

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 1 – the Lists

Sections 25 – 27. Removing individuals from the lists

54. **Section 25** gives the listed individual the power to apply to the Scottish Ministers for removal from the list(s). Such an application is only competent if the individual has been listed for a prescribed period or if the individual's circumstances have changed.
55. The Scottish Ministers intend to make regulations under section 25(3)(a) which will specify the time period after which an individual can apply to be removed from the list(s). Section 25(3)(a) makes clear that this time period may begin on a date other than the date of listing itself (for example with the event which led to inclusion on the list). The power to prescribe a minimum time period, before an application for removal is competent, may be used to allow individuals who were relatively young when listed to apply for removal from the list after a shorter period compared to those listed as mature adults. Section 25(4) puts beyond doubt that general rules on time limits are to apply to all cases; individuals are not to be "sentenced" to a tailored listing period.
56. **Section 26** provides that the Scottish Ministers must remove the individual from the list if satisfied that the individual is no longer unsuitable to undertake that type of regulated work. The process undertaken by the Scottish Ministers in respect of an application for removal mirrors that for a listing determination. Section 26(3) allows the Scottish Ministers to gather the same types of information as would be gathered for a listing determination and the same tests at section 15 and 16 are applied. That is to say, an individual will be removed from the list if it is no longer the case that, on the balance of probabilities, they are unsuitable to do that type of regulated work. This is not the same as saying the original decision to list was wrong (which would need to be contested through an appeal).
57. **Section 27** sets out the procedure for appealing the Scottish Ministers' decision in relation to application for removal from the list. This procedure mirrors that at section 23 in respect of appeals against initial listing decisions and, again, any such court proceedings may be held in private.