

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

1. This note provides information about [The Police Act 1997 \(Criminal Records\) \(Scotland\) Amendment Regulations 2022](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2022/97.
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 17 March 2022.
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on **22 March 2022**.
6. The Delegated Powers and Law Reform Committee drew the instrument to the attention of the Parliament on reporting ground (j) for failure to lay the instrument in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
7. The Delegated Powers and Law Reform Committee was content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.
8. The report produced by the Delegated Powers and Law Reform Committee is [available here](#).
9. The instrument will be considered by the Education, Children and Young People Committee at its meeting on **20 April 2022**.
10. If the Committee wishes to produce a report on these regulations, it must do so by 9 May 2022.

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

11. No.

Purpose of the regulations

12. The instrument amends the Police Act (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) (“the 2010 Regulations”) to enable

requests for enhanced disclosures with suitability information in relation to children and adults to be made for individuals who are seeking to provide accommodation within premises that they also reside in (and those over the age of 16 years residing within the same premises) to Ukrainian nationals, and their immediate family members, who have left Ukraine in connection with the Russian invasion.

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

Consultation

14. The policy note states that no consultation has been carried out due to the pace at which a legislative response was needed in order to respond to the circumstances. It is intended that consultation and review will form part of the scheme as it rolls out.

Impact Assessment

15. The policy note states that there are no impact assessments for this order and that the Scottish Government is working with key partners to ensure effective coordination of plans to address the practical challenges of resettling those coming to Scotland.

Financial Impact

16. The fee that is charged for enhanced disclosure certificates issued in these circumstances will be met by the Scottish Government.

Procedure

17. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
18. 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.
19. 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.
20. 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).
21. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to, then the regulations will remain in their current form.

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

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
1 April 2022

POLICY NOTE

The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 SSI 2022/97

1. The above instrument was made in exercise of the powers conferred by sections 113B(2)(b), 113CA(1), 113CB(1) and 125(5) of the Police Act 1997. The instrument is subject to negative procedure. For the purposes of this note, the instrument will be referred to as the “2022 Amendment Regulations”.

Summary Box

The instrument amends the Police Act (Criminal Records) (Scotland) Regulations 2010 (SSI 2010/168) (“the 2010 Regulations”) to enable requests for enhanced disclosures with suitability information in relation to children and adults to be made for individuals who are seeking to provide accommodation within premises that they also reside in (and those over the age of 16 years residing within the same premises) to Ukrainian nationals, and their immediate family members, who have left Ukraine in connection with the Russian invasion.

Policy Objectives

2. The 2022 Amendment Regulations have been introduced by the Scottish Government in response to the “Homes for Ukraine” scheme (“the scheme”) announced by the UK Government and the Scottish Government’s intention to act as a “super sponsor” for those fleeing the war in Ukraine.
3. The 2022 Amendment Regulations amend the 2010 Regulations so that the appropriate level of vetting checks can be made in relation to individuals who are seeking to provide accommodation within premises that they also reside in (and those over the age of 16 years residing within the same premises) to Ukrainian nationals and their immediate family members under. Connected amendments to the statutory framework in relation to self and state disclosure are being made in the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022.
4. The Scottish Ministers consider that, as the scheme is likely to predominantly involve women and children fleeing the war, the safeguarding needs are paramount in order to ensure an adequate level of protection. Whilst recognising that the vast majority of people volunteering to accommodate Ukrainian refugees will present no risk of harm to them, the Scottish Ministers are aware from previous similar schemes that people may seek to exploit vulnerabilities in the system and seek opportunities to cause harm.

General background to state and self-disclosure

5. The disclosure regime in Scotland is comprised of two broadly aligned parts: self and state disclosure. The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013 (“the 2013 Order”) regulate self-disclosure the obligation placed on an individual to admit to previous convictions if asked by a prospective employer. Self-disclosure by the individual is verified by disclosures provided by the state. Disclosure Scotland, an executive agency of the Scottish Ministers, carries out functions on behalf of the Scottish Ministers under the Police Act and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) in relation to the disclosure of conviction information and other criminal history. The Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) set out the system for state disclosure of an individual’s previous criminal history.

