

2010 No. 179

CHILDREN AND YOUNG PERSONS

PROTECTION OF VULNERABLE ADULTS

**The Protection of Vulnerable Groups (Scotland) Act 2007
(Applications for Removal from List and Late Representations)
Regulations 2010**

Made - - - - *5th May 2010*

Laid before the Scottish Parliament *6th May 2010*

Coming into force in accordance with regulation 1

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 25(3)(a), 42(1)(c) and (2), 97(1)(a) and section 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007(b) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) Regulations 2010 and come into force on the same day as section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“the 2003 Act” means the Protection of Children (Scotland) Act 2003(c);

“electronic communication” means an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000(d);

“individual” is the person who has—

- (a) made an application for removal from the children’s list, from the adults’ list or, where applicable, from both lists under section 25 of the Act; or
- (b) made late representations under section 28 of the Act as to why the person should not have been listed;

(a) See section 97(1) for definition of “prescribed”.

(b) 2007 asp 14.

(c) 2003 asp 5.

(d) 2000 c.7, section 15 is amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

“the 2010 Regulations” means the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010(a);

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(b), or a day appointed for public thanksgiving or mourning.

(2) Any reference in Schedule 1 to these Regulations to “the list” is to be read as a reference to the list or, where appropriate, lists from which the individual has applied for removal under section 25 of the Act.

(3) Any reference in Schedule 2 to these Regulations to “the list” is to be read as a reference to the list or, where appropriate, lists in which the individual was listed under section 15 or 16 of the Act and in relation to which the individual is making late representations under section 28 of the Act.

First applications for removal from list: prescribed period

3. For the first application by an individual for removal from the children’s list or the adults’ list, the period prescribed for the purposes of section 25(3)(a) of the Act in relation to an individual who at the time of inclusion in the children’s list or the adults’ list—

- (a) was aged 18 or over, is ten years from the date of inclusion in the list in question;
- (b) was a child, is five years from the date of inclusion in the list in question.

Further applications for removal from list: prescribed period

4.—(1) Paragraph (2) applies where an individual—

- (a) has been included in the list for the period prescribed in regulation 3(a) or (b) as applicable;
- (b) has applied to Ministers for removal from the list under section 25 of the Act; and
- (c) Ministers, after considering that application, have refused that application under section 26(1)(b) or (2)(b) of the Act.

(2) Where this paragraph applies, for any further application by an individual for removal from the children’s list or the adults’ list, the period prescribed for the purposes of section 25(3)(a), unless modified by order by the Inner House under section 27(6) of the Act, is ten years from the date of the last application for removal from the list in question.

Applications for removal: listing in both the children’s list and the adults’ list

5.—(1) Where an individual is listed in both the children’s list and the adults’ list, the individual may make one application for removal from both lists.

(2) Where an individual is listed in both the children’s list and the adults’ list and the period prescribed in regulation 3(a) or (b) is satisfied only in relation to the individual’s listing in one list, it is competent for the individual, in any application under section 25 of the Act for removal from the list for which the prescribed period is satisfied, to apply for removal from the other list at the same time, irrespective of the length of time of listing in that other list.

Procedure for determining applications for removal from the list under section 25 of the Act

6. The procedure set out in Schedule 1 applies to any application for removal from the children’s list, from the adults’ list or, where applicable, from both lists under section 25 of the Act.

(a) S.S.I. 2010/183.

(b) 1971 c.80. Schedule 1 was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

Procedure for late representations under section 28 of the Act

7. The procedure set out in Schedule 2 applies in relation to late representations under section 28 of the Act.

Extension of time

8.—(1) Where these Regulations require or authorise an individual or any other person to do something within a specified period, the individual or other person may apply to Ministers for further time within which to comply.

(2) On receipt of an application under paragraph (1), Ministers may, on cause shown or otherwise where they consider it reasonable to do so, grant any further period or periods of time as they consider appropriate.

(3) Where Ministers have granted a further period of time, any reference in these Regulations to that period of time is to be construed as a reference to the period of time as so extended.

Manner and time of service of notices and other communications

9.—(1) Any notice required to be given by Ministers to an individual under these Regulations must be given in accordance with section 30(8) of the Act.

(2) Any other communication required to be given by Ministers to an individual under these Regulations may be given in accordance with section 30(8) of the Act or may be sent by electronic communication, provided that the individual has consented to the use of electronic communication and has provided Ministers with an email address for the purposes of these Regulations.

(3) Any notice required to be given by Ministers to any organisation or other person under these Regulations must be given in accordance with section 30(8) of the Act.

