
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 25(3), 42(1)(c) and (2), 97(1) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 ([asp 14](#)) (“the Act”).

The Act provides that Scottish Ministers must keep a children’s list and an adults’ list (section 1(1)) and that an individual may be listed in one or both of those lists (section 1(2)). A listed person is barred from undertaking regulated work with children (if listed in the children’s list) or protected adults (if listed in the adults’ list) (see section 92 of the Act). “Regulated work” is defined at section 91 of, and schedules 2 and 3 to, the Act. A “child” is anyone under eighteen years of age and a “protected adult” is defined at section 94 of the Act.

Section 14(1) and (2) of the Act require Scottish Ministers to list an individual in the children’s list or the adults’ list, respectively, if specified criteria are met. Those criteria are specified in the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010. Sections 15 and 16 of the Act provide that Scottish Ministers must list an individual in the children’s or adults’ list, respectively, if, after considering whether to do so, they are satisfied by information relating to the individual’s conduct that the individual is unsuitable to work with children, or protected adults (or both groups). The Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010 (“the 2010 Regulations”) set out the procedures which Scottish Ministers must follow when considering under sections 10, 11, 12 and 13 of the Act whether to list an individual in either list (or both lists).

These Regulations set out the procedures for applications for removal from the children’s list or adults’ list under section 25 of the Act and for late representations under section 28 of the Act from individuals who think that they should not have been listed.

Regulation 3 prescribes a period for the purposes of section 25(3)(a) before which an individual cannot apply for removal from the lists (unless their circumstances have changed). For the first application by an individual for removal from the children’s list or the adults’ list, the period prescribed is ten years for a person who was aged 18 or over at the date of listing and five years for a person who was a child at the date of listing. Regulation 4 prescribes the period for subsequent applications for removal as ten years from the date of the previous application (regardless of the age of the individual at the date of listing).

Regulation 5 provides that 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. The period prescribed under regulation 3 only needs to have elapsed in relation to the listing on one list.

Regulation 6 introduces Schedule 1 which sets out the procedures for Scottish Ministers’ determination of applications for removal from the list under section 25 of the Act. Regulation 7 introduces Schedule 2 which sets out the procedures regarding late representations under section 28 of the Act.

Regulation 8 allows Scottish Ministers to grant extensions of time within which to comply with the requirements of the Regulations. Regulation 9 specifies the manner and time of service of notices and other communications under the Regulations; in particular, regulation 5 allows for electronic communication where the individual, other organisation or person has consented to the use of electronic communication and has provided Scottish Ministers with an email address for the purposes of these Regulations.

Schedule 1 contains the detailed procedure for Scottish Ministers' determination of applications for removal from the list under section 25 of the Act. Schedule 2 contains the detailed procedure regarding late representations under section 28 of the Act.

The procedures under each Schedule are similar and they are also similar to the procedures specified in the 2010 Regulations for the initial consideration for listing. The procedure under each Schedule commences with the individual who is either applying for removal or making late representations receiving acknowledgement of their application or late representations. If an individual has not provided sufficient information to allow Scottish Ministers to determine whether an application for removal is competent they can request that further information be submitted within 28 days. Scottish Ministers may seek further representations, information or comments from the individual or from any other person at any time during consideration of the application for removal or of the late representations. The final step in the procedure is to provide the individual with a copy of all information on which Scottish Ministers intend to rely in making their determination of the application for removal or the late representations.

Paragraphs 5 and 6 of each Schedule deal with the appointment of expert advisers and suitably qualified individuals to prepare reports to Scottish Ministers as part of the procedure for considering an application for removal or late representations. Scottish Ministers may appoint an expert adviser to prepare a report on matters within the expert's area of expertise for the purpose of assisting Ministers in their assessment of an individual's unsuitability to work with children or protected adults (or both groups). Scottish Ministers may also appoint one or more suitably qualified individuals to prepare a report providing an assessment of an individual's unsuitability to work with children or protected adults (or both groups). Scottish Ministers may provide information to these experts or suitably qualified individuals for the purpose of the preparation of the reports. Scottish Ministers must take account of such reports when they make their determination, but are not bound to follow the reports.

Paragraph 7 of each Schedule requires Scottish Ministers to give notification to an individual of their determination of an application for removal or of whether or not to remove individual from the list after late representations. Where they determine not to remove an individual from the list (or lists), they must give reasons for their determination and provide details of the individual's right to appeal or apply for removal from the list.

It is an offence for an individual to do, or seek to, or agree to do, any regulated work from which the individual is barred (section 34 of the Act). It is also an offence for an organisation to offer regulated work to an individual who is barred from that work (section 35) and for a personnel supplier to offer, or supply, an individual who is barred from doing regulated work to an organisation where the personnel supplier knows, or has reason to believe, that the organisation will make arrangements for the individual to do regulated work from which the individual is barred (section 36).

A person guilty of an offence under section 34, 35 or 36 is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both, and on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.