

**2010 No. 180**

**CHILDREN AND YOUNG PERSONS**

**PROTECTION OF VULNERABLE ADULTS**

**The Protection of Vulnerable Groups (Scotland) Act 2007  
(Savings and Transitional Provisions) Order 2010**

*Made* - - - - *5th May 2010*

*Laid before the Scottish Parliament* *6th May 2010*

*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 98(1) and 100(2)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007(a) and of all other powers enabling them to do so.

**Citation and commencement**

1. This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Savings and Transitional Provisions) Order 2010 and comes into force on the same day as paragraph 42 of schedule 4 to the Protection of Vulnerable Groups (Scotland) Act 2007.

**Interpretation**

2. In this Order—

“the Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“the 2003 Act” means the Protection of Children (Scotland) Act 2003(b);

“child care position” has the meaning given by schedule 2 to the 2003 Act;

“the list” means the list kept under section 1 of the 2003 Act;

“the 2010 Regulations” means the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010(c);

“the 2004 Regulations” means the Protection of Children (Scotland) Act 2003 Determination Regulations 2004(d); and

“the relevant date” means the day on which the 2003 Act is repealed by paragraph 42 of schedule 4 to the 2007 Act.

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(a) 2007 asp 14.  
(b) 2003 asp 5.  
(c) S.S.I. 2010/183.  
(d) S.S.I. 2004/523.

### **Transitional provision relating to references under sections 2(1) or 4(1) of the 2003 Act**

3.—(1) Paragraph (2) applies where prior to the relevant date—

- (a) Ministers have received a reference under section 2(1) or 4(1) of the 2003 Act, as the case may be; and
- (b) Ministers have not commenced their consideration of that reference under section 5 (inclusion in the list following referral under section 2(1) or 4(1)) of the 2003 Act.

(2) Where this paragraph applies—

- (a) a reference under section 2 (reference following disciplinary action etc.) of the 2003 Act is to be treated for all purposes as if prescribed information had been given to Ministers under section 3 (reference following disciplinary action etc.), section 4 (reference by employment agency) or section 5 (reference by employment business) of the Act, whichever corresponds most closely to the reference under the 2003 Act; and
- (b) a reference under section 4 (reference by certain other persons) of the 2003 Act is to be treated for all purposes as if prescribed information had been given to Ministers under section 8 (reference by certain other persons) of the Act.

### **Transitional provision relating to provisional listings under the 2003 Act following a reference under section 2(1) or 4(1) of the 2003 Act**

4.—(1) Where Ministers, having considered a reference under section 2(1) or 4(1) of the 2003 Act, have provisionally listed an individual under section 7(1) (provisional inclusion in list) of the 2003 Act but, prior to the relevant date, have not made a determination under section 5(4) of the 2003 Act—

- (a) Ministers are deemed to be satisfied as to the matters specified in section 10(1)(b) and (2) of the Act; and
- (b) the provisional listing is to be treated as if it were a decision by Ministers under section 10(2) of the Act to consider the individual for listing and Ministers must comply with the requirement in section 30(2)(b) of the Act.

(2) For the avoidance of doubt, where paragraph (1) applies Ministers must proceed to consider whether to list the individual in the children's list in accordance with the Act and the 2010 Regulations.

(3) Without prejudice to paragraph (2), anything done under the 2003 Act or the 2004 Regulations in relation to the reference under the 2003 Act is to be treated as having been done under the Act or the 2010 Regulations, as the case may be.

(4) Where, prior to the relevant date, Ministers are required under section 5(4)(a) of the 2003 Act to amend the list to indicate that the individual's inclusion in the list is no longer provisional or to restore the individual to the list, but by the relevant date have not provided the notices referred to in section 5(6) of the 2003 Act, section 30 of the Act and the 2010 Regulations apply as if the individual had been listed under section 15 of the Act.

(5) Where, prior to the relevant date, Ministers have determined under section 5(4)(b) of the 2003 Act to remove the individual from the list but by the relevant date have not notified that fact to the individual or any organisation for which the Ministers know the individual is working in a child care position, Ministers must notify the individual and that organisation (or those organisations if more than one).

### **Transitional provisions relating to section 6 of the 2003 Act**

5.—(1) Section 13 of the Act applies to consideration of a report of a relevant inquiry under section 6 of the 2003 Act where, prior to the relevant date—

- (a) a relevant inquiry has been held in terms of section 6 of the 2003 Act;
- (b) the report of the person who held that inquiry names an individual who is or has been working in a child care position;

- (c) the report has been produced to the Ministers; and
  - (d) Ministers have not commenced their consideration of that report under section 6(1)(c) of the 2003 Act.
- (2) In this article “relevant inquiry” has the same meaning as in section 6(6) of the 2003 Act.

