

POLICY NOTE

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (APPLICATION FOR REMOVAL FROM LIST AND LATE REPRESENTATIONS) AMENDMENT REGULATIONS 2021

SSI 2021/379

1. The above instrument was made in exercise of the powers conferred by sections 25(3)(a), 42(1)(c) and (2) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). The instrument is subject to the negative procedure.

Summary Box

These Regulations will enable individuals, who are barred from carrying out “regulated work”¹ when aged between 18 and 25 years to apply to be removed from the barred list sooner.

Policy Objectives

2. Under the 2007 Act, the Scottish Ministers administer the PVG Scheme for individuals carrying out regulated work with children, protected adults or both. One of the functions of the Scottish Ministers in doing so is to maintain the barred lists, which are the lists of individuals barred from carrying out regulated work with children or regulated work with adults or both groups

3. Section 25 of the 2007 Act allows a barred individual to apply to the Scottish Ministers for removal from the list(s) and subsection (3), in particular, provides for the circumstances in which such an application is competent. This subsection also gives the Scottish Ministers a power to prescribe the period that must pass before an application can be made and this power was exercised when making the Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) Regulations 2010 (“the principal Regulations”).

4. Article 3 of the principal Regulations provides for the prescribed period which must pass before a first application for removal from the lists can be made in accordance with section 25(3)(a) of the 2007 Act. The principal Regulations provided that, for an individual, who at the time of their inclusion in either the children’s list or the adults’ list (or both) was aged 18 or over, ten years must pass from the date of inclusion (this is the longer prescribed period); for an individual who was under the age of 18 at the time of their inclusion, five years must pass from the date of their inclusion (this is the shorter prescribed period).

5. These Regulations will change the age threshold for the prescribed periods so that individuals included on the barred lists when they were aged 25 years or under will be able to make an application under section 25(3)(a) of the 2007 Act to be removed after 5 years have passed from the date of their inclusion. This change in the age threshold for the shorter prescribed period will enable individuals to move on from past youthful offending behaviour sooner (where public safety considerations support that) and potentially engage in work,

¹ Section 91, schedules 2 and 3 of the 2007 Act define regulated work and what constitutes regulated work.

education or volunteering. Increasing the age threshold for the shorter prescribed period is in keeping with the policy reforms achieved by the Disclosure (Scotland) Act 2020 (“the Disclosure Act”). Individuals aged 26 years or over at the time they were included on the list will be able to apply to be removed after 10 years have passed from the date of their inclusion.

6. The threshold of “25 or under” also aligns with the Children and Young People (Scotland) Act 2014 which makes provision for care-experienced people up to the age of 26 to receive support from local authorities, increasing the previous age threshold of 21. The benefit of changing the age threshold was also understood within the context of the poorer outcomes faced by care experienced individuals compared to their peers and the challenges they face, particularly as an individual’s late teens and early twenties is a key period for moving into training, education or employment as well as other important life milestones.

7. The policy outcomes of the Disclosure Act build on those delivered by the Age of Criminal Responsibility (Scotland) Act 2019 and the Management of Offenders (Scotland) Act 2019 in respect of allowing people to move on from past offending behaviour. The report of the Advisory Group on the Minimum Age of Criminal Responsibility acknowledged that care-experienced individuals are more likely to have interactions with the criminal justice than their peers. It is considered that enabling an individual to make an earlier application for removal can help remove barriers to better outcomes and opportunities, particularly for care-experienced individuals. Setting that age threshold at 25 or under recognises the significance of a person’s life at that time as they move from childhood to adulthood.

8. These Regulations also make a minor textual amendment to Schedule 1 of the principal Regulations. Paragraph 1(2) of Schedule 1 is amended to replace the erroneous reference to “*an appeal*” with the correct reference of “*an application*”.

Consultation

9. In April 2018, the Scottish Government published a consultation paper entitled “The Protection of Vulnerable Groups and the Disclosure of Criminal Information”. This consultation ran for 12 weeks and attracted over 350 responses from organisations and individuals representing a wide variety of sectors across Scotland.

10. Whether the age threshold for the shorter prescribed period should be increased was a question posed in the consultation. It noted evidence that showed that most young people who offend do not continue to do so into adulthood and research demonstrates developmental issues usually play a large part in the behaviour of young people that leads to them acquiring convictions. It was for those reasons that the consultation paper proposed that the age threshold for the shorter prescribed period of 5 years should be raised to 25 years and under.

11. There were 221 responses, 167 respondents supported it, while 54 respondents were opposed to it. The question was unanswered by 131 respondents. A follow-up question, which provided options for what the age threshold should be was posed (the options were under 18 (no change), under 21 or under 25). The majority of respondents who answered this question supported raising the age threshold to under 25 years of age.

12. A typographical error was made during the consultation and the option, ‘under 25 years’, should have been ‘under 26 years’. Irrespective of this typographical error, it was

clear to Scottish Ministers that there was strong support for the raising the age threshold into the higher range from a number of youth and criminal justice advocates such as the Centre for Excellence for Looked After Children's Care and Protection based at Strathclyde University, Who Cares? Scotland, Recruit with Conviction, the Centre for Youth and Criminal Justice and the Improving Life Chances Implementation Group.

13. A full list of those consulted, and who agreed to the release of their information, is attached to the consultation report published on the Scottish Government website².

Impact Assessments

14. An equality impact assessment has been completed and is attached.

Financial Effects

15. The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate

October 2021

² Protection of Vulnerable Groups and the Disclosure of Criminal Information - Scottish Government - Citizen Space (consult.gov.scot).