



# Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 8th March 2007 and received Royal Assent on 18th April 2007**

An Act of the Scottish Parliament to bar certain individuals from working with children or certain adults; to require the Scottish Ministers to keep lists of those individuals; to make further provision in relation to those lists; to establish a scheme under which information about individuals working or seeking to work with children or certain adults is collated and disclosed; to amend Part 5 of the Police Act 1997; to amend the meaning of school care accommodation service in the Regulation of Care (Scotland) Act 2001; and for connected purposes.

VALID FROM 18/04/2010

## **PART 1** **S**

### THE LISTS

VALID FROM 28/02/2011

#### *Duty to keep lists*

#### **1** **Duty of Scottish Ministers to keep lists** **S**

- (1) Ministers must keep—
  - (a) the children's list, and
  - (b) the adults' list.
- (2) An individual may be listed in—
  - (a) the children's list,

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- (b) the adults' list, or
  - (c) both lists,
- only in accordance with this Part.

(3) In this Act, “listed”, in relation to an individual, means included in the children's list or, as the case may be, the adults' list, and references to listing an individual are to be construed accordingly.

### Referrals

VALID FROM 28/02/2011

## 2 Referral ground **S**

The referral ground—

- (a) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with children, is that the individual has, whether or not in the course of the individual's work—
  - (i) harmed a child,
  - (ii) placed a child at risk of harm,
  - (iii) engaged in inappropriate conduct involving pornography,
  - (iv) engaged in inappropriate conduct of a sexual nature involving a child, or
  - (v) given inappropriate medical treatment to a child,
- (b) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with adults, is that the individual has, whether or not in the course of the individual's work—
  - (i) harmed a protected adult,
  - (ii) placed a protected adult at risk of harm,
  - (iii) engaged in inappropriate conduct involving pornography,
  - (iv) engaged in inappropriate conduct of a sexual nature involving a protected adult, or
  - (v) given inappropriate medical treatment to a protected adult.

## 3 Reference following disciplinary action etc. **S**

- (1) An organisation must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if—
  - (a) it has, on the referral ground—
    - (i) dismissed the individual, or
    - (ii) transferred the individual to a position which does not involve that type of regulated work, or
  - (b) it would or might have dismissed or so transferred the individual on the referral ground if the individual had not—
    - (i) otherwise stopped doing regulated work, or
    - (ii) been working for the organisation for a fixed term.

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- (2) An organisation must give Ministers any prescribed information which it holds in relation to an individual who has been doing regulated work if—
- (a) the individual stops doing the regulated work in circumstances not falling within subsection (1),
  - (b) the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work, and
  - (c) the organisation considers that, if—
    - (i) it had been aware of that information at that time, and
    - (ii) the individual had not stopped doing regulated work,it would or might have dismissed the individual on the referral ground.
- (3) In subsections (1) and (2)—
- (a) an individual suspended from regulated work is not to be treated as having stopped doing that work, and
  - (b) the duty to give Ministers information in relation to the temporary transfer of an individual to another position applies only if the organisation subsequently makes a final decision not to permit the individual to resume the type of regulated work from which the individual was transferred.
- (4) This section does not apply to personnel suppliers (see sections 4 and 5).

#### **4 Reference by employment agency S**

A personnel supplier which carries on an employment agency must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if it has, on the referral ground, decided—

- (a) not to do any further business with the individual, or
- (b) not to—
  - (i) find the individual further regulated work, or
  - (ii) offer or supply the individual for such work.

#### **5 Reference by employment business S**

A personnel supplier which carries on an employment business must give Ministers any prescribed information which it holds in relation to an individual whom it has offered or supplied for regulated work if—

- (a) it has dismissed the individual on the referral ground,
- (b) the individual has otherwise stopped doing regulated work in circumstances in which it would or might have dismissed the individual on the referral ground if the individual had not so stopped, or
- (c) it has, on the referral ground, decided not to offer or supply the individual for further regulated work.

#### **6 Reference relating to matters occurring before provisions come into force S**

- (1) The duties in sections 3 to 5 do not apply where the individual stopped doing the regulated work (or, as the case may be, the organisation's opinion was formed) before the date on which the provisions imposing the duties come into force.

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- (2) But an organisation may give Ministers any prescribed information which it holds in relation to such an individual if it wishes to do so.

## 7 Reference by court **S**

- (1) Where a court convicts an individual of a relevant offence, it must give Ministers any prescribed information that it holds in relation to the convicted individual.
- (2) Subsection (3) applies where a court—
- (a) convicts an individual of an offence (other than a relevant offence), and
  - (b) is satisfied that it may be appropriate for the individual to be listed in the children's list or in the adults' list (or in both lists).
- (3) Where this subsection applies, the court may give Ministers any prescribed information that the court holds in relation to the convicted individual.
- (4) This section applies in relation to offences committed before and after this section comes into force.

## 8 Reference by certain other persons **S**

- (1) A person to whom this section applies may give Ministers any prescribed information that the person holds in relation to an individual who is or has been doing regulated work if—
- (a) on the basis of information obtained by the person in the exercise of relevant functions, the person considers that the referral ground is met (regardless of whether the conduct to which the information relates occurred before or after this section comes into force), and
  - (b) prescribed information in relation to the individual has not been given to Ministers under sections 3 to 6 in respect of the conduct to which the information relates.
- (2) This section applies to—
- The General Teaching Council for Scotland
  - The Registrar of Chiropractors
  - The registrar of dentists and dental care professionals
  - The registrar of the General Medical Council
  - The registrar of the General Optical Council
  - The Registrar of health professionals
  - The Registrar of nurses and midwives
  - The Registrar of Osteopaths
  - The registrar of pharmaceutical chemists
  - The Scottish Commission for the Regulation of Care
  - The Scottish Social Services Council
  - Any other person specified in an order made by Ministers
- (3) For the purposes of this section, “relevant functions” means—
- (a) in relation to the General Teaching Council for Scotland, such functions as are conferred on it by virtue of the Teaching Council (Scotland) Act 1965 (c. 19),

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- (b) in relation to registrars mentioned in subsection (2), such functions as are conferred on them by virtue of any enactment,
- (c) in relation to the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, such functions as are conferred on the Commission or, as the case may be, the Council by virtue of the 2001 Act and any other enactment, and
- (d) in relation to a person specified in an order made under subsection (2), such functions as are specified by the order.

VALID FROM 28/02/2011

## 9 Failure to refer: offence **S**

An organisation which fails, without reasonable excuse, to comply with a duty imposed by any of sections 3 to 5 within 3 months of the date on which the duty arose is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on a conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

VALID FROM 28/02/2011

### *Consideration whether to list*

## 10 Consideration whether to list: organisational referrals etc. **S**

- (1) This section applies
  - (a) <sup>[F1]</sup>where—
    - <sup>[F2]</sup>(i) prescribed information relating to an individual has been given to Ministers in pursuance of sections 3 to 6 or 8, and
    - <sup>[F2]</sup>(ii) they are satisfied that the information was not given for vexatious or frivolous purposes<sup>[F3]</sup>, or
  - (b) where information relating to an individual has been given to Ministers by the Independent Safeguarding Authority]
- (2) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the children's list, they must consider listing the individual in that list.
- (3) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the adults' list, they must consider listing the individual in that list.
- (4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work <sup>[F4]</sup>(if any) which the individual is or has been doing.

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### Textual Amendments

- F1** Words in s. 10(1)(a) renumbered as s. 10(1)(a) (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)), arts. 1(2), 4(2)(a)
- F2** S. 10(1)(a)(b) renumbered as s. 10(1)(a)(i)(ii) (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **4(2)(a)**
- F3** S. 10(1)(b) and word inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **4(2)(b)**
- F4** Words in s. 10(4) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **4(3)**

## 11 Consideration whether to list: court referrals **S**

- (1) This section applies where prescribed information relating to an individual has been given to Ministers in pursuance of section 7.
- (2) Where the individual has been convicted of a relevant offence, Ministers must consider listing the individual in the children's list.
- (3) In any other case, Ministers must consider listing the individual in the children's list where they are satisfied that—
  - (a) the information indicates that it may be appropriate for the individual to be included in that list, and
  - (b) the individual does, has done or is likely to do regulated work with children.
- (4) Ministers must consider listing the individual in the adults' list where they are satisfied that—
  - (a) the information indicates that it may be appropriate for the individual to be included in that list, and
  - (b) the individual does, has done or is likely to do regulated work with adults.

## 12 Consideration whether to list: vetting information etc. **S**

- (1) Ministers must consider listing an individual in the children's list if they are satisfied that—
  - (a) either—
    - (i) vetting information about the individual, or
    - (ii) information received when considering whether to list the individual in the adults' list,
 indicates that it may be appropriate for the individual to be included in the children's list, and
  - (b) the individual does, has done or is likely to do regulated work with children.
- (2) Ministers must consider listing an individual in the adults' list if they are satisfied that—
  - (a) either—
    - (i) vetting information about the individual, or

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- (ii) information received when considering whether to list the individual in the children's list, indicates that it may be appropriate for the individual to be included in the adults' list, and
- (b) the individual does, has done or is likely to do regulated work with adults.

### 13 Consideration whether to list: inquiries **S**

- (1) This section applies where—
  - (a) a relevant inquiry report names an individual who is or has been doing regulated work, and
  - (b) it appears to Ministers from the report that the person who held the inquiry found that the referral ground was met at a time when the individual was doing regulated work (whether that time was before or after this section comes into force).
- (2) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the children's list, they may consider listing the individual in the children's list.
- (3) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the adults' list, they may consider listing the individual in the adults' list.
- (4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work which the individual was doing.

#### *Inclusion in list*

### 14 Automatic listing **S**

- (1) Ministers must list an individual in the children's list where it appears to them that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.
- (2) Ministers must list an individual in the adults' list where it appears to them that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.
- (3) It is for Ministers to specify by order criteria for the purposes of subsections (1) and (2).
- (4) Criteria which may be so specified include—
  - (a) that an individual has been convicted of, or cautioned in relation to, an offence of a specified description, including offences under—
    - (i) the law of England, Wales, Northern Ireland, the Channel Islands or the Isle of Man,
    - (ii) section 70 of the Army Act 1955 (c. 18),
    - (iii) section 70 of the Air Force Act 1955 (c. 19),
    - (iv) section 42 of the Naval Discipline Act 1957 (c. 53),
    - (v) section 42 of the Armed Forces Act 2006 (c. 52),

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- (b) that an order of a specified description imposing requirements about an individual's conduct has been made.

VALID FROM 28/02/2011

**15 Inclusion in children's list after consideration S**

Ministers must list an individual in the children's list if, after considering whether to do so, they are satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children.

VALID FROM 28/02/2011

**16 Inclusion in adults' list after consideration S**

Ministers must list an individual in the adults' list if, after considering whether to do so, they are satisfied by information relating to the individual's conduct that the individual is unsuitable to work with protected adults.

*Information relevant to listing decisions*

**17 Information relevant to listing decisions S**

- (1) Ministers must, before making a decision under section 15 or 16—
  - (a) give the individual whom they are considering whether to list an opportunity to make representations as to why the individual should not be listed, and
  - (b) consider any such representations.
- (2) Ministers may, when deciding whether to list an individual, also consider—
  - (a) any information which caused them to consider listing the individual,
  - (b) any information relating to the individual which they obtain—
    - (i) in pursuance of a requirement made under any of sections 18 to 20, or
    - (ii) by performing their functions in relation to the Scheme, and
  - (c) any other information which they think relevant.
- (3) An individual who is given an opportunity to make representations under subsection (1) must be given the opportunity to make representations in relation to all of the information on which Ministers intend to rely in deciding whether to list the individual.
- (4) The opportunity to make representations under subsection (1) does not include the opportunity to make representations that any relevant finding of fact was wrongly made.
- (5) A relevant finding of fact is a finding of fact—
  - (a) made in legal proceedings,



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- (b) made in a relevant inquiry report (other than a report relating to an inquiry of the type mentioned in sub-paragraph (ii) of section 31(2)(a)),
  - (c) made in proceedings before one of the following bodies or any of its committees—
    - (i) the Council of the Pharmaceutical Society of Great Britain,
    - (ii) the General Chiropractic Council,
    - (iii) the General Dental Council,
    - (iv) the General Medical Council,
    - (v) the General Optical Council,
    - (vi) the General Osteopathic Council,
    - (vii) the General Teaching Council for Scotland,
    - (viii) the Health Professions Council,
    - (ix) the Nursing and Midwifery Council,
    - (x) the Scottish Commission for the Regulation of Care,
    - (xi) the Scottish Social Services Council, or
  - (d) made by any other person, or in any other circumstance, specified by order made by Ministers.
- (6) Subsections (1) and (3) do not apply if Ministers do not know and cannot reasonably ascertain the individual's whereabouts.

