



# Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

## PART 2

### VETTING AND DISCLOSURE

#### *Disclosure*

#### **[<sup>F1</sup>52 Disclosure of scheme records**

- (1) This section applies in relation to a scheme member's scheme record if—
  - (a) disclosure conditions A to D are satisfied, and
  - (b) section 53 does not require Ministers to disclose the scheme member's short scheme record.
- (2) Subsection (3) applies where the scheme record does not include vetting information about a conviction [<sup>F2</sup>which falls within subsection (2A)].

#### **[<sup>F3</sup>(2A) A conviction falls within this subsection if it is—**

- (a) a conviction for an offence listed in schedule 8A of the 1997 Act which is a spent conviction and either—
  - (i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction, or
  - (ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction,
- (b) a conviction for an offence listed in schedule 8B of the 1997 Act which is—
  - (i) a spent conviction, but
  - (ii) not a protected conviction.]
- (3) Ministers must—
  - (a) disclose the scheme record, and
  - (b) send a copy of the scheme record to the scheme member.

*Status: Point in time view as at 17/02/2018.*

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- (4) Subsections (5) to (9) apply where the scheme record includes vetting information about a conviction [<sup>F4</sup>which falls within subsection (2A).]
- (5) Ministers must send a copy of the scheme record to the scheme member (who may make an application to the sheriff under section 52A(2)).
- (6) Subsection (7) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member does not intend to make an application under section 52A(2), or
  - (b) that period expires without the scheme member having notified Ministers that the scheme member does intend to make such an application.
- (7) Ministers must disclose the scheme record as soon as possible after receiving the notification or, as the case may be, the expiry of that period.
- (8) Subsection (9) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member intends to make an application under section 52A(2), but
  - (b) either—
    - (i) the scheme member does not make such an application before the end of the period mentioned in section 52A(3)(b), or
    - (ii) the scheme member does make such an application but abandons it before it is determined by the sheriff.
- (9) Ministers must not disclose the scheme record (and the request for disclosure of the record is to be treated as having been withdrawn).]

#### Textual Amendments

- F1** Ss. 52, 52A substituted for s. 52 (8.2.2016) by The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015 (S.S.I. 2015/423), arts. 1(2), **4(6)** (with arts. 5-10)
- F2** Words in s. 52(2) substituted (17.2.2018) by The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 (S.S.I. 2018/52), arts. 1(2), **4(3)(a)**
- F3** S. 52(2A) inserted (17.2.2018) by The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 (S.S.I. 2018/52), arts. 1(2), **4(3)(b)** (with art. 7)
- F4** Words in s. 52(4) substituted (17.2.2018) by The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018 (S.S.I. 2018/52), arts. 1(2), **4(3)(c)**

#### [<sup>F1</sup>52A Review of vetting information in scheme record

- (1) This section applies where a scheme member receives a copy of the scheme member's scheme record under section 52(5).
- (2) The scheme member may apply to the sheriff for an order requiring Ministers to remove from the scheme record the vetting information referred to in section 52(4).
- (3) An application under subsection (2)—
  - (a) may only be made if the scheme member notifies Ministers before the end of the period of 10 working days beginning with the date on which the scheme

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- record was sent to the scheme member under section 52(5) of an intention to make the application,
- (b) must be made before the end of the period of 3 months beginning with the date on which that notification is given, and
  - (c) must not relate to vetting information about a conviction which has previously been the subject of an application which—
    - (i) was refused under subsection (6)(b), and
    - (ii) related to the same type of regulated work.
- (4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).
- (5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (6) In determining an application under subsection (2) the sheriff must—
- (a) if satisfied that the vetting information is not relevant in relation to a type of regulated work in relation to which the scheme member participates in the Scheme, allow the application,
  - (b) otherwise, refuse the application.
- (7) The sheriff may allow the application in part where it relates to vetting information about two or more convictions.
- (8) The decision of the sheriff on an application is final.
- (9) Where the sheriff allows the application, the sheriff must order Ministers to remove the information from the scheme record in relation to a type of regulated work in relation to which the scheme member participates in the Scheme.
- (10) On the determination of an application under subsection (2), Ministers must treat the disclosure request to which the application relates as if it had been made under section 52 on the day after the date on which the determination is made.]

#### Textual Amendments

- F1** Ss. 52, 52A substituted for s. 52 (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), 4(6) (with arts. 5-10)

### 53 Disclosure of short scheme records

- (1) [<sup>F5</sup>Subject to subsection (1A),] Ministers must disclose a scheme member's short scheme record if—
- (a) disclosure conditions A to D are satisfied,
  - (b) they have previously disclosed the member's scheme record, and
  - (c) the scheme member requests disclosure of a short scheme record only.

