the provisions contained in each of the SSIs continue to apply to individuals carrying out a regulated role.

**The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004, the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 and the National Health Service (General Dental Services) (Scotland) Regulations 2010**

37. The amendments in paragraphs 10, 11 and 13 of Part 3 of schedule 1 of this instrument ensures that:

- references to “regulated work” are replaced with “regulated roles”
- redundant disclosure product definitions are repealed and replaced with the new equivalents
- the correct disclosure application and/or product can be obtained or provided as required for the purposes of being included in the primary medical services performers list, the ophthalmic list, and the dental list.

38. These modifications ensure that existing practice in relation to the lists is maintained and equivalent access to disclosure information is provided.

**The Registration of Independent Schools (Scotland) Regulations 2006**

39. The amendments made by paragraph 12 of Part 3 of schedule 2 of this instrument ensures that:

- references to “regulated work” are replaced with “regulated roles”
- redundant disclosure product definitions are repealed and replaced with the new equivalents.
- a Level 2 disclosure can be sought and provided instead of scheme records issued by the Scottish Ministers under section 52 or section 53 of the PVG Act.

40. This ensures that existing processes for the registration of independent schools is maintained and equivalent access to disclosure information is provided.

**The Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013**

41. The amendments made by paragraph 17 of Part 3 of schedule 1 of this instrument inserts the Disclosure Act into the list of enactments in Rule 90 of the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013, under which the chief constable and police forces can use information for the purposes of enabling or assisting them to perform their functions under those enactments. This is required to ensure that the chief officer and police forces can use information disclosed to them by the Principal

Reporter to perform their functions under the Disclosure Act to prevent any safeguarding gap.

### **The Letting Agent Registration (Scotland) Regulations 2016**

42. The amendment in paragraph 19 of Part 3 of schedule 1 of this instrument ensures that a Level 1 disclosure (instead of a criminal conviction certificate issued under section 112 of the Police Act 1997) can be required, in certain circumstances, as part of the application preserving existing practice equivalent access to disclosure information under the Letting Agent Registration (Scotland) Regulations 2016.

### **The Age of Criminal Responsibility (Scotland) Act 2019 (Independent Review of Disclosure of Information) Regulations 2020**

43. The amendments in paragraph 20 of part 3 of schedule 1 of this instrument reflect similar amendments being made by paragraph 7 of schedule 5 of the Disclosure Act to the 2019 Act. This ensure that the correct disclosure product is referred to in the Age of Criminal Responsibility (Scotland) Act 2019 (Independent Review of Disclosure of Information) Regulations 2020 and consistency is achieved for the entire review process provided for under the 2019 Act.

### **Schedule 2**

44. Schedule 2 of this instrument revokes various enactments which are no longer required in consequence of the changes to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act. The majority of these are SSIs made under the Police and PVG Acts and are no longer required as a result of the Disclosure Act and the suite of SSIs made under it as part of implementation.
45. As noted above at revokes the Children’s Hearings (Scotland) Act 2011 (Rehabilitation of Offenders) (Transitory Provisions) Order 2013.paragraph 14, schedule 2 of this instrument also

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

46. The Scottish Ministers have made the following statement regarding children’s rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Disclosure (Scotland) Act 2020 (Incidental, Supplementary and Consequential Provision) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

### **EU Alignment Consideration**

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

## Consultation

48. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
49. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
50. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;
  - i. individuals with and without experience of using Disclosure Scotland's services,
  - ii. individuals with convictions,
  - iii. care experienced people,
  - iv. people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
  - v. organisations – including various roles e.g. HR, admin staff, counter signatories,
  - vi. charities, and
  - vii. voluntary organisations.
51. The results of the consultation generally informed further development of the policy and (Disclosure)(Scotland) Bill provisions.
52. Disclosure Scotland will continue developing guidance for stakeholders to help their understanding. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

## Impact Assessments

53. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:
- Disclosure (Scotland) Bill: [Fairer Scotland Duty assessment](#)
  - Disclosure (Scotland) Bill: [children rights and wellbeing impact assessment](#)
  - Disclosure (Scotland) Bill: [data protection impact assessment](#)
  - Disclosure (Scotland) Bill: [equality impact assessment](#)
  - Disclosure (Scotland) Bill: [partial Business and Regulatory Impact Assessment](#)
54. The Children's Rights and Wellbeing Impact Assessment for these Regulations identified that there was no impact in relation to children's rights.
55. Equality Impact Assessment, Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was identified during screening and a full impact assessment was not completed.

## Financial Effects

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

Scottish Government  
Disclosure Scotland  
January 2025

## Annexe B

# Note by the Clerk on The Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 [draft]

## Overview

14. At this meeting, the Committee will take evidence from the Minister for Children, Young People and The Promise and officials on The Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
15. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Disclosure \(Scotland\) Act 2020 \(List A and B Offences\) Amendment Regulations 2025](#)

**Laid under:** [Disclosure \(Scotland\) Act 2020](#)

**Laid on:** 14 January 2025

**Procedure:** Affirmative

**Lead committee to report by:** 3 March 2025

## Procedure

16. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
17. Once laid, the instrument is referred to:
  12. the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  13. a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
18. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
19. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  14. an evidence session with the Minister and officials, followed by

15. a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
20. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

## **Delegated Powers and Law Reform Committee consideration**

21. The DPLR Committee considered the instrument on Tuesday 21 January and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee report on 21 January 2025](#). The DPLR Committee made no points in relation to the instrument.

## **Purpose of the instrument**

22. These Regulations amend schedules 1 and 2 of the Disclosure (Scotland) Act 2020 (“the Disclosure Act”).
23. Regulation 2 makes amendments to the list of offences in schedule 1 (List A offences) to update the list of offences for which convictions must and children’s hearing outcomes may be disclosed on a Level 2 disclosure provided under the Disclosure Act, unless that conviction is removed by the Scottish Ministers, the independent reviewer or a sheriff.
24. Regulation 3 makes amendments to schedule 2 (List B offences) to update the list of offences for which convictions must and children’s hearing outcomes may be disclosed on a Level 2 disclosure provided under the Disclosure Act until they become non-disclosable within the meaning of sections 9 and 10 of the Disclosure Act.
25. Children’s hearing outcomes will only ever be disclosed on a Level 2 disclosure subject to a review by the Scottish Ministers under section 13 of the Disclosure Act.
26. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Report**

27. Following today’s proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate to the Convener responsibility for finalising its report on this instrument.

**Clerks to the Committee  
February 2025**



## Annexe: Scottish Government Policy Note

### POLICY NOTE

#### THE DISCLOSURE (SCOTLAND) ACT 2020 (LIST A AND B OFFENCES) AMENDMENT REGULATIONS 2025

#### SSI 2025/XXX

The Scottish Ministers make these Regulations in exercise of the powers conferred by section 9(3) of the Disclosure (Scotland) Act 2020<sup>2</sup> and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

### Summary Box

These Regulations amend schedules 1 and 2 of the Disclosure (Scotland) Act 2020 (“the Disclosure Act”).

Regulation 2 makes amendments to the list of offences in schedule 1 (List A offences) to update the list of offences for which convictions must and children’s hearing outcomes may be disclosed on a Level 2 disclosure provided under the Disclosure Act, unless that conviction is removed by the Scottish Ministers, the independent reviewer or a sheriff.

Regulation 3 makes amendments to schedule 2 (List B offences) to update the list of offences for which convictions must and children’s hearing outcomes may be disclosed on a Level 2 disclosure provided under the Disclosure Act until they become non-disclosable within the meaning of sections 9 and 10 of the Disclosure Act.

Children’s hearing outcomes will only ever be disclosed on a Level 2 disclosure subject to a review by the Scottish Ministers under section 13 of the Disclosure Act.

### Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and ‘protected’ adults on behalf of Scottish Ministers.
2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 (“the Police Act”) as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the

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<sup>2</sup> 2020 asp 13.

