

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 2: Vetting and Disclosure

Sections 65 – 69. Offences relating to vetting information

117. These offences are designed primarily for the purpose of protecting personal and sensitive information about individuals rather than the exclusion of barred individuals from the regulated workforces. Therefore, they attract an intermediate level of penalty as set out at section 69. They build on already existing penalties and offences for disclosure information under Part 5 of the Police Act, but focus on misuse of scheme information, i.e. information about individuals working or intending to work with children or protected adults.
118. **Section 65** creates the offence of falsifying a disclosure record. It mirrors the offences relating to falsifying criminal record certificates in the Police Act. Where a barred individual falsifies a disclosure record to access regulated work, that individual would be committing this offence *and* the offence at section 34. Reasons why an individual might attempt to falsify a disclosure record include to avoid the fee or because of embarrassment over some historic incident or conviction.
119. **Section 66** makes it an offence for a person to disclose to others disclosure records which have been disclosed under section 51, 52, 53 or 54. These offences are needed to ensure that the sensitive information contained in the scheme record is not shared unnecessarily. The section also recognises that it may be necessary to share the record with other employees, members and office holders within an organisation or where the disclosure has been requested on somebody else's behalf, and the section exempts such sharing from the scope of the offence.
120. **Section 68** provides further clarification of the section 66 offence by setting out in subsection (1) the circumstances in which it is not an offence to disclose disclosure information. Subsection (2) makes clear that the record should only be shared for the purposes of enabling the employer to determine suitability for regulated work. This is an important safeguard to ensure that employers only share disclosure information for legitimate purposes.
121. **Section 68(1)(a)** makes clear that a scheme member may disclose their own disclosure record. So, for example, a disclosure of scheme membership obtained under section 54 by a scheme member in respect of one personal employer may be shown by that scheme member to other personal employers. For example, a private dance teacher who is teaching a class of 20 children each Wednesday evening might be asked to obtain a statement of scheme membership by one of the parents. There is nothing to prevent that dance teacher showing the statement of scheme membership to every parent; there is

*These notes relate to the Protection of Vulnerable Groups (Scotland)
Act 2007 (asp 14) which received Royal Assent on 18 April 2007*

no requirement to generate 20 disclosures of scheme membership, one for each parent, although this would be permitted.

122. [Section 67](#) makes it an offence for anyone to attempt to see a disclosure record, or to use such a record other than for the purpose of checking an individual's suitability for regulated work. [Section 67\(1\)](#) creates an offence designed to prevent employers who cannot legitimately ask for a record because they are not engaged in regulated work from requiring an individual to share the information on the record. For example, it would normally be an offence for a garage owner to ask mechanics in his garage if he could see their disclosure records, if they had obtained them for other purposes, since car repair work is not (normally) regulated work. [Section 67\(4\)](#) limits the offences to the disclosure record itself and not information contained on the record.
123. [Section 67\(3\)](#) sets out the "permitted purposes" for which a disclosure record can be requested or viewed. Paragraph (a) allows organisational employers and personnel suppliers to request or seek sight of a disclosure record. Paragraph (b) allows regulations to specify circumstances in which a third parties may ask to see a disclosure record. I.e. these regulations can specify circumstances in which a person ('Z') who is not the employer of the individual can ask to see a disclosure record without committing an offence in respect of individuals who are doing regulated work for a contractor. For example, where a council contracts school bus services, the bus driver is employed by the bus company and Z is the council. Such regulations might allow the council to ask to see the bus driver's scheme record disclosure without committing an offence, although the request can be refused by the bus driver.