

Disclosure (Scotland) Act 2020

2020 asp 13

PART 2

PROTECTION OF VULNERABLE GROUPS

PROSPECTIVE

Scheme members under consideration for listing

76 Conditions imposed on scheme members under consideration for listing

- (1) The PVG Act is amended as follows.
- (2) After section 13 insert—

“13A Conditions imposed on scheme members under consideration for listing

- (1) Where Ministers are considering whether to list a scheme member by virtue of sections 10 to 13 or section 45B(7), they may impose such conditions on the scheme member as—
 - (a) may be prescribed, and
 - (b) they consider necessary for the protection of the public or otherwise in the public interest.
- (2) Regulations under subsection (1)(a) may in particular provide that Ministers may—
 - (a) restrict the scheme member from carrying out a regulated role,
 - (b) require that the scheme member may carry out a regulated role only under the supervision of another scheme member whom Ministers are not considering whether to list by virtue of sections 10 to 13 or section 45B(7),
 - (c) require that the scheme member may carry out only a regulated role of such description as may be specified by Ministers,

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- (d) require the scheme member to provide to them information relating to any regulated role which the scheme member is carrying out, or is to carry out, for a person or individual who is not an organisation or a personnel supplier.
- (3) Ministers may impose a condition under subsection (1) only on the basis of—
 - (a) information which caused them to consider listing the scheme member,
 - (b) information relating to the scheme member which they obtain—
 - (i) in pursuance of a requirement made under any of sections 18 to 20, or
 - (ii) otherwise in performing their functions in relation to the Scheme.
- (4) A condition imposed under subsection (1) applies for the prescribed period beginning with the day on which Ministers impose the condition on the scheme member and ceases to apply at the end of that period unless it is confirmed by the sheriff under section 13B.
- (5) Where Ministers decide under subsection (1) to impose a condition on a scheme member, they must notify the persons mentioned in subsection (6) of—
 - (a) that fact, and
 - (b) the details of the condition.
- (6) The persons are—
 - (a) the scheme member,
 - (b) an organisation for whom Ministers know the scheme member is carrying out, or is seeking or agreeing to carry out, a regulated role,
 - (c) a personnel supplier whom Ministers know has offered or supplied the scheme member to carry out a regulated role,
 - (d) any relevant regulatory body whom Ministers think it would be appropriate to notify under subsection (5), and
 - (e) the chief constable.
- (7) In addition, Ministers must inform the scheme member of the reason for imposing the condition.
- (8) In subsection (6)(d) (and section 13B(9)(c)), a “relevant regulatory body” is—
 - The General Teaching Council for Scotland,
 - Healthcare Improvement Scotland,
 - The Scottish Social Services Council,
 - Social Care and Social Work Improvement Scotland,
 - any other person specified in regulations made by Ministers.
- (9) In this section (and in sections 13B and 13C), “condition” includes restriction or requirement.

13B Application to sheriff for confirmation of conditions

- (1) Ministers may apply to the sheriff for confirmation of a condition imposed on a scheme member under section 13A(1).

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- (2) An application under subsection (1) must be made before the expiry of the period referred to in section 13A(4).
- (3) Where an application under subsection (1) is made, that period is to be treated for the purposes of section 13A(4) as not having ended until the application is determined.
- (4) In considering an application under subsection (1), the sheriff may—
 - (a) confirm the condition (with or without variation),
 - (b) remove the condition, or
 - (c) impose another condition.
- (5) The sheriff may only—
 - (a) make a variation to a condition under subsection (4)(a) if the variation would result in a condition that could have been imposed by Ministers under section 13A(1), or
 - (b) impose a condition under subsection (4)(c) if the condition is one that could have been imposed by Ministers under section 13A(1).
- (6) If the sheriff confirms (with or without variation) the condition under paragraph (a) of subsection (4) or imposes another condition under paragraph (c) of that subsection, that condition applies until Ministers make a decision under section 15 or, as the case may be, 16.
- (7) If the sheriff removes the condition under subsection (4)(b), the condition ceases to apply from the date of the sheriff's decision.
- (8) The scheme member is entitled to be a party to proceedings on an application under subsection (1).
- (9) Ministers must notify the following persons of the sheriff's decision under subsection (4)—
 - (a) the scheme member,
 - (b) an organisation (or other person) for whom they know the scheme member is carrying out, or seeking or agreeing to carry out, a regulated role,
 - (c) any relevant regulatory body whom Ministers think it would be appropriate to notify of the decision,
 - (d) the chief constable.
- (10) For the purposes of subsection (2), an application is made when it is lodged with the sheriff clerk.
- (11) Proceedings on an application under subsection (1) may take place in private if the sheriff considers it appropriate in all the circumstances.