PVG Act”) under which the Scottish Ministers administer the PVG Scheme.

3. The disclosure system in Scotland comprises two broadly aligned parts: self and state disclosure. The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”)<sup>3</sup> regulate self-disclosure: the obligation placed on an individual to admit to previous convictions if asked by a prospective employer.
4. Self-disclosure by the individual is verified by disclosures provided by the state. Disclosure Scotland will carry out functions on behalf of the Scottish Ministers under the Disclosure Act in relation to the system for state disclosure of an individual’s previous criminal history. As consistency between the state and self-disclosure must be maintained, an Order under the 1974 Act is also being made simultaneously to make associated amendments to schedules A1 and B1 in the 2013 Order<sup>4</sup>.
5. These Regulations amend schedules 1 and 2 of the Disclosure Act. Schedules 1 and 2 detail the lists of offences which the Scottish Ministers consider should be disclosed on a Level 2 disclosure beyond the point they are spent (to fulfil the task of protecting vulnerable groups, safeguard sensitive assets or information). Level 2 disclosures are used for the purpose of employment or volunteering positions involving a high degree of sensitivity or when there is an expectation of integrity or for the purposes of public protection.
6. If an offence is not included on either list, a conviction for that offence will not be disclosed on any level of disclosure once it is spent.

### Background

7. The lists in schedules 1 and 2 of the Disclosure Act were first established in Scotland by the Police Act and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 (“the 2015 Order”)<sup>5</sup>. The 2015 Order was made in response to the finding of the United Kingdom Supreme Court (“UKSC”) on 18 June 2014, in the case R (on the application of T and another) (FC) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2014] UKSC 35. In that case, the UKSC found that blanket disclosure of all spent convictions was not in accordance with the law. Although the case concerned the Police Act as it applied in England and Wales, the legislative provisions under the Police Act operated similarly in Scotland in relation to the issue of disclosure certificates.

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<sup>3</sup> <https://www.legislation.gov.uk/ssi/2013/204/contents/made>

<sup>4</sup> The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)(Scotland) Amendment Order 2025

<sup>5</sup> This Order was subsequently revoked and replaced by the Police Act and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No.2) Order 2015 (“the (No.2) 2015 Order”)

8. Subsequently, there was a judicial review in the Court of Session which challenged the operation of the PVG Act as amended by the (No. 2) 2015 Order. This was the case of *P v Scottish Ministers* [2017] CSOH 33, 28 February 2017. In that case Lord Pentland declared that, insofar as they require automatic disclosure of the petitioner’s criminal history from Children’s Hearing proceedings, the provisions of the PVG Act, as amended, unlawfully and unjustifiably interfered with the petitioner’s rights under Article 8 of the European Convention on Human Rights, and Scottish Ministers had no power to make the provisions in terms of section 57(2) of the Scotland Act 1998 (“the 1998 Act”).
9. The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 (“the 2018 Order”) <sup>6</sup> further refined the reforms introduced by the 2015 Orders so as to bring a benefit to individuals who have a spent conviction for an offence included in schedule 8A of the 1997 Act (‘Offences which must always be disclosed’).
10. The refinements in the 2018 Order provided the possibility of the disclosure recipient making an application to a sheriff in cases where an individual has a spent conviction for an offence included in schedule 8A after a certain period of time depending on the age of the individual at the time of the conviction. This meant that the practice of automatically disclosing all spent convictions for offences included in schedule 8A indefinitely ended.
11. The approach established by the 2015 Orders and the 2018 Order ensured a fairer balance between an individual’s right to respect for their private life and the interests of public protection within the disclosure process.

List A and B offences

12. The rationale that informed the development of the offence lists in the Disclosure Act was based upon the same rationale used in September 2015 when the offence lists were first created.
13. The Scottish Ministers gave careful consideration to the attributes required for roles that place the individuals filling them in a position of power and responsibility. In creating and reviewing the lists, the Scottish Ministers decided that a conviction for a criminal offence that:
  - resulted in serious harm to a person;
  - represented a significant breach of trust and/or responsibility;
  - demonstrated exploitative or coercive behaviour;

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<sup>6</sup> <https://www.legislation.gov.uk/ssi/2018/52/contents/made>

- demonstrated dishonesty against an individual;
- abused a position of trust; or
- displayed a degree of recklessness that resulted in harm or a substantial risk of harm

was evidence that a person's conduct had caused harm to an individual and/or was evidence of misconduct in a position of authority.

14. This evidence of past behaviour is important information for employers when determining whether an individual is suitable for a particular role.
15. Schedule 1 (List A) of the Disclosure Act contains the list of offences for which convictions must always be disclosed, unless removed following a successful review application to Ministers or the independent reviewer, or after an appeal to the sheriff. Spent childhood convictions and all children's hearings outcomes related to List A offences will be disclosed on a Level 2 disclosure only after review by the Scottish Ministers under section 13 of the Disclosure Act. List A includes the most serious offences, such as serious violence, sexual offending and terrorist offences.
16. List B includes offences that are less serious than List A offences but are offences which still warrant disclosure even when spent, for example, theft and fraud. Convictions for offences on List B must be disclosed until either:
- they become non-disclosable within the meaning of section 9 or 10 of the Disclosure Act<sup>7</sup>, or
  - following a successful review application to Ministers or the independent reviewer, or after an appeal to a the sheriff.
17. List B offences will become non-disclosable if:
- the disposal for the conviction was an admonition or an absolute discharge
  - the conviction is a childhood conviction and at least **5 years and 6 months** have passed since the date of the conviction
  - the conviction is not a childhood conviction and at least **11 years** have passed since the date of the conviction.

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<sup>7</sup> <https://www.legislation.gov.uk/asp/2020/13/section/9>

18. Spent childhood convictions and all children's hearings outcomes related to List B offences will be disclosed on a Level 2 disclosure only after review by the Scottish Ministers under section 13 of the Disclosure Act.
19. If an offence is not listed in either List A or List B, a spent conviction (including a spent childhood conviction) or children's hearing outcome for such an offence cannot ever be disclosed on a Level 2 disclosure.
20. Schedules 1 and 2 of the Disclosure Act broadly replicate the lists of offences contained in schedules 8A and 8B of the Police Act, with some adjustments to reflect new offences that have been created and changes in conviction or sentencing approach. The Disclosure Act repeals those offences lists.
21. The Disclosure Act further advances an individual's rights to privacy, as a person has the right to make an application to Scottish Ministers and subsequently an independent reviewer, and then by application to the courts to have a spent conviction for an offence listed in List A or List B removed from a Level 2 disclosure provided certain criteria are met. This criteria is set out at section 20(6) of the Disclosure Act, that is:
  - (a) a spent conviction for a List A offence and at least 11 years have passed since the date of conviction,
  - (b) a spent conviction for a List B offence that is not a non-disclosable conviction.

#### Amendments to the Disclosure Act

22. In developing the proposals for the Disclosure Act and for these Regulations, the factors above were again considered in order to classify offences as either serious or less serious. The passage of time from the date of conviction was then applied to determine at what point it would be appropriate to allow an application to have a spent conviction.
23. These Regulations make necessary modifications to Lists A and B to make provision for:
  - including new offences into either List A or List B which were created after the Disclosure Act was passed,
  - including or moving additional existing offences to either List A or List B

#### *Amendments that were intended to be lodged at stage 3 of the Disclosure (Scotland) Bill*

24. The first set of amendments relates to changes to the listing of offences that were intended to be brought forward by way of amendments during stage 3 of

the Disclosure (Scotland) Bill. These amendments could not be not taken forward at that time due to the COVID pandemic.