VALID FROM 28/02/2011

## 18 Police information etc. **S**

- (1) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require the chief constable of a police force <sup>[F5]</sup> or the Scottish Crime and Drug Enforcement Agency ] to provide them with any information relating to the individual which the chief constable <sup>[F5]</sup> or the Scottish Crime and Drug Enforcement Agency ] thinks might be relevant in relation to the type of regulated work concerned.
- (2) A <sup>[F6]</sup> person ] must not provide information to Ministers under subsection (1) if the <sup>[F6]</sup> person ] thinks that disclosing it to the individual to whom it relates would be contrary to the interests of the prevention or detection of crime.
- (3) Ministers must pay the appropriate police authority <sup>[F7]</sup> or the Scottish Police Services Authority ] such fee as Ministers think appropriate for information provided under subsection (1).
- (4) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require—
  - (a) any person who holds records of convictions, cautions or other information for the use of police forces generally to provide them with any information relating to the individual which the record holder thinks might be relevant in relation to the type of regulated work concerned,
  - (b) any person who holds such records to provide them with the information referred to in section 113A(3)(a) of the 1997 Act (prescribed details of every relevant matter relating to the individual which is recorded in central records).

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### Textual Amendments

- F5** Words in s. 18(1) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **5(2)**
- F6** Word in s. 18(2) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **5(3)**
- F7** Words in s. 18(3) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **5(4)**

VALID FROM 12/10/2010

## 19 Information held by public bodies etc. **S**

- (1) Ministers may, for the purpose of enabling or assisting Ministers to decide whether to list an individual, require—
- (a) any person who holds vetting information of a type prescribed under section 49(1)(d) to provide them with any such vetting information relating to the individual,
  - (b) any of the persons set out in subsection (3) to provide them with any information held by the person which Ministers think might be relevant.
- (2) Information provided under subsection (1)(b) may, in particular, be information which relates to—
- (a) the regulated work concerned, or
  - (b) the protection of children or protected adults in general, or of any child or protected adult in particular.
- (3) The persons who may be required to provide information under subsection (1)(b) are—

Councils

The General Teaching Council for Scotland

Health Boards and Special Health Boards

[<sup>F8</sup> Healthcare Improvement Scotland ]

Her Majesty's Chief Inspector of Prisons for Scotland

Her Majesty's Inspectors of Schools

The Registrar of Chiropractors

The registrar of dentists and dental care professionals

The registrar of the General Medical Council

The registrar of the General Optical Council

The Registrar of health professionals

The Registrar of Independent Schools in Scotland

The Registrar of nurses and midwives

The Registrar of Osteopaths

[<sup>F9</sup> The registrar of pharmacists ]

<sup>F10</sup>  
...

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The Scottish Social Services Council  
 [F11 Social Care and Social Work Improvement Scotland ]  
 Social work inspectors  
 Any other person specified in an order made by Ministers

#### Textual Amendments

- F8** Words in s. 19(3) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 36\(b\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F9** Words in s. 19(3) substituted (27.9.2010) by [The Pharmacy Order 2010 \(S.I. 2010/231\)](#), art. 1(5), [Sch. 4 para. 16\(b\)](#); [S.I. 2010/1621](#), art. 2(1), Sch.
- F10** S. 19(3) entry repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 14 para. 30\(a\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F11** Words in s. 19(3) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 14 para. 30\(b\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.

VALID FROM 28/02/2011

## 20 Information held by regulated work providers **S**

- (1) Ministers may require a person falling within subsection (2) to provide them with any information held by the person which Ministers think might be relevant for the purpose of enabling or assisting them to decide whether to list an individual.
- (2) A person falls within this subsection if—
- the individual is doing, or has done, regulated work for the person,
  - the individual has been offered regulated work by the person (whether or not the individual subsequently did the work),
  - it is an employment agency which has offered or supplied, or made arrangements with a view to offering or supplying, the individual to another person for regulated work (whether or not the arrangements are still in place), or
  - it is an employment business which employs or has employed the individual to do regulated work for another person.
- (3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (1) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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### *Appeals against listing*

#### **21 Appeals against inclusion in children's list** **S**

- (1) An individual listed under section 15 may appeal to the sheriff against Ministers' decision to list the individual in the children's list.
- (2) Such an appeal must be lodged—
  - (a) within 3 months of the date on which the individual was listed, or
  - (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—
  - (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children, by confirming Ministers' decision to list the individual in the children's list, or
  - (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the children's list.

#### **22 Appeals against inclusion in adults' list** **S**

- (1) An individual listed under section 16 may appeal to the sheriff against Ministers' decision to list the individual in the adults' list.
- (2) Such an appeal must be lodged—
  - (a) within 3 months of the date on which the individual was listed, or
  - (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—
  - (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with protected adults, by confirming Ministers' decision to list the individual in the adults' list, or
  - (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the adults' list.

#### **23 Further appeals in relation to inclusion in either list** **S**

- (1) The sheriff's determination under section 21 or 22 may be appealed to the sheriff principal by—
  - (a) the individual, or
  - (b) Ministers.
- (2) The sheriff principal's determination of an appeal under subsection (1) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
  - (a) the individual, or
  - (b) Ministers.
- (3) The decision of—
  - (a) the sheriff principal, or

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(b) if leave is granted to appeal to the Inner House, that House, on any appeal is final.

#### **24 Appeals in relation to listing: supplementary S**

- (1) No finding of fact on which any conviction is based may be challenged on an appeal under section 21, 22 or 23.
- (2) Any court proceedings under section 21, 22 or 23 may take place in private if the court considers it appropriate in all the circumstances.

#### *Removal from list*

#### **25 Application for removal from list S**

- (1) A listed individual may apply to Ministers for removal from—
  - (a) the children's list, or
  - (b) the adults' list.
- (2) References in this section to “the list” are to be read as references to the list from which the individual has applied for removal.
- (3) An application for removal from the list is competent only if—
  - (a) it is made after the end of such period as may be prescribed (beginning on such date as may be prescribed), or
  - (b) Ministers are satisfied that the applicant's circumstances have changed since the applicant—
    - (i) was listed, or
    - (ii) last made an application for removal from the list under this section, such that Ministers should consider the application.
- (4) A period may not be prescribed under subsection (3)(a) in relation to a particular individual.
- (5) An applicant's circumstances are to be treated as having changed if—
  - (a) the applicant was convicted of an offence in relation to conduct which Ministers had regard to when considering whether to list the applicant, and
  - (b) the conviction is subsequently quashed.
- (6) Subsection (5) does not affect the generality of subsection (3)(b).

VALID FROM 28/02/2011

#### **26 Determination of application for removal from list S**

- (1) Ministers must determine a competent application for removal from the children's list—
  - (a) where they are satisfied that the applicant is no longer unsuitable to work with children, by removing the individual from the list, or
  - (b) where they are not so satisfied, by refusing the application.

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- (2) Ministers must determine a competent application for removal from the adults' list—
  - (a) where they are satisfied that the applicant is no longer unsuitable to work with protected adults, by removing the individual from the list, or
  - (b) where they are not so satisfied, by refusing the application.
- (3) Sections 18 to 20 apply to Ministers' determination of an application for removal from the list as they apply to a decision whether to list an individual (with references to deciding whether to list an individual being read as references to determining whether to remove an individual from the list).

VALID FROM 28/02/2011

## 27 Appeals against refusal to remove individual from list **S**

- (1) An individual may appeal to the sheriff against Ministers' decision to refuse an application for removal from the list under section 26.
- (2) The sheriff must determine an appeal under subsection (1) in relation to removal from the children's list—
  - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with children, by directing Ministers to remove the individual from the list, or
  - (b) where the sheriff is not so satisfied, by refusing the application.
- (3) The sheriff must determine an appeal under subsection (1) in relation to removal from the adults' list—
  - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with protected adults, by directing Ministers to remove the individual from the list, or
  - (b) where the sheriff is not so satisfied, by refusing the application.
- (4) The sheriff's determination may be appealed to the sheriff principal by—
  - (a) the individual, or
  - (b) Ministers.
- (5) The sheriff principal's determination of an appeal under subsection (4) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
  - (a) the individual, or
  - (b) Ministers.
- (6) The Inner House may, in determining an appeal under subsection (5), by order modify the period prescribed for the purposes of section 25(3) in so far as that period is to apply to any further application by the individual concerned for removal from the children's list or, as the case may be, the adults' list.
- (7) The decision of—
  - (a) the sheriff principal, or
  - (b) if leave is granted to appeal to the Inner House, that House,

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on any appeal is final.

- (8) Any court proceedings under this section may take place in private if the court considers it appropriate in all the circumstances.

VALID FROM 28/02/2011

## 28 Late representations **S**

- (1) This section applies where an individual listed under section 15 or 16—
- (a) was not, because of section 17(6), given an opportunity to make representations as to why the individual should not be listed, and
  - (b) subsequently makes representations to Ministers as to why the individual should not have been listed.
- (2) Where this section applies, Ministers must—
- (a) consider the individual's representations, and
  - (b) if satisfied that the individual should not have been listed, remove the individual from the list.

VALID FROM 28/02/2011

## 29 Removal from list **S**

- (1) Ministers—
- (a) must remove an individual from the children's list or adults' list—
    - (i) if directed to do so by the court, or
    - (ii) where section 26 or 28 requires them to do so, and
  - (b) may, at any other time, remove an individual from the children's list or adults' list if they are satisfied that the individual should not have been listed.
- (2) Where Ministers appeal against a direction to remove an individual from the children's list or adults' list, the duty imposed by subsection (1)(a) does not apply until that appeal is finally determined.

*Listing: supplementary*

VALID FROM 28/02/2011

## 30 Notice of listing etc. **S**

- (1) Subsection (2) applies where—
- (a) an individual has been listed under section 14, 15 or 16,
  - (b) Ministers become aware that an individual has otherwise been barred from doing regulated work with children or adults, or

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- (c) Ministers are considering whether to list an individual by virtue of sections 10 to 13.
- (2) Where this subsection applies, Ministers must notify the persons specified in subsection (3) of the fact—
  - (a) that the individual has been barred from doing regulated work with children or adults, or, as the case may be
  - (b) that they are considering whether to list the individual.
- (3) Those persons are—
  - (a) the individual concerned,
  - (b) where—
    - (i) the individual has been barred from regulated work with children, or
    - (ii) Ministers are considering whether to list the individual in the children's list,any organisation for which they know the individual is doing regulated work with children,
  - (c) where—
    - (i) the individual has been barred from regulated work with adults, or
    - (ii) Ministers are considering whether to list the individual in the adults' list,any organisation for which they know the individual is doing regulated work with adults, and
  - (d) any relevant regulatory body whom Ministers think it would be appropriate to notify of that fact.
- (4) Where, after considering whether to list an individual, Ministers decide not to do so, they must give notice of that fact to—
  - (a) the individual,
  - (b) where Ministers have decided not to include the individual in the children's list, any organisation for which they know the individual is doing regulated work with children,
  - (c) where Ministers have decided not to include the individual in the adults' list, any organisation for which they know the individual is doing regulated work with adults, and
  - (d) any relevant regulatory body to whom Ministers gave notice under subsection (2) of the fact that they were considering whether to list the individual.
- (5) A notice given under subsection (2) or (4) may include—
  - (a) such details as Ministers think appropriate—
    - (i) where the individual has been barred (by being listed or otherwise), about the circumstances in which the individual was barred,
    - (ii) where they have decided not to list an individual, about the circumstances in which the individual was considered for listing, and
  - (b) any other information about the individual which Ministers think appropriate.



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- (6) Where Ministers remove an individual from a list under section 29, they must give notice of that fact to—
- (a) the individual, and
  - (b) any relevant regulatory body whom they think it would be appropriate to notify of that fact (having regard to the period for which the individual has been listed).
- (7) The following persons are “relevant regulatory bodies”—
- The General Teaching Council for Scotland
- [<sup>F12</sup> Healthcare Improvement Scotland ]
- <sup>F13</sup> ...
- The Scottish Social Services Council
- [<sup>F14</sup> Social Care and Social Work Improvement Scotland ]
- Any other person specified in an order made by Ministers
- (8) A notice which this section requires to be given to an individual may be given—
- (a) by delivering it to the individual,
  - (b) by leaving it at the individual's usual or last known place of abode, or
  - (c) by sending it by post to the individual at that place.

#### Textual Amendments

- F12** Words in s. 30(7) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 17 para. 36\(c\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F13** S. 30(7) entry repealed (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 14 para. 31\(a\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.
- F14** Words in s. 30(7) inserted (1.10.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#), s. 134(7), [Sch. 14 para. 31\(b\)](#); [S.S.I. 2010/321](#), art. 3, Sch.; [S.S.I. 2011/122](#), art. 2, Sch.

