

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
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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