

Education, Children and Young People Committee

8 December 2021

Protection of Vulnerable Groups scheme: Barred lists

Introduction

This paper is intended to support the Committee in its consideration of the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Applications for Removal from List and Late Representations\) Amendment Regulations 2021](#).

The paper is in three sections: an explanation of barred lists and applications for removal from the those lists; the proposed changes in the instrument; and noting some of the changes to the disclosure scheme in recent years.

Barred lists

Part 1 of the [Protection of Vulnerable Groups \(Scotland\) Act 2007](#) provides for a duty on Ministers to keep two lists of individuals who are unsuitable to undertake paid or voluntary work with children or protected adults. An individual could be listed on one or both of those lists. Ministers here should be read as Disclosure Scotland on behalf of Scottish Ministers.

The 2007 Act defined the work which falls under the ambit of the PVG scheme – regulated work. There are separate lists regulated work with children and with adults. It is an offence to engage an individual who is listed in regulated work and it is also an offence for the individual themselves to undertake the type of regulated work from which they are barred (i.e. with children or adults or both).

The Disclosure (Scotland) Act 2020 will, once fully in force, make a change from ‘regulated work’ to ‘regulated roles’. The principle in terms of listed individuals will remain the same.

The 2007 Act came into force on 28 February 2011. Between then and March 2021, Disclosure Scotland had listed around 7,700 individuals.

Referrals, vetting and automatic listing

There are a number of pathways which would lead to Disclosure Scotland considering whether to list an individual.

Referrals

Disclosure Scotland can receive referrals from employers, employment agencies, the courts and professional regulators (e.g. the GTCS). The 2020 Act will remove the referral route from courts¹ but adds: the police; local authorities; and integration joint boards to the list of bodies that could make a reference to Disclosure Scotland.

The grounds for making a referral are if the individual has in the course of doing regulated work, or otherwise has:

- (i) harmed a child/adult,
- (ii) placed a child/adult at risk of harm,
- (iii) engaged in inappropriate conduct involving pornography,
- (iv) engaged in inappropriate conduct of a sexual nature involving a child/protected adult, or
- (v) given inappropriate medical treatment to a child/protected adult

Vetting

Disclosure Scotland undertakes vetting of individuals when they apply to join the PVG Scheme and then undertakes ongoing monitoring of PVG scheme members. Should information come to light in the course of this work that indicates that it may be appropriate for the individual to be listed, that individual could then be considered for inclusion on the lists.

Ministers' decision

The test for whether to list an individual is whether ministers are satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children or protected adults. [Regulations](#) set out the procedure when considering an individual for listing.

An individual may appeal to a sheriff against ministers' decision to list the individual within three months of being listed.

¹ The 2020 Act will make the PVG scheme mandatory when undertaking regulated roles which means that any serious offending would be picked up by Disclosure Scotland without the need for a referral by the courts.

Automatic listing

Certain offences would lead to an individual automatically being listed. These are [set out in regulations](#) and are convictions of (or acquittals on the grounds of insanity) murdering a child or rape.

As of July 2021, around 18% of those listed were as a result of automatic listing. Ministers have never removed an individual from the barred list where the listing was resultant from automatic listing.²

Application to be removed from a list

Individuals may seek to be removed from lists should there have been a relevant change to the circumstances of the individual or if a prescribed period had passed.

[The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Applications for Removal from List and Late Representations\) Regulations 2010/179](#) provide for these prescribed periods. For the first application by an individual for removal from a 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. Subsequent applications for removal may be made ten years from the date of the previous application (regardless of the age of the individual at the date of listing).

Where an application is made, ministers will then determine whether they are satisfied that the applicant is no longer unsuitable to work with children or protected adults. The procedure for doing so is set out in the regulations referenced in the preceding paragraph.

The instrument

The [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Applications for Removal from List and Late Representations\) Amendment Regulations 2021](#) makes changes to how the periods are applied. These regulations would mean that for the first application by an individual for removal from a list, the period prescribed is ten years for a person who was aged 26 or over at the date of listing and five years for a person who was aged 25 or under at the date of listing.

The [policy note](#) accompanying the regulations stated—

“This change in the age threshold for the shorter prescribed period will enable individuals to move on from past youthful offending behaviour sooner (where public safety considerations support that) and potentially engage in work, education or volunteering. Increasing the age threshold for the shorter prescribed period is in keeping with the policy reforms achieved by the Disclosure (Scotland) Act 2020.”

² Personal communication with Disclosure Scotland.

The policy note also highlighted the policy change in the context of supporting care experienced young people. It said—

“The benefit of changing the age threshold was also understood within the context of the poorer outcomes faced by care experienced individuals compared to their peers and the challenges they face, particularly as an individual’s late teens and early twenties is a key period for moving into training, education or employment as well as other important life milestones ...

“The report of the Advisory Group on the Minimum Age of Criminal Responsibility acknowledged that care-experienced individuals are more likely to have interactions with the criminal justice than their peers. It is considered that enabling an individual to make an earlier application for removal can help remove barriers to better outcomes and opportunities, particularly for care-experienced individuals. Setting that age threshold at 25 or under recognises the significance of a person’s life at that time as they move from childhood to adulthood.”

The Scottish Government undertook a consultation on the disclosure system and PVG scheme in 2018. This consultation led to the 2020 Act. The consultation also had a set of questions on the topic of this instrument. The consultation said—

“Adolescence and early adulthood is statistically the peak period for offending. Evidence shows that most young people who offend do not continue to do so in adulthood and research demonstrates developmental issues usually play a large part in the behaviour of young people that leads to them acquiring convictions. We are therefore proposing the age threshold for the shorter prescribed period of 5 years should be raised to 25 years.”

Of the 221 responses to questions on this proposal, 54 were in favour of retaining the current threshold of 18 years, 56 preferred a threshold of 21 years, and 111 respondents preferred 25 years to be the threshold.

Recent legislation

The regulations could be considered as part of a suite of changes to the law governing childhood offending, the PVG scheme and disclosures.

In the past years the Parliament has passed the Management of Offenders (Scotland) Act 2019, the Age of Criminal Responsibility (Scotland) Act 2019, and the Disclosure (Scotland) Act 2020. Broadly, each of these pieces of legislation was concerned with seeking a balance between public protection and the right to move on from past offences.

Ned Sharratt, Senior Researcher (Education, Culture), SPICe Research
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