

Consideration of subordinate legislation by the Education, Children and Young People Committee

This note provides information about the [SSI 2021/380 \(C. 28\): The Disclosure \(Scotland\) Act 2020 \(Commencement No. 1 and Transitory Provision\) Regulations 2021](#). Subordinate legislation can be used to make changes to an existing Act of the Scottish Parliament, to amend current regulations or to commence (start) powers in other legislation.

1. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2021/380.
2. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

3. These regulations were laid before the Scottish Parliament on **1 November 2021**.
4. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **9 November 2021**. The Committee had no comments and the report produced by the Committee is [available here](#).
5. They will be considered by the Education, Children and Young People Committee at its meeting on **8 December 2021**.
6. If the committee wishes to produce a report on these regulations, it must do so by **6 December 2021**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

7. No.

Purpose of the regulations

8. This instrument commences a number of provisions in the 2020 Act. It also makes provision to:
 - (a) temporarily omit references to new provisions that are to be inserted into the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) by sections of the 2020 Act, until such time as those sections are brought into force; and
 - (b) modify the terminology used in certain new provisions of the PVG Act (that are being brought into force by this instrument) so that the existing terminology of “regulated work” with children and adults can continue to be used until such time as the relevant provisions in the 2020 Act (which use the new terminology of ‘regulated roles’) are brought into force.
9. A copy of the Scottish Government’s Policy Note is included in [Annexe A](#).

10. DPLRC had no comments to make on the Instrument.

Consultation

11. In April 2018 the Scottish Government published a consultation paper entitled "*The Protection of Vulnerable Groups and the Disclosure of Criminal Information*". This consultation ran for 12 weeks and attracted over 350 responses from organisations and individuals representing a wide variety of sectors across Scotland. During the consultation period, representatives from the Scottish Government held face-to-face engagement sessions with stakeholders throughout Scotland.

Impact Assessment

12. An equality impact assessment has been completed.

Financial Impact

13. The Scottish Government concluded that there will be no financial impact from the instrument.

Procedure

14. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
15. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
16. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40 day time period seeking an annulment of regulations.
17. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
18. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to (i.e. MSPs believe the regulations are OK as they are), then the regulations will remain in their current form.
19. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
20. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.

21. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.
22. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
23. The Committee is invited to consider the instrument.

Jane Davidson

Committee Assistant

Education, Children and Young People Committee

3 December 2021

Annexe A

Policy Note

The Disclosure (Scotland) Act 2020 (Commencement No. 1 And Transitory Provision) Regulations 2021

SSI 2021/380 (C. 28)

1. The above instrument is made in exercise of the powers conferred by sections 97(2) and (3) of the Disclosure (Scotland) Act 2020 (“the 2020 Act”).
2. Regulations made under section 97(2) of the 2020 Act are not subject to procedure. Regulations made under section 97(3) of the 2020 Act, enable the Scottish Ministers to make commencement regulations including transitional or transitory provision, are subject to negative procedure.
3. This instrument uses both powers and as such is subject to negative procedure.

Summary Box

This instrument commences a number of provisions in the 2020 Act.

It also makes provision to:

- (a) temporarily omit references to new provisions that are to be inserted into the Protection of Vulnerable Groups (Scotland) Act 2007 (“the PVG Act”) by sections of the 2020 Act, until such time as those sections are brought into force, and
- (b) modify the terminology used in certain new provisions of the PVG Act (that are being brought into force by this instrument) so that the existing terminology of “*regulated work*” with children and adults can continue to be used until such time as the relevant provisions in the 2020 Act (which use the new terminology of ‘*regulated roles*’) are brought into force.

Policy Objectives

Background

4. The 2020 Act received Royal Assent on 14 July 2020. It repeals Part 5 of the Police Act 1997 (“the 1997 Act”) as it applies in Scotland, and restates the law in relation to the disclosure of criminal history and other information. It also makes amendments to the PVG Act and the operation of the Protecting Vulnerable Groups Scheme (“the PVG Scheme”).
5. The 2020 Act is being implemented in stages. This instrument is the first instrument to commence provisions that will reform and update the PVG Act.

*Commencement of provisions**Regulation 2 and Schedule 1*

6. Regulation 2 specifies the appointed day for the coming into force of the provisions in Schedule 1.
7. Schedule 1 sets out the provisions to be commenced and the extent to which they are to be commenced.
8. Sections 78, 83, 84, 85, 87, 88(1) and (2) and 90 of the 2020 Act are to be commenced in full by the instrument and those sections amend and/or insert new provisions into the PVG Act and change how the PVG Scheme operates. The new provisions modify and extend existing powers available to the Scottish Ministers under the PVG Act.
9. Sections 63, 69, 89 and 93(c) of the 2020 Act are to be commenced for limited purposes by this instrument. The purposes are clearly specified in column 3 of the table in Schedule 1 of the instrument.
10. Paragraph 12 of Schedule 5 of the 2020 Act is to be commenced in full. The Schedule makes minor amendments to the PVG Act which mostly update outdated references and/or correct inaccuracies in various provisions. Paragraph 12(4) amends section 19(3) of the PVG Act to add Integration Joint Boards to the list of people from whom the Scottish Ministers can require information to enable or assist them decide whether to list an individual, and paragraph 12(10)(c) substitutes the definition of “police force” so that the PVG Act will take its meaning from the 2020 Act rather than from Part 5 of the 1997 Act (which will be repealed, in due course).