VALID FROM 28/02/2011

### 31 Relevant inquiries **S**

- (1) This section applies for the purposes of section 13 and 17.
- (2) A relevant inquiry is any of the following—
- (a) an inquiry held—
    - (i) by Ministers,
    - (ii) by the Scottish Parliament (including an inquiry held by a committee or sub-committee of the Parliament),
  - (b) an inquiry held under the Inquiries Act 2005 (c. 12),
  - (c) any other inquiry or hearing designated for the purposes of this section by an order made by Ministers.

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- (3) “Relevant inquiry report” means the report by the person who held the relevant inquiry.

### 32 Relevant offences etc. **S**

- (1) For the purposes of this Part an individual commits a relevant offence if the individual—
- (a) commits an offence which falls within paragraph 1 of schedule 1, or
  - (b) falls within paragraph 2 of that schedule,
- and references to being convicted of, or charged with, a relevant offence are to be construed accordingly.
- (2) Ministers may by order modify schedule 1 so as to modify the circumstances in which an individual is to be treated for the purposes of this Part as having committed a relevant offence.
- (3) Subsection (4) applies to an individual if—
- (a) the individual is charged with an offence,
  - (b) either—
    - (i) the individual is acquitted of the charge on the ground of insanity, or
    - (ii) the court makes a finding under section 55(2) of the 1995 Act in respect of the individual, and
  - (c) the court makes any order mentioned in section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding.
- (4) An individual to whom this subsection applies is to be treated, for the purposes of sections 7, 17 and 24, as having been convicted of the offence.

VALID FROM 28/02/2011

### 33 Duty to notify certain changes **S**

- (1) An individual who is listed, or whom Ministers are considering whether to list, must give Ministers notice of—
- (a) a change in the individual's name or address,
  - (b) the issue of a full gender recognition certificate to the individual under section 4 of the Gender Recognition Act 2004 (c. 7), or
  - (c) any other change in circumstance of a prescribed type.
- (2) A notice under subsection (1) must be given within 1 month of the date of the change or issue of the certificate to which it relates.
- (3) An individual who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) An individual guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

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### Offences relating to regulated work

VALID FROM 28/02/2011

#### 34 Barred individuals not to do regulated work **S**

- (1) It is an offence for an individual to do, or to seek or agree to do, any regulated work from which the individual is barred.
- (2) It is a defence for an individual charged with an offence under subsection (1) to prove that the individual did not know, and could not reasonably be expected to have known—
  - (a) that the individual was barred from that regulated work, or
  - (b) that the work concerned was regulated work.

#### 35 Organisations not to use barred individuals for regulated work **S**

- (1) It is an offence for an organisation to offer regulated work to an individual barred from that work.
- (2) 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.
- (3) 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.
- (4) An organisation which fails to comply with regulations made under subsection (2) commits an offence.
- (5) An organisation commits an offence under subsection (1) if it offers regulated work to a barred individual who is already working for the organisation.
- (6) 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.
- (7) 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.

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VALID FROM 28/02/2011

**36 Personnel suppliers not to supply barred individuals for regulated work** **S**

- (1) A personnel supplier commits an offence if it—
- (a) offers or supplies an individual who is barred from doing regulated work to an organisation, and
  - (b) knows or has reason to believe that the organisation will make arrangements for the individual to do regulated work from which the individual is barred.
- (2) It is a defence for a personnel supplier charged with an offence under subsection (1) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing the regulated work.

VALID FROM 28/02/2011

**37 Penalties for offences relating to regulated work** **S**

- A person guilty of an offence under section 34, 35 or 36 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

*General and supplementary*

VALID FROM 28/02/2011

**38 Police access to lists** **S**

- (1) Ministers must make available to chief constables of police forces <sup>[F15]</sup>, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency <sup>[</sup>—
- (a) the name of each individual included in the children's list,
  - (b) the name of each individual included in the adults' list, and
  - (c) any other information contained in those lists which Ministers consider should be disclosed for any purpose mentioned in subsection (2).
- (2) Information disclosed under subsection (1) may be used by police forces <sup>[F16]</sup>, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency] only for the purpose of—
- (a) the prevention or detection of crime, or
  - (b) the apprehension or prosecution of offenders.

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### Textual Amendments

- F15** Words in s. 38(1) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **6(2)**
- F16** Words in s. 38(2) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **6(3)**

VALID FROM 28/02/2011

### 39 Restrictions on listing in children's list **S**

- (1) Ministers need not list an individual (nor consider an individual for listing) in the children's list if the individual is already barred from regulated work with children <sup>F17</sup> ...
- (2) Ministers need not consider an individual for listing in the children's list if—
- they consider that it would be more appropriate for the individual's case to be <sup>F18</sup> dealt with ] by the <sup>F19</sup>Independent Safeguarding Authority] (“<sup>F19</sup>ISA]”), or
  - subsection (3) applies.
- (3) This subsection applies where—
- <sup>F20</sup>(a) the individual's case has been dealt with in pursuance of relevant corresponding legislation, and]
  - Ministers are satisfied that all information relating to the individual which they consider relevant to their decision whether to consider to list the individual was considered <sup>F21</sup> before, or when, the individual's case was last dealt with in pursuance of the relevant corresponding legislation ].
- (4) Where—
- in pursuance of subsection (2)(a), Ministers do not consider an individual for listing in the children's list, and
  - <sup>F19</sup>ISA]<sup>F22</sup>deals with] the individual's case,
- section 30 applies (with any necessary modifications) as if Ministers are considering to list the individual in the children's list.
- (5) Ministers need not list an individual in the children's list under section 14 if <sup>F23</sup>they consider that it would be more appropriate for the individual's case to be dealt with by ISA.]—
- <sup>F24</sup>(a) .....
  - <sup>F24</sup>(b) .....
- <sup>F25</sup>(6) Where—
- in pursuance of subsection (5), Ministers do not list an individual in the children's list under section 14, and
  - ISA deals with the individual's case,
- section 30 applies (with any necessary modifications) as if Ministers had listed the individual in the children's list under section 14.

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- (7) In this section “relevant corresponding legislation” means—
- (a) the Protection of Children Act 1999 (c.14) ,
  - (b) the Criminal Justice and Court Services Act 2000 (c.43) ,
  - (c) sections 142 to 144 of the Education Act 2002 (c.32) ,
  - (d) the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003,
  - (e) the Safeguarding Vulnerable Groups Act 2006 (c.47) ,
  - (f) regulations made under Article 70(1) and (2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986,
  - (g) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.]

### Textual Amendments

- F17** Words in s. 39(1) repealed (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(2\)](#)
- F18** Words in s. 39(2)(a) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(3\)](#)
- F19** Words in s. 39 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss.81\(2\)\(3\)\(n\)](#), [116\(5\)\(a\)](#)
- F20** S. 39(3)(a) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(4\)\(a\)](#)
- F21** Words in s. 39(3)(b) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(4\)\(b\)](#)
- F22** Words in s. 39(4)(b) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(5\)](#)
- F23** Words in s. 39(5) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(6\)\(a\)](#)
- F24** S. 39(5)(a)(b) repealed (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(6\)\(b\)](#)
- F25** S. 39(6)(7) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), [7\(7\)](#)

VALID FROM 28/02/2011

### 40 Restrictions on listing in adults' list **S**

- (1) Ministers need not list an individual (nor consider an individual for listing) in the adults' list if the individual is already barred from regulated work with adults<sup>F26</sup> ...
- (2) Ministers need not consider an individual for listing in the adults' list if—

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- (a) they consider that it would be more appropriate for the individual's case to be <sup>F27</sup>dealt with ] by the <sup>F28</sup>Independent Safeguarding Authority ] (“<sup>F28</sup>ISA ]”), or
- (b) subsection (3) applies.
- (3) This subsection applies where—
- <sup>F29</sup>(a) the individual’s case has been dealt with in pursuance of relevant corresponding legislation, and ]
- (b) Ministers are satisfied that all information relating to the individual which they consider relevant to their decision whether to consider to list the individual was considered <sup>F30</sup>before, or when, the individual’s case was last dealt with in pursuance of the relevant corresponding legislation].
- (4) Where—
- (a) in pursuance of subsection (2)(a), Ministers do not consider an individual for listing in the adults' list, and
- (b) <sup>F28</sup>ISA]<sup>F31</sup>deals with ] the individual's case, section 30 applies (with any necessary modifications) as if Ministers are considering to list the individual in the adults' list.
- (5) Ministers need not list an individual in the adults' list under section 14 if <sup>F32</sup>they consider that it would be more appropriate for the individual’s case to be dealt with by ISA.]
- <sup>F33</sup>(a) .....
- <sup>F33</sup>(b) .....
- <sup>F34</sup>(6) Where—
- (a) in pursuance of subsection (5), Ministers do not list an individual in the adults’ list under section 14, and
- (b) ISA deals with the individual’s case, section 30 applies (with any necessary modifications) as if Ministers had listed the individual in the adults’ list under section 14.
- (7) In this section “relevant corresponding legislation” means—
- (a) Part 7 of the Care Standards Act 2000 (c.14) ,
- (b) the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003,
- (c) the Safeguarding Vulnerable Groups Act 2006 (c.47) ,
- (d) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.]

### Textual Amendments

- F26** Words in s. 40(1) repealed (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(2)**
- F27** Words in s. 40(2)(a) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(3)**
- F28** Words in s. 40 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), ss.81(2)(3)(n), 116(5)(a)

**Status:** Point in time view as at 12/11/2009. This version of this Act contains provisions that are not valid for this point in time.

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- F29** S. 40(3)(a) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(4)(a)**
- F30** Words in s. 40(3)(b) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(4)(b)**
- F31** Words in s. 40(4)(b) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(5)**
- F32** Words in s. 40(5) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(6)(a)**
- F33** S. 40(5)(a)(b) repealed (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(6)(b)**
- F34** S. 40(6)(7) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **8(7)**

VALID FROM 28/02/2011

#### 41 Protection from actions for damages **S**

- (1) No proceedings are competent in respect of any loss or damage incurred by any person because of—
- (a) the fact that an individual is or is not listed,
  - (b) the fact that Ministers have or have not considered whether to list an individual,
  - (c) the provision of information in pursuance of any of sections 3 to 8 and 18 to 20 <sup>F35</sup>(or of any other power or duty to provide information to Ministers in relation to their functions under this Part)].
- (2) Subsection (1)(c) does not apply if the provider of the information—
- (a) knew, or was reckless as to whether, it was untrue or misleading in a material respect, and
  - (b) provided it—
    - (i) in purported compliance with any of sections 3 to 8 and 18 to 20 <sup>F36</sup>(or of any other power or duty to provide information to Ministers in relation to their functions under this Part)], or
    - (ii) in other circumstances in which the provider knew, or could reasonably be expected to have known, that it would be used by Ministers, or provided to them for use, in connection with the performance of their functions under this Part.

#### Textual Amendments

- F35** Words in s. 41(1)(c) inserted (18.4.2010 coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **9**



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F36 A

#### 42 Power to regulate procedure etc. **S**

- (1) Ministers may, by regulations, make further provision about—
  - (a) the information about listed individuals which is to be included in the children's list and adults' list,
  - (b) the maintenance of those lists, and
  - (c) the procedure which is to be followed in relation to any decision which Ministers are authorised or required to take under this Part.
- (2) The regulations may, in particular, make provision in relation to the time within which anything has to be done.

VALID FROM 28/02/2011

#### 43 Transfer from 2003 Act list **S**

- (1) Ministers must list in the children's list each individual who was included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children (Scotland) Act 2003 (asp 5) (“the 2003 Act”) immediately before that section was repealed.
- (2) Ministers must give notice of listing under subsection (1) to each individual listed under that subsection.
- (3) An individual who is listed under subsection (1) is to be treated for the purposes of this Act as having been so listed—
  - (a) under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of that Act, and
  - (b) on the day on which the individual was included in the list kept under section 1 of the 2003 Act.
- (4) The provisions of this Part are accordingly to apply in relation to such an individual with any necessary modifications.
- (5) Section 29(1)(b) is not to be read as requiring or authorising Ministers to remove such an individual from the children's list where it appears to them that the individual—
  - (a) would not have been listed under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of the 2003 Act, but
  - (b) should have been included in the list kept under the 2003 Act under the provision of that Act which corresponds most closely with the provision of this Part under which the individual is to be treated as having been listed.
- (6) A notice required by subsection (2) may be given—
  - (a) by delivering it to the listed individual,
  - (b) by leaving it at the listed individual's usual or last known place of abode, or

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(c) by sending it by post to the listed individual at that place.