A conviction may become spent if a certain length of time has elapsed since the date of conviction, with different periods of time applying to different disposals, as set out in section 5 of the 1974 Act.

6. Once a conviction is spent, an individual becomes a “protected person”. The 1974 Act provides that such a person is not normally required to disclose their spent conviction and that they generally cannot be prejudiced by its existence. The purpose

of this approach is to appropriately allow an individual to move away from their past criminal activity so that they can contribute effectively to society while also ensuring that people with a legitimate interest, such as employers, are able to understand an individual’s background.

7. The lowest level of disclosure certificate that can be issued under the Police Act 1997 is referred to as a basic disclosure. It is available to any individual for any purpose under section 112(1) of the Police Act and contains details of unspent convictions.

8. Section 4 of the 1974 Act sets out the effect of becoming a protected person. Broadly speaking, section 4 permits such persons not to disclose spent convictions when asked to do so (e.g. by a prospective employer), prevents others from asking about those spent convictions and prohibits reliance on spent convictions in certain legal proceedings or to prejudice an individual in an employment context. However, there are certain exceptions and exclusions to this general approach when the interests of public safety are paramount.

9. There are some categories of employment and proceedings to which the rules in the 1974 Act do not apply as it is considered appropriate that disclosure of spent conviction information continues to be available. This is because the employment positions and proceedings involve a high degree of sensitivity or there is an expectation of integrity or for the purposes of public protection. These positions and proceedings are subject to what are known as enhanced disclosures which contain details of unspent convictions and other relevant information.

The 2010 Regulations

10. The 2010 Regulations were made under the 1997 Act and make detailed provision in relation to the operation of the state disclosure system, including the information that is to be contained in enhanced disclosures and for what positions/in what circumstances they can be sought. They fall into two categories: positions whose sensitivity is not primarily around access to vulnerable groups; and those which relate to appointments, rather than work, where the suitability or otherwise of the individual to exercise power over vulnerable groups is a relevant concern. Regulations 10 to 13 make provision for the latter and also include suitability information relating to children and adults.

What the 2022 Amendment Regulations do

11. Regulation 2 of the 2022 Amendment amends regulation 10 of the 2010 Regulations to add two further categories of individual to the list of individuals, in relation to whom an exempted question may be asked for the purpose of an enhanced criminal record certificate with suitability information relating to children. Those are

- a. any individual who is seeking to provide accommodation (and who also resides in that accommodation) to a Ukrainian national, or the immediate family member of a Ukrainian national, who has left Ukraine in connection with the Russian invasion that took place on 24 February 2022 and
- b. any individuals who is over the age of 16 and who also resides in the accommodation being provided.

Regulation 2(3) makes equivalent amendments to regulation 12 of the 2010 Regulations.

12. This has the effect that, when an applicant to the scheme is offering to provide accommodation in the premises where they also reside, they (and any other person also residing there aged over 16) can be subject to an appropriate level of checks and an enhanced criminal record certificate with suitability information relating to children and adults can be issued under sections 113B, 113CA and 113CB of the Police Act 1997. The Scottish Ministers consider that this level of vetting is necessary to minimising any risk of placing refugees with an unsuitable individual while allowing for the scheme to achieve its aims.

Consultation

13. In ordinary circumstances, the Scottish Ministers would consult with stakeholders to inform the determinations that they make in this context. However, they have had to respond at speed in this situation, recognising the vulnerable status of the Ukrainian refugees in these circumstances. The Scottish Ministers are of the view that this enhanced level of vetting of individuals is a proportionate and necessary response to the circumstances.

14. No consultation has been carried out due to the pace at which a legislative

response was needed in order to respond to the circumstances. It is intended that consultation and review will form part of the scheme as it rolls out.

Impact Assessments

15. There are no impact assessments for this Order. The Scottish Government is working with key partners, such as COSLA, the Scottish Refugee Council and Police Scotland, to ensure effective coordination of plans to address the practical challenges of resettling those coming to Scotland.

Financial Effects

16. The fee that is charged for enhanced disclosure certificates issued in these circumstances will be met by the Scottish Government. This will ensure that organisations, such as local authorities and NGOs, are not burdened by the costs of disclosure checks and the administrative process associated with the fee being paid.

Scottish Government

Disclosure Scotland

17 March 2022