



# Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

## PART 1

### THE LISTS

#### *Removal from list*

#### **25 Application for removal from list**

- (1) A listed individual may apply to Ministers for removal from—
  - (a) the children's list, or
  - (b) the adults' list.
- (2) References in this section to “the list” are to be read as references to the list from which the individual has applied for removal.
- (3) An application for removal from the list is competent only if—
  - (a) it is made after the end of such period as may be prescribed (beginning on such date as may be prescribed), or
  - (b) Ministers are satisfied that the applicant's circumstances have changed since the applicant—
    - (i) was listed, or
    - (ii) last made an application for removal from the list under this section, such that Ministers should consider the application.
- (4) A period may not be prescribed under subsection (3)(a) in relation to a particular individual.
- (5) An applicant's circumstances are to be treated as having changed if—
  - (a) the applicant was convicted of an offence in relation to conduct which Ministers had regard to when considering whether to list the applicant, and
  - (b) the conviction is subsequently quashed.
- (6) Subsection (5) does not affect the generality of subsection (3)(b).

**26 Determination of application for removal from list**

- (1) Ministers must determine a competent application for removal from the children's list—
  - (a) where they are satisfied that the applicant is no longer unsuitable to work with children, by removing the individual from the list, or
  - (b) where they are not so satisfied, by refusing the application.
- (2) Ministers must determine a competent application for removal from the adults' list—
  - (a) where they are satisfied that the applicant is no longer unsuitable to work with protected adults, by removing the individual from the list, or
  - (b) where they are not so satisfied, by refusing the application.
- (3) Sections 18 to 20 apply to Ministers' determination of an application for removal from the list as they apply to a decision whether to list an individual (with references to deciding whether to list an individual being read as references to determining whether to remove an individual from the list).

**27 Appeals against refusal to remove individual from list**

- (1) An individual may appeal to the sheriff against Ministers' decision to refuse an application for removal from the list under section 26.
- (2) The sheriff must determine an appeal under subsection (1) in relation to removal from the children's list—
  - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with children, by directing Ministers to remove the individual from the list, or
  - (b) where the sheriff is not so satisfied, by refusing the application.
- (3) The sheriff must determine an appeal under subsection (1) in relation to removal from the adults' list—
  - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with protected adults, by directing Ministers to remove the individual from the list, or
  - (b) where the sheriff is not so satisfied, by refusing the application.
- (4) The sheriff's determination may be appealed to the sheriff principal by—
  - (a) the individual, or
  - (b) Ministers.
- (5) The sheriff principal's determination of an appeal under subsection (4) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
  - (a) the individual, or
  - (b) Ministers.
- (6) The Inner House may, in determining an appeal under subsection (5), by order modify the period prescribed for the purposes of section 25(3) in so far as that period is to apply to any further application by the individual concerned for removal from the children's list or, as the case may be, the adults' list.
- (7) The decision of—
  - (a) the sheriff principal, or

(b) if leave is granted to appeal to the Inner House, that House,  
on any appeal is final.

(8) Any court proceedings under this section may take place in private if the court considers it appropriate in all the circumstances.

## **28 Late representations**

- (1) This section applies where an individual listed under section 15 or 16—
- (a) was not, because of section 17(6), given an opportunity to make representations as to why the individual should not be listed, and
  - (b) subsequently makes representations to Ministers as to why the individual should not have been listed.
- (2) Where this section applies, Ministers must—
- (a) consider the individual's representations, and
  - (b) if satisfied that the individual should not have been listed, remove the individual from the list.

## **29 Removal from list**

- (1) Ministers—
- (a) must remove an individual from the children's list or adults' list—
    - (i) if directed to do so by the court, or
    - (ii) where section 26 or 28 requires them to do so, and
  - (b) may, at any other time, remove an individual from the children's list or adults' list if they are satisfied that the individual should not have been listed.
- (2) Where Ministers appeal against a direction to remove an individual from the children's list or adults' list, the duty imposed by subsection (1)(a) does not apply until that appeal is finally determined.