
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 42(1)(c) and (2) 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.

Sections 10, 11, 12, and 13 of the Act provide that Scottish Ministers must consider listing an individual in the children’s list, in the adults’ list or both lists, if they are satisfied that it may be appropriate for the individual to be included in one, or both, of those lists. Sections 15 and 16 provide that Scottish Ministers must list the 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).

Regulation 3 (and the Schedule) 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). Regulation 4 allows Scottish Ministers to grant extensions of time within which to comply with the requirements of the Regulations. Regulation 5 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, the referring body, 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.

The Schedule contains the detailed procedure for Scottish Ministers’ consideration whether to list an individual. Part 1 of the Schedule requires Scottish Ministers to record the date of their decision to consider whether to list an individual and to notify the individual of that date.

Part 2 of the Schedule sets out the procedure where consideration whether to list is under section 10(2) or (3) of the Act. Part 3 sets out the procedure where consideration is under section 11(2), (3) or (4) of the Act; Part 4 sets out the procedure where consideration is under section 12(1) or (2) of the Act and Part 5 sets out the procedure where consideration is under section 13(2) or (3) of the Act. Although the procedures under each Part are similar, there are some differences depending on the types of information which Scottish Ministers are considering. The procedure under each Part commences with the individual who is under consideration for listing receiving notification of the consideration process and being invited to make representations and submit any comments or information. Such representations, comments and information will be passed to the referring body, if there is one. Scottish Ministers may seek further representations, information or comments from the individual, from the referring body (if any) and from any other person at any time during the consideration procedure. The final step in the consideration procedure is to provide the individual with a copy of all information on which Scottish Ministers intend to rely in making their decision whether to list an individual.

Part 6 of the Schedule deals with the appointment of expert advisers and suitably qualified individuals to prepare reports to Scottish Ministers as part of the procedure for considering whether to list an individual. 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

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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 which they have received during the consideration procedure 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 decide whether to list an individual, but are not bound to follow the reports.

Part 7 of the Schedule sets out what must be provided to an individual when notification of listing is sent in accordance with section 30 of the Act. Scottish Ministers must give reasons for their decision 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 (section 37).