## Offences moved from List B to List A

25. The following offences are deleted from List B and added to List A by these Regulations:

- Robbery
- Housebreaking with intent to steal
- Theft by housebreaking
- An offence under the Official Secrets Act 1911
- An offence under the Official Secrets Act 1920
- An offence under the Official Secrets Act 1989
- An offence under section 67 of the Serious Organised Crime and Police Act 2005

26. Robbery and housebreaking are high tariff offences for which there are no low-level equivalents, and custodial sentences have been imposed in over 50% of the cases following conviction

27. The offences under the Official Secrets Acts are deployed in cases of, for example, a threat to national security or where lives are put at risk. Similar offences are already included in List A. These offences are added to maintain consistency.

28. The offence under section 67 of the Serious Organised Crime and Police Act 2005 is comparable to the common law offence of perverting the course of justice which was moved into List A of the Disclosure Act during the passage of the Disclosure (Scotland) Bill.

*New Offences created after the Disclosure Act*

## New offences added to schedule 1 (List A)

29. The following new offences are added to List A:

- A. *Offences under sections 7 and 17 of the Domestic Abuse (Protection) (Scotland) Act 2021*

30. This is for consistency with other offences on List A that relate to domestic offending and including the breaching of domestic abuse interdict orders imposed by a court.

*B. An offence under any of the following provisions of the Health and Care Act 2022:*

- Section 140 (offence of virginity testing: Scotland)
- Section 141 (offence of offering to carry out virginity testing: Scotland)
- Section 142 (offence of aiding or abetting etc. a person to carry out virginity testing: Scotland)
- Section 152 (offence of carrying out hymenoplasty: Scotland)
- Section 153 (offence of offering to carry out hymenoplasty: Scotland)
- Section 154 (offence of aiding or abetting etc. a person to carry out hymenoplasty: Scotland)

31. These are added as they involve unacceptable and potentially violent behaviour against women and girls.

*C. Offences under sections 66A and 66B of the Sexual Offences Act 2003 (added by the Online Safety Act 2023).*

32. These are added as they involve unacceptable sexual behaviour.

*D. Offences under sections 3 and 4(1) or (2) of the Hate Crime and Public Order (Scotland) Act 2021*

33. These offences involve behaviour which would reasonably be considered to be threatening, abusive or insulting either with the intention to stir up racial hatred or would reasonably be considered to be likely to result in the stirring up of racial hatred. This is consistent with the other offences in List A relating to harassment or racial harassment.

*E. An offence under section 184(1) of the Online Safety Act 2023*

34. This is added as it involves behaviour amounting to encouraging or assisting serious self-harm

## **New offences added to schedule 2 (List B)**

35. The following offences are added to List B:

*F. An offence under section 75 of the Age of Criminal Responsibility (Scotland) Act 2019*

36. This is added as it involves behaviour deemed to be interfering with a police investigation involving a child under the age of 12.

37. Section 75 provides that a person commits an offence where they intentionally obstruct a person set out in subsection (2) or otherwise interferes with a police investigation into an incident in relation to which a constable suspects a child while under 12 by behaving in a violent or dangerous way has caused or risked causing serious physical harm to another person, or by behaving in a sexually violent or sexually coercive way has caused or risked causing harm (whether physical or not) to another person.
38. This offence is similar to offences already included on List B under section 81 of the Children (Scotland) Act 1995 and section 59 of the Children's Hearing (Scotland) Act 2011 and so is included for consistency.

*G. Offences under sections 38, 39 and 42 of the Offensive Weapons Act 2019*

39. These offences are intended to deal with the situation of online purchases where there is not a physical face-to-face transaction to allow the retailer to verify age more easily. As these new offences broadly compare to an offence of a shop-keeper selling to a person under 18, with a delivery company delivering to a person under 18, they are added to List B for consistency in protecting children from harm.

*H. An offence under section 21(1) of the Fireworks and Pyrotechnics Articles (Scotland) Act 2022.*

40. This new offence deals with similar types of conduct already captured in List B, namely, supplying individuals under the age of 18 with weapons and dangerous substances.

*I. Offences under section 4B of the Public Order Act 1986 (added by the Sex-based Harassment in Public Act 2023)*

41. This offence was inserted by way of consequential amendment in section 3(2) of the Protection from Sex-based Harassment in Public Act 2023 to schedule 8B of the Police Act. This amendment is necessary to ensure the status quo.

*J. Offences under sections 4(1) and 5(1) of the Abortion Services (Safe Access Zones) (Scotland) Act 2024*

42. These offences are in relation to influencing, preventing access or causing harassment in a safe access zone or from an area visible or audible from a safe access zone. These offences are relevant to work with children and protected adults as they display both a degree of recklessness which has the potential to result in serious harm to an individual, specifically psychological harm, and a degree of exploitative and coercive behaviour. Inclusion of these offences in List B is consistent with the inclusion of other offences involving harassment already included in List B



*K. Offences under sections 179(1), 181(1) and 183(1) or (8) of the Online Safety Act 2023:*

43. These offences have been added as they relate to sending messages or showing images electronically. These offences are targeted at sending or showing flashing images with the intention of causing harm to a person with epilepsy where “harm” means a seizure, alarm or distress.

## **Existing offences added to schedule 1 (List A)**

44. These Regulations add the following existing offences into List A:

- An offence under article 44 of the Nursing and Midwifery Order 2001
- An offence under section 28 of the Opticians Act 1989
- An offence under section 32 of the Osteopaths Act 1993
- An offence under section 32 of the Chiropractors Act 1994
- An offence under section 39 of the Health Professions Order 2001
- An offence under section 38 of the Dentists Act 1984
- An offence under section 39 of the Dentists Act 1984

45. These offences are similar to offences already included in the lists which are concerned with people pretending to be registered healthcare professionals or that they hold a license to practice.

## **Existing offences moved from schedule 2 (List B) to schedule 1 (List A)**

46. These Regulations move the following offences under the National Security Act 2023 into List A from List B:

- section 1 (obtaining or disclosing protected information)
- section 2 (obtaining or disclosing trade secrets)
- section 3 (assisting a foreign intelligence service)
- section 4 (entering etc. a prohibited place for a purpose prejudicial to the UK)
- section 12 (sabotage)
- section 13 (foreign interference: general)
- section 17 (obtaining etc. material benefits from a foreign intelligence

service)

- section 18 (preparatory conduct)

47. The National Security Act 2023 brings together a suite of new measures and further protects the UK's national security, the safety of the British public and the UK's vital interests from the hostile activities of foreign states. Accordingly, these offences, which replace existing offences in the Official Secrets Acts 1911, 1920 and 1939<sup>8</sup> are also moved to List A.

## Aggravation

48. In order to make clear that an offence of assault falls within List A of the Disclosure Act if the conviction indicates it results in any of the following: disability, disfigurement (permanent or otherwise), impairment (permanent or otherwise), an additional category specifying this has been added to the 'common law aggravations' in Part 3 of schedule 1.

## Existing offences added to schedule 2 (List B)

49. These Regulations add the following existing offences into List B:

*A. Culpable and reckless conduct to endanger life and culpable and reckless discharge of a firearm.*

50. These offences are similar to the common law offences of 'culpable and reckless conduct', 'culpable and reckless endangering of the public' and 'culpable and reckless fire-raising', which are already included in List B.

*B. Opening a lockfast place*

51. This offence is similar to the common law offence of 'opening a lockfast place with intent to steal' which is already include in List B.

*C. Offences under the Treason Act 1351, the Treason Act 1708, or an offence under section 2 of the Treason Act 1842*

52. These offences are added because in the course of our review of the operation of the offence lists during implementation, it was noted that, while the common law offence of treason was included, the statutory offences were not. For consistency and for completeness to ensure that each offence is included appropriately, Scottish Ministers consider that these statutory offences should

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<sup>8</sup> These offences were moved to schedule 8A of the Police Act by the Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022

be added to List B.

*D. An offence under section 1 of the Malicious Communications Act 1988 and section 83 of the Postal Services Act 2000.*

53. These offences are similar to the offence of theft, included in List B, but is aggravated by an individual who commits it by being in a position of trust. These offences have been added to List B following operation of the lists in practice. These offences are also similar to offences already in List B, namely section 85(3) of the Postal Services Act 2000 and the offence under section 127(1) of the Communications Act 2003.

