

The Protection of Vulnerable Groups (Scotland) Act 2007: Section 35(2) and (3)

**The Protection of Vulnerable Groups
(Scotland) Act 2007 (Removal of Barred
Individuals from Regulated Work)
Regulations 2010**

January 2016

Dear Sir or Madam

**THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007:
SECTION 35(2) and (3)**

**THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007
(REMOVAL OF BARRED INDIVIDUALS FROM REGULATED WORK)
REGULATIONS 2010**

This consultation paper discusses possible new regulations made under section 35(2) and (3) of the Protection of Vulnerable Groups (Scotland) Act 2007 which would revoke and replace the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010. We would welcome your views on the proposed options, particularly on the specific questions we have asked in the consultation paper.

It would be helpful to us if you could send your responses using the electronic format provided on the Scottish Government's website.

Please send your response with the completed [Respondent Information Form](#) (see "Handling your response" below) to Disclosure Scotland's Policy Team:

Online here: <https://consult.gov.scot/disclosure-scotland/vulnerable-groups>

By Email to: PVGActConsultationJanuary2016@disclosurescotland.gsi.gov.uk

We would prefer to receive electronic responses. However, you may wish to provide a response by hard copy and this can be done by addressing your response to:

Anna Bulik
Policy Team
Disclosure Scotland
Pacific Quay
Glasgow
G51 1DZ

We would be grateful if you would please clearly indicate in your response which parts of the Consultation you are responding to, as this will aid collation of the responses received.

This document, and other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.gov.scot/consultations>.

The Scottish Government has an email alert system for consultations <http://register.scotland.gov.uk>. This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). This system complements, but in no way replaces Scottish Government distribution lists. It is designed to allow stakeholders to keep up to date with all Scottish Government consultation activity,

and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the associated [Respondent Information Form](#) questionnaire as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly. All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002. We would therefore have to consider any request made to it under the Act for information relating to responses made to this exercise.

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available on the Scottish Government consultation web pages three weeks after consultation.

What happens next?

Following the closing date of the Consultation, all responses will be analysed and considered. We plan to issue a report on this consultation process in the summer of 2016. The responses and other available evidence will help us determine the option going forward.

Yours faithfully

Lynne McMinn
Policy Manager

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007: SECTION 35(2) and (3)

THE PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007 (REMOVAL OF BARRED INDIVIDUALS FROM REGULATED WORK) REGULATIONS 2010

Introduction

1. This short consultation paper seeks the views of organisations, employers and individuals on whether or not new regulations should be made under section 35(2) and (3) of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) once retrospective checking is complete in order to revoke and replace the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010.

2. Retrospective checking is the process of allowing organisations to make applications for PVG Scheme membership for those members of staff who are currently, and were also in 2011, doing work of a type which became regulated work with children or protected adults at PVG go-live on 28 February 2011.

3. At the outset of the programme of retrospective checking, Ministers gave a public commitment that regulations to set out the new prohibitions and requirements under section 35(2) and (3) of the 2007 Act would be consulted on with stakeholders prior to draft regulations being laid in Parliament. This consultation fulfils that commitment.

Background

4. In 2010, Ministers made regulations by a Scottish Statutory Instrument under section 35(2) and (3) of the 2007 Act (*the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010 (SSI 2010 No 244)*) (“the 2010 Regulations”).

5. The effect of the 2010 Regulations is that there are three conditions, each of which must be satisfied before the organisation commits the offence under section 35(4) of the 2007 Act. The conditions are:

- a person is doing regulated work for that organisation and the person is barred from doing that type of regulated work; and
- Disclosure Scotland has notified an organisation that a person doing regulated work for it has been barred from that type of regulated work; and
- the organisation permits that person to continue working for them and does not remove that person from doing that regulated work.

6. Retrospective checking began on 29 October 2012 and was scheduled to be completed by 29 October 2015. As of the end of October 2015, the vast majority of organisations and employers in Scotland have brought the relevant members of staff into the PVG Scheme. However, a small number of organisations have not yet achieved that target.