VALID FROM 18/04/2010

## PART 2 **S**

### VETTING AND DISCLOSURE

VALID FROM 28/02/2011

#### *The Scheme*

#### 44 **The Scheme **S****

Ministers are to administer a scheme (“the Scheme”) under which information about individuals who do, or wish to do, regulated work with children or protected adults is—

- (a) collated, and
- (b) disclosed,

in accordance with this Part.

#### 45 **Participation in Scheme **S****

(1) An individual may apply to Ministers to join the Scheme in relation to—

- (a) regulated work with children,
- (b) regulated work with adults, or
- (c) both types of regulated work.

(2) Ministers must allow an individual to be a member of the Scheme (a “scheme member”) in relation to a type of regulated work if the individual is not barred from doing that work.

#### 46 **Statement of scheme membership **S****

(1) Ministers must disclose a statement of scheme membership to each scheme member.

(2) A statement of scheme membership is a document which—

- (a) sets out the type of regulated work in relation to which an individual participates in the Scheme,
- (b) confirms that the individual is not barred from doing that work,
- (c) if Ministers are considering whether to list the individual in relation to that type of work, says so, and
- (d) contains such other information about the individual as may be prescribed.

(3) Ministers need not comply with subsection (1) where—

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- (a) the individual makes a disclosure request at the same time as the individual applies to join the Scheme, and
- (b) Ministers make the requested disclosure.

### *Vetting information*

VALID FROM 28/02/2011

#### **47 Enquiries about scheme members** **S**

- (1) Ministers must, after making enquiries for the purpose of discovering whether any vetting information exists in relation to a new scheme member, create a scheme record for the member.
- (2) Ministers must make arrangements for the purpose of discovering whether any new vetting information arises in relation to scheme members while those members participate in the Scheme.
- (3) Ministers must update a scheme record if they discover any new vetting information about the scheme member to whom it relates.
- (4) Vetting information is new if Ministers did not discover it as a result of earlier enquiries made in pursuance of subsection (1) or (2) in relation to the scheme member concerned (regardless of whether it existed when they made those earlier enquiries).

VALID FROM 28/02/2011

#### **48 Scheme record** **S**

A scheme record is a document comprising—

- (a) a scheme member's statement of scheme membership, and
- (b) vetting information about the scheme member which Ministers discover as a result of enquiries or arrangements made under section 47.

#### **49 Vetting information** **S**

- (1) Vetting information, in relation to a scheme member, is—
  - (a) the information referred to in section 113A(3)(a) of the 1997 Act (prescribed details of every relevant matter relating to the scheme member which is recorded in central records),
  - (b) if the scheme member is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c. 42), information about those requirements,
  - (c) information which the chief officer of a relevant police force thinks might be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and
  - (d) such other information as may be prescribed.

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- (2) Regulations prescribing information for the purposes of subsection (1)(d) may require persons holding information of the type prescribed to disclose it to Ministers for the purposes of this Act.

VALID FROM 28/02/2011

#### 50 Duty to notify certain changes **S**

- (1) A scheme member must give Ministers notice of—
- (a) a change in the member's name,
  - (b) the issue of a full gender recognition certificate to the member under section 4 of the Gender Recognition Act 2004 (c. 7), or
  - (c) any other change in circumstance of a prescribed type.
- (2) A notice under subsection (1) must be given within 3 months of the date of the change or issue of the certificate to which it relates.
- (3) An individual who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) An individual guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

VALID FROM 28/02/2011

#### 51 Correction of inaccurate scheme record **S**

- (1) Ministers must correct a scheme record if they are satisfied (following a request by a scheme member for correction, notification under section 50 or otherwise) that any information included in it is inaccurate.
- (2) After correcting an inaccurate scheme record, Ministers must disclose the corrected information to—
- (a) the scheme member, and
  - (b) any organisation for which they know the scheme member is doing regulated work.
- (3) Subsection (2) applies only if Ministers have previously disclosed the inaccurate information under this Part to the scheme member or, as the case may be, the organisation.
- (4) A scheme member may, in particular, request a review of any information included in a scheme record by virtue of section 49(1)(c).
- (5) Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether the chief officer still thinks that the information concerned might be relevant in relation to the type of regulated work in relation to which the scheme member participates in the scheme.
- (6) Information which was considered accurate when included in a scheme record but which—

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- (a) is subsequently found to have always been inaccurate, or
  - (b) subsequently becomes inaccurate for any reason,
- is to be regarded as being inaccurate information for the purposes of this section.

VALID FROM 28/02/2011

### *Disclosure*

#### **52 Disclosure of scheme records** **S**

- (1) Ministers must disclose a scheme member's scheme record if—
  - (a) disclosure conditions A to D are satisfied, and
  - (b) section 53 does not require them to disclose the scheme member's short scheme record.
- (2) Ministers must send a copy of a record disclosed under subsection (1) to the scheme member who made the disclosure request.

#### **53 Disclosure of short scheme records** **S**

- (1) Ministers must disclose a scheme member's short scheme record if—
  - (a) disclosure conditions A to D are satisfied,
  - (b) they have previously disclosed the member's scheme record, and
  - (c) the scheme member requests disclosure of a short scheme record only.
- (2) Ministers must send a copy of a record disclosed under subsection (1) to the scheme member who made the disclosure request.
- (3) A short scheme record is a document which—
  - (a) includes a scheme member's statement of scheme membership,
  - (b) specifies the date on which the scheme member's scheme record was last disclosed under section 52,
  - (c) says whether any vetting information was included in the scheme member's scheme record on that date,
  - (d) if any new vetting information has been included in the scheme member's scheme record since that date, says when that information was so included, and
  - (e) if any vetting information has been removed from the scheme member's scheme record since that date, says when that information was so removed.
- (4) A short scheme record must not disclose any vetting information of the types referred to in paragraphs (c) to (e) of subsection (3).

#### **54 Disclosure of scheme membership** **S**

- (1) If disclosure conditions A to C are satisfied, Ministers must disclose a scheme member's statement of scheme membership.
- (2) Ministers must send a copy of a statement disclosed under subsection (1) to the scheme member who made the disclosure request.

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## 55 Disclosure conditions **S**

The disclosure conditions are—

<i>Condition A</i>	The scheme member requests Ministers to make the disclosure to a person, and in relation to a type of regulated work, specified in the request.
<i>Condition B</i>	The scheme member participates in the Scheme in relation to that type of regulated work.
<i>Condition C</i>	The person to whom the disclosure is to be made declares that the disclosure is requested for the purpose of enabling or assisting the person (or any other person for whom the person acts) to consider the scheme member's suitability to do, or to be offered or supplied for, that type of regulated work.
<i>Condition D</i>	The person to whom the disclosure is to be made is a registered person for the purposes of Part 5 of the 1997 Act.

## 56 Crown work **S**

- (1) This section applies where a disclosure declaration is made by—
  - (a) a Minister of the Crown,
  - (b) a member of the Scottish Executive,
  - (c) any other office-holder in the Scottish Administration, or
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).
- (2) Where this section applies Ministers may, despite disclosure condition D, disclose the relevant scheme record or short scheme record.

## 57 Disclosure restrictions **S**

- (1) Regulations under section 49(1)(d) may prohibit Ministers (at any time or in prescribed circumstances)—
  - (a) from including a prescribed type of information in scheme records,
  - (b) from disclosing a prescribed type of information under section 52 or 53.
- (2) Subsection (3) applies where—
  - (a) a scheme member participates in the Scheme in relation to both types of regulated work, and
  - (b) Ministers receive a disclosure request which includes a disclosure declaration made in relation to only one of those types of regulated work.
- (3) Where this subsection applies, Ministers must not—

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- (a) disclose information which appears in the member's scheme record only because the member participates in the Scheme in relation to the other type of regulated work, or
- (b) reveal whether any such information has been included in, or removed from, the member's scheme record.

VALID FROM 28/02/2011

### *Removal from scheme*

#### **58 Removal from scheme** **S**

- (1) Ministers must remove a scheme member from the Scheme in relation to a type of regulated work if they—
  - (a) bar the member from doing that work by listing the member, or
  - (b) become aware that the member has otherwise been barred from doing that work.
- (2) Ministers may remove from the Scheme any scheme member who fails to pay any fee for participation in the Scheme which is prescribed under section 70.

#### **59 Withdrawal from scheme** **S**

Ministers must remove a scheme member from the Scheme in relation to a type of regulated work if—

- (a) the scheme member applies to be so removed, and
- (b) they are satisfied that the scheme member is not doing that type of regulated work.

#### **60 Notice of removal** **S**

- (1) Ministers must give notice confirming that they have removed an individual from the Scheme under section 58 or 59 to—
  - (a) the individual, and
  - (b) any other person whom they think fit.
- (2) A notice under subsection (1) must—
  - (a) state the type of regulated work in relation to which the individual has been removed, and
  - (b) say why the individual has been removed.
- (3) A notice under subsection (1)(b) need not comply with subsection (2)(b) if Ministers think that it would be inappropriate for the recipient to be informed of the reason for removal.

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## 61 Retention of scheme records after removal **S**

- (1) Ministers may keep the scheme record of an individual removed from the Scheme and may continue to use that record for the purposes of enabling or assisting them to perform their functions under this Act.
- (2) Subsection (1) does not—
  - (a) entitle Ministers to continue to make enquires in relation to the individual in pursuance of section 47(2), or
  - (b) require Ministers to otherwise ensure that the retained scheme record is updated.

### *Evidence of identity*

VALID FROM 28/02/2011

## 62 Evidence of identity **S**

- (1) An individual making—
  - (a) an application to join, or to be removed from, the Scheme,
  - (b) a request to correct a scheme record, or
  - (c) a disclosure request,
 must provide Ministers with such evidence of identity as they may require.
- (2) Ministers need not consider such an application or request if—
  - (a) the individual fails to comply with a requirement under this section or section 63, or
  - (b) the evidence provided does not satisfy them as to the individual's identity.

## 63 Power to use fingerprints to check applicant's identity **S**

- (1) Ministers may require an applicant to join the Scheme, or a scheme member, to have fingerprints taken in such manner, and at such place, as may be prescribed for the purposes of enabling or assisting Ministers to satisfy themselves as to the identity of the applicant or, as the case may be, scheme member.
- (2) But Ministers may require an individual to have fingerprints taken under subsection (1) only if they are not satisfied by other evidence provided under section 62(1) as to the individual's identity.
- (3) Ministers must arrange the destruction of any such fingerprints as soon as reasonably practicable after they have been used for the purposes mentioned in subsection (1).
- (4) Any person who holds records of fingerprints for the use of police forces generally must make those records available to Ministers for the purposes of this section.
- (5) This section does not affect the generality of section 62 in relation to any other type of evidence of identity.



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#### **64 Power to use personal data to check applicant's identity** **S**

- (1) Ministers may use information given to them by personal data holders to check evidence of identity given to them for the purposes of section 62.
- (2) Personal data holders are—
  - The Identity and Passport Service
  - The Driver and Vehicle Licensing Agency
  - Ministers of the Crown in connection with keeping of records of national insurance numbers
  - Such other persons holding data about individuals as may be prescribed

*Offences relating to vetting information*

VALID FROM 28/02/2011

#### **65 Falsification of scheme records etc.** **S**

- (1) It is an offence for a person, with intent to deceive, to—
  - (a) make a document which purports to be a disclosure record,
  - (b) alter a disclosure record,
  - (c) use, or allow another person to use, a disclosure record in a way which suggests that it relates to an individual other than the scheme member in respect of whom it was disclosed.
- (2) It is an offence for a person to knowingly make a false or misleading declaration or other statement for the purposes of—
  - (a) obtaining, or enabling another person to obtain, a disclosure record, or
  - (b) satisfying Ministers that an individual who is doing regulated work is not doing so.

VALID FROM 28/02/2011

#### **66 Unlawful disclosure of scheme records etc.** **S**

- (1) A person to whom disclosure information is disclosed under section 51, 52, 53 or 54 commits an offence if the person discloses it to any other person.
- (2) A person does not commit an offence under subsection (1) by disclosing the disclosure information—
  - (a) to any of the person's employees,
  - (b) where the person is not an individual, to any member or officer of the person, or
  - (c) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
    - (i) to that other person,
    - (ii) to any of that other person's employees, or

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- (iii) where that other person is not an individual, to any member or officer of that other person.
- (3) An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(a) or (b) or (4)(a) commits an offence if the individual discloses it to any other person.
- (4) An individual does not commit an offence under subsection (3) by disclosing the disclosure information, in the course of the individual's duties—
- (a) to any other individual who is a member, officer or employee of the person to whom the corresponding disclosure was made under section 52, 53 or 54, or
  - (b) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
    - (i) to that other person,
    - (ii) to any of that other person's employees, or
    - (iii) where that other person is not an individual, to any member or officer of that other person.
- (5) A person to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(i) or (4)(b)(i) commits an offence if the person discloses it to any other person.
- (6) A person does not commit an offence under subsection (5) by disclosing the disclosure information—
- (a) to any of the person's employees, or
  - (b) where the person is not an individual, to any member or officer of the person.
- (7) An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(ii) or (iii), (4)(b)(ii) or (iii) or (6) commits an offence if the person discloses it to any other person.
- (8) An individual does not commit an offence under subsection (7) by disclosing the disclosure information, in the course of the individual's duties, to any other individual who is a member, officer or employee of the person for whose purposes the corresponding disclosure was made under section 52, 53 or 54.
- (9) A person to whom disclosure information is disclosed unlawfully commits an offence if the person discloses it to any other person.

