

Education, Children and Young People Committee

9th Meeting, 2022 (Session 6), Wednesday 23 March 2022

The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022 (SSI 2022 / 34)

1. The Committee considered the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022 (SSI 2022 / 34) at its meeting on [9 March 2022](#).
2. At that meeting, several Committee Members asked for clarification on a number of points. The Committee agreed to write to the Minister for Children and Young People to seek more information.
3. The original paper that was considered on 9 March 2022 is provided at [Annexe A](#), along with the policy note.
4. The correspondence from the Convener to the Minister for Children and Young People, dated 9 March, is provided at [Annexe B](#) and the response from Minister for Children and Young People, dated 10 March, is included at [Annexe C](#).
5. The Committee considered the Minister's response, by correspondence, and agreed to note and to make no recommendations in respect of the instrument.
6. This instrument has been put onto the agenda for this meeting to allow the Committee to formally note that decision.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
16 March 2022

Annexe A

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

1. This note provides information about the Police Act 1997 and [the Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Fees\) \(Coronavirus\) Amendment Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/34.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **1 February 2022**.
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **9 February 2022**. The Committee had no comments and the report produced by the Committee is [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **9 March 2022**.
7. If the Committee wishes to produce a report on these regulations, it must do so by **21 March 2022**.

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

8. No.

Purpose of the regulations

9. This instrument amends the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020 (“the 2020 Regulations”).
10. The 2020 Regulations provide that disclosure checks relating solely to recruitment for coronavirus work in qualifying sectors are free. As a result of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland)

Act 2007 (Fees) (Coronavirus) (Amendment) Regulations 2021 (SSI 2021/71), the 2020 Regulations were amended to cease to have effect on 25 March 2022.

11. This SSI makes a further change to regulation 5(1) of the 2020 Regulations so that free checks relating solely to recruitment for coronavirus work in qualifying sectors will continue until 24 June 2022.

12. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).

Consultation

13. The policy note states that there has been no formal consultation. Disclosure Scotland held informal discussions with stakeholder organisations recruiting staff and volunteers to respond to the COVID-19 pandemic at the time when the 2020 Regulations

Impact Assessment

14. The policy note states that there are no equality, fairer Scotland or children's rights issues associated with these regulations.

Financial Impact

15. The policy note states that a Business and Regulatory Impact Assessment was prepared for the 2020 Regulations which noted a short-term negative financial effect on the Scottish Government, and short-term positive financial effect for local government, health boards, voluntary organisations and businesses in Scotland as they respond to the COVID-19 pandemic.

Procedure

16. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.

17. 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.

18. 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.

19. 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).

20. 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.

21. 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.
22. 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.
23. 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.
24. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
25. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
4 March 2022

POLICY NOTE

THE POLICE ACT 1997 AND THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (FEES) (CORONAVIRUS) AMENDMENT REGULATIONS 2022

SSI 2022/34

1. The above instrument was made in exercise of the powers conferred by sections 112(1)(b), 113A(1)(b), 113B(1)(b), 114(1)(b) and 116(1)(b) of the Police Act 1997 (“the 1997 Act”) and sections 70(1) and (2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”), and all other powers enabling them to do so. The instrument is subject to negative procedure in the Scottish Parliament.

Purpose of the instrument.

This SSI amends the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020 (“the 2020 Regulations”).

The 2020 Regulations provide that disclosure checks relating solely to recruitment for coronavirus work in qualifying sectors are free. As a result of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) (Amendment) Regulations 2021 (SSI 2021/71), the 2020 Regulations were amended to cease to have effect on 25 March 2022.

This SSI makes a further change to regulation 5(1) of the 2020 Regulations so that free checks relating solely to recruitment for coronavirus work in qualifying sectors will continue until 24 June 2022.

Policy Objectives

2. As part of Scottish Ministers’ response to the COVID-19 pandemic, a Ministerial decision suspended charging fees for disclosure products and applications to join the PVG Scheme when the application was for recruitment into a role responding to the pandemic. In the first instance that suspension ran from Monday 30 March to Monday 11 May 2020 and was subsequently extended until Thursday 25 June 2020.
3. The policy aim behind the suspension of fees was to ensure that individuals and organisations recruiting individuals responding to the COVID-19 pandemic were not burdened by the cost of disclosure checks, and the administrative process associated with the fee being paid.
4. While that aim was achieved, the future picture about the coronavirus disease

recurring remained uncertain. As such, Scottish Ministers made the 2020 Regulations which came into force on Friday 26 June 2020.