Transitory provisions

11. Sections 78, 83, 84 and 85 of the 2020 Act make amendments to, or insert new provisions into, the PVG Act. Within those amended or new provisions are references to other new sections of the PVG Act which have not yet been commenced by the 2020 Act. This instrument makes provision to temporarily omit or modify those references until such time as the relevant provisions are brought into force by the 2020 Act. The policy objective is to ensure that the provisions being brought into force by these Regulations will operate effectively during this period and do not make references to provisions which are not yet in force.

Regulation 3

12. Regulation 3 makes transitory provision as a result of the bringing into force of section 78 of the 2020 Act by this instrument.
13. Section 78 of the 2020 Act introduces a new section (section 59A) into the PVG Act. This new section gives the Scottish Ministers a power to decide not to continue considering an individual for listing, in either the children or adults’ list(s) (or both lists), where a decision to remove the individual from the PVG Scheme has already been taken.
14. Section 59A of the PVG Act makes reference to a new section 45B(7) of the PVG Act (which is to be inserted by section 72 of the 2020 Act) and a new subsection (3C) in section 30 of the PVG Act (which is to be inserted by section 77 of the 2020

Act).

15. Sections 72 and 77 of the 2020 Act are not yet in force and are not being brought into force by this instrument. Until such time as they are, regulation 3 of this instrument modifies section 59A of the PVG Act so that references to the new section 45B(7) and 30(3C) of the PVG Act are omitted.

Regulation 4

16. Regulation 4 makes transitory provision as a result of the bringing into force of section 83, 84 and 85 of the 2020 Act by this instrument. Those sections of the 2020 Act all make amendments to the PVG Act which refer to a person carrying out “regulated roles” with children or adults.

17. Currently, the PVG Act relies on the concept of “regulated work” as the eligibility criteria for PVG Scheme membership. The term is defined in section 91 and schedules 2 and 3 of the PVG Act. Stakeholder feedback since the PVG Scheme began operating in February 2011 has highlighted that the concept of ‘regulated work’ can be difficult to understand and navigate. For this reason, the 2020 Act will (once it is fully in force) substitute a new section 91 (and new schedules 2 and 3) into the PVG Act to replace the concept of ‘regulated work’ with the concept of ‘regulated roles’. Section 74 of the 2020 Act will make this substitution, but that section is not yet in force and is not being brought into force by this instrument.

18. Regulation 4 of this instrument provides, therefore, that until such time as section 74 of the 2020 Act is brought into force, any reference to carrying out “regulated roles” with children or adults in provisions that are being brought into force by this instrument are to be read as doing “regulated work” with children or adults. This ensures consistency with the current regime until such time as the rest of the 2020 Act is brought into force. The provisions of the PVG Act which should be read subject to this temporary modification are:

- (a) section 25(4A) of the PVG Act (application for removal from list) (as inserted by section 83(3) of the 2020 Act),
- (b) section 29(1)(b)(ii) of the PVG Act (removal from list) (as inserted by section 84(3) of the 2020 Act), and
- (c) section 29A(2)(d) of the PVG Act (appeals and removals: application of sections 18 to 20) (as inserted by section 85(3) of the 2020 Act).

Consultation

19. In April 2018 the Scottish Government published a consultation paper entitled “*The Protection of Vulnerable Groups and the Disclosure of Criminal Information*”. This consultation ran for 12 weeks and attracted over 350 responses from organisations and individuals representing a wide variety of sectors across Scotland. During the consultation period, representatives from the Scottish Government held face-to-face engagement sessions with stakeholders throughout Scotland.

20. Respondents supported a range of proposals in the consultation. The outcomes of the consultation directly informed the policy that will be delivered by the 2020 Act. A full list of

those consulted, and who agreed to the release of this information, is attached to the consultation report published on the Scottish Government website¹.

21. In addition, extensive informal consultation with stakeholders throughout Scotland and across a range of different sectors and interests and continues in relation to the implementation of the 2020 Act.

Impact Assessments

22. An Equality Impact Assessment was carried out prior to introduction of the Disclosure (Scotland) Bill². No additional impact assessments have been carried out in relation to the commencement of the various sections of the 2020 Act being brought into force by this instrument.

Financial Effects

23. The Minister for Children and Young People confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Children and Families Directorate
October 2021

¹ [Protection of Vulnerable Groups and the Disclosure of Criminal Information - Scottish Government - Citizen Space \(consult.gov.scot\)](#).

² [Disclosure \(Scotland\) Bill: equality impact assessment - gov.scot \(www.gov.scot\)](#).