(4) Any other communication required to be given by Ministers to any organisation or other person under these Regulations may be given in accordance with section 30(8) of the Act or may be sent by electronic communication, provided that the organisation or other person has consented to the use of electronic communication and has provided Ministers with an email address for the purposes of these Regulations.

(5) Where an individual or any person, organisation or body is required to make any representations or submit any information or comments to Ministers under these Regulations, such representations, information or comments may be sent by electronic communication to an e-mail address specified by Ministers for that purpose.

(6) Where any communication is sent by electronic communication, it is to be treated as received the day after the day of its transmission.

(7) If a period of notice expires on a day which is not a working day, the period of notice is to be treated as expiring on the next working day after that day.

Transitional provision in relation to those individuals transferred to the children's list under section 43 of the Act

10.—(1) Paragraph (2) applies where an individual has been listed in the children's list by virtue of section 43 of the Act and has not made an application for removal under section 14 (application for removal from list) of the 2003 Act.

(2) Where this paragraph applies the prescribed period under regulation 3(a) or (b) is to be calculated from the date that the individual was included (otherwise than provisionally) in the list kept under section 1 of the 2003 Act.

(3) Paragraph (4) applies where an individual has been listed in the children's list by virtue of section 43 of the Act and has made an application under section 14 of the 2003 Act which was dismissed prior to the coming into force of these Regulations.

(4) Where this paragraph applies, the prescribed period for the purposes of section 25(3)(a) of the Act is ten years from the date on which the application for leave to make an application under

section 14 of the 2003 Act was made, unless a different period has been specified by order by the Inner House under section 15(8) of the 2003 Act.

(5) Where the Inner House has by order specified a period under section 15(8) of the 2003 Act as the period during which an individual may not make an application to the sheriff for leave to make a further application for an order under section 14(2) of that Act, that order is to be treated as if that order had been made under section 27(6) of the Act.

(6) Where an individual has been listed in the children's list by virtue of section 43 of the Act, the individual is to be treated as a child for the purposes of regulation 3 if they would have been treated as a child under section 14 of the 2003 Act.

St Andrew's House,
Edinburgh
5th May 2010

ADAM INGRAM
Authorised to sign by the Scottish Ministers

**PROCEDURE FOR DETERMINING APPLICATIONS FOR
REMOVAL FROM THE LIST UNDER SECTION 25 OF THE ACT**

Acknowledgement of receipt of application for removal under section 25 of the Act

1.—(1) Where Ministers receive an application for removal from the list under section 25 of the Act, they must send an acknowledgement of its receipt to the individual within five working days.

(2) Where Ministers consider that insufficient information has been sent with the application to allow them to determine whether an appeal is competent under section 25(3)(b) of the Act, Ministers may, by notice, invite the individual to provide such further information as Ministers think appropriate, within 28 days of the date of the receipt of that notice.

(3) If the individual fails to provide such further information within the period specified under paragraph (2), the application is deemed to have been withdrawn.

Representations, comments or information to be sent to Ministers

2.—(1) For the purpose of enabling or assisting Ministers to determine whether to remove an individual from the list, Ministers may, by notice, invite—

- (a) any further representations, comments or information from the individual as to why the individual should be removed from the list; or
- (b) any representations, comments or information from any other person as Ministers may consider appropriate.

(2) Any representations, comments or information in response to a notice sent under sub-paragraph (1) are to be supplied in the manner and within such time as Ministers may specify in the notice.

Notification of any further information on which Ministers intend to rely in determining whether to remove an individual from the list

3. Ministers must give to the individual—

- (a) details of any further representations, comments or information supplied to Ministers under paragraph 2(1)(b) on which they intend to rely in determining whether to remove an individual from the list;
- (b) details of any other information upon which they intend to rely in determining whether to remove an individual from the list, including—
 - (i) any information which Ministers obtained under the Act or under the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act;
 - (ii) information which they obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
 - (iii) information which they obtain by performing their functions in relation to the Scheme; or
 - (iv) any reports provided to Ministers under paragraph 5(2) or 6(2); and
- (c) a notice inviting the individual to—
 - (i) make any further representations as to why the individual should be removed from the list;
 - (ii) submit comments on any of the information provided to the individual under sub-paragraphs (a) or (b); and

- (iii) submit any further supporting information which the individual wishes to be taken into account by Ministers in determining whether to remove the individual from the list,

within 28 days of the date of the receipt of that notice.