**Transitional provision relating to provisional listings under the 2003 Act following the findings of a report of a relevant inquiry**

6.—(1) Where Ministers, having considered a report of a relevant inquiry under section 6 of the 2003 Act, have provisionally listed an individual under section 7(1) of the 2003 Act but, prior to the relevant date, have not made a determination under section 6(3) of the 2003 Act—

- (a) Ministers are deemed to be satisfied as to the matters specified in section 13(1)(b) and (2) of the Act; and
- (b) the provisional listing is to be treated as if it were a decision by Ministers under section 13(2) of the Act to consider the individual for listing and Ministers must comply with the requirement in section 30(2) of the Act.

(2) For the avoidance of doubt, where paragraph (1) applies Ministers must proceed to consider whether to list the individual in the children’s list in accordance with the Act and the 2010 Regulations.

(3) Without prejudice to paragraph (2), anything done, under the 2003 Act or the 2004 Regulations, in relation to Ministers’ determination under section 6 of the 2003 Act is to be treated as having been done under the Act or the 2010 Regulations, as the case may be.

(4) Where, prior to the relevant date, Ministers are required under section 6(3)(a) of the 2003 Act to amend the list to indicate that the individual’s inclusion in the list is no longer provisional or to restore the individual to the list, but by the relevant date Ministers have not provided the notices referred to in section 6(5) of the 2003 Act, section 30 of the Act and the 2010 Regulations apply as if the individual had been listed under section 15 of the Act.

(5) Where, prior to the relevant date, Ministers have determined under section 6(3)(b) of the 2003 Act to remove the individual from the list but by the relevant date have not notified that fact to the individual or any organisation for which the Ministers know the individual is working in a child care position, Ministers must notify the individual and that organisation (or those organisations if more than one).

(6) In paragraph (5) “child care position” has the meaning given by schedule 2 to the 2003 Act.

**Application of section 77 of the Act where articles 4(1) or 6(1) apply**

7. Where articles 4(1) or 6(1) apply, section 77 of the Act applies as if it had been modified as follows—

- (a) by substituting for subsection (2)—
  - “(2) The “relevant period” is—
    - (a) where the circumstance or, as the case may be, act in respect of which a reference under section 2(1) or 4(1) of the 2003 Act was made is the subject of legal or disciplinary proceedings, the period of six months which begins on the date on which the proceedings are finally determined;
    - (b) in any other case, the period of six months which begins on the date on which the individual was provisionally included, under section 7(1) of the 2003 Act, in the list;
    - (c) where either of the periods mentioned in paragraphs (a) or (b) above has been extended under section 7(6) of the 2003 Act, the extended period; or
    - (d) where either of the periods mentioned in paragraphs (a) and (b) is extended under subsection (3), the extended period; and

- (e) in subsection (3) after “this subsection” by inserting “or section 7(6) of the Protection of Children (Scotland) Act 2003 (asp 5)”.

#### **Transitional Provision in relation to applications under section 7(6) of the 2003 Act**

8. An application which is made under section 7(6) (provisional inclusion in list) of the 2003 Act before the relevant date and which is not finally disposed of by that date, is to be treated as being an application for an extension of the relevant period under section 77 of the Act which is to be read as if modified by article 7.

#### **Savings and transitional provision in relation to court referrals under section 10 of the 2003 Act**

9. Where prior to the relevant date, an individual has been convicted of an offence to which section 10 of the 2003 Act applies, that section, with the exception of subsection (10), continues to apply in relation to the conviction of that individual for that offence as if section 10 had not been repealed by paragraph 42 of schedule 4 to the 2007 Act, and is to be read as if it had been modified as follows—

- (a) in subsection (7), for “the list kept under section 1(1)” there was substituted “the children’s list kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)”; and
- (b) in subsection (8)—
  - (i) for “the list” there was substituted “the children’s list”;
  - (ii) in paragraph (b) for “working in a child care position” there was substituted “doing regulated work with children within the meaning of section 91(2) of the Protection of Vulnerable Groups (Scotland) Act 2007”.

#### **Savings and transitional provision in relation to applications for removal from list under section 14 of the 2003 Act**

10. Section 14 of the 2003 Act continues to apply in relation to all applications under that section which were commenced, but have not been finally disposed of, prior to the relevant date and is to be read as if it had been modified as follows—

- (a) for “the list” in subsection (2) there was substituted “the children’s list kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007”.

#### **Saving and transitional provision in relation to appeals under section 15 of the 2003 Act**

11.—(1) Where, prior to the relevant date, an individual has appealed under section 15(1), or (5) of the 2003 Act but that appeal has not been finally disposed of, section 15 continues to apply in relation to that appeal subject to paragraph 5.