## 67 Unlawful requests for scheme records etc. **S**

- (1) It is an offence to request provision of, or to otherwise seek sight of, a disclosure record for a purpose other than the permitted purpose.
- (2) It is an offence to use disclosure information for a purpose other than the permitted purpose.
- (3) The permitted purpose is to enable or assist a person (“Z”) to consider the suitability of the individual to whom the record or information relates—
  - (a) to do, or to be offered or supplied for, the type of regulated work to which the disclosure record relates, or

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(b) to do that type of regulated work in prescribed circumstances for any person other than Z in pursuance of arrangements under which services are provided to Z.

(4) References in subsection (1) to disclosure records do not include references to information included in disclosure records.

VALID FROM 28/02/2011

## 68 Unlawful disclosure etc.: supplementary **S**

(1) Nothing in section 66 prevents disclosure of disclosure information—

- (a) by the scheme member to whom the information relates,
- (b) by any other person with the consent of the scheme member to whom the information relates,
- (c) to an office-holder in the Scottish Administration or a government department,
- (d) to a person appointed to any office by virtue of any enactment,
- (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
- (f) for the purposes of answering a prescribed type of exempted question, or
- (g) for some other prescribed purpose.

(2) Nothing in subsections (2), (4), (6) or (8) of section 66 makes lawful any disclosure of disclosure information made otherwise than for the purpose of enabling or assisting the person in relation to whom the corresponding disclosure request was made to consider the suitability of the scheme member concerned to do, or to be offered or supplied for, the type of regulated work concerned.

(3) Nothing in section 67 prevents use of disclosure information for a purpose other than the permitted purpose—

- (a) by the scheme member to whom the information relates,
- (b) by any other person with the consent of the scheme member to whom the information relates,
- (c) by an office-holder in the Scottish Administration or a government department,
- (d) by a person appointed to any office by virtue of any enactment,
- (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
- (f) in order to answer a prescribed type of exempted question, or
- (g) in any other prescribed circumstances.

(4) References in sections 66 and 67 and in this section to disclosure information are references to—

- (a) disclosure records disclosed under section 52, 53 or 54, and
- (b) any information in such a disclosure record which is obtained only by virtue of section 51, 52, 53 or 54.

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- (5) “Exempted question”, where used in subsections (1)(f) and (3)(f), means a question in relation to which section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (c. 53) has been excluded by order made under section 4(4) of that Act.

VALID FROM 28/02/2011

## 69 Penalties for offences relating to vetting information **S**

A person guilty of an offence under section 65, 66 or 67 is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

### *Fees, forms and other procedures*

## 70 Fees **S**

- (1) Ministers may charge such fee as may be prescribed—
- (a) in respect of applications to join, or to be removed from, the Scheme,
  - (b) in respect of disclosure requests, and
  - (c) otherwise in respect of the performance of their functions under this Part.
- (2) Regulations may, in particular, provide for—
- (a) different fees in different circumstances,
  - (b) annual or other recurring fees in respect of participation in the Scheme,
  - (c) reduction, waiver or refund of fees in prescribed circumstances.
- (3) Before prescribing fees under this section, Ministers must have regard to—
- (a) the circumstances in which those fees are payable, and
  - (b) the desirability of maintaining an appropriate balance among—
    - (i) the quality of the performance of their vetting, barring and disclosure functions,
    - (ii) the cost of that performance, and
    - (iii) the fees paid to them in respect of that performance.
- (4) Where regulations provide for a fee to be charged in respect of—
- (a) an application to join, or to be removed from, the Scheme, or
  - (b) a disclosure request,

Ministers need not consider the application or request unless the fee is paid.

VALID FROM 12/10/2010

## 71 Forms **S**

- (1) It is for Ministers to determine the form and manner in which—
- (a) applications to join, or to be removed from, the Scheme,
  - (b) requests to correct a scheme record, and

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(c) disclosure requests (including disclosure declarations made in relation to them),  
must be made.

(2) Ministers may, in particular, determine that any such application, request or declaration may be made in electronic form.

(3) Ministers need not consider any such application, request or declaration unless it is made in the form and manner determined by them (or in a form and manner as close to that as circumstances permit).

## 72 Procedure **S**

(1) Ministers may, by regulations, make such further provision about the administration of the Scheme as they think fit.

(2) Regulations may, in particular—

- (a) prescribe further procedure relating to applications to join, or to be removed from, the Scheme,
- (b) prescribe circumstances in which scheme members are to be removed from the Scheme,
- (c) prescribe circumstances in which disclosure condition A (see section 55) is to be treated as being satisfied when a person other than a scheme member makes a disclosure request in respect of that member,
- (d) prescribe further procedure relating to making disclosure requests and to disclosing information in pursuance of such requests.

### *Supplementary*

## 73 Consideration of suitability **S**

References in this Part to a person (“A”) considering an individual's suitability to do, or to be offered or supplied for, any type of regulated work are references to A considering the individual's suitability—

- (a) to do that type of regulated work for A,
- (b) to be supplied by A to do that type of regulated work for another person,
- (c) to be a teacher (for the purposes of section 6 of the Teaching Council (Scotland) Act 1965 (c. 19)),
- (d) to provide or manage a care service (for the purposes of the 2001 Act),
- (e) to be registered under Part 3 (registration of social workers etc.) of the 2001 Act,
- (f) to foster a child (for the purposes of any regulations made under section 5(2) of the Social Work (Scotland) Act 1968 (c. 49)), or
- (g) for any other prescribed purpose.

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VALID FROM 28/02/2011

#### 74 Delegation of vetting and disclosure functions **S**

- (1) Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function—
  - (a) relating to the making of regulations or orders,
  - (b) under section 71, or
  - (c) relating to the determination of an appropriate fee under section 75(4).
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- (4) No proceedings are competent against a person performing functions delegated under this section by reason of an inaccuracy in the information made available or provided to the person in accordance with section 63(4) or 75.

VALID FROM 28/02/2011

#### 75 Sources of information **S**

- (1) Any person who holds records of convictions, cautions or other information for the use of police forces generally must make those records available to Ministers for the purposes of enabling or assisting them to perform their functions under this Part.
- (2) A chief constable <sup>F37</sup> or the Scottish Crime and Drug Enforcement Agency ] must, as soon as practicable, comply with a request by Ministers to provide them with information of the type described in section 49(1)(c) for the purposes of enabling or assisting them to perform their functions under this Part.
- (3) A <sup>F38</sup> person ] must not provide information to Ministers under subsection (2) if the <sup>F38</sup> person ] thinks that disclosing that information to the individual to whom it relates would be contrary to the interests of the prevention or detection of crime.
- (4) Ministers must pay the appropriate police authority <sup>F39</sup> or the Scottish Police Services Authority ] such fee as Ministers think appropriate for information provided under subsection (2).
- (5) No proceedings are competent against Ministers by reason of an inaccuracy in the information made available or provided to them in accordance with this section or section 63(4) <sup>F40</sup> (or in pursuance of any other power or duty to provide information to Ministers in relation to their functions under this Part) ] .

#### Textual Amendments

- F37** Words in s. 75(2) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **10(2)**

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- F38** Word in s. 75(3) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **10(3)**
- F39** Words in s. 75(4) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **10(4)**
- F40** Words in s. 75(5) inserted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **10(5)**

VALID FROM 28/02/2011

## 76 Police access to scheme information **S**

- (1) Ministers must make available to chief constables of police forces [<sup>F41</sup>, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency ]—
- the name of each individual participating in the Scheme,
  - confirmation of whether each such individual participates in the Scheme in relation to regulated work with—
    - children,
    - adults, or
    - both, and
  - any other information held by Ministers by virtue of their administration of the Scheme which Ministers consider would enable or assist police forces [<sup>F42</sup>, the Scottish Police Services Authority or the Scottish Crime and Drug Enforcement Agency ] to satisfy themselves as to the identity of such individuals.
- (2) Information disclosed under subsection (1) may be used by police forces [<sup>F43</sup>, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency] only for the purpose of—
- enabling or assisting them to perform their functions under or by virtue of this Part,
  - the prevention or detection of crime, or
  - the apprehension or prosecution of offenders.

### Textual Amendments

- F41** Words in s. 76(1) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **11(2)**
- F42** Words in s. 76(1)(c) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **11(3)**
- F43** Words in s. 76(2) substituted (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **11(4)**

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VALID FROM 28/02/2011

**77 Statements of scheme membership: disclosure of whether individual under consideration for listing S**

- (1) Despite section 46(2)(c), a statement of scheme membership must not disclose whether Ministers are considering whether to list an individual if Ministers have not made a decision under section 15 or, as the case may be, 16 within the relevant period.
- (2) The relevant period is—
  - (a) where the information which caused Ministers to consider whether to list the individual is the subject of legal or disciplinary proceedings, the period of 6 months which begins on the date on which the proceedings are finally determined,
  - (b) in any other case, the period of 6 months which begins on the date on which Ministers made a decision under section 10, 11, 12 or 13 to consider whether to list the individual, or
  - (c) where either of the periods mentioned in paragraphs (a) and (b) is extended under subsection (3), the extended period.
- (3) The sheriff may, on an application by Ministers and on cause shown, extend the period mentioned in paragraph (a) or (b) of subsection (2) (or, as the case may be, that period as previously extended under this subsection).
- (4) A period may not be extended (or further extended) under subsection (3) for a period of longer than 6 months beginning with the date on which the extension (or further extension) is granted.
- (5) An application under subsection (3) must be made before the expiry of the relevant period.
- (6) Where an application under subsection (3) is made, the relevant period is to be treated for the purposes of subsection (1) as not having expired until the application is determined.
- (7) The sheriff may, on cause shown, dispense with any requirement—
  - (a) to intimate an application under subsection (3) to the individual,
  - (b) to notify the individual of any interlocutor relating to the application.
- (8) For the purposes of subsection (5), an application is made when it is lodged with the sheriff clerk.
- (9) Any court proceedings under subsection (3) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (10) For the purposes of subsection (2)(a), proceedings are finally determined when—
  - (a) the proceedings are terminated or abandoned without a decision being made,
  - (b) a decision is made against which no appeal lies, or
  - (c) where a decision is made which may be appealed, the period during which an appeal (other than an appeal which need not be timeous) may be brought expires without an appeal being brought.



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- (11) For the purposes of subsection (10), an appeal which need not be timeous is—
- (a) an appeal under Part 8 (appeals from solemn proceedings) of the 1995 Act in relation to which the High Court must, if the appeal is to be competent, extend the time within which intimation of intention to appeal or note of appeal or both may be given,
  - (b) an appeal under Part 10 (appeals from summary proceedings) of the 1995 Act in relation to which the High Court must, if the appeal is to be competent, extend the time within which an application for a stated case may be made, or
  - (c) an appeal under section 191 (appeal by suspension on ground of miscarriage of justice) of the 1995 Act.

### PART 3 **S**

#### AMENDMENT OF PART 5 OF THE POLICE ACT 1997

VALID FROM 28/02/2011

#### 78 **Information in criminal conviction and record certificates** **S**

- (1) In section 112(2) of the 1997 Act, for the words from “or” immediately following paragraph (a) to the end of paragraph (b) substitute “(or states that there is no such conviction); and
  - (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c. 42), states that fact.”.
- (2) Section 113A of the 1997 Act is amended as follows—
  - (a) in subsection (3), for the words from “or” immediately following paragraph (a) to the end of paragraph (b) substitute “(or states that there is no such matter); and
    - (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c. 42), states that fact.”,
  - (b) in the definition of “central records” in subsection (6), for “and cautions” substitute “ , cautions or other information ”,
  - (c) in the definition of “relevant matter” in that subsection, the word “and” immediately following paragraph (a) is repealed,
  - (d) at the end of paragraph (b) of that definition, insert “and
    - (c) a prescribed court order.”.
- (3) In section 119(1) of the 1997 Act, for “or cautions” substitute “ , cautions or other information ”.
- (4) In section 119A of the 1997 Act—
  - (a) in subsection (1), after “convictions” insert “ or other information ”,
  - (b) in subsection (2), for “or cautions” substitute “ , cautions or other information ”.