Notification of further procedure

4.—(1) During their determination of whether to remove an individual from the list, Ministers may, if they consider it appropriate, appoint—

- (a) an expert adviser to prepare a report to Ministers on such matters within the expert's area of expertise as Ministers consider appropriate for the purpose of assisting Ministers in the Ministers' assessment of the individual's unsuitability to work with children, protected adults or, where applicable, both groups; or
- (b) one or more such suitably qualified individuals as Ministers consider appropriate to prepare a report to Ministers providing an assessment of the individual's unsuitability to work with children, protected adults or, where applicable, both groups.

(2) Where Ministers decide to appoint an expert adviser or suitably qualified individuals under sub-paragraph (1)(a) or (b) or both, they must notify the individual of that decision.

(3) For the avoidance of doubt, Ministers may decide to make appointments under either or both of sub-paragraph (1)(a) and (b) and may do so at the same time or at different times during their determination of whether to remove an individual from the list.

Report by expert adviser

5.—(1) Where Ministers appoint an expert adviser under paragraph 4(1)(a) they must give to that person all relevant information, which they have obtained in carrying out their functions under the Act, the 2010 Regulations or these Regulations and which is reasonably required by the expert adviser, and such information may include—

- (a) a copy of the application for removal from the list under section 25 of the Act;
- (b) details of any information relating to the individual which Ministers obtained under the Act or the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act;
- (c) details of any vetting information relating to the individual;
- (d) details of any information relating to the individual which Ministers obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
- (e) details of any information relating to the individual which Ministers obtain by performing their functions in relation to the Scheme; and
- (f) details of any representations, comments and information received by Ministers under these Regulations.

(2) The person appointed under paragraph 4(1)(a) must provide their report to Ministers, in such manner and within such time as Ministers may specify.

Assessment by suitably qualified individuals

6.—(1) Where Ministers appoint one or more suitably qualified individuals to assess the individual's unsuitability to work with children, protected adults or, where applicable, both groups under paragraph 4(1)(b) they must give to that person or persons all information upon which Ministers intend to rely in determining whether to remove an individual from the list and such information may include—

- (a) a copy of the application for removal from the list under section 25 of the Act;
- (b) details of any information relating to the individual which Ministers obtained under the Act or the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act;

- (c) details of any vetting information relating to the individual;
- (d) details of any information relating to the individual which Ministers obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
- (e) details of any information relating to the individual which Ministers obtain by performing their functions in relation to the Scheme;
- (f) details of any representations, comments and information received by Ministers under these Regulations;
- (g) a copy of any report provided to Ministers under paragraph 5(2).

(2) The person or persons appointed under paragraph 4(1)(b) must review the information supplied to them under sub-paragraph (1) and, based on that information, provide to Ministers a report containing their assessment as to the individual's unsuitability to work with children, protected adults or, where applicable, both groups, in such manner and within such time as Ministers may specify.

Notification of determination of application for removal

7.—(1) Where Ministers determine under section 26(1)(a) or (2)(a) of the Act that an individual is to be removed from the list, Ministers must, as soon as reasonably practicable after making their determination, give notification to the individual of their determination.

(2) Where Ministers determine under section 26(1)(b) or (2)(b) that an individual is not to be removed from the list, Ministers must, as soon as reasonably practicable after making their determination, give notification to the individual of their determination, together with—

- (a) the reasons for their determination;
- (b) information as to the individual's right of appeal under section 27 of the Act against the Ministers' determination to refuse the application for removal from the list; and
- (c) information as to the individual's further right to seek removal from the list under section 25 of the Act and regulation 4.

**PROCEDURE FOR LATE REPRESENTATIONS UNDER
SECTION 28 OF THE ACT**

Acknowledgement of receipt of late representations under section 28 of the Act

1.—(1) Where Ministers receive late representations under section 28 of the Act, they must send an acknowledgement of receipt of those representations to the individual within five working days.

(2) Within 28 days of acknowledging receipt of the late representations under paragraph (1), Ministers must send to the individual a copy of—

- (a) any information which Ministers obtained under the Act or under the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act; and
- (b) the notification under section 30 of the Act of their decision to list the individual, including the reasons for their decision.

Representations, comments or information to be sent to Ministers

2.—(1) In considering late representations under section 28 of the Act, Ministers may, by notice, invite—

- (a) any further representations, comments or information from the individual as to why the individual should not have been listed; or
- (b) any representations, comments or information from any other person as Ministers may consider appropriate.

(2) Any representations, comments or information in response to a notice sent under sub-paragraph (1) are to be supplied in the manner and within such time as Ministers may specify in the notice.