## **Aggravation**

54. In order to make clear that an offence of culpable and reckless conduct falls within List B of the Disclosure Act if the conviction indicates it results in any of the following: injury, severe injury, disfigurement (permanent or otherwise), an additional category specifying this has been added to the 'common law aggravations' in Part 3 of schedule 2.

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

55. The Scottish Ministers have made the following statement regarding children's rights:  
In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

## **EU Alignment Consideration**

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

## **Consultation**

57. Notification of the 2015 Orders was given on 10 September 2015 on both the Scottish Government's and Disclosure Scotland's website. Notice was also sent to Disclosure Scotland's major stakeholders. 27 responses were received and the majority of the respondents were generally supportive of the changes to the disclosure regime. The notice and the statement of the Scottish Ministers setting out the summary and analysis of written observations received can be found at: <https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable-groups/> . The statement also specifies the modifications to the 2015 Order which Scottish

Ministers considered appropriate at that time.

58. Notification of the 2018 Order was given on 11 September 2017 on the Scottish Government's website, the Citizen Space website, and by broadcasting on Disclosure Scotland's social media channels. Notice was also sent to Disclosure Scotland's major stakeholders. 51 written responses were received and the majority of respondents were generally supportive of the proposals. The notice and the statement of the Scottish Ministers setting out the summary and analysis of the written observations received can be found at: <https://consult.gov.scot/disclosure-scotland/remedial-order-2018/>
59. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
60. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
61. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;
- individuals with and without experience of using Disclosure Scotland's services,
  - individuals with convictions,
  - care experienced people,
  - people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
  - organisations – including various roles e.g. HR, admin staff, countersignatories,
  - charities, and
  - voluntary organisations.

62. The results of the consultation informed further development of the policy and (Disclosure) (Scotland) Bill provisions. The Scottish Government published its [response](#) to the consultation on 13 June 2019. The need for a mandatory scheme received overwhelming stakeholder support at various stages of engagement and consultation on the Bill. It was also recommended in the [Health and Sport Committee's report on Child Protection in Sport](#).
63. Since the Disclosure Act gained Royal Assent, Disclosure Scotland have engaged across Government, where required, to establish the nature of existing offences and new offences have arisen since the passage of the Disclosure Act. Specific engagement was carried out with the Crown Office and Judicial Appointment Board for Scotland in relation to the movement of various offences from List B to List A as detailed at paragraph 23. This consultation has informed the policy rationale for some of the amendments within these Regulations.
64. Disclosure Scotland is committed to providing more guidance and training, which will include updated guidance on the offence lists, and continually engage with stakeholders to develop guidance and training that meets user needs.
65. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. Disclosure Scotland use a range of communication channels to inform stakeholders of the new mandatory requirements, the associated offences.
66. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act

## Impact Assessments

67. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:
- Disclosure (Scotland) Bill: [Fairer Scotland Duty assessment](#)
  - Disclosure (Scotland) Bill: [children rights and wellbeing impact assessment](#)
  - Disclosure (Scotland) Bill: [data protection impact assessment](#)
  - Disclosure (Scotland) Bill: [equality impact assessment](#)
  - Disclosure (Scotland) Bill: [partial Business and Regulatory Impact Assessment](#)
68. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No impact on children's rights have been identified.
69. The Equality Impact Assessment identified an indirect impact in relation to sex. This is because men are more likely than women to have criminal convictions. In 2021-22 there were 12 convictions per 1,000 population. There were more

convictions for men at 20 convictions per 1,000 population compared to four for women<sup>9</sup>. Men accounted for 83% of all convictions in 2021-22, a similar proportion as each year in the past 10 years (range 82% to 84%). More men than women were convicted in all crime and offence categories, including those listed in the offence lists. This means it is more likely that disclosures will contain conviction information if the applicant is male.

70. Level 2 disclosures will be used as part of the recruitment practice by organisations offering education, employment and training. Individuals seeking these types of roles should know from the recruitment advertisement or researching their role, that the possibility of information being sought from Disclosure Scotland about spent convictions is part of the process. Under the Disclosure Act, people with convictions will also have improved access to review of the inclusion of such information regardless of sex or age. People convicted as children, regardless of sex, will have additional protections under the childhood information provisions at section 13 of the Disclosure Act.

71. A Fairer Scotland Duty Assessment and an Island Communities Impact Assessment screening exercise was undertaken. No impacts were identified during screening and, therefore, a full impact assessment was not done.

## Financial Effects

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

Scottish Government  
Disclosure Scotland  
January 2025

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<sup>9</sup> Criminal Proceedings in Scotland, 2021-22 – Updated - gov.scot  
(<https://www.gov.scot/publications/criminalproceedings-scotland-2021-22-updated/pages/17/>)

## Annexe C

# Note by the Clerk on The Regulated Roles with Children and Adults (Scotland) Amendment Regulations 2025 [draft]

## Overview

28. At this meeting, the Committee will take evidence from the Minister for Children, Young People and The Promise and officials on The Regulated Roles with Children and Adults (Scotland) Amendment Regulations 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
29. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Regulated Roles with Children and Adults \(Scotland\) Amendment Regulations 2025](#)

**Laid under:** [The Rehabilitation of Offenders Act 1974](#)

**Laid on:** 14 January 2025

**Procedure:** Affirmative

**Lead committee to report by:** 3 March 2025

## Procedure

30. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
31. Once laid, the instrument is referred to:
  - (4) the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - (5) a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
32. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
33. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  - (6) an evidence session with the Minister and officials, followed by

(7) a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

34. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

## **Delegated Powers and Law Reform Committee consideration**

35. The DPLR Committee considered the instrument on Tuesday 21 January and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee report on 21 January 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

## **Purpose of the instrument**

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

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

38. These modifications:

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

39. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Report**

40. Following today’s proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate to the Convener responsibility for finalising its report on this instrument.

**Clerks to the Committee  
February 2025**



## Annexe: Scottish Government Policy Note

### POLICY NOTE

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

#### SSI 2025/XXX

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 33 of schedule 2 and paragraph 25 of schedule 3 of the Protection of Vulnerable Groups (Scotland) Act 2007<sup>10</sup> and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

### Summary Box

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

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

These modifications:

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

### Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and ‘protected’ adults on behalf of Scottish Ministers.

2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 as it applies in Scotland and also making amendments to

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<sup>10</sup> 2007 asp 14. Schedules 2 and 3 were substituted by section 74(3) and (4) of the Disclosure (Scotland) Act 2020 (asp 13) (“the Disclosure Act”).

the PVG Act under which the Scottish Ministers administer the PVG Scheme.

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

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

#### Regulated roles with children

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

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

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

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

- persuading or putting pressure on a particular child to behave or act in a certain manner for the financial gain or personal gratification of a person other than the child.

8. The revised definition of “contact with children” marks an important change in the construct of who is brought into scope of the PVG Scheme. The prerequisite for regulated roles with children is not confined to the opportunity for *unsupervised contact* with children in relation to all the activities before a role becomes within scope of the PVG Scheme.

9. The reason for this is that some roles allow individuals to exert power or influence over children to such a degree that, even if contact occurs within the presence of a “responsible person” within the meaning of paragraph 3(1) of schedule 2 of the PVG Act, the role should still be one which requires membership of the Scheme. The only prerequisite for all the activities in schedule 2 is that the carrying out of the activities gives the individual carrying them out, when doing anything permitted or required in connection with the carrying out of the activities, the opportunity to have “contact with children” (which is then defined in paragraph 3(1) of schedule 2).

