

EXECUTIVE NOTE

THE POLICE ACT 1997 (ALTERATION OF THE MEANING OF SUITABILITY INFORMATION RELATING TO CHILDREN AND PROTECTED ADULTS) (SCOTLAND) (No. 2) ORDER 2010

SSI 2010/382

Powers under which Instrument is made

1. The Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) (No. 2) Order 2010 (“the Suitability Information No. 2 Order”) is made by the Scottish Ministers in exercise of powers conferred by section 113CC(1)(a) and (b) of the Police Act 1997 (“the 1997 Act”).

Parliamentary procedure

2. This Scottish Statutory Instrument is a class 5 instrument subject to the negative resolution procedure at the Scottish Parliament.

Summary of policy proposals

The Protection of Vulnerable Groups (Scotland) Act 2007

3. Under Part 5 of the Police Act 1997, the Scottish Ministers may carry out criminal record checks. There are currently three levels of checks: the criminal conviction certificate (basic disclosure); the criminal record certificate (standard disclosure); and the enhanced criminal record certificate (enhanced disclosure). Most enhanced checks are carried out for the purpose of assessing the suitability of a person for working with vulnerable groups. Around 700,000 people in Scotland work with vulnerable groups, either through their paid employment or as volunteers. Since April 2002, the Scottish Government and BT have worked in partnership as Disclosure Scotland to provide criminal record checks for Scotland. Since then, over 5 million applications have been made for basic, standard and enhanced disclosures. In the 2008/09 financial year¹, 360,000 enhanced disclosures were processed for the purposes of working with vulnerable groups.
4. Since 10 January 2005, Scottish Ministers have kept a list of individuals who are considered unsuitable to work with children - the Disqualified from Working with Children List - introduced by the Protection of Children (Scotland) Act 2003 (“POCSA”). It is an offence for anyone on the list to work in a child care position in Scotland. In the first five years of operation, 393 individuals have been listed on DWCL.
5. The Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”), when it is fully commenced, will provide for a new vetting and barring scheme. This means that the use of disclosure checks under the 1997 Act for work with children and protected

¹ This is the financial year on which the RIA is based. The figure for the 2009/10 financial year is 350,000 enhanced disclosures.

adults will end. They will be replaced by new types of disclosure requests under the 2007 Act. For ease of reference, the Scottish Government is referring to this as the PVG Scheme. The PVG Scheme will ensure that those who either have regular contact with vulnerable groups through the workplace, or who are otherwise in regulated work, do not have a history of abusive behaviour. It will exclude people who are known to be unsuitable, on the basis of past behaviour, from working with children and/or protected adults and detect those who become unsuitable while in the workplace. The Scottish Ministers will continue to keep a list of individuals who are considered to be unsuitable to work with children (“the children’s list”). Under the 2007 Act, the Scottish Ministers will, for the first time in Scotland, keep a list of those who are barred from working with protected adults (“the adults’ list”).

6. The PVG Scheme will be managed and delivered by Disclosure Scotland as an executive agency, which will also continue to deliver the other types of disclosure (which will still be available under the 1997 Act for checks which are not for the purposes of work with children or protected adults). A new team within Disclosure Scotland will receive and consider referrals and take decisions, on behalf of Scottish Ministers, about those people who may be unsuitable to work with children or protected adults. The team will gather and assess all relevant information to make listing decisions.
7. For more information about how the PVG Scheme will work, see the guidance document² and training materials published on the Disclosure Scotland website which can be accessed through:
www.infoscotland.com/pvgscheme

The Suitability Information No. 2 Order

8. Section 113CA(1) of the 1997 Act allows the Scottish Ministers to prescribe the circumstances in which an enhanced disclosure must include suitability information relating to children and section 113CB(1) does the same in respect of protected adults. Sections 113CA(2) and 113(CB)(2) provide that suitability information includes whether the applicant is barred from that type of regulated work or under consideration for listing by the Scottish Ministers. Section 113CC of the 1997 Act allows the Scottish Ministers to amend the definition of suitability information in sections 113CA and 113CB.
9. The Police Act 1997 (Alteration of the Meaning of Suitability Information relating to Children and Protected Adults) (Scotland) Order 2010 (SSI 2010/190) amended section 113CA and 113CB so that information about the following civil orders is also suitability information:
 - (a.) risk of sexual harm order (or interim order) under the Sexual Offences Act 2003 (“the 2003 Act”);
 - (b.) sexual offences prevention order (or interim order) under the 2003 Act;
 - (c.) foreign travel order under the 2003 Act;
 - (d.) notification order (or interim order) under the 2003 Act; and

² *Protecting Vulnerable Groups Scheme: Guidance for Individuals, Organisations and Personal Employers*, The Scottish Government, June 2010.

