
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 179

**The Protection of Vulnerable Groups (Scotland)
Act 2007 (Applications for Removal from List
and Late Representations) Regulations 2010**

Citation and commencement

1. These Regulations may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) Regulations 2010 and come into force on the same day as section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“the 2003 Act” means the Protection of Children (Scotland) Act 2003(1);

“electronic communication” means an electronic communication as defined in section 15(1) of the Electronic Communications Act 2000(2);

“individual” is the person who has—

- (a) made an application for removal from the children’s list, from the adults’ list or, where applicable, from both lists under section 25 of the Act; or
- (b) made late representations under section 28 of the Act as to why the person should not have been listed;

“the 2010 Regulations” means the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010(3);

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(4), or a day appointed for public thanksgiving or mourning.

(2) Any reference in Schedule 1 to these Regulations to “the list” is to be read as a reference to the list or, where appropriate, lists from which the individual has applied for removal under section 25 of the Act.

(3) Any reference in Schedule 2 to these Regulations to “the list” is to be read as a reference to the list or, where appropriate, lists in which the individual was listed under section 15 or 16 of the Act and in relation to which the individual is making late representations under section 28 of the Act.

(1) 2003 asp 5.

(2) 2000 c.7, section 15 is amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).

(3) S.S.I. 2010/183.

(4) 1971 c.80. Schedule 1 was amended by the St Andrew’s Day Bank Holiday (Scotland) Act 2007 (asp 2).

First applications for removal from list: prescribed period

3. For the first application by an individual for removal from the children's list or the adults' list, the period prescribed for the purposes of section 25(3)(a) of the Act in relation to an individual who at the time of inclusion in the children's list or the adults' list—

- (a) was aged 18 or over, is ten years from the date of inclusion in the list in question;
- (b) was a child, is five years from the date of inclusion in the list in question.

Further applications for removal from list: prescribed period

4.—(1) Paragraph (2) applies where an individual—

- (a) has been included in the list for the period prescribed in regulation 3(a) or (b) as applicable;
- (b) has applied to Ministers for removal from the list under section 25 of the Act; and
- (c) Ministers, after considering that application, have refused that application under section 26(1)(b) or (2)(b) of the Act.

(2) Where this paragraph applies, for any further application by an individual for removal from the children's list or the adults' list, the period prescribed for the purposes of section 25(3)(a), unless modified by order by the Inner House under section 27(6) of the Act, is ten years from the date of the last application for removal from the list in question.

Applications for removal: listing in both the children's list and the adults' list

5.—(1) Where an individual is listed in both the children's list and the adults' list, the individual may make one application for removal from both lists.

(2) Where an individual is listed in both the children's list and the adults' list and the period prescribed in regulation 3(a) or (b) is satisfied only in relation to the individual's listing in one list, it is competent for the individual, in any application under section 25 of the Act for removal from the list for which the prescribed period is satisfied, to apply for removal from the other list at the same time, irrespective of the length of time of listing in that other list.

Procedure for determining applications for removal from the list under section 25 of the Act

6. The procedure set out in Schedule 1 applies to any application for removal from the children's list, from the adults' list or, where applicable, from both lists under section 25 of the Act.

Procedure for late representations under section 28 of the Act

7. The procedure set out in Schedule 2 applies in relation to late representations under section 28 of the Act.

Extension of time

8.—(1) Where these Regulations require or authorise an individual or any other person to do something within a specified period, the individual or other person may apply to Ministers for further time within which to comply.

(2) On receipt of an application under paragraph (1), Ministers may, on cause shown or otherwise where they consider it reasonable to do so, grant any further period or periods of time as they consider appropriate.

(3) Where Ministers have granted a further period of time, any reference in these Regulations to that period of time is to be construed as a reference to the period of time as so extended.

Manner and time of service of notices and other communications

9.—(1) Any notice required to be given by Ministers to an individual under these Regulations must be given in accordance with section 30(8) of the Act.

(2) Any other communication required to be given by Ministers to an individual under these Regulations may be given in accordance with section 30(8) of the Act or may be sent by electronic communication, provided that the individual has consented to the use of electronic communication and has provided Ministers with an email address for the purposes of these Regulations.

(3) Any notice required to be given by Ministers to any organisation or other person under these Regulations must be given in accordance with section 30(8) of the Act.

(4) Any other communication required to be given by Ministers to any organisation or other person under these Regulations may be given in accordance with section 30(8) of the Act or may be sent by electronic communication, provided that the organisation or other person has consented to the use of electronic communication and has provided Ministers with an email address for the purposes of these Regulations.

(5) Where an individual or any person, organisation or body is required to make any representations or submit any information or comments to Ministers under these Regulations, such representations, information or comments may be sent by electronic communication to an e-mail address specified by Ministers for that purpose.

(6) Where any communication is sent by electronic communication, it is to be treated as received the day after the day of its transmission.

(7) If a period of notice expires on a day which is not a working day, the period of notice is to be treated as expiring on the next working day after that day.

Transitional provision in relation to those individuals transferred to the children's list under section 43 of the Act

10.—(1) Paragraph (2) applies where an individual has been listed in the children's list by virtue of section 43 of the Act and has not made an application for removal under section 14 (application for removal from list) of the 2003 Act.

(2) Where this paragraph applies the prescribed period under regulation 3(a) or (b) is to be calculated from the date that the individual was included (otherwise than provisionally) in the list kept under section 1 of the 2003 Act.

(3) Paragraph (4) applies where an individual has been listed in the children's list by virtue of section 43 of the Act and has made an application under section 14 of the 2003 Act which was dismissed prior to the coming into force of these Regulations.

(4) Where this paragraph applies, the prescribed period for the purposes of section 25(3)(a) of the Act is ten years from the date on which the application for leave to make an application under section 14 of the 2003 Act was made, unless a different period has been specified by order by the Inner House under section 15(8) of the 2003 Act.

(5) Where the Inner House has by order specified a period under section 15(8) of the 2003 Act as the period during which an individual may not make an application to the sheriff for leave to make a further application for an order under section 14(2) of that Act, that order is to be treated as if that order had been made under section 27(6) of the Act.

(6) Where an individual has been listed in the children's list by virtue of section 43 of the Act, the individual is to be treated as a child for the purposes of regulation 3 if they would have been treated as a child under section 14 of the 2003 Act.

St Andrew's House,
Edinburgh
5th May 2010

ADAM INGRAM
Authorised to sign by the Scottish Ministers