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

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

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

13. For example, a person ordinarily resident in Glasgow going to Trinity College in Dublin to study medicine would not have to join the PVG Scheme. However, the provisions bring into scope any training provided overseas where a person is doing

a placement or secondment with a non-Scottish organisation, but their training is still subject to overall supervision and sign-off by a training provider in Scotland. Therefore, a Scottish-domiciled medical student at University of Glasgow on exchange to Trinity College and working in a children's hospital in Dublin would still need to be a scheme member for the period of the placement/exchange.

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

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

#### Regulated roles with protected adults

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

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

- a) assisting, facilitating, permitting or impeding progress towards a desirable objective or outcome for a particular protected adult,
- b) making decisions of an operational or strategic nature that could have an

impact on a number of protected adults, or

- c) persuading or putting pressure on a particular protected adult to behave or act in a certain manner for the financial gain or personal gratification of a person other than the protected adult.

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

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

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

#### Amendments by these Regulations

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

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

- making minor textual amendments to certain activities in Part 2 of the schedule to include additional establishments and activities. This ensures consistency in related activities in the schedule and also in relation to activities which appear in both schedules 2 and 3.
- Regulation 3 makes amendments to schedule 3 of the PVG Act in the following ways: substitutes the definition of contact with protected adults within paragraph 3(1)(b) of the schedule with the intention of setting out the definition more clearly. These regulations also extend the definition of 'contact with protected adults' to include visual communication with protected adults. The policy intent here is to ensure that the use of British Sign Language is captured by the meaning of contact in relation to regulated roles with protected adults.
- paragraph 3(1)(b) also introduces the concept of unsupervised contact with protected adults in connection with the carrying out of activities in care homes, day centre premises, adult placement settings and hospitals; for activities other than in these named locations, the carrying out of these activities must require the individuals to have contact with protected adults and such contact requires to take place in the absence of other responsible people, namely those who would be responsible for the care or safety of protected adults. This mirrors the arrangements for similar roles with children.
- adds to the list of health care professionals named in the Act as regulated roles. These roles are: anaesthesia associates, physician associates, dental care professionals, pharmacy technicians, optometrists, dispensing opticians and any roles practising in a profession pursuant to registration with the Health and Care Professions Council. These amendments, which arose from health regulators, ensures that current and emerging roles are captured across this sector.
- inserts a further activity which states that roles that involve having responsibility for the safety and welfare of protected adults would be regulated roles under the Disclosure Act, subject to meeting the conditions in paragraph 1(2) of schedule 3 of the PVG Act. It mirrors arrangements for similar services for children.
- introduces the role of providing advocacy support in relation to health or wellbeing of protected adults as an activity that would form part of a regulated role. This emanates from a request from stakeholders in this sector that such roles are considered regulated roles under the Disclosure Act. It mirrors arrangements for similar services for children.
- amends the wording of an activity in order that it mirrors the wording for

the relevant activity in schedule 2 for children. This ensures that individuals who hold positions of responsibility in organisations who provide benefits for or to protected adults are not excluded from the PVG scheme because the organisation has other purposes.

22. Further details of the policy objectives relating to the Disclosure Act are set out in the [Policy Memorandum](#) which accompanied the Disclosure (Scotland) Bill. The [Scottish Parliament website](#) also sets out the timeline for the passage of the Bill.

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

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

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Regulated Roles with Children and Adults (Scotland) Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

## **EU Alignment Consideration**

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

## **Consultation**

25. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.

26. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.

27. After the Disclosure Act received Royal Assent, further engagement was undertaken to take the views of customers from all sectors on schedules 2 and 3 of the PVG Act. This involved engagement with different sectors, including local

authorities, regulatory bodies, sports organisations, care organisations and charities. In total, 115 organisations participated in this sessions, which were a combination of in-person and online sessions and facilitated by Disclosure Scotland to examine the wording of each schedule and activity.

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

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

30. Disclosure Scotland is committed to providing more guidance and training and continually engage with stakeholders to develop guidance and training that meets user needs. They have engaged with stakeholders specifically on the development of guidance on regulated roles. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

## **Impact Assessments**

31. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:

- Disclosure (Scotland) Bill: [Fairer Scotland Duty assessment](#)
- Disclosure (Scotland) Bill: [children rights and wellbeing impact assessment](#)
- Disclosure (Scotland) Bill: [data protection impact assessment](#)
- Disclosure (Scotland) Bill: [equality impact assessment](#)
- Disclosure (Scotland) Bill: [partial Business and Regulatory Impact Assessment](#)

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

33. Equality Impact Assessment, Fairer Scotland Duty Assessment and Island Communities Impact Assessment screening was undertaken. No impact was



identified during screening and a full impact assessment was not completed.

## **Financial Effects**

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

Scottish Government  
Disclosure Scotland  
January 2025

## Annexe D

# Note by the Clerk on The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025 [draft]

### Overview

41. At this meeting, the Committee will take evidence from the Minister for Children, Young People and The Promise and officials on The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025 [draft] before debating a motion in the name of the Minister inviting the Committee to recommend approval of the instrument.
42. This is a draft Scottish Statutory Instrument (SSI), which requires approval by resolution of the Parliament before it can become law. More information about the instrument is summarised below:

**Title of instrument:** [The Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment \(No. 2\) Order 2025](#)

**Laid under:** [The Rehabilitation of Offenders Act 1974](#)

**Laid on:** 14 January 2025

**Procedure:** Affirmative

**Lead committee to report by:** 3 March 2025

### Procedure

43. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
44. Once laid, the instrument is referred to:
  - (8) the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
  - (9) a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
45. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
46. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
  - (10) an evidence session with the Minister and officials, followed by

(11) a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.

47. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on the motion, only committee members may vote. If the motion is agreed to, it is for the Chamber to decide, at a later date, whether to approve the instrument.

## Delegated Powers and Law Reform Committee consideration

48. The DPLR Committee considered the instrument on Tuesday 21 January and reported on it in its [Subordinate Legislation considered by the Delegated Powers and Law Reform Committee report on 21 January 2025](#). The DPLR Committee made no recommendations in relation to the instrument.

## Purpose of the instrument

- This Amendment Order makes amendments to the [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Order 2013](#) (“the 2013 Order”), and makes provision to update and replace references to outdated terminology no longer used in the Disclosure Act, for the purposes of the 2013 Order - these amendments reflect the changes made to the disclosure system by the Disclosure (Scotland) Act 2020 (“the Disclosure Act”), ensuring that both the state and self-disclosure regimes in Scotland continue to work as intended.
- adds new provisions to the 2013 Order, specifically in relation to articles 2A, 4 and 5 of the 2013 Order. These add the concept of non-disclosable children’s hearing outcomes to the provisions about the exclusions and exceptions.
- amends and updates the lists of offences in schedules A1 and B1 of the 2013 Order.
- omits circumstances from schedule 3 of the 2013 Order which are now regulated roles under the Disclosure Act and for which PVG Scheme membership will be required.
- inserts new provision into schedule 3 of the 2013 Order to so that questions can be asked of individuals over the age of 16 who are:
  - residing in the same household as a person whose suitability is being assessed, investigated, reviewed or confirmed to be a shared lives carer within the meaning of paragraphs 16 and 24 of schedule 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 or to be in charge of or caring for children, within the meaning of paragraph 12 of schedule 2 of that Act, and
  - residing in residential accommodation where a school care accommodation service is being provided to a pupil, but are not the pupil, employed by the school or the person being assessed as to their suitability to carry out a regulated role with children.

49. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects.

## **Report**

50. Following today's proceedings, a draft report will be prepared by the clerks. The Committee is invited to delegate to the Convener responsibility for finalising its report on this instrument.

