
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 52

**POLICE
CHILDREN AND YOUNG PERSONS
PROTECTION OF VULNERABLE ADULTS**

**The Police Act 1997 and the Protection of Vulnerable
Groups (Scotland) Act 2007 Remedial Order 2018**

Made - - - - 8th February 2018

Coming into force - - 17th February 2018

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001⁽¹⁾ (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this Order to be necessary or expedient in consequence of provisions in the Police Act 1997⁽²⁾ and the Protection of Vulnerable Groups (Scotland) Act 2007⁽³⁾, insofar as they require automatic disclosure of certain convictions, being incompatible with Convention rights⁽⁴⁾.

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 13(3) of the 2001 Act the Scottish Ministers laid before the Scottish Parliament a copy of the proposed draft Order, together with a statement of their reasons for proposing to make the Order, gave such public notice of the contents of the proposed draft Order as they considered appropriate, invited observations on it and had regard to written observations submitted.

In accordance with section 13(4) of the 2001 Act the Scottish Ministers laid before the Scottish Parliament a statement summarising all the observations to which they had regard under

(1) 2001 asp 7.

(2) 1997 c.50. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(3) 2007 asp 14.

(4) The term “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998 (c.42). In the case of *P v Scottish Ministers* [2017] CSOH 33, the court declared that, insofar as they require automatic disclosure of the disposal of the petitioner’s case before the Children’s Hearing on 14 October 1987, the provisions contained in the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order (S.S.I. 2015/423) (“the legislation”) unlawfully and unjustifiably interfered with the petitioner’s rights under and in terms of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and that the Scottish Ministers did not, to that extent, have power to make the provisions. The court made an order in terms of section 102(2)(b) of the Scotland Act 1998, suspending the effect of the declarator, except in relation to the petitioner, for a period of nine months or such shorter period as may be required for the defect in the legislation to be corrected and for that correction to take effect. The legislation amended both the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007.

section 13(3)(c) and specifying the changes which they made in the draft Order and the reasons for them.

In accordance with section 13(2) of the 2001 Act a draft of this Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018.

(2) This Order comes into force on 17th February 2018.

Interpretation²

2. In this Order—

“the 1997 Act” means the Police Act 1997;

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007; and

“the relevant date” means 17th February 2018.

Amendment of the 1997 Act

3.—(1) The 1997 Act is amended as follows.

(2) In section 116ZA (copies of criminal record certificate or enhanced criminal record certificate)⁽⁵⁾—

(a) in subsection (1)(b), for the words from “for” to the end substitute “which falls within subsection (1A)”;

(b) after subsection (1) insert—

“(1A) A conviction falls within this subsection if it is—

(a) a conviction for an offence listed in schedule 8A which is a spent conviction and either—

(i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of the conviction, or

(ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction,

(b) a conviction for an offence listed in schedule 8B which is—

(i) a spent conviction, but

(ii) not a protected conviction.”;

(c) in subsection (3)(b), for the words from “for” to the end substitute “which falls within subsection (1A)”.

(3) In section 116ZB (application for an order for a new criminal record certificate or enhanced criminal record certificate)⁽⁶⁾, in subsection (1)(b), for the words from “for” to the end substitute “which falls within section 116ZA(1A)”.

⁽⁵⁾ Section 116ZA was inserted by article 3(4) of [S.S.I. 2015/423](#).

⁽⁶⁾ Section 116ZB was inserted by article 3(4) of [S.S.I. 2015/423](#).

(4) The title of schedule 8A (offences which must always be disclosed)(7) becomes “Offences which must be disclosed unless a sheriff orders otherwise”.

(5) In schedule 8B (offences which are to be disclosed subject to rules)(8)—

(a) in paragraph 75, for “and” substitute “or”;

(b) in paragraph 81, sub-paragraph (c) and the word “and” immediately preceding it are repealed.

Amendment of the 2007 Act 2

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

(2) In section 52ZA (procedure following correction of inaccurate scheme record)(9)—

(a) in subsection (1)(c), for the words from “for” to the end substitute “which falls within subsection (4)”;

(b) after subsection (3) insert—

“(4) A conviction falls within this subsection if it is—

(a) a conviction for an offence listed in schedule 8A of the 1997 Act which is a spent conviction and either—

(i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction, or

(ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction,

(b) 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.”.

(3) In section 52 (disclosure of scheme records)(10)—

(a) in subsection (2), for the words from “for” to the end substitute “which falls within subsection (2A)”;

(b) after subsection (2) insert—

“(2A) A conviction falls within this subsection if it is—

(a) a conviction for an offence listed in schedule 8A of the 1997 Act which is a spent conviction and either—

(i) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of conviction, or

(ii) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of conviction,

(b) 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.”;

(c) in subsection (4), for the words from “for” to the end substitute “which falls within subsection (2A)”.

(7) Schedule 8A was inserted by article 3(8) of [S.S.I. 2015/423](#).

(8) Schedule 8B was inserted by article 3(8) of [S.S.I. 2015/423](#).

(9) Section 52ZA was inserted by article 4(5) of [S.S.I. 2015/423](#).

(10) Section 52 was substituted by article 4(6) of [S.S.I. 2015/423](#).