

**EXPLANATORY MEMORANDUM TO THE
DISQUALIFICATION FROM WORKING WITH CHILDREN (SCOTLAND)
ORDER 2005**

2005 No. 267

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 Section 37 of the Criminal Justice and Court Services Act 2000 (“the 2000 Act”) allows the Secretary of State to extend section 35 of the 2000 Act to an individual who under the law of Scotland is subject to a prohibition or disqualification which, in the opinion of the Secretary of State, corresponds to disqualification by any of the means mentioned in section 35(4) from working with children. The Disqualification from Working with Children (Scotland) Order 2005 extends section 35 of the 2000 Act to an individual who is prohibited from working with children (otherwise than provisionally) under the Protection of Children (Scotland) Act 2003. This will mean that individuals who are prohibited from working with children in Scotland will also be disqualified from working with children in England and Wales.

3. Matters of special interest to the Joint Committee on Statutory Instruments of the Select Committee on Statutory Instruments

- 3.1 None.

4. Legislative Background

- 4.1 These regulations are made under section 37 of the 2000 Act.

5. Extent

- 5.1 The instrument applies to England and Wales.

6. European Convention on Human Rights

Paul Goggins, Parliamentary Under-Secretary of State made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Disqualification from Working with Children (Scotland) Order 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The Protection of Children (Scotland) Act 2003 received Royal Assent on 19 March 2003. This Act requires Scottish Ministers to keep a list of individuals whom they consider to be unsuitable to work with children and to prohibit such individuals included in the list from doing certain work relating to children.
- 7.2 In England and Wales similar provisions disqualifying individuals from working with children exist in the Protection Children Act 1999, the Education Act 2002, the Education Act 1996 and the 2000 Act.
- 7.3 Section 35 of the 2000 Act provides that an individual who is disqualified from working with children is guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a regulated position. An individual is also guilty of an offence if he knowingly offers work in a regulated position to, or procures work in a regulated position for, an individual who is disqualified from working with children, or fails to remove such an individual from such work. The definition of “regulated position” is at section 36 of the 2000 Act.
- 7.4 The Protection of Children (Scotland) Act 2003 has made similar provision as regards individuals who are disqualified in England and Wales.

8. Impact

- 8.1 A regulatory impact assessment has not been prepared for this instrument as it has a minimal impact on business, charities, or voluntary bodies.

9. Contact

- 9.1 David Ireland at the Home Office Tel: 020 7273 2985 or e-mail: David.Ireland@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.