**Clerks to the Committee**  
**February 2025**

## Annexe: Scottish Government Policy Note

### POLICY NOTE

#### THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2025

#### SSI 2025/XXX

The Scottish Ministers make the following Order in exercise of the powers conferred on them by sections 4(4), 7(4), 10(1), and 10A(1) of the Rehabilitation of Offenders Act 1974 and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

### Summary Box

This Amendment Order makes amendments to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”). It:

- makes provision to update and replace references to outdated terminology no longer used in the Disclosure Act, for the purposes of the 2013 Order - these amendments reflect the changes made to the disclosure system by the Disclosure (Scotland) Act 2020 (“the Disclosure Act”), ensuring that both the state and self disclosure regimes in Scotland continue to work as intended.
- adds new provisions to the 2013 Order, specifically in relation to articles 2A, 4 and 5 of the 2013 Order. These add the concept of non-disclosable children’s hearing outcomes to the provisions about the exclusions and exceptions.
- amends and updates the lists of offences in schedules A1 and B1 of the 2013 Order.
- omits circumstances from schedule 3 of the 2013 Order which are now regulated roles under the Disclosure Act and for which PVG Scheme membership will be required.
- inserts new provision into schedule 3 of the 2013 Order to so that questions can be asked of individuals over the age of 16 who are:
  - residing in the same household as a person whose suitability is being assessed, investigated, reviewed or confirmed to be a shared lives carer within the meaning of paragraphs 16 and 24 of schedule 2 of the Protection of Vulnerable Groups (Scotland) Act 2007 or to be in charge of or caring for children, within the meaning of paragraph 12 of schedule 2 of that Act, and
  - residing in residential accommodation where a school care accommodation service is being provided to a pupil, but are not the pupil, employed by the school or the person being assessed as to their suitability to carry out a regulated role with children.

## Policy Objectives

1. Disclosure Scotland is an executive agency of the Scottish Government that provides criminal record disclosures, maintains the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) and keeps lists of individuals barred from working with children and protected adults on behalf of the Scottish Ministers.
2. The Disclosure Act reforms the disclosure regime in Scotland, repealing Part 5 of the Police Act 1997 (“the Police Act”) as it applies in Scotland and also making amendments to the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) under which the Scottish Ministers administer the PVG Scheme.

### Background to state and self-disclosure

3. The disclosure system in Scotland comprises two broadly aligned parts: self and state disclosure. The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the 2013 Order regulates self-disclosure, which is the obligation on an individual to admit to previous convictions if asked questions about them by a prospective employer.
4. Self-disclosure (by an individual) can be verified by disclosures that are provided by the state. Disclosure Scotland carries out functions on behalf of the Scottish Ministers under the the PVG Act and the Disclosure Act in relation to the system for state disclosure of an individual’s previous criminal history.
5. A conviction may become spent if a certain length of time has elapsed since the date of conviction, with different periods of time applying to different disposals, as set out in section 5 of the 1974 Act. Section 4 of the 1974 Act provides a general protection which permits an individual not to disclose spent conviction information and prevent any other person requiring the disclosure of such information or prejudicing the individual on account of any such disclosure or failure to disclose.
6. However, Scottish Ministers have powers to except or exclude the protections under section 4 of the 1974 Act (by Order under the 1974 Act) when the interests of public safety are paramount. By disapplying the protections in the circumstances specified in the 2013 Order, the self-disclosure of certain spent convictions (set out in schedules A1 & B1 of the 2013 Order) is required in specific circumstances. The Scottish Ministers made the 2013 Order in exercise of those powers. This Amendment Order amends that 2013 Order.
7. The basis of the 2013 Order is that there are some categories of employment and proceedings to which the rules in the 1974 Act do not apply because it is considered appropriate that disclosure of spent conviction information continues to be available. This is because the employment positions and proceedings involve a high degree of sensitivity or there is an expectation of integrity or for the purposes of public protection. These positions and proceedings can be subject to higher level disclosures, which is a collective term for types of disclosure that provide for access to spent convictions. Under the Disclosure Act, Level 2 disclosures will be the higher level disclosures in Scotland.

8. The purpose of this approach to self and state disclosure is to appropriately allow an individual to move away from their past criminal activity so that they can contribute effectively to society while also ensuring that people with a legitimate interest, such as employers, are able to assess an individual's background.
9. The Disclosure Act repeals Part 5 of the Police Act as it applies in Scotland; all state disclosures are provided under the Disclosure Act. In order to maintain full alignment of the state and self-disclosure rules, the amendments to the 2013 Order by this Amendment Order are necessary to prevent an individual from being at risk of 'over-disclosing' spent convictions through self disclosure and ensure both state and self disclosure work as intended.

## **Changes being made to the 2013 Order by this Amendment Order**

### Amendment to Article 2

10. This Amendment Order makes amendments to the definitions in Article 2(1) of the 2013 Order. These amendments both omit and add definitions to reflect the repeal of Part 5 of the Police Act by the Disclosure Act and the changes that the Disclosure Act makes to the disclosure system and the operation of the PVG Scheme and barring service.

### Amendment to Article 2A

11. Article 4 of this Amendment Order amends article 2A of the 2013 Order, to replace references to "protected convictions" with references to "non-disclosable convictions" for the purposes of the exclusions and exceptions in the 2013 Order. A "non-disclosable conviction" is a conviction that will not be included in a Level 2 disclosure.
12. To be non-disclosable, a conviction must be spent. It must also be :
  - (i) for an offence that does not appear on either schedule A1 or schedule B1
  - (ii) for an offence that appears on Schedule B but only where:
    - (a) the disposal was an admonition or absolute discharge
    - (b) the conviction was a childhood conviction<sup>11</sup> and at least 5 years and 6 months have passed since the date of conviction
    - (c) the conviction was not a childhood conviction and at least 11 years have passed from the date of conviction.
13. Article 4 of this Amendment Order also inserts provision for "non-disclosable children's hearing outcomes" for the purposes of the exclusions and exceptions in

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<sup>11</sup> "childhood conviction" means a conviction for an offence committed when the individual was under 18 years of age

the 2013 Order. This makes clear when a children's hearing outcome may be included in a Level 2 disclosure, even although it is spent. All children's hearing outcomes are spent immediately however the rules which apply to make children's hearing outcomes non-disclosable are otherwise the same as for convictions, with reference to the offence lists in schedules A1 and B1. Only when there is acceptance, establishment or deemed establishment of the grounds of an offence referral to a children's hearing is it within scope for disclosure.

14. These amendments do not change the operation of the 2013 Order.

15. The amendments to article 2A(2) of the 2013 Order are made to mirror the timescales set out in section 9 of the Disclosure Act. Those are 5 years and 6 months for a childhood conviction and 11 years if it is not a childhood conviction.

#### Amendment to Article 3

16. Reference to "protected conviction" in Article 3(2) of the 2013 Order is replaced with "non-disclosable conviction" and "non-disclosable children's hearing outcomes". This will ensure consistency in terminology between the 2013 Order (self-disclosure regime) and sections 9 and 10 of the Disclosure Act, which define the same terms for the purposes of the Disclosure Act (state disclosure regime). This amendment does not change the operation of the 2013 Order.

#### Amendment to Article 4

17. Article 6 of this Amendment Order substitutes paragraph (2) of Article 4 of the 2013 Order with an amended paragraph (2A) and inserts a new paragraph (2B) to explain when spent convictions and children's hearings outcomes are not covered by the exclusion in paragraph (2) of the 2013 Order. It also replaces outdated terminology references to "higher level disclosure" with "Level 2 disclosure" to reflect the changes made to the disclosure system by the Disclosure Act. This amendment does not change the operation of the 2013 Order.

#### Amendment to Article 5

18. Article 7 makes amendments to article 5 of the 2013 Order in respect of the treatment of spent convictions and children's hearing outcomes. These are equivalent to the amendments that Article 6 of this Amendment Order makes to Article 4 of the 2013 Order.

#### Amendment to Schedules A1 and B1

19. The lists of offences in schedules A1 and B1 of the 2013 Order were established in response to the case R (on the application of T and another) (FC) (Respondents) v Secretary of State for the Home Department and another (Appellants) [2014] UKSC 35. In that case, the UKSC found that blanket disclosure of all spent convictions were not in accordance with the law. Although this judgment applied to England and Wales, it was necessary to reform the approach in Scotland too which resulted in the establishment of two offence



lists<sup>12</sup>.

