
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 98(1) and 100(2)(b) of the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#) (“the Act”) and makes saving, transitional and incidental provision relating to the Protection of Children (Scotland) Act 2003 (“the 2003 Act”). Section 1 of the 2003 Act established the Disqualified from Working with Children List (“the DWCL”).

Paragraph 42 of Schedule 4 to the Act repeals all of the 2003 Act except sections 13 and 16. Section 43 of the Act provides for all those on the DWCL (immediately before section 1 of the 2003 Act is repealed) to be transferred to the children’s list kept under section 1 of the Act. This Order makes provision in relation to those engaged with the consideration for listing process for the DWCL, with applications for removal from the DWCL or with appeals against listing in the DWCL at the time of the repeal of the 2003 Act.

Article 3 makes transitional provision in relation to references received under sections 2(1) or 4(1) of the 2003 Act. Where a reference has been received under either of those sections but Ministers have not, by the date of the repeal of the 2003 Act, commenced their consideration of that reference, it is to be treated as if prescribed information had been given to Ministers under section 3, 4, 5 or 8 of the Act. The reference will then proceed under the procedures under the Protection of Vulnerable Groups (Scotland) Act 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010 (“the PVG procedures”).

Article 4 makes further transitional provision in relation to references under section 2(1) or 4(1) of the 2003 Act. Where, under section 7 of the 2003 Act, Ministers have provisionally included an individual in the DWCL but at the time of the repeal of the 2003 Act have not made a determination under section 5(4) of that Act, paragraph (1) provides that Ministers are deemed to be satisfied as to the matters set out in section 10 of the Act. The individual will then be treated as “under consideration for listing” under the Act and the PVG procedures will apply to the further consideration of that person for listing in the children’s list under the Act.

Article 5 makes transitional provision, similar to that in article 3, in relation to the consideration by Ministers to list an individual in DWCL following a “relevant inquiry” (defined in section 6(6) of the 2003 Act). It provides that where Ministers have, prior to the repeal of the 2003 Act, received the report but have not commenced their consideration under section 6(1)(c) of the 2003 Act, section 13 of the Act shall apply in relation to the consideration by Ministers of that report.

Article 6 makes transitional provision, similar to that in article 4, in relation to individuals provisionally included in the DWCL by Ministers under section 7 of the 2003 Act following their consideration of a relevant inquiry report. It provides that where the individual has been provisionally included in the list Ministers will be deemed to be satisfied about the matters in section 13 of the Act. The individual will then be treated as “under consideration for listing” under the Act and the further consideration of that person for listing will be under the PVG procedures.

Article 7 makes provision in relation to the application of section 77 of the Act in relation to individuals whose status is changed from “provisionally listed” under the 2003 Act to “under consideration for listing” under the Act by virtue of articles 4 or 6 of the Order.

Article 8 makes transitional provision in relation to applications to the sheriff under section 7(6) of the 2003 Act to extend the period during which the provisional inclusion in DWCL of the individual could be displayed on enhanced disclosures. It provides for these applications to be treated as

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applications to extend “the relevant period” under section 77 of the Act for the purposes of the statement of scheme membership.

Article 9 makes saving provision in relation to referrals by courts under section 10 of the 2003 Act. It provides for section 10 of the 2003 Act to continue to apply in relation to any individual who, before the 2003 Act is repealed, is convicted of an offence to which that section applies.

Article 10 makes saving and transitional provision in relation to section 14 of the 2003 Act to provide that section 14 continues to apply to all applications commenced, but not concluded prior to the repeal of the 2003 Act. Any application is to be treated as if it was an application to determine whether the individual should continue to be included in the children’s list.

Article 11 makes saving and transitional provision in relation to appeals made under section 15 of the 2003 Act. It provides for section 15 of the 2003 Act to continue to apply in relation to any appeal commenced but not finally disposed of by the time of the repeal of the 2003 Act.

Article 12 saves various provisions of the 2003 Act for the purposes of the provisions of the Order.