

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Part 2: Protection of vulnerable groups

Scheme membership

Section 73: Compulsory Scheme membership

142. Section 73 inserts five new sections: sections 45C, 45D, 45E, 45F and 45G into the PVG Act. The new section 45C (Individuals must be scheme members to carry out regulated roles) makes it an offence under subsection (1) for an individual to carry out, or agree to carry out, a regulated role if not a scheme member. Subsection (2) makes it clear, in relation to an offence under subsection (1), that an individual is not deemed to have agreed to carry out a regulated role if that agreement is subject to the individual joining the PVG Scheme for that type of role. It is a defence if the person did not know they were carrying out a regulated role, or if they did not know that their membership had not been renewed. The offence does not apply to any individual who is barred from the type of regulated role in question (although the offence under section 34 of the PVG Act may be triggered), or who is under the age of 16 years of age.
143. The offence also does not apply in relation to any individual who is barred from the type of regulated role in question (although section 35 of the PVG Act may apply), or who is under the age of 16 years of age (see paragraph 134 of these notes).
144. The new section 45D (Organisations not to use individuals for regulated roles without confirming scheme membership) makes it an offence for an organisation to offer a regulated role to a person unless the organisation has first had PVG scheme membership confirmed by Disclosure Scotland issuing a Level 2 disclosure to them. It is a defence if the organisation can prove that it did not know, and could not be expected to have known, that the person was not a scheme member. An organisation which had offered a role conditional on receipt of a disclosure does not commit an offence. The offence also does not apply in relation to any individual who is barred from the type of regulated role in question (although section 35 of the PVG Act may apply), or who is under the age of 16 years of age.
145. The new section 45E (Power to require organisations to stop using individuals for regulated roles without scheme membership) makes it an offence for an organisation to fail to comply with regulations made under subsection (1). Subsection (1) provides the Scottish Ministers with a regulation making power (subject to the affirmative procedure by virtue of the amendment in section 73(3)) to prohibit organisations from permitting an individual to carry out a regulated role or to require organisations to remove an individual from a regulated role where the individual is not a scheme member. This is to address behaviour by organisations continuing to employ someone to carry out a regulated role where that person is not or is no longer a scheme member. Regulations may impose prohibitions or requirements in relation to particular types of organisations or in relation to particular kinds of regulated roles.

*These notes relate to the Disclosure (Scotland) Act 2020
(asp 13) which received Royal Assent on 14 July 2020*

146. Section 45E ensures there is an ongoing impetus on organisations to check whether their employees remain scheme members. It does so by ensuring that there is a consequence for an organisation that does nothing following receipt of a notification under the new section 45B stating that a scheme member's membership has lapsed. Under subsection (4) it is a defence for an organisation charged with an offence under subsection (3) to prove that it did not know, and could not reasonably be expected to have known, that the individual was not a scheme member.
147. Section 45F (Personnel suppliers not to supply individuals for regulated roles without confirming scheme membership) makes provision, in relation to personnel suppliers offering an individual to carry out a regulated role for an organisation. A personnel supplier commits an offence by offering or supplying a person for a regulated role in an organisation unless the personnel supplier has first had PVG scheme membership confirmed by Disclosure Scotland issuing a Level 2 disclosure to them. The offence does not apply in relation to any individual who is barred from the type of regulated role in question (but see section 36 of the PVG Act), or who is under the age of 16 years.
148. The new section 45G (Penalties for offences relating to regulated roles by individuals not in Scheme) sets out the penalties for the offences introduced by sections 45C, 45D, 45E and 45F.