20. In developing the offence lists in 2015, the Scottish Ministers gave careful consideration to the attributes required for roles requiring higher level disclosure. Such roles place the individuals filling them in a position of power and responsibility.

21. Ministers decided that a conviction for a criminal offence that:

- resulted in serious harm to a person;
  - represented a significant breach of trust and/or responsibility;
  - demonstrated exploitative or coercive behaviour;
  - demonstrated dishonesty against an individual;
  - abused a position of trust; or
- displayed a degree of recklessness that resulted in harm or a substantial risk of harm

was evidence that a person's conduct had caused harm to an individual and/or was evidence of misconduct in a position of authority.

22. This evidence of past behaviour is important information for employers when determining whether an individual is suitable for a role for which the disclosure of unspent and certain spent convictions is required. The protection of vulnerable groups and the need to prevent fraudulent activity must be balanced against the presumption that spent convictions ought not to be disclosed. The offences list approach ensures a fair balance between an individual's right to respect for their private life and the interests of public protection within the disclosure process.

23. In developing the proposals for the Disclosure Act and for this Amendment Order, these factors were again considered in order to classify offences as either serious or less serious. The passage of time from the date of conviction was then applied to determine at what point it would be appropriate to allow an application to have a spent conviction removed from a Level 2 disclosure.

24. Article 8 of this Amendment Order amends schedule A1 of the 2013 Order to update the list of offences for which convictions must always be disclosed subject to the exceptions specified in the 2013 Order. Spent childhood convictions and all children's hearings outcomes related to offences listed in schedule A1 will be disclosed on a Level 2 disclosure only after review by the Scottish Ministers under section 13 of the Disclosure Act. Schedule A1 includes

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<sup>12</sup> Police Act and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No.2) Order 2015

the most serious offences, such as serious violence, sexual offending and terrorist offences.

25. Article 9 of this Amendment Order amends schedule B1 of the 2013 Order to update the list of offences for which the convictions are to be disclosed subject to the rules set out in the 2013 Order. Spent childhood convictions and all children's hearings outcomes related to offences listed in schedule B1 will be disclosed on a Level 2 disclosure only after review by the Scottish Ministers under section 13 of the Disclosure Act.

26. As consistency between the state and self-disclosure must be maintained, this Amendment Order is amending the 2013 Order at the same time as the Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 are amending Lists A and B in schedules 1 and 2 of the Disclosure Act.

## **New offences moved from schedule B1 to schedule A1**

27. The following offence has been moved from schedule B1 to schedule A1

- Theft by housebreaking

28. Housebreaking is a high tariff offence for which there are no low-level equivalents, and custodial sentences have been imposed in over 50% of the cases following conviction.

## **New offences added to Schedule A1**

29. The following new offences are added to schedule A1:

- Offences under the National Security Act 2023
  - section 1 (obtaining or disclosing protected information)
  - section 2 (obtaining or disclosing trade secrets)
  - section 3 (assisting a foreign intelligence service)
  - section 4 (entering etc a prohibited place for a purpose prejudicial to the UK)
  - section 12 (sabotage)
  - section 13 (foreign interference: general)
  - section 17 (obtaining etc material benefits from a foreign intelligence service)
  - section 18 (preparatory conduct)

30. The National Security Act 2023 brings together a suite of new measures and

further protects the UK's national security, the safety of the British public and the UK's vital interests from the hostile activities of foreign states. Accordingly these offences, which replace existing offences in the Official Secrets Acts 1911, 1920 and 1939 (which were moved to schedule 8A of the Police Act by the Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022. Therefore, these are being added to schedule A1 for consistency.

- sections 7 and 17 of the Domestic Abuse (Protection) (Scotland) Act 2021

31. This is for consistency with a number of other offences on schedule A1 that relate to domestic offending and including the breaching of domestic abuse interdict orders imposed by a court.

- sections 66A and 66B of the Sexual Offences Act 2003 (added by the Online Safety Act 2023).

32. These are added as they represent unacceptable sexual behaviour.

- sections 3 and 4(1) or (2) of the Hate Crime and Public Order (Scotland) Act 2021

33. These offences represent behaviour which would reasonably be considered to be threatening, abusive or insulting either with the intention to stir up racial hatred or would reasonable considered to be likely to result in the stirring up of racial hatred. This is consistent with the other offences in schedule A1 relating to harassment or racial harassment.

- section 184(1) of the Online Safety Act 2023

34. This is added as it represents behaviour amounting to encouraging or assisting serious self-harm.

## **New offences added to Schedule B1**

35. The following offences are added to schedule B1 of the 2013 Order:

- section 21(1) of the Fireworks and Pyrotechnics Articles (Scotland) Act 2022

36. This new offence deals with similar types of conduct already captured in schedule B1 of the 2013 Order, namely, supplying individuals under the age of 18 with weapons and dangerous substances.

- sections 4(1) and 5(1) of the Abortion Services (Safe Access Zones) (Scotland) Act 2024

37. These offences are in relation to influencing, preventing access or causing harassment in a safe access zone or from an area visible or audible from a safe access zone. These offences are relevant to work with children and protected

adults as they display both a degree of recklessness which has the potential to result in serious harm to an individual, specifically psychological harm and a degree of exploitative and coercive behaviour. Inclusion of these offences on schedule B1 of the 2013 Order is consistent with the inclusion of other offences involving harassment already included in that schedule.

- sections 179(1), 181(1) and 183(1) or (8) of the Online Safety Act 2023

38. These offences have been added as they relate to sending or showing flashing images electronically, these offences are targeted at sending or showing flashing images with the intention of causing harm to a person with epilepsy where “harm” means a seizure, alarm or distress.

- Section 38, 39 and 42 of the Offensive Weapons Act 2019

39. These offences are intended to deal with the situation of online purchases where there is not a physical face-to-face transaction to allow the retailer to verify age more easily. As these new offences broadly compare to an offence of a shopkeeper selling to a person under 18, with a delivery company delivering to a person under 18, they are added to schedule B1 of the 2013 Order for consistency in protecting children from harm.

- section 4B of the Public Order Act 1986 (added by the Protection from Sex Based Harassment in Public Act 2023)

40. This offence was inserted by way of consequential amendment in section 3(2) of the Protection from Sex-based Harassment in Public Act 2023 to schedule 8B of the Police Act, it is therefore being added to the List B offences in the Disclosure Act by the Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025 and to schedule B1 of the 2013 Order to ensure the status quo is maintained.

- Culpable and reckless discharge of a firearm.

41. These are similar to the common law offences of ‘culpable and reckless conduct’, ‘culpable and reckless endangering of the public’ and ‘culpable and reckless fire-raising’ already included in the schedule B1 on the 2013 Order.

42. In order to make clear that an offence of culpable and reckless conduct falls within schedule B1 of the 2013 Order if the conviction indicates it results in any of the following: injury, severe injury, disfigurement (permanent or otherwise), an additional category specifying this has been added to the ‘common law aggravations’ in schedule B1.

- opening a lockfast place.

43. This is similar to the common law offence of ‘opening a lockfast place with

intent to steal' which is already include on schedule B1 of the 2013 Order.

- An offence under the Treason Act 1351, an offence under the Treason Act 1708, or an offence under section 2 of the Treason Act 1842

44. This is because in the course of our review of the operation of the offence lists it was noted that while the common law offence of treason was included, the statutory offences were not. For consistency and for completeness to ensure that each offence is included appropriately, Scottish Ministers consider that these statutory offences should be added to schedule B1 of the 2013 Order.

### **Amendment to Schedule 3**

45. Article 10 of this Amendment Order amends schedule 3 of the 2013 Order.

46. Schedule 3 of the 2013 Order describes circumstances, for example specific roles or functions, in which questions can be put to someone about spent convictions which would not normally need to be disclosed. In certain circumstances these questions can be asked of the individual whose suitability is being assessed, investigated, reviewed or confirmed for a particular role, position or employment, or of another individual who is over the age of 16 and who resides in the same household as the individual being assessed.