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#### Commencement Information

**I1** S. 78(2)-(4) in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#) (with [art. 3](#))

## 79 Form of Part 5 applications **S**

(1) In each of the following provisions of the 1997 Act, the words “in the prescribed manner and form” are repealed—

- section 112(1)(a)
- section 113A(1)(a)
- section 113B(1)(a)
- section 114(1)(a)
- section 116(1)(a)

(2) In sections 117(1) and 120(2) of the 1997 Act, the words “in writing” are repealed.

(3) After section 125 of the 1997 Act insert—

#### “125A Form of applications

- (1) It is for the Scottish Ministers to determine the form and manner in which applications must be made for the purposes of sections 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a), 117(1), and 120(2).
- (2) The Scottish Ministers may, in particular, determine that such applications may be made in electronic form (and may be signed or countersigned electronically).
- (3) The Scottish Ministers need not consider any such application unless it is made in the form and manner determined by them (or in a form and manner as close to that as circumstances permit).”

#### Commencement Information

**I2** S. 79 in force at 11.1.2008 by [S.S.I. 2007/564](#), [art. 2](#), [Sch.](#)

## 80 Payment of fee for information from certain police forces **S**

In section 113B of the 1997 Act, after subsection (5) insert—

“(5A) The Scottish Ministers must pay to such body as may be prescribed such fee as they think appropriate for information received from the chief officer of a body mentioned in subsection (10)(j) to (m) as a result of a request under subsection (4) or (5).”

#### Commencement Information

**I3** S. 80 in force at 11.1.2008 by [S.S.I. 2007/564](#), [art. 2](#), [Sch.](#)

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VALID FROM 12/10/2010

## 81 Regulations about registration **S**

- (1) Section 120 of the 1997 Act is amended as follows—
  - (a) in subsection (2), for “section 120A and regulations under subsection (3)” substitute “ sections 120ZB and 120A ”,
  - (b) subsection (3) is repealed.
- (2) Before section 120A of the 1997 Act insert—

### “120ZB Regulations about registration

- (1) The Scottish Ministers may by regulations make further provision about registration.
- (2) Regulations under this section may in particular make provision for—
  - (a) the payment of fees;
  - (b) the information to be included in the register;
  - (c) the registration of any person to be subject to conditions;
  - (d) the nomination by—
    - (i) a body corporate or unincorporated; or
    - (ii) a person appointed to an office by virtue of an enactment, whether that body or person is registered or applying to be registered,  
of an individual to act for the body or, as the case may be, person in relation to disclosure applications;
  - (e) the refusal by the Scottish Ministers, on such grounds as may be specified in or determined under the regulations, to accept or to continue to accept any nomination made by virtue of this section;
  - (f) the refusal by the Scottish Ministers to include persons who, in the opinion of the Scottish Ministers, are likely to act in relation to fewer disclosure applications in any period of 12 months than a minimum number specified in the regulations;
  - (g) the removal from the register of persons who have, in any period of 12 months during which they were registered, acted in relation to fewer disclosure applications than the minimum number specified under paragraph (f);
  - (h) the removal from the register of persons who are, in the opinion of the Scottish Ministers, no longer likely to wish to act in relation to disclosure applications;
  - (i) the removal from the register of any person who has breached any condition of the person's registration; and
  - (j) the period which must elapse before any person refused registration or removed from the register may apply to be included in the register.
- (3) The provision which may be made by virtue of subsection (2)(c) includes provision—

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- (a) for the registration or continued registration of any person to be subject to prescribed conditions or, if the regulations so provide, such conditions as the Scottish Ministers think fit; and
  - (b) for the Scottish Ministers to vary or revoke those conditions.
- (4) In subsection (2), references to acting in relation to disclosure applications are to be read as references to—
- (a) countersigning applications under section 113A or 113B; or
  - (b) making declarations in relation to requests for disclosures under section 52 or 53 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14).”
- (3) Section 124A of the 1997 Act is amended as follows—
- (a) in subsection (1), for “section 120(3)(b)” substitute “ section 120ZB(2)(h)”, and
  - (b) in subsection (3), for “section 120(3)(ac)” substitute “ section 120ZB(2)(j) ”.

## PART 4 S

### SCHOOL CARE ACCOMMODATION SERVICES

#### 82 **Meaning of “school care accommodation service”** S

- (1) In section 2 of the 2001 Act, for subsection (4) substitute—
- “(4) A school care accommodation service is a service which—
- (a) consists of the provision of residential accommodation to a pupil in a place in or outwith a public, independent or grant-aided school;
  - (b) is provided (whether or not during term-time) for the purpose of or in connection with the pupil's attendance at the school (whether current or otherwise); and
  - (c) is provided to the pupil by—
    - (i) an education authority or the managers of an independent or grant-aided school; or
    - (ii) any person under arrangements made between that person and any such authority or managers.
- (4A) For the purposes of subsection (4)(c)(i) above, a service which—
- (a) falls within the description given by subsection (4)(a), (b) and (c)(ii) above; and
  - (b) is provided to the pupil in domestic premises,
- is to be regarded as being provided by that authority or (as the case may be) those managers.
- (4B) A service may be excepted from the definition in subsection (4) above by regulations.”.
- (2) In section 77(1) of the 2001 Act, in the definition of “school care accommodation service”, for “has the meaning given by subsection (4) of section 2” substitute “ is to be construed in accordance with subsections (4) to (4B) of section 2 of ”.

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#### Commencement Information

**14** S. 82 in force at 1.9.2007 by S.S.I. 2007/385, art. 2, Sch.

### **83** Application of fire safety rules to school care accommodation service **S**

In section 78 of the Fire (Scotland) Act 2005 (asp 5), in subsection (5)(c), after “section” insert “ except where the service is provided as mentioned in subsection (4) (c)(ii) of that section ”.

#### Commencement Information

**15** S. 83 in force at 1.9.2007 by S.S.I. 2007/385, art. 2, Sch.

## **PART 5** **S**

### SUPPLEMENTARY AND GENERAL

VALID FROM 28/02/2011

### **84** Guidance **S**

- (1) Ministers must issue guidance on such matters relating to the operation of Parts 1 and 2 of this Act as they think appropriate.
- (2) Ministers may revoke or vary guidance issued under subsection (1) at any time.

VALID FROM 28/02/2011

### **85** Annual report **S**

- (1) Ministers must, in respect of each reporting year, prepare a report on the performance of their vetting, barring and disclosure functions during that year.
- (2) Ministers must lay a copy of each such report before the Scottish Parliament as soon as practicable after the end of the reporting year to which it relates.
- (3) A reporting year is—
  - (a) the period beginning with the day on which this section comes into force and ending on 31 March, and
  - (b) each successive year ending on that date.

### **86** Transfer of Disclosure Scotland staff etc. **S**

- (1) Ministers may by order (a “staff transfer order”) make provision for persons employed by virtue of section 9 of the Police (Scotland) Act 1967 (c. 77) (employees other than

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- constables) by the Strathclyde Joint Police Board (the “Police Board”) to transfer to, and become members of the staff of, the Scottish Administration.
- (2) A staff transfer order may specify particular persons, or types of person, to whom the order applies.
- (3) Subsections (4) to (9) apply where—
- (a) a person is to be transferred by virtue of a staff transfer order, and
  - (b) immediately before the day on which the staff transfer order comes into force in relation to the person (the “transfer day”), the person has a contract of employment with the Police Board.
- (4) On and after the transfer day the contract of employment has effect as if originally made between the person and Ministers on behalf of the Crown.
- (5) On the transfer day, the rights, powers, duties and liabilities of the Police Board under or in connection with the contract of employment are transferred to Ministers.
- (6) Anything done before the transfer day by or in relation to the Police Board in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to Ministers.
- (7) If, before the transfer day, the person gives notice to Ministers or the Police Board that the person objects to becoming a member of staff of the Scottish Administration—
- (a) the contract of employment with the Police Board is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated, and
  - (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.
- (8) Nothing in this section prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person's working conditions is made.
- (9) Where—
- (a) the identity of the person's employer changes by virtue of the making of a staff transfer order, and
  - (b) it is shown that, in all the circumstances, the change is significant and detrimental to the person,
- the person has the right to terminate the contract of employment.
- (10) A staff transfer order may make such further provision about such transfers as Ministers think fit.

#### Commencement Information

**I6** S. 86 in force at 1.9.2007 by S.S.I. 2007/385, art. 2, Sch.

## 87 Power to give effect to corresponding legislation in England, Wales and Northern Ireland **S**

- (1) Ministers may by order make such provision as they consider appropriate in consequence of, or for the purposes of giving full effect to, any provision made by virtue of the Safeguarding Vulnerable Groups Act 2006 (c. 47).

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- (2) Ministers may by order make such provision as they consider appropriate in consequence of, or for the purposes of giving full effect to, any legislation which forms part of the law of Northern Ireland which in Ministers' opinion—
- (a) corresponds to provision made by virtue of this Act, or
  - (b) affects the operation of any provision made by virtue of this Act.
- (3) An order under subsection (1) or (2) may modify any enactment, instrument or document.

#### Commencement Information

I7 S. 87 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

## 88 Modification of enactments **S**

Schedule 4 contains minor amendments and amendments and repeals consequential on the provisions of this Act.

#### Commencement Information

I8 S. 88 in force at 1.9.2007 for specified purposes by S.S.I. 2007/385, art. 2, Sch.

I9 S. 88 in force at 11.1.2008 for specified purposes by S.S.I. 2007/564, art. 2, Sch.

VALID FROM 28/02/2011

## 89 Offences by bodies corporate etc. **S**

- (1) Where—
- (a) an offence under this Act has been committed by—
    - (i) a body corporate,
    - (ii) a Scottish partnership, or
    - (iii) an unincorporated association other than a Scottish partnership, and
  - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
    - (i) a relevant individual, or
    - (ii) an individual purporting to act in the capacity of a relevant individual,
- that individual as well as the body corporate, partnership or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate other than a council—
    - (i) a director, manager, secretary or other similar officer of the body,
    - (ii) where the affairs of the body are managed by its members, the members,
  - (b) in relation to a council, an officer or member of the council,

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- (c) in relation to a Scottish partnership, a partner, and
  - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
- (3) Any penalty imposed on a body corporate, Scottish partnership or unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the 1995 Act.

VALID FROM 28/02/2011

## 90 Crown application **S**

- (1) This Act binds the Crown.
- (2) But subordinate legislation made under this Act need not bind the Crown.
- (3) No contravention by the Crown of a provision made by or under this Act makes the Crown criminally liable.
- (4) But the Court of Session may, on the application of any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (5) Despite subsection (3), the provisions made by and under this Act apply to persons in the public service of the Crown as they apply to other persons.

## PART 6 **S**

### INTERPRETATION

VALID FROM 28/02/2011

## 91 Regulated work **S**

- (1) Regulated work means regulated work with children or protected adults.
- (2) Regulated work with children is work of the type described in schedule 2.
- (3) Regulated work with adults is work of the type described in schedule 3.
- (4) References in this Act to types of regulated work are to be construed accordingly.

VALID FROM 18/04/2010

## 92 Individuals barred from regulated work **S**

- (1) An individual is barred from regulated work with children if the individual is—
  - (a) listed in the children's list,



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- (b) included in the children's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),
  - (c) included (otherwise than provisionally) in the list kept under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
  - (d) an individual falling within subsection (3).
- (2) An individual is barred from regulated work with adults if the individual is—
- (a) listed in the adults' list,
  - (b) included in the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),
  - (c) included (otherwise than provisionally) in the list kept under article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
  - (d) an individual falling within subsection (4).
- (3) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with children by virtue of any of paragraphs (a) to (c) of subsection (1).
- (4) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with adults by virtue of any of paragraphs (a) to (c) of subsection (2).
- (5) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers' opinion corresponds to the children's list for a list mentioned in subsection (1)(b) and (c).
- (6) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers' opinion corresponds to the adults' list for a list mentioned in subsection (2)(b) or (c).

#### Commencement Information

**I10** S. 92(3)-(6) in force at 18.4.2010 for specified purposes by [S.S.I. 2010/133](#), [art. 2](#), [Sch.](#)

VALID FROM 28/02/2011

#### 93 Meaning of “harm” **S**

- (1) For the purposes of this Act, an individual (“A”) harms another (“B”) if—
- (a) A's conduct causes B physical harm,
  - (b) A's conduct causes B psychological harm (for example: by putting B in a state of fear, alarm or distress), or

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- (c) A engages in unlawful conduct which appropriates or adversely affects B's property, rights or interests (for example: theft, fraud, embezzlement or extortion),

and references to harm are to be construed accordingly.