13C Breach of conditions: offences

- (1) It is an offence for a scheme member on whom a condition is imposed under section 13A(1) to fail to comply with the condition.
- (2) It is an offence for a person mentioned in subsection (3) to knowingly do anything, or fail to do anything, that results in a scheme member

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failing to comply with a condition imposed on the scheme member under section 13A(1).

- (3) The persons referred to in subsection (2) are—
- (a) an organisation for whom the scheme member is carrying out a regulated role,
 - (b) a personnel supplier who has offered or supplied the scheme member to carry out a regulated role.
- (4) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that the person did not know, and could not reasonably be expected to have known, that a condition was imposed on the scheme member.
- (5) A person who commits an offence under subsection (1) or (2) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).”.

- (3) In section 100 (orders and regulations), in subsection (4), before the entry in the list for section 14(3) insert— “ Section 13A(1)(a) ”.

77 Notice of consideration for listing

- (1) Section 30 (notice of listing etc.) of the PVG Act is amended as follows.

- (2) In subsection (3)—
- (a) in paragraph (b), at the end insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with children, ”,
 - (b) in paragraph (c), at the end (and before the word “and” immediately following that paragraph) insert “ and any personnel supplier whom they know has offered or supplied the scheme member to carry out a regulated role with adults, ”.

- (3) After subsection (3) insert—

“(3A) Subsection (3B) applies where—

- (a) Ministers are considering whether to list an individual by virtue of sections 10 to 13 or section 45B(7), and
- (b) they know that the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults for a person other than an organisation.

(3B) Where this subsection applies, Ministers may notify the person—

- (a) that they are considering whether to list the individual in the children's list or, as the case may be, in the adults' list, and
- (b) of the details of any conditions that Ministers have imposed under section 13A(1) or, if no such conditions have been imposed, of that fact.”.

(3C) After considering whether to list an individual as mentioned in subsection (3A)(a), Ministers may notify their decision (whether to list the individual or not to do so) to any person other than an organisation for whom

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they know the individual is carrying out a regulated role with children or, as the case may be, a regulated role with adults.”.

(4) In subsection (5), after “(2)” insert “, (3B), (3C)”.

78 Withdrawal from Scheme when under consideration for listing

(1) The PVG Act is amended as follows.

(2) After section 59 insert—

“59A Withdrawal from Scheme when under consideration for listing

(1) Where—

- (a) Ministers remove an individual who is a scheme member from the Scheme under section 59, and
 - (b) at the time of the removal, they are considering whether to list the individual by virtue of sections 10 to 13 or section 45B(7),
- they may decide not to continue to consider whether to list the individual.

(2) Where Ministers decide under subsection (1) not to continue to consider whether to list an individual, that decision is not to be treated as a decision not to list the individual after considering whether to do so for the purposes of subsection (3C) or (4) of section 30 (and accordingly no notice of the decision under subsection (1) is to be given under either of those subsections of that section).”.

(3) In section 60 (notice of removal), after subsection (2) insert—

“(2A) Where Ministers decide under section 59A(1) not to continue to consider whether to list the individual a notice under subsection (1) must also give notice of that fact.”.

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