47. Article 10(a)(i) and (iii) to (vi) adds provision in respect of new types of regulated roles (including Shared Lives Carers) in relation to which questions can be asked of individuals over the age of 16 who are residing in the same household as the person whose suitability is being assessed, investigated, reviewed or confirmed for those roles.

48. Article 10(a)(ii) omits host parenting circumstances which are regulated roles under the Disclosure Act and for which PVG Scheme membership will be required.

49. Article 10(b), (d) and (e) makes various consequential amendments and substitutions to reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act.

50. Article 10(c) of this Amendment Order also adds a new subsection (5A) to schedule 3 of the 2013 Order in relation to school care accommodation services etc. for the family members of housemasters and boarding masters of independent schools to be eligible to request enhanced disclosures with suitability information relating to children. This means that any individual in these circumstances will be required to self disclose spent convictions. This follows engagement with the Scottish Council of Independent Schools who had expressed concern that there is a loophole within the existing framework for higher level disclosure eligibility meaning that these family members are only entitled to request a basic disclosure (i.e. a Level 1 disclosure under the Disclosure Act).

51. Although these family members do not work with children nor are they involved in

their care, they are of sufficient proximity to children to warrant being included as a prescribed purpose in relation to Level 2 disclosures. The approach taken by Article 10 mirrors arrangements already in place for other scenarios, such as individuals over the age of 16 years sharing a household with childminders or foster carers.

## **Amendment to Schedule 4**

52. Article 11 of this Amendment Order updates terminology references from “regulated work” to “regulated role” reflect the changes made to the disclosure system and the operation of the PVG Scheme and barring service by the Disclosure Act.

53. Further details of the policy objectives relating to the Disclosure Act are set out in the Policy Memorandum which accompanied the Disclosure (Scotland) Bill. The Scottish Parliament website also sets out the timeline for the passage of the Bill.

## **The Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025**

54. As consistency between the state and self-disclosure must be maintained, regulations are being taken forward simultaneously that amend the Disclosure Act, namely The Disclosure (Scotland) Act 2020 (List A and B Offences) Amendment Regulations 2025.

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

55. The Scottish Ministers have made the following statement regarding children’s rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No. 2) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of that Act.

## **EU Alignment Consideration**

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

## **Consultation**

57. The creation and content of the offence lists or schedules were consulted on in 2015 for the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015. Notification of the 2015 Order was given on 10 September 2015 on both the Scottish Government’s and

Disclosure Scotland's website. Notice was also sent to Disclosure Scotland's major stakeholders. 27 responses were received and the majority of the respondents were generally supportive of the changes to the disclosure regime. The notice and the statement of the Scottish Ministers setting out the summary and analysis of written observations received<sup>13</sup>. The statement also specifies the modifications to the 2015 Order which Scottish Ministers considered appropriate at that time.

58. The Disclosure Act received wide cross-party support during its passage through Parliament and was passed unanimously. Disclosure Scotland are continuing to engage with external stakeholders as part of the implementation of the Disclosure Act.
59. Disclosure Scotland published a consultation paper on 25 April 2018. This was distributed widely to a large number of stakeholders, including over 3,000 registered bodies. There were 353 responses, 269 from organisations and 84 from individuals. There were responses from a range of stakeholders with varying backgrounds including judicial bodies, the legal sector, local government, voluntary organisations, the health sector and individual scheme members.
- i. There was extensive engagement with stakeholders during the consultation period. This included group discussions and meetings with individual groups or organisations, in total 38 engagement sessions took place during the formal consultation period. During this time Disclosure Scotland User Researchers also engaged with a variety of stakeholders. Since April 2016 the user research team carried out a significant amount of research, which has included a range of users, including;  
    - ii. individuals with convictions,
    - iii. care experienced people,
    - iv. people with disabilities, including blind participants, deaf participants, people with low cognitive skills, dyslexia, dyspraxia,
    - v. organisations – including various roles e.g. HR, admin staff, countersignatories,
    - vi. charities, and
    - vii. voluntary organisations.
60. The results of the consultation resulted in further engagement on the issues highlighted by the Scottish Council of Independent Schools, both the consultation and further engagement informed further development of the policy and (Disclosure) (Scotland) Bill provisions. The Scottish Government published its [response](#)<sup>14</sup> to the consultation on 13 June 2019.

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<sup>13</sup> The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 - Scottish Government consultations - Citizen Space (<https://consult.gov.scot/disclosure-scotland/protection-of-vulnerable-groups/>)

<sup>14</sup> <https://www.gov.scot/publications/government-response-protection-vulnerable-groups-disclosure-criminal-information-consultation/pages/1/>

61. Since the Disclosure Act gained Royal Assent, Disclosure Scotland have engaged across Government, where required, to establish the nature of existing offences and new offences have arisen since the passage of the Disclosure Act. Furthermore, Disclosure Scotland engaged with stakeholders in the prevention of domestic abuse and violence against women space were engaged during the Bill process and post-Royal Assent on the inclusion of offences related to this area of harm. This consultation has informed the policy rationale for the amendments within these Regulations.
62. Disclosure Scotland is committed to providing more guidance and training, which will include updated guidance on the offence lists, and continually engage with stakeholders to develop guidance and training that meets user needs.
63. A communications campaign is also underway to raise awareness of the impact of the changes brought about by the Disclosure Act. For this Amendment Order, there was engagement with the Scottish Council of Independent Schools who had expressed concern that there is a loophole within the existing framework for higher level disclosure eligibility meaning that family members residing are only entitled to request a basic disclosure (which becomes a Level 1 disclosure under the Disclosure Act).
64. This commitment to providing improved resources to support stakeholders is one that will continue throughout the transition to the refreshed disclosure regime under the Disclosure Act.

## Impact Assessments

65. A suite of Impact Assessments was completed as part of the Disclosure (Scotland) Bill process:
- Disclosure (Scotland) Bill: [Fairer Scotland Duty assessment](#)
  - Disclosure (Scotland) Bill: [children rights and wellbeing impact assessment](#)
  - Disclosure (Scotland) Bill: [data protection impact assessment](#)
  - Disclosure (Scotland) Bill: [equality impact assessment](#)
  - Disclosure (Scotland) Bill: [partial Business and Regulatory Impact Assessment](#)
66. An Equalities Impact Assessment and an Impact Assessment regarding Children's Rights and Wellbeing have been completed for these Regulations. These will be published alongside this instrument on legislation.gov.uk. No negative equality impact issues have been identified.
67. The Children's Rights and Wellbeing Impact Assessment identified that there is an impact in relation to Article 16 (right to privacy) as there are two new circumstances where self disclosure of certain spent convictions can be requested from 16 and 17 year olds but that this impact is neutral. The new circumstances are limited and similar to those which already exist. They were also assessed for [The Level 1 and Level 2 Disclosure Information \(Scotland\)](#)



[Regulations 2024<sup>15</sup>](#) which does the same thing for accessing state disclosure. Safeguards in relation to the use of criminal history information in these circumstances have been established for over 10 years.

68. The policy introducing the new circumstances also has a positive impact for children under Article 3 (best interests of the child and the Government supporting care and protection of children) and Article 19 (protection from all forms of violence) as it helps address public protection concerns about vulnerable people being cared for in home-based settings. The two new circumstances extend existing checks on those who are not doing regulated roles but who will be nearby and viewed as a trusted person by vulnerable groups in these home-based settings.

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

## Financial Effects

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

Scottish Government  
Disclosure Scotland  
January 2025

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<sup>15</sup> [https://www.legislation.gov.uk/ssi/2024/315/pdfs/ssipn\\_20240315\\_en\\_001.pdf](https://www.legislation.gov.uk/ssi/2024/315/pdfs/ssipn_20240315_en_001.pdf)