- (2) For the purposes of this Act, an individual (“C”) places another (“D”) at risk of harm if—

- (a) C attempts to harm D,
- (b) C incites another to harm D,
- (c) C encourages D to self-harm, or

(d) C's conduct otherwise causes, or is likely to cause, D to be harmed, and references to being placed at risk of harm are to be construed accordingly.

VALID FROM 18/04/2010

#### 94 Meaning of “protected adult” **S**

- (1) For the purposes of this Act, a “protected adult” is an individual aged 16 or over who is provided with—

- (a) a service by a person carrying on—
  - (i) a support service,
  - (ii) an adult placement service,
  - (iii) a care home service, or
  - (iv) a housing support service,

which is registered under Part 1 of the 2001 Act,

- (b) a prescribed service—
  - (i) by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29),
  - (ii) which is secured by a health body acting in exercise of such functions,
  - (iii) by an independent hospital,
  - (iv) by a private psychiatric hospital,
  - (v) by an independent clinic, or
  - (vi) by an independent medical agency,

- (c) a community care service—
  - (i) provided or secured by a council under the Social Work (Scotland) Act 1968 (c. 49) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
  - (ii) in respect of which a council has made a direct payment, or
- (d) a prescribed welfare service.

- (2) Ministers may by order modify subsection (1) in order to change the definition of “protected adult” as they think appropriate.

- (3) Expressions used in paragraphs (a) and (b) of subsection (1) have the same meaning as in the 2001 Act.

- (4) In subsection (1)(c)—

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“community care service” has the same meaning as in the Social Work (Scotland) Act 1968 (c. 49),

“direct payment” means a payment made under section 12B of that Act.

(5) In subsection (1)(d), “welfare service” includes any service which provides support, assistance, advice or counselling to individuals with particular needs.

VALID FROM 28/02/2011

## 95 Meaning of “work” **S**

- (1) In this Act “work” means work of any kind and, in particular, includes—
- (a) paid and unpaid work,
  - (b) work under a contract (for example: under a contract of service or apprenticeship or under a contract for services),
  - (c) carrying out the functions of any office established by virtue of an enactment,
  - (d) being a foster carer, and
  - (e) caring for, or supervising, individuals participating in any organised activity, and references to a “worker” and to “working” are to be construed accordingly.
- (2) Despite the generality of subsection (1), “work” does not include work falling within subsection (3) or (4).
- (3) Work falls within this subsection if it is done for an individual (“A”)—
- (a) in the course of a family relationship, and
  - (b) for the benefit of A or a member of A's family.
- (4) Work falls within this subsection if it is done for an individual (“B”)—
- (a) in the course of a personal relationship,
  - (b) for no commercial consideration, and
  - (c) for the benefit of B, a member of B's family or B's friend.
- (5) A family relationship includes a relationship between two individuals who—
- (a) live in the same household, and
  - (b) treat each other as though they were members of the same family.
- (6) A personal relationship is a relationship between or among friends.
- (7) Any friend of a member of an individual's family is to be regarded as being the individual's friend.
- (8) “Benefit” does not include commercial benefit.
- (9) Ministers may prescribe circumstances in which work either is or is not to be treated for the purposes of this Act as being done in the course of a family or personal relationship.

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VALID FROM 28/02/2011

## 96 **Fostering** **S**

- (1) For the purposes of this Act, a “foster carer”, in relation to a child, is an individual other than a parent of the child—
  - (a) with whom the child has been placed under section 26(1)(a) (placement by councils) of the Children (Scotland) Act 1995 (c. 36) (“the 1995 Act”),
  - (b) who looks after the child in pursuance of arrangements made by a council under 26(1)(c) (arrangements for accommodating children) of the 1995 Act,
  - (c) who—
    - (i) maintains the child as a foster child for the purposes of the Foster Children (Scotland) Act 1984 (c. 56), or
    - (ii) otherwise looks after the child in circumstances in which that Act applies by virtue of section 17 of that Act, or
  - (d) who looks after the child in pursuance of—
    - (i) a permanence order, or
    - (ii) a supervision requirement.
- (2) A foster carer is to be treated as doing work for—
  - (a) in the case of a foster carer of the type described in subsection (1)(a), the council which placed the child with that foster carer under section 26(1)(a) of the 1995 Act,
  - (b) in the case of a foster carer of the type described in subsection (1)(b) or (c), any person who—
    - (i) made arrangements with the foster carer in pursuance of which the foster carer looks after the child, and
    - (ii) has power to terminate those arrangements,
  - (c) in the case of a foster carer of the type described in subsection (1)(d)(i), the council which has the right to regulate the child's residence,
  - (d) in the case of a foster carer of the type described in subsection (1)(d)(ii), the council in whose area the child is looked after.
- (3) Sections 34 to 37 do not apply in relation to work as a foster carer where the work is done in pursuance of—
  - (a) a permanence order which vests any parental responsibility or parental right in the foster carer, or
  - (b) a supervision requirement.
- (4) Subsections (2) to (7) of section 95 do not apply in relation to work as a foster carer.
- (5) References in section 3 to dismissing an individual doing regulated work are, in relation to foster carers, to be read as references to terminating the fostering arrangements concerned.
- (6) References in this section to looking after a child in pursuance of a permanence order are references to looking after a child in consequence of the exercise by the council to which the order relates of its right to regulate the child's residence.
- (7) References in this section to the council's right to regulate a child's residence are references to the parental right vested in the council by virtue of section 81(1)(b)

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of the Adoption and Children (Scotland) Act 2007 (asp 4) (mandatory provision in permanence order).

(8) In this section—

“parental responsibilities” and “parental rights” have the same meaning as they have in the 1995 Act,

“permanence order” means an order made under section 80(1) of the Adoption and Children (Scotland) Act 2007 (asp 4),

“supervision requirement” means a requirement made under section 70(1) of the 1995 Act.

## 97 General interpretation **S**

(1) In this Act—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46),

“the 1997 Act” means the Police Act 1997 (c. 50),

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001 (asp 8),

“care service” has the same meaning as in the 2001 Act,

“charity” means a body entered in the Scottish Charity Register,

“charity trustees” has the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),

“chief constable” means the chief constable of a police force in Scotland,

“child” means an individual under the age of 18,

“conduct” includes neglect and other failures to act,

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),

“disciplinary proceedings” means proceedings in which the regulatory body for a profession is to decide whether disciplinary action should be taken against an individual carrying on that profession,

“disclosure declaration” means a declaration of the type referred to in disclosure condition C (see section 55) which is made in relation to a disclosure request,

“disclosure record” means a—

(a) scheme record,

(b) short scheme record, or

(c) statement of scheme membership,

disclosed under Part 2,

“disclosure request” means a request for a disclosure under section 52, 53 or 54 of—

(a) a scheme record,

(b) a short scheme record, or

(c) a statement of scheme membership,

“employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services (and “employee” and related words are to be construed accordingly),

“employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for

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the purpose of finding individuals employment with employers or of supplying employers with individuals for employment by them,

“employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying individuals in the employment of the person carrying on the business to act for, and under the control of, other persons in any capacity,

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29),

“Her Majesty's Inspectors of Schools” means the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c. 44),

“<sup>F44</sup>Independent Safeguarding Authority]” and “<sup>F44</sup>ISA]” mean the body established by section 1 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),

“legal proceedings” means civil or criminal proceedings in or before any court or tribunal,

“Ministers” means the Scottish Ministers,

“organisation” means—

- (a) a body corporate or unincorporated,
- (b) an individual who, in the course of a business, employs or otherwise gives work to other persons,
- (c) the governing body, trustees, or other person or body of persons responsible for the management of any of the following—
  - (i) a school,
  - (ii) a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6),
  - (iii) a hostel used mainly by pupils attending a school or body mentioned in paragraph (i) or (ii) respectively,

“personnel supplier” means an organisation which carries on an employment agency or employment business,

“police authority” has the same meaning as in the Police (Scotland) Act 1967 (c. 77),

“police force” has the same meaning as in Part 5 of the 1997 Act,

“prescribed” (except where used in sections 18(4)(b) and 49(1)(a)) means prescribed in regulations made by Ministers (and “prescribe” is to be construed accordingly),

“registrar of dentists and dental care professionals” means the registrar appointed under section 14 of the Dentists Act 1984 (c. 24),

“Registrar of health professionals” means the Registrar appointed under Article 4 of the Health Professions Order 2001 (S.I. 2002/254),

“Registrar of nurses and midwives” means the Registrar appointed under Article 4 of the Nursing and Midwifery Order 2001 (S.I. 2002/253),

“registrar of pharmaceutical chemists” means the registrar appointed under section 1 of the Pharmacy Act 1954 (c. 61),

“school” has the same meaning as in the Education (Scotland) Act 1980 (c. 44),

“social work inspector” means a person appointed under section 4 of the Joint Inspection of Children's Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3),

“Special Health Board” means a board constituted by order under section 2(1) (b) of the National Health Service (Scotland) Act 1978 (c. 29).

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- (2) For the purposes of this Act, Ministers must assume that an individual is doing regulated work for an organisation if they—
- (a) have made a disclosure in respect of the individual, in relation to that type of regulated work, under section 52, 53 or 54,
  - (b) know that the disclosure was sought for the purposes of enabling or assisting the organisation to consider the scheme member's suitability to do, that type of regulated work for the organisation (or to be offered such work by the organisation), and
  - (c) have not been satisfied that the individual has not been engaged to do, or has stopped doing, that type of regulated work for the organisation.
- (3) References in this Act to Ministers considering whether to list an individual are to be read as references to Ministers considering whether to list an individual in the children's list, in the adults' list or, as the case may be, in both lists in pursuance of section 10, 11, 12 or 13.
- (4) References in this Act to Ministers' vetting, barring and disclosure functions are references to their functions under Parts 1 and 2 of this Act and Part 5 of the 1997 Act (other than functions relating to the making of regulations and orders).
- (5) References in this Act to relevant police forces, and to the chief officers of those forces, are to be read in the same way as they are read in relation to an application under section 113B of the 1997 Act.
- (6) The words and other expressions listed in schedule 5 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

#### Textual Amendments

**F44** Words in s. 97 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), [ss.81\(2\)\(3\)\(n\)](#), [116\(5\)](#)  
(a)

#### Commencement Information

**I11** S. 97(1) in force at 1.9.2007 by [S.S.I. 2007/385](#), [art. 2](#), [Sch.](#)

## PART 7 S

### FINAL PROVISIONS

#### 98 Ancillary provision S

- (1) Ministers may by order make—
- (a) such supplementary, incidental or consequential provision, or
  - (b) such transitional, transitory or saving provision,
- as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

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## 99 Saving: disclosure of information **S**

Nothing in this Act affects any power which exists apart from this Act to disclose information.

## 100 Orders and regulations **S**

- (1) Any power of Ministers under this Act to make an order or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as Ministers consider appropriate,
  - (b) different provision for different purposes.
- (3) Unless subsection (4) makes contrary provision, a statutory instrument containing an order (other than an order made under section 101) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An order or regulations must not be made under any of the following provisions unless a draft of the statutory instrument containing the order or, as the case may be, the regulations has been laid before, and approved by a resolution of, the Scottish Parliament—
  - Section 14(3)
  - Section 32(2)
  - Section 35(2)
  - Section 87(1) or (2) or 98(1) (but only if the order contains provisions which add to, replace or omit any part of the text of this or any other Act)
  - Section 94(2)
  - Paragraph 28 of schedule 2 (except an order of the type mentioned in paragraph 15 of that schedule)
  - Paragraph 13 of schedule 3

## 101 Commencement **S**

- (1) This Part comes into force on Royal Assent.
- (2) The provisions of Parts 1 to 6 come into force on such day as Ministers may by order appoint.
- (3) Different days may be appointed for different purposes and for different areas.

## 102 Short title **S**

This Act may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007.



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VALID FROM 28/02/2011

SCHEDULE 1 **S**  
(introduced by section 32)

RELEVANT OFFENCES

.....

VALID FROM 28/02/2011

SCHEDULE 2 **S**  
(introduced by section 91)

REGULATED WORK WITH CHILDREN

.....

VALID FROM 28/02/2011

SCHEDULE 3 **S**  
(introduced by section 91)

REGULATED WORK WITH ADULTS

.....

SCHEDULE 4 **S**  
(introduced by section 88)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

*Teaching Council (Scotland) Act 1965 (c. 19)*

1 The Teaching Council (Scotland) Act 1965 is amended as follows.

**Commencement Information**

**I22** Sch. 4 para. 1 in force at 1.9.2007 by S.S.I. 2007/385, art. 2, Sch.

VALID FROM 28/02/2011

F63<sub>2</sub>

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### Textual Amendments

**F63** Sch. 4 para. 2 repealed (18.4.2010 for specified purposes, coming into force in accordance with art. 1(2)) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Miscellaneous Provisions\) Order 2010 \(S.S.I. 2010/446\)](#), arts. 1(2), **21**

- 3 In section 10B(1)(b)—
- (a) paragraphs (i) to (iii), and
  - (b) the word “and” which follows those paragraphs,
- are repealed.

