



Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

PART 2

VETTING AND DISCLOSURE

Supplementary

73 Consideration of suitability

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 [^{F1} registration under the Public Services Reform (General Teaching Council for Scotland) Order 2011]),
- (d) to provide or manage a care service (for the purposes of the [^{F2} Part 5 of the 2010 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.

Textual Amendments

- F1** Words in s. 73(c) substituted (2.4.2012) by [The Public Services Reform \(General Teaching Council for Scotland\) Order 2011 \(S.S.I. 2011/215\)](#), **Sch. 6 para. 2(3)**
- F2** Words in s. 73(d) substituted (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. 32**; S.S.I. 2010/321, art. 3, Sch.

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Modifications etc. (not altering text)

- C1** Pt. 2 modified (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2660\)](#), arts. 1, **22**
- C2** Pt. 2 modified (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Consequential Provisions\) Order 2010 \(S.I. 2010/2660\)](#), arts. 1, **21**

Commencement Information

- I1** S. 73(a)-(f) in force at 28.2.2011 by [S.S.I. 2011/157](#), **art. 2(a)**
- I2** S. 73(g) in force at 18.4.2010 for specified purposes by [S.S.I. 2010/133](#), **art. 2, Sch.**
- I3** S. 73(g) in force at 28.2.2011 in so far as not already in force by [S.S.I. 2011/157](#), art. 2(a)

74 Delegation of vetting and disclosure functions

- (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.

Commencement Information

- I4** S. 74 in force at 28.2.2011 by [S.S.I. 2011/157](#), **art. 2(a)**

75 Sources of information

- (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) [^{F3} The chief constable] 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.
- [^{F4}(2A) But the chief constable may provide information under subsection (2) relating to a time when the scheme member was under 12 years of age only where—
- (a) the independent reviewer determines, on a review under section 18 of the Age of Criminal Responsibility (Scotland) Act 2019, that the information ought to be included in the scheme member's scheme record and—
 - (i) no appeal under section 20 of that Act is taken, or
 - (ii) such an appeal having been taken, the sheriff confirms the determination under section 20(3)(a), or

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- (b) the sheriff, on an appeal under section 20, determines under section 20(3)(b) that the information ought to be included in the scheme member's scheme record.]
- (3) [^{F5}The chief constable] must not provide information to Ministers under subsection (2) if the [^{F6} chief constable] 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 [^{F7} Scottish Police 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) [^{F8} (or in pursuance of any other power or duty to provide information to Ministers in relation to their functions under this Part)].
- [^{F9}(6) In this section, “independent reviewer” means the independent reviewer appointed under section 12 of the Age of Criminal Responsibility (Scotland) Act 2019.]

Textual Amendments

- F3** Words in s. 75(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(4\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F4** S. 75(2A) inserted (30.11.2020) by [Age of Criminal Responsibility \(Scotland\) Act 2019 \(asp 7\)](#), [ss. 10\(4\)\(a\)](#), 84(2); S.S.I. 2020/369, reg. 2, sch.
- F5** Words in s. 75(3) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(4\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F6** Words in s. 75(3) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(4\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F7** Words in s. 75(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(4\)\(c\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F8** 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\(5\)](#)
- F9** S. 75(6) inserted (30.11.2020) by [Age of Criminal Responsibility \(Scotland\) Act 2019 \(asp 7\)](#), [ss. 10\(4\)\(b\)](#), 84(2); S.S.I. 2020/369, reg. 2, sch.

Commencement Information

- I5** S. 75 in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#)

76 Police access to scheme information

- (1) Ministers must make available to [^{F10}the chief constable]—
- (a) the name of each individual participating in the Scheme,
- (b) confirmation of whether each such individual participates in the Scheme in relation to regulated work with—
- (i) children,

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- (ii) adults, or
 - (iii) both, and
 - (c) any other information held by Ministers by virtue of their administration of the Scheme which Ministers consider would enable or assist [^{F11} constables of the Police Service of Scotland] to satisfy themselves as to the identity of such individuals.
- (2) Information disclosed under subsection (1) may be used by [^{F12} constables of the Police Service of Scotland] only for [^{F13}—
- (a) the performance of the chief constable's functions under this Part, or
 - (b) the law enforcement purposes within the meaning of section 31 of the Data Protection Act 2018].

Textual Amendments

- F10** Words in s. 76(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(5\)\(a\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F11** Words in s. 76(1)(c) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(5\)\(a\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F12** Words in s. 76(2) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [Sch. 7 para. 36\(5\)\(b\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F13** Words in s. 76(2) inserted (10.12.2021) for words by [Disclosure \(Scotland\) Act 2020 \(asp 13\)](#), s. 97, [sch. 5 para. 12\(8\)](#) (with s. 96); S.S.I. 2021/380, reg. 2, sch.

Commencement Information

- I6** S. 76 in force at 28.2.2011 by [S.S.I. 2011/157](#), [art. 2\(a\)](#)

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

- (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).

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- (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.
- (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.

Modifications etc. (not altering text)

C3 S. 77 modified (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Savings and Transitional Provisions\) Order 2010 \(S.S.I. 2010/180\)](#), arts. 1, 7

Commencement Information

I7 S. 77 in force at 28.2.2011 by [S.S.I. 2011/157](#), art. 2(a)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 6A inserted by [2020 asp 13 s. 80\(2\)](#)
- s. 8(3)(za) inserted by [2020 asp 13 s. 82\(3\)](#)
- s. 10(1)(aa) inserted by [2020 asp 13 s. 80\(3\)](#)
- s. 13A-13C inserted by [2020 asp 13 s. 76\(2\)](#)
- s. 18(5) inserted by [2020 asp 13 sch. 5 para. 5\(2\)\(b\)](#)
- s. 30(3A)-(3C) inserted by [2020 asp 13 s. 77\(3\)](#)
- s. 45A inserted by [2020 asp 13 s. 71](#)
- s. 45B inserted by [2020 asp 13 s. 72](#)
- s. 45C-45G inserted by [2020 asp 13 s. 73\(2\)](#)
- s. 45H inserted by [2020 asp 13 s. 88\(3\)](#)
- s. 46A inserted by [2020 asp 13 s. 79](#)
- s. 49(3) inserted by [2020 asp 13 sch. 5 para. 5\(3\)\(c\)](#)
- s. 70(2)(d) inserted by [2020 asp 13 sch. 5 para. 10\(41\)\(b\)](#)
- s. 77(1A) inserted by [2020 asp 13 sch. 5 para. 10\(46\)\(b\)](#)
- s. 94(2A)(2B) inserted by [2020 asp 13 s. 75\(3\)](#)