5. The objective behind the 2020 Regulations was to ensure that individuals and organisations recruiting individuals in qualifying sectors solely for the purpose of responding to the coronavirus pandemic do not have to pay for disclosure checks. To achieve that objective, the 2020 Regulations waived the prescribed fees of £18 or £59 payable for PVG disclosure requests, and the prescribed fee of £59 when applying to join the PVG Scheme (set in the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 (SSI 2010/167), and also set a fee of £0 in relation to disclosure applications made under the 1997 Act (set in the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) but only when the disclosure application or requests is solely in connection with recruitment into coronavirus work in qualifying sectors.
6. When the 2020 Regulations were first made, it was provided that they would end on 25 December 2021. Scottish Ministers subsequently decided that the end date should be extended, and to achieve that, amendment regulations (SSI 2020/376) were made in November 2020 which came into force on 26 December 2020, and which had the effect of changing the end date in the 2020 Regulations to 25 March 2021.
7. Due to the continued impact of coronavirus and the increase in cases in late 2020, the Scottish Ministers decided in January 2021 that the 2020 Regulations should be amended so that the 2020 Regulations ceased to have effect on 25 March 2022. That amendment was achieved by SSI 2021/71.
8. The omicron variant of coronavirus has led to an increase in coronavirus cases in Scotland during December 2021 and January 2022. In light of that increase, the Scottish Ministers have agreed that the expiry date in regulation 5(1) of the 2020 Regulations should be further extended. This SSI substitutes a new expiry date into regulation 5(1) of the 2020 Regulations so that they now cease to have effect on 24 June 2022.

Consultation

9. There has been no formal consultation about the amendment regulations. Disclosure Scotland held informal discussions with stakeholder organisations recruiting staff and volunteers to respond to the COVID-19 pandemic at the time when the 2020 Regulations were being considered.

Impact Assessments

10. There are no Equality, Fairer Scotland or Children's Rights issues associated with these Regulations.

Financial Effects

11. A Business and Regulatory Impact Assessment was prepared for the 2020 Regulations which noted a short-term negative financial effect on the Scottish Government, and short-term positive financial effect for local government, health boards, voluntary organisations and businesses in Scotland as they respond to the COVID-19 pandemic.

Scottish Government
Children and Families Directorate
January 2022

Annexe B



The Scottish Parliament
Pàrlamaid na h-Alba

Education Children and Young People Committee

Clare Haughey MSP
Minister for Children and Young People
Scottish Government

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9 March 2022

Dear Minister,

On 9 March, the Committee considered The Police Act 1997 and the Protection Of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022. These regulations amend the expiry date of the [Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Fees\) \(Coronavirus\) Regulations 2020](#). The 2020 Regulations provide for fees in relation to the disclosure and PVG systems be waived under certain circumstances.

Shortly before consideration of the regulations, the Committee received correspondence from the Scottish Private Nurseries Association seeking clarification on how this waiver affects private ELC providers.

The Committee notes that the 2020 regulations apply to “qualifying sectors” and childcare is one of these sectors. The Committee also notes that the waiver applies “solely in respect of” regulated work which involves the carrying out of any activities or functions in connection with the response to the incidence or transmission of coronavirus or the treatment of coronavirus disease. (See regulations 2 and 3 of the 2020 Regulations.)

The Committee agreed that I write to you to seek clarification on how these waivers apply or have applied to the ELC sector, and particularly the private, voluntary and independent sectors.

I would be grateful for a response by close of business on **Thursday 10 March**. I appreciate that this is a very short timescale, however; this would allow the Committee to consider the response within the timetable for these regulations.

Yours sincerely
Stephen Kerr MSP
Convener

Minister for Children and Young People
Clare Haughey MSP

Stephen Kerr
Convener
Education, Children and Young People

Our ref: qA636703
10 March 2020

The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022

Thank you for your letter of 9 March following the meeting of the Education, Children and Young People Committee yesterday at which the above Regulations were considered. Your letter mentioned correspondence received by the Committee from the Scottish Private Nurseries Association seeking clarification about the extent of the waiver of Disclosure Scotland fees.

The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2022 amend only the expiry date of the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Regulations 2020 (“the 2020 Regulations”) for an additional period of 3 months.

The 2020 Regulations, which have been in force since June 2020, make provision for free disclosure checks and applications to join the Protecting Vulnerable Groups Scheme (“the PVG Scheme”) for work relating to the coronavirus response. The scope of the sectors to which the fee waiver applies has not changed since the 2020 Regulations came into force.

The fee waiver applies to any application to join the PVG Scheme or disclosure request made under the relevant sections of the Protection of Vulnerable Groups (Scotland) Act 2007, or application for criminal conviction certificate, criminal record certificate, or enhanced criminal record certificate made under the relevant sections of the Police Act 1997 provided the Scottish Ministers are satisfied that (1) the application is in connection with coronavirus work in a qualifying sector and (2) the application is made solely in respect of that work.

Regulation 2 of the 2020 Regulations provides that “coronavirus work” means work of any kind, paid or unpaid, which involves the carrying out of any activities or functions in connection with the response to the incidence or transmission of coronavirus or the treatment of coronavirus disease and “qualifying sector” includes the childcare sector. This is the whole childcare sector including private, independent, voluntary and local authority providers.

There is additional guidance on Disclosure Scotland's website explaining this. An example of where the 2020 Regulations could apply in a nursery setting is in relation to an additional cleaning role that has been created solely to prevent the spread of coronavirus.

I hope that this reply is helpful.

Clare Haughey