7. In light of that, the possibility of doing retrospective checking will remain open for another 6 to 8 months. During that time, the 2010 Regulations will remain in force. It is now expected that all retrospective checks will be completed by the end of July 2016. If the outcome of this consultation is that new regulations should be put in place, the new regulations will be laid in the Scottish Parliament after the 2016 summer recess.

Discussion

8. There are two options, explored in turn below, which Ministers would like you to consider as to how the offence will be taken forward. The options are:

1. Maintain the current prohibitions and requirements, that is, leave the existing 2010 Regulations in place. The 2010 Regulations are not time-limited and this course of action does not require any change to the law.
2. Create new prohibitions and requirements, which will require change in the law through new Regulations.

In addition to these two options, Ministers will consider other viable options identified by respondents to the consultation.

Option 1 – Maintain the current provisions

9. This would mean that the 2010 Regulations would remain in force and the circumstances described above would continue – the organisation would only commit the offence when advised by Disclosure Scotland that the person was barred and having been so advised, the organisation then failed to remove that person from doing regulated work.

10. The risk with this approach is that barred individuals, unchecked by their employer through PVG, could continue to do regulated work from which they are barred. Scottish Ministers may not be aware that the individual works for the employer concerned and therefore cannot provide a notification of barring. While the barred individual would likely commit an offence by continuing in regulated work, detection could be unlikely before an adverse incident occurred. Accordingly the safeguarding intentions underpinning the PVG Scheme, that unsuitable people should not do regulated work, may not be fully realised.

Question 1 – Do you think we should maintain the current provisions?

Option 2 – Create new prohibitions and requirements

11. The proposed new prohibitions and requirements would differ from the current provisions because an organisation would be prohibited from permitting a barred person to do regulated work, irrespective of whether or not Disclosure Scotland had told the organisation about the person being barred from doing that type of regulated work.

12. This is a marked change from the current provisions under which the offence can be committed only when an organisation continues to employ a barred individual in regulated work despite having been told by Disclosure Scotland that the individual is barred. In order not to commit an offence under these new provisions organisations will have to check that individuals who are already doing regulated work for them are not barred.

13. Ministers do not propose to make it an offence for an individual to do regulated work if they are not a scheme member as long as they are not barred from that type of work. It should be noted that such an offence would require primary legislation and would make PVG a mandatory scheme. Ministers do not have the power to provide for such an offence under the 2007 Act as it is currently enacted and will not seek to make provision in primary legislation.

Question 2 – Do you agree that there is a need for new prohibitions and requirements on organisations employing barred individuals?

Impact Assessments

14. The consultation options mentioned above are not likely to have an impact on the matters that would normally be covered in an Equality Impact Assessment (“EQIA”) or a Business and Regulatory Impact Assessment (“BRIA”). Therefore we believe that an EQIA or BRIA is not needed.

Question 3 – Do you agree that either of the options suggested will not impact on any of the protected equality groups?

Question 4 – Do you have any concerns that either of these options will have an impact on businesses?

Conclusion

15. Consultees are invited to comment on the two options above and to make further suggestions as appropriate. In doing that, respondents may wish to take account of the powers in section 35(3) of the 2007 Act which allows Ministers to impose different prohibitions or requirements on particular types of organisations, or particular kinds of regulated work.

16. Section 35 of the 2007 Act is reproduced at Appendix A.

Scottish Government
26 January 2015

Appendix A

The Protection of Vulnerable Groups (Scotland) Act 2007 – Section 35

Organisations not to use barred individuals for regulated work

It is an offence for an organisation to offer regulated work to an individual barred from that work.

