



Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

PART 1

THE LISTS

General and supplementary

38 Police access to lists

- (1) Ministers must make available to chief constables of police forces [^{F1}, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency]—
- (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 [^{F2}, 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.

Textual Amendments

- F1** 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)**
- F2** 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)**

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Commencement Information

II S. 38 in force at 28.2.2011 by S.S.I. 2011/157, art. 2(a)

39 Restrictions on listing in children's list

- (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 ^{F3}...
- (2) Ministers need not consider an individual for listing in the children's list if—
 - (a) they consider that it would be more appropriate for the individual's case to be ^{F4} dealt with] by the ^{F5}Independent Safeguarding Authority] (“^{F5}ISA”), or
 - (b) subsection (3) applies.
- (3) This subsection applies where—
 - ^{F6}(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 ^{F7} 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 children's list, and
 - (b) ^{F5}ISA][^{F8}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 ^{F9}they consider that it would be more appropriate for the individual’s case to be dealt with by ISA.]—
 - ^{F10}(a)
 - ^{F10}(b)
- ^{F11}(6) Where—
 - (a) in pursuance of subsection (5), Ministers do not list an individual in the children’s 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 children’s list under section 14.
- (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,

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(g) the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.]

Textual Amendments

- F3** 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)**
- F4** 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)**
- F5** Words in s. 39 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), ss.81(2)(3)(n), 116(5)(a)
- F6** 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)**
- F7** 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)**
- F8** 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)**
- F9** 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)**
- F10** 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)**
- F11** 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)**

Commencement Information

- I2** S. 39 in force at 28.2.2011 by [S.S.I. 2011/157](#), art. 2(a)

40 Restrictions on listing in adults' list

- (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^{F12}...
- (2) Ministers need not consider an individual for listing in the adults' list if—
- they consider that it would be more appropriate for the individual's case to be [^{F13} dealt with] by the [^{F14} Independent Safeguarding Authority] (“^{F14} ISA [”], or
 - subsection (3) applies.
- (3) This subsection applies where—
- ^{F15}(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 [^{F16}before, or when, the individual's case was last dealt with in pursuance of the relevant corresponding legislation].

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- (4) Where—
- (a) in pursuance of subsection (2)(a), Ministers do not consider an individual for listing in the adults' list, and
 - (b) [^{F14}ISA][^{F17} 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 [^{F18} they consider that it would be more appropriate for the individual's case to be dealt with by ISA.]
- ^{F19}(a)
 - ^{F19}(b)
- [^{F20}(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

- F12** 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)**
- F13** 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)**
- F14** Words in s. 40 substituted (12.11.2009) by [Policing and Crime Act 2009 \(c. 26\)](#), **ss.81(2)(3)(n)**, 116(5)(a)
- F15** 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)**
- F16** 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)**
- F17** 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)**
- F18** 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)**

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- F19** 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)**
- F20** 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)**

Commencement Information

- I3** S. 40 in force at 28.2.2011 by [S.S.I. 2011/157](#), **art. 2(a)**

41 Protection from actions for damages

- (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 [^{F21}(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 [^{F22}(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

- F21** 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**
- F22** A

Commencement Information

- I4** S. 41 in force at 28.2.2011 by [S.S.I. 2011/157](#), **art. 2(a)**

42 Power to regulate procedure etc.

- (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

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- (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.

Commencement Information

- I5** S. 42(1)(a)(b) in force at 28.2.2011 by S.S.I. 2011/157, art. 2(a)
- I6** S. 42(1)(c)(2) in force at 18.4.2010 for specified purposes by S.S.I. 2010/133, art. 2, Sch.
- I7** S. 42(1)(c)(2) in force at 28.2.2011 in so far as not already in force by S.S.I. 2011/157, art. 2(a)

43 Transfer from 2003 Act list

- (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—
- 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
 - 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—
- 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
 - 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—
- by delivering it to the listed individual,
 - by leaving it at the listed individual's usual or last known place of abode, or
 - by sending it by post to the listed individual at that place.

Commencement Information

- I8** S. 43 in force at 28.2.2011 by S.S.I. 2011/157, art. 2(a)

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