[<sup>F6</sup>(1A) But Ministers must treat the request as a request for a disclosure of the member's scheme record under section 52 if the scheme record includes vetting information.]

- (2) Ministers must send a copy of a record disclosed under subsection (1) to the scheme member who made the disclosure request.

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- (3) A short scheme record is a document which—
- (a) includes a scheme member's statement of scheme membership,
  - [<sup>F7</sup>(b) says that no vetting information is included in the scheme member's scheme record.]

<sup>F8</sup>(4) .....

#### Textual Amendments

- F5** Words in s. 53(1) inserted (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), **4(7)(a)** (with arts. 5-10)
- F6** S. 53(1A) inserted (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), **4(7)(b)** (with arts. 5-10)
- F7** S. 53(3)(b) substituted for (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), **4(7)(c)** (with arts. 5-10)
- F8** S. 53(4) repealed (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), **4(7)(d)** (with arts. 5-10)

#### Modifications etc. (not altering text)

- C1** Pt. 2 modified (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2660\)](#), arts. 1, **22**
- C2** Pt. 2 modified (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2660\)](#), arts. 1, **21**

#### Commencement Information

- I1** S. 53 in force at 28.2.2011 by [S.S.I. 2011/157](#), art. **2(a)**

### 54 Disclosure of scheme membership

- (1) If disclosure conditions A to C are satisfied, Ministers must disclose a scheme member's statement of scheme membership.
- (2) Ministers must send a copy of a statement disclosed under subsection (1) to the scheme member who made the disclosure request.

#### Commencement Information

- I2** S. 54 in force at 28.2.2011 by [S.S.I. 2011/157](#), art. **2(a)**

### 55 Disclosure conditions

The disclosure conditions are—

*Condition A*

The scheme member requests Ministers to make the disclosure to a person, and

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	in relation to a type of regulated work, specified in the request.
<i>Condition B</i>	The scheme member participates in the Scheme in relation to that type of regulated work.
<i>Condition C</i>	The person to whom the disclosure is to be made declares that the disclosure is requested for the purpose of enabling or assisting the person (or any other person for whom the person acts) to consider the scheme member's suitability to do, or to be offered or supplied for, that type of regulated work.
<i>Condition D</i>	The person to whom the disclosure is to be made is a registered person for the purposes of Part 5 of the 1997 Act.

#### Commencement Information

**I3** S. 55 in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#)

## 56 Crown work

- (1) This section applies where a disclosure declaration is made by—
  - (a) a Minister of the Crown,
  - (b) a member of the Scottish Executive,
  - (c) any other office-holder in the Scottish Administration, or
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).
- (2) Where this section applies Ministers may, despite disclosure condition D, disclose the relevant scheme record or short scheme record.

#### Commencement Information

**I4** S. 56 in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#)

## 57 Disclosure restrictions

- (1) Regulations under section 49(1)(d) may prohibit Ministers (at any time or in prescribed circumstances)—
  - (a) from including a prescribed type of information in scheme records,
  - (b) from disclosing a prescribed type of information under section 52 or 53.
- (2) Subsection (3) applies where—
  - (a) a scheme member participates in the Scheme in relation to both types of regulated work, and
  - (b) Ministers receive a disclosure request which includes a disclosure declaration made in relation to only one of those types of regulated work.

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- (3) Where this subsection applies, Ministers must not—
- (a) disclose information which appears in the member's scheme record only because the member participates in the Scheme in relation to the other type of regulated work, or
  - (b) reveal whether any such information has been included in, or removed from, the member's scheme record.

#### Commencement Information

**I5** S. 57 in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#)

#### [<sup>F9</sup>57A Meaning of “conviction” and “protected conviction”

For the purposes of sections [<sup>F10</sup>52ZA,] 52 and 52A—

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, and “spent conviction” is to be construed in accordance with that Act,

“protected conviction” is to be construed in accordance with section 126ZA of the 1997 Act . ]

#### Textual Amendments

**F9** S. 57A inserted (10.9.2015) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial Order 2015 \(S.S.I. 2015/330\)](#), arts. 1(2), [4\(7\)](#) (with arts. 5-10) which S.S.I. is revoked and s. 57A inserted (8.2.2016) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015 \(S.S.I. 2015/423\)](#), arts. 1(2), [4\(8\)](#) (with arts. 5-10)

**F10** Word in s. 57A inserted (17.2.2018) by [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial Order 2018 \(S.S.I. 2018/52\)](#), arts. 1(2), [4\(4\)](#)

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