- (1) Ministers may, by regulations, prohibit an organisation from permitting an individual to do, or require an organisation to remove an individual from, regulated work from which the individual is barred.
- (2) Regulations may in particular—
 - (a) impose prohibitions or requirements—
 - (i) in relation to particular types of organisations only,
 - (ii) in relation to particular kinds of regulated work only, or
 - (b) otherwise limit the purpose for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.
- (3) An organisation which fails to comply with regulations made under subsection (2) commits an offence.
- (4) An organisation commits an offence under subsection (1) if it offers regulated work to a barred individual who is already working for the organisation.
- (5) It is a defence for an organisation charged with an offence under subsection (1) or (4) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.
- (6) For the purposes of subsection (1), an organisation is not to be treated as having offered regulated work to an individual if the offer is subject to the organisation being satisfied (by virtue of information disclosed under Part 2 or otherwise) that the individual is suitable to do that work.

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately



1. Name/Organisation

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
<input type="text"/>		
Postcode	Phone	Email

3. Permissions - I am responding as...

Individual / Group/Organisation

Select appropriately

(a) Do you agree to your response being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes No

(b) Please tick **ONE** of the following boxes

(c) Do you agree to your organisation's **details** and **response** being made available to the public? (on the Scottish Government Consultation Hub)

Please tick as appropriate

Yes, publish my response and details
 No, do not publish my response

Form continues below.

[Redacted]

[Redacted]

Yes, make my response
and name all available

or

Yes, make my response
Available without my
name (anonymously)

[Redacted]

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Form continues below.

QUESTION 1

Do you think we should maintain the current provisions?

Yes No Don't know

Please provide reasons for why you agree or disagree with the proposal.

Comments

QUESTION 2

Question 2 – Do you agree that there is a need for new prohibitions and requirements on organisations employing barred individuals?

Yes No Don't know

Please provide reasons for why you agree or disagree with the proposal.

Comments

QUESTION 3

Question 3 – Do you agree that either of the options suggested will not impact on any of the protected equality groups?

Yes No Don't know

If No, what impact do you foresee?

Comments

QUESTION 4

Question 4 – Do you have any concerns that either of these options will have an impact on businesses?

Yes No Don't know

If yes, what are your concerns?

Comments

List of Consultees

Education

Principals and Vice Principals of Scotland's Colleges and Universities
The Open University in Scotland
Educational Institute of Scotland
General Teaching Council Scotland

Health

Health Boards
Special Health Boards
British Medical Association
General Dental Council
General Medical Council
General Pharmaceutical Council
Mental Welfare Commission
Royal College of Psychiatrists
Scottish Care
General Chiropractic Council
General Optical Council
General Osteopathic Council
Healthcare Improvement Scotland
Health Professions Council
NHS Tribunal
Nursing and Midwifery Council

Local Authorities

Chief Executives
Directors of Social Work
Directors of Education
Association of Directors of Education
Association of Directors of Social Work
CoSLA
SoLACE

Justice

Crown Agent, Crown Office and Procurator Fiscal Service
Chief Executive, Scottish Courts and Tribunal Service
Children's Hearings Scotland
Faculty of Advocates
Law Society of Scotland
Lord President and Lord Justice General
Parole Board for Scotland
Sheriffs Principal
Sheriffs' Association
Scottish Law Commission
Scottish Children's Reporter Administration

Police

Chief Constable of Police Scotland
Scottish Police Authority
Scottish Police Federation
Association of Scottish Police Superintendents
HM Inspectorate of Constabulary Scotland

Prisons

Chief Executive, Scottish Prison Service
HM Inspectorate of Prisons
Scottish Prison Officers Association

Other Organisations including Voluntary Organisations

Apex Scotland
Barnardos
The Care Inspectorate

Children 1st
Scottish Housing Regulator
Howard League for Penal Reform
OSCR
Recruit with Conviction
SACRO
Scottish Association for Mental Health
Scottish Commission for Human Rights
Scottish Commissioner for Children and Young People
Scottish Council for Voluntary Organisations
Scottish Social Services Council
Scottish Football Association
Sporta HR network
The Prince's Trust
Unlock
Victim Support Scotland
Volunteer Scotland Disclosure Services
Young Scot

In addition to the organisations mentioned above, we will e-mail the lead signatories of all organisations registered with Disclosure Scotland that have provided an email address to advise them about the consultation.



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