POLICY NOTE

THE POLICE ACT 1997 (CRIMINAL RECORDS) (HOMES FOR UKRAINE SPONSORSHIP SCHEME) (SCOTLAND) AMENDMENT REGULATIONS 2022

SSI 2022/158

The above instrument was made in exercise of the powers conferred by sections 113B(2)(b), 113CA(1), 113CB(1) and 125(1) and (5) of the Police Act 1997. The instrument is subject to negative procedure.

These Regulations amend 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 all individuals who are offering to provide accommodation (and those individuals over the age of 16 years where they, and the individual offering the accommodation, reside within the accommodation to be provided) to a person who has been granted permission to enter into or to stay in the United Kingdom under the Homes for Ukraine Sponsorship Scheme.

Policy Objectives

1. These Regulations have been introduced by the Scottish Government in response to the Homes for Ukraine Sponsorship 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. These Regulations are the second instrument to amend the 2010 Regulations in response to the scheme. The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (SSI 2022/97)[1] was made on 17 March 2022 and came into force on 24 March 2022.

2. The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 made provision to enable enhanced disclosures with suitability information in relation to children and adults for individuals offering to provide accommodation within premises that they also reside in (and those individuals over the age of 16 years also residing within the same premises) to Ukrainian nationals, and their immediate family members, who had left Ukraine in connection with the Russian invasion.

3. The amendments in these Regulations substitute the amendments made by the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022, reflecting the developing and current policy position of the Scottish Government.

4. These Regulations make provision so that enhanced disclosures with suitability information relating to children and adults can be requested when any individual whose suitability to provide accommodation (which no longer is restricted to premises in which the individual also resides), to a person who has permission to enter into or stay in the United Kingdom in relation to the Homes for Ukraine Sponsorship Scheme, is being assessed. Connected and similar amendments to the statutory framework in relation to self-disclosure (see paragraph 10 for more detail on the operation of self and state

[1] The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (legislation.gov.uk)

disclosure) are being made by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Home for Ukraine Sponsorship Scheme) Amendment Order 2022.

5. These Regulations also take account of the immigration status of displaced Ukrainians arriving in the United Kingdom through the Homes for Ukraine Scheme.

6. 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.

7. In the private sector, different types of housing can be considered as suitable housing options as part of the scheme including individuals offering spare rooms within their own homes and individuals offering whole properties, such as second home/holiday lets/empty homes. Second homes etc. are particularly useful as they provide self-contained accommodation. This is likely to be more attractive for accommodating families or vulnerable people in particular and, as there is no requirement to share with others, placements are more likely to be sustained as the risk of tenant/host relationship breakdowns through living in close proximity is reduced. In addition, such properties do not exacerbate an already pressured private rented sector (unlike landlords offering empty properties to the scheme which will reduce private rented sector housing stock and potentially put further pressure on market rents).

8. The Scottish Ministers consider that the level of disclosure checks that an individual offering to provide accommodation asked to undertake as part of the suitability assessment for the scheme should be the same no matter the type of accommodation offered.

9. Occupancy arrangements in relation to second homes etc. under the Homes for Ukraine Scheme will not be the same as standard tenancy agreements, and individuals offering whole properties under the scheme will not have entry to their property restricted by the terms of any lease. The Scottish Government considers that there is a significant risk that the scheme could attract individuals who are seeking to exploit this opportunity to gain access to vulnerable people. Further examination of the risks and emerging evidence of those risks materialising in other parts of the UK, as well as information of concern being disclosed on those checks already happening on those offering rooms, has led the Scottish Ministers to conclude an enhanced disclosure with suitability information relating to children and adults on everyone offering accommodation through the scheme (whether that be within personal homes or via second properties) offers the appropriate level of safeguarding in these circumstances.

<u>General background to state and self-disclosure</u>

10. 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 or declare previous convictions if asked in certain circumstances. Self-disclosure by the

individual is then 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 1997 ("the 1997 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 1997 Act and the 2007 Act set out the statutory framework for state disclosure of an individual's previous criminal history.

11. 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. 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.

12. 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 in certain circumstances (e.g. when asked by a prospective employer), prevents others from asking about spent convictions and prohibits reliance on spent convictions in certain legal proceedings or to prejudice an individuals in an employment context. However, there are certain exceptions and exclusions to this general approach when the interests of public safety are paramount.

13. 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. Enhanced disclosures with suitability information relating to children and adults provides that, where an applicant for enhanced disclosure is barred from regulated work with children or protected adults, the information on the disclosure includes the details of the barring.

The 2010 Regulations

14. 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. Those positions/circumstances 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 12 make provision for the latter and also include suitability information relating to children and adults.

What the Homes for Ukraine Amendment Regulations do

15. Regulation 2(2) of these Regulations amends regulation 10 of the 2010 Regulations by substituting new paragraphs (2)(k) and (2)(l) so that the categories of individual 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 now include

    a) an individual whose suitability to provide accommodation, to a person who has permission to enter into or stay in the United Kingdom granted under the immigration rules laid down under section 3(2) of the Immigration Act 1971 in relation to the Homes for Ukraine Sponsorship Scheme, is being assessed.

    b) any other individual over the age of 16 who resides within the same accommodation as an individual whose suitability to provide accommodation is being assessed, and the individual being assessed resides in the accommodation being provided.

16. Regulation 2(3) makes equivalent amendments to regulation 12 of the 2010 Regulations by substituting new paragraphs (2)(d) and (2)(e).

17. These substitutions have the effect that, when an individual is offering to provide accommodation, to a person who has been granted permission to enter or stay in the United Kingdom under the scheme, they 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. Where the individual offering the accommodation is offering a room in their own home, any other individual over the age of 16 years also residing in the household with that individual, can also be subject to the same level of check. The Scottish Ministers consider that this level of vetting is necessary in these circumstances to minimise any risk of displaced Ukrainians being accommodated by an unsuitable individual while allowing for the scheme to continue to achieve its aims.

Consultation

18. In ordinary circumstances, the Scottish Ministers would consult with stakeholders to inform the determinations that they make in this context. However, they are continuing to respond at speed in this situation, recognising the vulnerable status of the displaced Ukrainians in these circumstances and the urgent need to them to be accommodated. The Scottish Ministers are of the view that this enhanced level of vetting of individuals is a proportionate and necessary response to the circumstances.

19. No consultation has been carried out due to the pace at which a legislative response was needed in order to respond to the circumstances. However, it is intended that consultation and review will form part of the scheme as continues to develop.

Impact Assessments

20. No impact assessments for these Regulations have been published yet but they will follow in due course. 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

21. The fee that is charged for enhanced disclosure certificates in relation to those offering to provide accommodation under the scheme 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
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