

DISCLOSURE (SCOTLAND) ACT 2020

EXPLANATORY NOTES

PROVISION BY PROVISION COMMENTARY

Schedule 3: Schedule to be substituted for schedule 2 of the PVG Act

Part 2: Activities

202. Part 2 of the new schedule substituted by schedule 3 lists the activities that give rise to a regulated role with children for which PVG scheme membership will be mandatory under the Act.
203. Paragraph 4 covers all types of foster care, including private foster care arrangements. Section 96 of the PVG Act provides a definition of foster care for the purpose of the Act. This covers public fostering arranged by councils under section 26(1)(a) of the Children (Scotland) Act 1995 which would cover many foster care placements and also include the situation where a looked after child is placed by the council with a relative or friend, even though that individual is not a career foster carer. It would thereby include some kinship care scenarios. Those looking after a child in pursuance of a permanence order, and those looking after a child under a supervision requirement are covered too.
204. [Paragraph 5](#) is relevant to care arrangements arranged by a local authority.
205. Paragraph 6 applies, for example, to scout leaders or safety and welfare officers at sports clubs.
206. Paragraph 7 covers social workers (including the Chief Social Worker Officer of a local authority), members of the Children’s Panel, Children’s Hearings Scotland or the Scottish Children’s Reporter Administration. Explicitly excluded are individuals carrying out such a role in the capacity of an “elected representative”, which paragraph 31 defines as (a) a member of the House of Commons or (b) a member of the Scottish Parliament. Accordingly, paragraph 7 does extend to councillors of local authorities who have the ability to directly influence decisions about the welfare or safety of a child, for example, due to holding a position on a committee concerned with the provision of children’s social services.
207. Paragraph 8 covers teaching, instructing or delivering training to children. This captures teaching of any subject, in an establishment such as a school or home-based tuition.
208. Paragraph 9 makes provision for education inspectors, the Chief Education Officer of a local authority, members of the governing body responsible for the management of a school or further education institution and the Registrar of Independent Schools in Scotland. Explicitly excluded are individuals carrying out such a role in the capacity of an “elected representative” which paragraph 31 defines as (a) a member of the House of Commons or (b) a member of the Scottish Parliament. Accordingly, paragraph 9 does extend to councillors of a local authority who have the ability to directly influence operational delivery of education services for children, for example, due to holding a position on a particular committee with an education remit.

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

209. Paragraph 10 captures those who act on behalf of children where a power imbalance exists, for instance football agents and talent scouts. This matter was considered by the Scottish Parliament's Health and Sport Committee in their report *Child Protection in Sport*¹.
210. Paragraph 11 covers individuals engaged in the provision of advice or guidance in relation to career development or education, for example careers advisers.
211. Paragraph 12 makes provision to cover activities such as crèche workers where individuals will be in charge or caring for children.
212. Paragraphs 13 to 19 cover various health professionals who are actively practising and are not, for example, on a career break.
213. Paragraph 20 covers those providing domestic services (such as cleaning, food preparation, caretaking or maintenance roles) in establishments which are provided for children, such as schools, children's hospitals, nurseries or outdoor activity centres for children.
214. Paragraph 21 is qualified by paragraph 1(2)(b)(i) in Part 1 of the schedule so that the activities mentioned in paragraph 21 must give rise to the opportunity to have unsupervised contact with children (see paragraph 3(1) of the schedule for the meaning of "unsupervised contact with children").
215. Paragraph 22 covers the provision of a care home service or independent healthcare service as defined by the interpretation section at paragraph 31.
216. Paragraph 23 makes provision for self-employed individuals providing personal care services.
217. Paragraph 24 covers individuals providing counselling, therapy or advice or guidance in relation to health or wellbeing to children. This covers advice or guidance provided to a child on their physical or mental health or welfare. The activities mentioned in paragraph 24 capture individuals providing these services to children within shelters, hostels, refuges and other types of accommodation where they are offered support or guidance on their situation or experience. Excluded from scope however are individuals providing such services to a fellow prisoner in a young offenders institution for example. This exception will enable individuals who may be automatically barred from carrying out regulated roles with children due to the nature of their convictions to take part in peer to peer support services provided to other prisoners.
218. Paragraph 25 covers persons who have responsibility for the scrutiny or inspection, on behalf of a statutory body, of medical and healthcare services provided for children. Explicitly excluded are individuals carrying out such a role in the capacity of an "elected representative" which paragraph 31 defines as (a) a member of the House of Commons or (b) a member of the Scottish Parliament. Accordingly, paragraph 25 does extend to councillors of a local authority who have the ability to directly influence the operational delivery of medical or care services for children, for example, due to holding a position on a committee.
219. Paragraph 26 covers, for example, individuals providing entertainment or party services for children or photography services for children, or people running art classes or summer clubs for children.
220. Paragraph 27 covers individuals providing sports coaching or coaching of other physical activities to children.
221. Paragraph 28 covers individuals volunteering at Sunday school, youth church activities or chaplaincy services. This paragraph covers all denominations or religious beliefs.

¹ <https://sp-bpr-en-prod-cdnep.azureedge.net/published/HS/2017/4/26/Child-Protection-in-Sport/3rd%20Report.pdf>

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222. Paragraph 29 makes provision for individuals engaging in the provision of transport services for children but is limited to those driving or escorting children, for example, on a school bus rather than a depot manager or individual arranging the scheduling for the transport service.
223. Paragraph 30 captures persons such as trustees of a children's charity and the Commissioner for Children and Young People in Scotland.
224. Interpretation is provided for certain terms and expressions used in the substituted schedule by paragraph 31. Paragraph 32 gives Ministers a power (by regulations subject to the negative procedure) to amend the meaning of the expression "further education institution" but only for the purposes of this schedule.