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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 423**

**The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015**

*Amendment of the 2007 Act*

**Amendment of the 2007 Act 2**

4.—(1) The 2007 Act is amended as follows.

(2) In section 46 (statement of scheme membership) subsection (3)(b) and the word “, and” immediately preceding it are repealed.

(3) In section 49 (vetting information) for subsection (1)(c) substitute—

“(c) information which—

(i) the chief officer of a relevant police force reasonably believes to be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and

(ii) in the chief officer’s opinion, ought to be included in the scheme member’s scheme record, and”.

(4) In section 51 (correction of inaccurate scheme record)—

(a) for subsection (5) substitute—

“(5) Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether—

(a) the chief officer still reasonably believes that information to be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and

(b) in the chief officer’s opinion, that information still ought to be included in the scheme member’s scheme record.”; and

(b) after subsection (6) insert—

“(7) This section does not apply to vetting information included in a scheme record which could be the subject of an application under section 52A(2).”.

(5) After section 51 (correction of inaccurate scheme record) insert—

**“52ZA Procedure following correction of inaccurate scheme record**

(1) This section applies where—

(a) on receiving a copy of a scheme record under section 52(3)(b) or (5), a scheme member requests that Ministers correct information included in the record,

(b) Ministers correct the information, and

(c) as a result of the correction, the scheme record includes vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—

- (i) a spent conviction, but
  - (ii) not a protected conviction.
- (2) Section 51(2) does not apply in relation to the corrected information.
- (3) Ministers must treat the request for disclosure to which the copy of the scheme record relates as if—
  - (a) it has not yet been complied with, and
  - (b) it had been made on the day on which the information is corrected.”.
- (6) For section 52 (disclosure of scheme records) substitute—

**“52 Disclosure of scheme records**

- (1) This section applies in relation to a scheme member’s scheme record if—
  - (a) disclosure conditions A to D are satisfied, and
  - (b) section 53 does not require Ministers to disclose the scheme member’s short scheme record.
- (2) Subsection (3) applies where the scheme record does not include vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—
  - (a) a spent conviction, but
  - (b) not a protected conviction.
- (3) Ministers must—
  - (a) disclose the scheme record, and
  - (b) send a copy of the scheme record to the scheme member.
- (4) Subsections (5) to (9) apply where the scheme record includes vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—
  - (a) a spent conviction, but
  - (b) not a protected conviction.
- (5) Ministers must send a copy of the scheme record to the scheme member (who may make an application to the sheriff under section 52A(2)).
- (6) Subsection (7) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member does not intend to make an application under section 52A(2), or
  - (b) that period expires without the scheme member having notified Ministers that the scheme member does intend to make such an application.
- (7) Ministers must disclose the scheme record as soon as possible after receiving the notification or, as the case may be, the expiry of that period.
- (8) Subsection (9) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member intends to make an application under section 52A(2), but
  - (b) either—
    - (i) the scheme member does not make such an application before the end of the period mentioned in section 52A(3)(b), or

(ii) the scheme member does make such an application but abandons it before it is determined by the sheriff.

(9) Ministers must not disclose the scheme record (and the request for disclosure of the record is to be treated as having been withdrawn).

### **52A Review of vetting information in scheme record**

(1) This section applies where a scheme member receives a copy of the scheme member's scheme record under section 52(5).

(2) The scheme member may apply to the sheriff for an order requiring Ministers to remove from the scheme record the vetting information referred to in section 52(4).

(3) An application under subsection (2)—

(a) may only be made if the scheme member notifies Ministers before the end of the period of 10 working days beginning with the date on which the scheme record was sent to the scheme member under section 52(5) of an intention to make the application,

(b) must be made before the end of the period of 3 months beginning with the date on which that notification is given, and

(c) must not relate to vetting information about a conviction which has previously been the subject of an application which—

(i) was refused under subsection (6)(b), and

(ii) related to the same type of regulated work.

(4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).

(5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.

(6) In determining an application under subsection (2) the sheriff must—

(a) if satisfied that the vetting information is not relevant in relation to a type of regulated work in relation to which the scheme member participates in the Scheme, allow the application,

(b) otherwise, refuse the application.

(7) The sheriff may allow the application in part where it relates to vetting information about two or more convictions.

(8) The decision of the sheriff on an application is final.

(9) Where the sheriff allows the application, the sheriff must order Ministers to remove the information from the scheme record in relation to a type of regulated work in relation to which the scheme member participates in the Scheme.

(10) On the determination of an application under subsection (2), Ministers must treat the disclosure request to which the application relates as if it had been made under section 52 on the day after the date on which the determination is made.”

(7) In section 53 (disclosure of short scheme records)—

(a) in subsection (1) before “Ministers” insert “Subject to subsection (1A),”;

(b) after subsection (1) insert—

“(1A) But Ministers must treat the request as a request for a disclosure of the member's scheme record under section 52 if the scheme record includes vetting information.”;

- (c) in subsection (3) for paragraphs (b) to (e) substitute—
  - “(b) says that no vetting information is included in the scheme member’s scheme record.”; and
- (d) subsection (4) is repealed.
- (8) After section 57 (disclosure restrictions) insert—

**“57A Meaning of “conviction” and “protected conviction”**

For the purposes of sections 52 and 52A—

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, and “spent conviction” is to be construed in accordance with that Act,

“protected conviction” is to be construed in accordance with section 126ZA of the 1997 Act.”.