### Commencement Information

**I23** Sch. 4 para. 3 in force at 1.9.2007 by [S.S.I. 2007/385](#), art. 2, **Sch.**

- 4 In section 11(8), for the words from “such” to “but” substitute “ who has applied to be registered ”.

### Commencement Information

**I24** Sch. 4 para. 4 in force at 1.9.2007 by [S.S.I. 2007/385](#), art. 2, **Sch.**

VALID FROM 28/02/2011

### *Education (Scotland) Act 1980 (c. 44)*

- 5 The Education (Scotland) Act 1980 is amended as follows.
- 6 In section 98A—
- (a) in subsection (5)(a)(ii), for “disqualified from working with children” substitute “ barred from regulated work with children ”,
  - (b) in subsection (6), for the definition of “disqualified from working with children” substitute—
 

““barred from regulated work with children” shall be construed in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14);”.
- 7 In section 99(1A)—
- (a) in paragraph (g)(ii), for “disqualified from working with children” substitute “ barred from regulated work with children ”,
  - (b) in paragraph (h)(ii), for “disqualified from working with children” substitute “ barred from regulated work with children ”.
- 8 In section 135(1)—
- (a) after the definition of “attendance order” insert—
 

““barred from regulated work with children” has the meaning given by section 98A(6) of this Act;”,
  - (b) the definition of “disqualified from working with children” is repealed.

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VALID FROM 28/02/2011

*Foster Children (Scotland) Act 1984 (c. 56)*

- 9 The Foster Children (Scotland) Act 1984 is amended as follows.
- 10 In section 7, after subsection (2) insert—
- “(3) A person who lives in the same premises as a barred person shall not maintain a foster child.
- (4) In subsection (3) (and in section 15(2A)), “barred person” means a person who is barred from regulated work with children (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)).”.
- 11 In section 15, after subsection (2) insert—
- “(2A) A person shall not be guilty of an offence under subsection (1)(c) above in relation to a contravention of section 7(3) if the person proves that he did not know, and had no reasonable ground for believing, that any other person living in the premises in which the person lives was a barred person.”.
- 12 In section 21, before the definition of “care home service” insert—
- ““barred person” has the meaning given by section 7(4);”.

VALID FROM 28/02/2011

*Criminal Procedure (Scotland) Act 1995 (c. 46)*

- 13 The 1995 Act is amended as follows.
- 14 In section 106(1)—
- (a) paragraphs (db) and (dc) are repealed,
- (b) in paragraph (f), sub-paragraphs (ii) and (iii) are repealed.
- 15 In section 110(1)(a), the words “, the proposal to make a reference was made” are repealed.
- 16 Section 111(3) is repealed.
- 17 In section 116, for subsection (2) substitute—
- “(2) A person who has appealed against both conviction and sentence (or, as the case may be, against both conviction and a decision mentioned in section 106(1)(bb) or both conviction and disposal and order) may abandon the appeal in so far as it is against conviction and may proceed with it against sentence (or, as the case may be, decision, disposal or order) alone.”.
- 18 In section 118—
- (a) in subsection (4), for the words “106(1)(ba), (bb), (c), (d), (da), (dc), (e) or (f)” substitute “ 106(1)(ba), (bb), (c), (d), (da), (e) or (f) ”,
- (b) subsection (4AA) is repealed,

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	(c) in subsection (7)—
	(i) the words “or, as the case may be,” at the end of paragraph (a), and
	(ii) paragraph (b),
	are repealed.
19	In section 121A(1), the words “(other than an appeal under section 106(1)(db) or (dc))” are repealed.
20	In section 173(2), the words “or (cb)” are repealed.
21	In section 175—
	(a) in subsection (2)—
	(i) paragraph (cb)(but not the word “or” which appears immediately after that paragraph) is repealed,
	(ii) in paragraph (d), sub-paragraphs (ii) and (iii) are repealed,
	(b) in subsection (8), for the words from “under” to the end of paragraph (c) substitute “against both conviction and sentence may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone,”,
	(c) in subsection (9), the words “or (cb)” are repealed.
22	Section 181(4) is repealed.
23	In section 186—
	(a) the words “or (cb)”, where they appear in subsections (1), (2), (9) and (10), are repealed,
	(b) in subsection (2)(a)—
	(i) at the end of sub-paragraph (i) insert “ or ”,
	(ii) sub-paragraph (iii)(and the word “or” which immediately precedes it) are repealed.
24	In section 187(1), the words “or (cb)” are repealed.
25	In section 189—
	(a) subsection (2A) is repealed,
	(b) in subsection (7)(b)—
	(i) the words “or, as the case may be,” at the end of paragraph (a), and
	(ii) paragraph (b),
	are repealed.
26	In section 193A(1), the words “(other than by way of an appeal under section 175(2)(cb) of this Act against a reference only)” are repealed.

*Police Act 1997 (c. 50)*

27 Part 5 of the 1997 Act is amended as follows.

**Commencement Information**

**I25** Sch. 4 para. 27 in force at 11.1.2008 for specified purposes by S.S.I. 2007/564, art. 2, Sch.

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VALID FROM 28/02/2011

- 28 In section 113A, after subsection (5) insert—
- “(5A) The Scottish Ministers need not issue a criminal record certificate under subsection (1) if the statement accompanying the application states that the purpose for which the certificate is required is the purpose mentioned in disclosure condition C (set out in section 55 of the Protection of Vulnerable Groups (Scotland) Act 2007) (asp 14).”.

VALID FROM 18/04/2010

- 29 After section 113B insert—
- “113CA Suitability information relating to children**
- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to children.
- (2) Suitability information relating to children is—
- (a) whether the applicant is barred from regulated work with children;
  - (b) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which the applicant became barred;
  - (c) whether the Scottish Ministers are considering whether to list the individual in the children's list;
  - (d) whether the Independent Barring Board is considering whether to include the applicant in the children's barred list in pursuance of paragraph 3 or 5 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006.
- 113CB Suitability information relating to protected adults**
- (1) In such cases as are prescribed, an enhanced criminal record certificate must also include suitability information relating to protected adults.
- (2) Suitability information relating to protected adults is—
- (a) whether the applicant is barred from regulated work with adults;
  - (b) if the applicant is barred from such activity, such details as are prescribed of the circumstances in which the applicant became barred;
  - (c) whether the Scottish Ministers are considering whether to list the individual in the adults' list;
  - (d) whether the Independent Barring Board is considering whether to include the applicant in the adults' barred list in pursuance of paragraph 9 or 11 of Schedule 3 to the Safeguarding Vulnerable Groups Act 2006.

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### 113CC Suitability information: supplementary

- (1) The Scottish Ministers may by order made by statutory instrument—
  - (a) amend section 113CA for the purpose of altering the meaning of suitability information relating to children;
  - (b) amend section 113CB for the purpose of altering the meaning of suitability information relating to protected adults.
- (2) Such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) Expressions used in sections 113CA and 113CB and in the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) have the same meaning in those sections as in that Act, except that “prescribed” must be construed in accordance with section 125 of this Act.”.

VALID FROM 28/02/2011

30 Sections 113C to 113F are repealed.

VALID FROM 28/02/2011

31 In section 114—

- (a) in subsection (2), for “a Minister of the Crown” substitute “ a person mentioned in subsection (2A) ”,
- (b) after subsection (2) insert—
 

“(2A) Any of the following persons may make a statement for the purposes of subsection (2)—

  - (a) a Minister of the Crown;
  - (b) a member of the Scottish Executive;
  - (c) any other office-holder in the Scottish Administration; or
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).”
- (c) in subsection (3), for “Sections 113A(3) to (6) and 113C to 113F” substitute “ Section 113A(3) to (6) ”.

VALID FROM 28/02/2011

32 In section 116—

- (a) in subsection (2), for “a Minister of the Crown, or a person nominated by a Minister of the Crown,” substitute “ a person mentioned in subsection (2A) ”,
- (b) after subsection (2) insert—
 

“(2A) Any of the following persons may make a statement for the purposes of subsection (2)—

  - (a) a Minister of the Crown;

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- (b) a member of the Scottish Executive;
  - (c) any other office-holder in the Scottish Administration; or
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).”
- (c) in subsection (3), for “113C to 113F” substitute “ 113CA to 113CC ”.

33 In section 117, after subsection (2) insert—

- “(3) An application under this section may, in particular, request a review of any information contained in a certificate by virtue of section 113B(4).
- (4) The Scottish Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether the chief officer still thinks that the information concerned might be relevant for the purpose in respect of which it was requested.”.

#### Commencement Information

I26 Sch. 4 para. 33 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

34 In section 118—

- (a) in subsection (2A)(a), for “United Kingdom Passport Agency” substitute “ Identity and Passport Service ”,
- (b) after subsection (2A) insert—

“(2B) The Scottish Ministers may require an applicant to have fingerprints taken under subsection (2) only if they are not satisfied by other evidence provided under subsection (1) as to the applicant’s identity.”,
- (c) for subsection (3) substitute—

“(3) The Scottish Ministers must arrange the destruction of any fingerprints taken in pursuance of subsection (2) as soon as reasonably practicable after they have been used for the purpose mentioned in subsection (1).”.

#### Commencement Information

I27 Sch. 4 para. 34 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

VALID FROM 28/02/2011

35 In section 119A(2), the words from “; and” to the end of the subsection are repealed.

VALID FROM 28/02/2011

36 In section 120(5)(b) for the words from “countersign” to “113B” substitute “—  
 (“) countersign applications under section 113A or 113B; or

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- (ii) make declarations in relation to disclosure requests made under section 52 or 53 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14),”.

VALID FROM 28/02/2011

- 37 In section 120A—
- (a) in subsection (3)(b), for “included in any list mentioned in section 113C(3) or 113D(3)” substitute “barred from regulated work with children or adults (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14))”;
  - (b) in subsection (4)(b)(iii), after “applications” insert “, or the making of declarations,”.

- 38 Section 121 is repealed.

#### Commencement Information

**I28** Sch. 4 para. 38 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

VALID FROM 28/02/2011

- 39 In section 122—
- (a) in subsection (3)—
    - (i) after “113B” insert “, or make a disclosure under section 52 or 53 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14),”;
    - (ii) after “application” insert “ or, as the case may be, made the declaration in relation to the disclosure request”;
    - (iii) after “countersigned”, where it appears in paragraph (b), insert “ or, as the case may be, made the declaration”;
  - (b) in subsection (4)(b)—
    - (i) the words after “person” become sub-paragraph (i), and
    - (ii) after that new sub-paragraph insert “; or
      - (ii) has made or is likely to make a declaration in relation to a disclosure request made under section 52 or 53 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)”.

- 40 Before section 123 insert—

#### Delegation of functions of Scottish Ministers

- “122(1) The Scottish Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function—



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- (a) relating to the making of regulations or orders;
  - (b) relating to the publishing or revising of a code of practice;
  - (c) relating to the laying of a code of practice before the Scottish Parliament;
  - (d) relating to the determination of an appropriate fee under section 113B(5A) or 119(3); or
  - (e) under section 125A.
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- (4) No proceedings are competent against a person performing functions delegated under this section by reason of an inaccuracy in the information made available or provided to the person in accordance with section 119.”.

#### Commencement Information

**I29** Sch. 4 para. 40 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

VALID FROM 28/02/2011

41 In section 126(1), after the definition of “Minister of the Crown” insert—  
““office-holder in the Scottish Administration” has the same meaning as in the Scotland Act 1998 (c. 46);”.

VALID FROM 28/02/2011

*Protection of Children (Scotland) Act 2003 (asp 5)*  
42 The whole Act (other than sections 13 and 16) is repealed.

VALID FROM 28/02/2011

*Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)*  
43 Section 24(1) of the Criminal Procedure (Amendment) (Scotland) Act 2004 is repealed.

VALID FROM 28/02/2011

*Charities and Trustee Investment (Scotland) Act 2005 (asp 10)*  
44 Paragraph 15 of schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 is repealed.

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VALID FROM 28/02/2011

*Inquiries Act 2005 (c. 12)*

45 Part 2 of Schedule 2 to the Inquiries Act 2005 is repealed.

*Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)*

46 The following provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 are repealed—

- (a) section 3(2)(d),
- (b) section 3(8), and
- (c) paragraph 14(2) of schedule 1.

**Commencement Information**

**I30** Sch. 4 para. 46 in force at 11.1.2008 by S.S.I. 2007/564, art. 2, Sch.

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SCHEDULE 5 **S**  
(introduced by section 97(6))

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