Notification of any further information on which Ministers intend to rely in considering late representations

3. Ministers must give to the individual—

- (a) details of any further representations, comments or information supplied to Ministers under paragraph 2(1)(b) on which they intend to rely in considering an individual's late representations;
- (b) details of any other information upon which they intend to rely in considering an individual's late representations, including—
 - (i) information which they obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
 - (ii) information which they obtain by performing their functions in relation to the Scheme; or
 - (iii) any reports provided to Ministers under paragraph 5(2) or 6(2); and
- (c) a notice inviting the individual to—
 - (i) make any further representations as to why the individual should not have been listed;
 - (ii) submit comments on any of the information provided to the individual under paragraph 1(2) or sub-paragraphs (a) or (b); and

- (iii) submit any further supporting information which the individual wishes to be taken into account by Ministers in considering the individual's late representations, within 28 days of the date of receipt of that notice.

Notification of further procedure

4.—(1) During their consideration of late representations, Ministers may, if they consider it appropriate, appoint—

- (a) an expert adviser to prepare a report to Ministers on such matters within the expert's area of expertise as Ministers consider appropriate for the purpose of assisting Ministers in the Ministers' assessment of the individual's unsuitability to work with children, protected adults or, where applicable, both groups; or
- (b) one or more such suitably qualified individuals as Ministers consider appropriate to prepare a report to Ministers providing an assessment of the individual's unsuitability to work with children, protected adults or, where applicable, both groups.

(2) Where Ministers decide to appoint an expert adviser or suitably qualified individuals under sub-paragraph (1)(a) or (b) or both, they must notify the individual of that decision.

(3) For the avoidance of doubt, Ministers may decide to make appointments under either or both of sub-paragraph (1)(a) and (b) and may do so at the same time or at different times during their consideration of the individual's late representations.

Report by expert adviser

5.—(1) Where Ministers appoint an expert adviser under paragraph 4(1)(a) they must give to that person all relevant information, which they have obtained in carrying out their functions under the Act, the 2010 Regulations or these Regulations and which is reasonably required by the expert adviser, and such information may include—

- (a) a copy of the late representations under section 28 of the Act;
- (b) details of any information relating to the individual which Ministers obtained under the Act or the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act;
- (c) details of any vetting information relating to the individual;
- (d) details of any information relating to the individual which Ministers obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
- (e) details of any information relating to the individual which Ministers obtain by performing their functions in relation to the Scheme; and
- (f) details of any representations, comments and information received by Ministers under these Regulations.

(2) The person appointed under paragraph 4(1)(a) must provide their report to Ministers, in such manner and within such time as Ministers may specify.

Assessment by suitably qualified individual

6.—(1) Where Ministers appoint one or more suitably qualified individuals to assess the individual's unsuitability to work with children, protected adults or, where applicable, both groups under paragraph 4(1)(b) they must give to that person or persons all information upon which Ministers intend to rely in considering the individual's late representations, and such information may include—

- (a) a copy of the late representations under section 28 of the Act;
- (b) details of any information relating to the individual which Ministers obtained under the Act or the 2010 Regulations and upon which they relied when making their decision to list the individual under section 15 or 16 of the Act;

- (c) details of any vetting information relating to the individual;
- (d) details of any information relating to the individual which Ministers obtain in pursuance of a requirement made under section 18, 19 or 20 of the Act;
- (e) details of any information relating to the individual which Ministers obtain by performing their functions in relation to the Scheme;
- (f) details of any representations, comments and information received by Ministers under these Regulations;
- (g) a copy of any report provided to Ministers under paragraph 5(2).

(2) The person or persons appointed under paragraph 4(1)(b) must review the information supplied to them under sub-paragraph (1) and, based on that information, provide to Ministers a report containing their assessment as to the individual's unsuitability to work with children, protected adults or, where applicable, both groups, in such manner and within such time as Ministers may specify.

Notification of determination following consideration of late representations

7.—(1) Where Ministers determine, following their consideration of late representations under section 28 of the Act, that the individual is to be removed from the list, Ministers must, as soon as reasonably practicable after making their determination, give notification to the individual of their determination.

(2) Where Ministers determine, following their consideration of late representations under section 28 of the Act, that the individual is not to be removed from the list, Ministers must, as soon as reasonably practicable after making their determination, give notification to the individual of their determination, together with—

- (a) the reasons for their determination;
- (b) information as to the individual's right of appeal under section 21 or 22 of the Act against Ministers' decision to include them on the list; and
- (c) information as to the individual's right to seek removal from the list under section 25 of the Act.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 25(3), 42(1)(c) and (2), 97(1) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) (“the Act”).

The Act provides that Scottish Ministers must keep a children’s list and an adults’ list (section 1(1)) and that an individual may be listed in one or both of those lists (section 1(2)). A listed person is barred from undertaking regulated work with children (if listed in the children’s list) or protected adults (if listed in the adults’ list) (see section 92 of the Act). “Regulated work” is defined at section 91 of, and schedules 2 and 3 to, the Act. A “child” is anyone under eighteen years of age and a “protected adult” is defined at section 94 of the Act.