- (e.) risk of sexual harm order (or interim order) under the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
10. The Suitability Information No. 2 Order repeals sections 113CA(2)(d) and 113CB(2)(d) of the 1997 Act which would otherwise have required the fact as to whether the Independent Safeguarding Authority³ (“the ISA”) was considering an individual to be included on an enhanced disclosure with suitability information. This is because this information will not be available to the Scottish Ministers for disclosure. This reflects the position in the rest of the UK: the ISA do not provide the information to the Criminal Records Bureau for disclosure in England and Wales, nor to AccessNI for disclosure in Northern Ireland.
11. Note that the situation is different with regard to consideration cases under the 2007 Act. Disclosure Scotland will disclose whether an individual is under consideration for listing under the 2007 Act both in enhanced disclosures with suitability statements (see sections 113CA(2)(c) and 113CB(2)(c) of the 1997 Act) and in disclosure records under the 2007 Act (see section 46(2)(c) of the 2007 Act).
12. The provision at sections 113CA(2)(d) and 113CB(2)(d) of the 1997 Act was included in the amendments to the 1997 Act at paragraph 29 of schedule 4 to the 2007 Act in anticipation of the information becoming available. The power to prescribe other information to be included on statements of scheme membership, at section 46(2)(d) of the 2007 Act, was included to allow this information to be included on all types of disclosure record. It was expected that the information would be available by the time of the go-live of the PVG Scheme and the Policing and Crime Act 2009 included amendments to the Safeguarding Vulnerable Groups Act 2006 and Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to notify relevant persons of a proposal by the ISA to include a person in a barred list. One effect of this is to create a well-defined under consideration status which could be shared with disclosure agencies. However, this is not now being progressed by the UK Government, pending the outcome of remodelling work on the vetting and barring scheme for England, Wales and Northern Ireland⁴.

Consultation

13. A Scottish Government consultation "*Protection of Vulnerable Groups (Scotland) Act 2007 Scottish Vetting and Barring Scheme -Consultation on Policy Proposals for Secondary Legislation*" took place between 1 November 2007 and 12 February 2008. The purpose of the written consultation was to allow respondents to inform the detail of policy proposals for secondary legislation. It set out a number of options for each major issue as well as seeking general comments on the proposals. The Scottish Government received 199 responses to the consultation.

³ The Independent Safeguarding Authority is the body responsible for maintaining the children’s barred lists and the adult’s barred lists under the Safeguarding Vulnerable Groups Act 2006 for England and Wales and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 for Northern Ireland.

⁴ The Executive Note to the Protection of Vulnerable Groups (Scotland) Act 2007 (Miscellaneous Provisions) Order 2010 explains the background to cross border information exchange and other developments in the UK in more detail.

14. The consultation was supported by seven PVG consultation events in cities across Scotland attended by 875 people and nine events provided by the Central Registered Body in Scotland (CRBS) attended by 176 people from November 2007 through to January 2008. The CRBS events were not formal consultation events, but were supported by the Scottish Government and intended to complement the PVG consultation events. The CRBS events reached rural communities and delegates were primarily from the voluntary sector.
15. The analysis of the consultation was published in the "*Protection of Vulnerable Groups (Scotland) Act 2007, Scottish Vetting and Barring Scheme, Analysis of consultation on policy proposals for secondary legislation*" on 27 June 2008 and the Scottish Government's response was published in the "*Scottish Government response to the analysis of consultation on policy proposals for secondary legislation*" on 6 October 2008.
16. In June 2009, the Scottish Government hosted a series of eight information events to bring organisations up to speed with implementation activities and provide an opportunity to consider and discuss aspects of the PVG Scheme. The events were attended by around 1300 people from organisations that are registered with Disclosure Scotland, have a regulatory role, or that represent groups and/or organisations that work with vulnerable groups. Although not part of a formal consultation exercise, the opportunity was taken to seek feedback on policy developments around regulated work and the structure of the guidance.

Issues specific to the Suitability Information No. 2 Order

17. The Suitability Information No. 2 Order has not been subject to public consultation because it is necessary to make this provision, given the absence of information from the ISA.

Financial effects and Regulatory Impact Assessment

18. The *Protection of Vulnerable Groups (Scotland) Act 2007 - Secondary Legislation - Partial Regulatory Impact Assessment (RIA No. 2007/40)* was published on 15 November 2007 to accompany the consultation on secondary legislation. Although comments were invited, no specific comments were made in respect of the RIA. A revised draft RIA (RIA No. 2009/03) was published to accompany the significant draft SSIs published for consultation on 10 November 2009. Responses to the consultation exercise have been taken into account in finalising the RIA. The final RIA (also RIA No. 2009/03) can be found at: www.scotland.gov.uk/pvglegislation

Scottish Government
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