Section 14(1) and (2) of the Act require Scottish Ministers to list an individual in the children’s list or the adults’ list, respectively, if specified criteria are met. Those criteria are specified in the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010. Sections 15 and 16 of the Act provide that Scottish Ministers must list an individual in the children’s or adults’ list, respectively, if, after considering whether to do so, they are satisfied by information relating to the individual’s conduct that the individual is unsuitable to work with children, or protected adults (or both groups). The Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010 (“the 2010 Regulations”) set out the procedures which Scottish Ministers must follow when considering under sections 10, 11, 12 and 13 of the Act whether to list an individual in either list (or both lists).

These Regulations set out the procedures for applications for removal from the children’s list or adults’ list under section 25 of the Act and for late representations under section 28 of the Act from individuals who think that they should not have been listed.

Regulation 3 prescribes a period for the purposes of section 25(3)(a) before which an individual cannot apply for removal from the lists (unless their circumstances have changed). For the first application by an individual for removal from the children’s list or the adults’ list, the period prescribed is ten years for a person who was aged 18 or over at the date of listing and five years for a person who was a child at the date of listing. Regulation 4 prescribes the period for subsequent applications for removal as ten years from the date of the previous application (regardless of the age of the individual at the date of listing).

Regulation 5 provides that where an individual is listed in both the children’s list and the adults’ list, the individual may make one application for removal from both lists. The period prescribed under regulation 3 only needs to have elapsed in relation to the listing on one list.

Regulation 6 introduces Schedule 1 which sets out the procedures for Scottish Ministers’ determination of applications for removal from the list under section 25 of the Act. Regulation 7 introduces Schedule 2 which sets out the procedures regarding late representations under section 28 of the Act.

Regulation 8 allows Scottish Ministers to grant extensions of time within which to comply with the requirements of the Regulations. Regulation 9 specifies the manner and time of service of notices and other communications under the Regulations; in particular, regulation 5 allows for electronic communication where the individual, other organisation or person has consented to the use of electronic communication and has provided Scottish Ministers with an email address for the purposes of these Regulations.

Schedule 1 contains the detailed procedure for Scottish Ministers’ determination of applications for removal from the list under section 25 of the Act. Schedule 2 contains the detailed procedure regarding late representations under section 28 of the Act.

The procedures under each Schedule are similar and they are also similar to the procedures specified in the 2010 Regulations for the initial consideration for listing. The procedure under each Schedule commences with the individual who is either applying for removal or making late representations receiving acknowledgement of their application or late representations. If an

individual has not provided sufficient information to allow Scottish Ministers to determine whether an application for removal is competent they can request that further information be submitted within 28 days. Scottish Ministers may seek further representations, information or comments from the individual or from any other person at any time during consideration of the application for removal or of the late representations. The final step in the procedure is to provide the individual with a copy of all information on which Scottish Ministers intend to rely in making their determination of the application for removal or the late representations.

Paragraphs 5 and 6 of each Schedule deal with the appointment of expert advisers and suitably qualified individuals to prepare reports to Scottish Ministers as part of the procedure for considering an application for removal or late representations. Scottish Ministers may appoint an expert adviser to prepare a report on matters within the expert's area of expertise for the purpose of assisting Ministers in their assessment of an individual's unsuitability to work with children or protected adults (or both groups). Scottish Ministers may also appoint one or more suitably qualified individuals to prepare a report providing an assessment of an individual's unsuitability to work with children or protected adults (or both groups). Scottish Ministers may provide information to these experts or suitably qualified individuals for the purpose of the preparation of the reports. Scottish Ministers must take account of such reports when they make their determination, but are not bound to follow the reports.

Paragraph 7 of each Schedule requires Scottish Ministers to give notification to an individual of their determination of an application for removal or of whether or not to remove individual from the list after late representations. Where they determine not to remove an individual from the list (or lists), they must give reasons for their determination and provide details of the individual's right to appeal or apply for removal from the list.

It is an offence for an individual to do, or seek to, or agree to do, any regulated work from which the individual is barred (section 34 of the Act). It is also an offence for an organisation to offer regulated work to an individual who is barred from that work (section 35) and for a personnel supplier to offer, or supply, an individual who is barred from doing regulated work to an organisation where the personnel supplier knows, or has reason to believe, that the organisation will make arrangements for the individual to do regulated work from which the individual is barred (section 36).

A person guilty of an offence under section 34, 35 or 36 is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both, and on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

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