(2) For the purposes of paragraph (1) an appeal under section 15(1) of the 2003 Act is finally disposed of when—

- (a) the sheriff has decided the appeal under section 15(1) of that Act and the time allowed to appeal against that decision has expired without any appeal having been lodged under section 15(4) of that Act;
- (b) the sheriff has decided the appeal under section 15(1) of that Act and an appeal is lodged under section 15(4) of that Act and the sheriff principal has decided the appeal without leave to appeal being granted;
- (c) the sheriff principal has decided the appeal under section 15(4) of the 2003 Act and granted leave to appeal, and the time allowed to appeal against the sheriff principal’s decision has expired without any appeal being lodged under section 15(6) of that Act; or
- (d) the Court of Session has decided the appeal under section 15(6) of the 2003 Act.

(3) For the purposes of paragraph (1) an appeal under section 15(5) of the 2003 Act is finally disposed of when—

- (a) the sheriff principal has decided the appeal under section 15(5) of the 2003 Act without leave to appeal being granted;
- (b) the sheriff principal has decided the appeal under section 15(5) of the 2003 Act and granted leave to appeal, and the time allowed to appeal against the sheriff principal's decision has expired without any appeal being lodged under section 15(6) of that Act; or
- (c) the Court of Session has decided the appeal under section 15(6) of the 2003 Act.

(4) Where, prior to the relevant date, an individual has appealed under section 15(1) of the 2003 Act but the sheriff has not by that date determined whether to allow the appeal under section 15(2) section 15 of the 2003 Act continues to apply in relation to that appeal subject to paragraph (2).

(5) Section 15 of the 2003 Act is to be read as if it had been modified as follows—

- (a) in subsection (3), for “the list” there was substituted “the children’s list kept under section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007”;
- (b) for subsection (8), there was substituted—

“In allowing or dismissing an appeal, under subsection (6) above, of the decision of a sheriff principal on an appeal under subsection (5) above, the Inner House may by order specify a period other than the period specified in regulation 4 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) (Procedure etc.) Regulations 2010 as the period during which the individual may not make a further application to Ministers for removal from the children’s list under section 25 of the Protection of Vulnerable Groups (Scotland) Act 2007.”.

#### **Savings provisions for other provisions of the 2003 Act**

12. The following provisions of the 2003 Act continue to apply so far as necessary for the purposes of this Order as if they had not been repealed by, or by virtue of, paragraph 42 of schedule 4 to the Act—

- (a) sections 17 to 19;
- (b) Schedules 1 and 2; and
- (c) the Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008(a).

St Andrew’s House,  
Edinburgh  
5th May 2010

*ADAMINGRAM*  
Authorised to sign by the Scottish Ministers

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(a) S.S.I. 2008/260.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under sections 98(1) and 100(2)(b) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) (“the Act”) and makes saving, transitional and incidental provision relating to the Protection of Children (Scotland) Act 2003 (“the 2003 Act”). Section 1 of the 2003 Act established the Disqualified from Working with Children List (“the DWCL”).

Paragraph 42 of Schedule 4 to the Act repeals all of the 2003 Act except sections 13 and 16. Section 43 of the Act provides for all those on the DWCL (immediately before section 1 of the 2003 Act is repealed) to be transferred to the children’s list kept under section 1 of the Act. This Order makes provision in relation to those engaged with the consideration for listing process for the DWCL, with applications for removal from the DWCL or with appeals against listing in the DWCL at the time of the repeal of the 2003 Act.

Article 3 makes transitional provision in relation to references received under sections 2(1) or 4(1) of the 2003 Act. Where a reference has been received under either of those sections but Ministers have not, by the date of the repeal of the 2003 Act, commenced their consideration of that reference, it is to be treated as if prescribed information had been given to Ministers under section 3, 4, 5 or 8 of the Act. The reference will then proceed under the procedures under the Protection of Vulnerable Groups (Scotland) Act 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Consideration for Listing) Regulations 2010 (“the PVG procedures”).

Article 4 makes further transitional provision in relation to references under section 2(1) or 4(1) of the 2003 Act. Where, under section 7 of the 2003 Act, Ministers have provisionally included an individual in the DWCL but at the time of the repeal of the 2003 Act have not made a determination under section 5(4) of that Act, paragraph (1) provides that Ministers are deemed to be satisfied as to the matters set out in section 10 of the Act. The individual will then be treated as “under consideration for listing” under the Act and the PVG procedures will apply to the further consideration of that person for listing in the children’s list under the Act.

Article 5 makes transitional provision, similar to that in article 3, in relation to the consideration by Ministers to list an individual in DWCL following a “relevant inquiry” (defined in section 6(6) of the 2003 Act). It provides that where Ministers have, prior to the repeal of the 2003 Act, received the report but have not commenced their consideration under section 6(1)(c) of the 2003 Act, section 13 of the Act shall apply in relation to the consideration by Ministers of that report.

Article 6 makes transitional provision, similar to that in article 4, in relation to individuals provisionally included in the DWCL by Ministers under section 7 of the 2003 Act following their consideration of a relevant inquiry report. It provides that where the individual has been provisionally included in the list Ministers will be deemed to be satisfied about the matters in section 13 of the Act. The individual will then be treated as “under consideration for listing” under the Act and the further consideration of that person for listing will be under the PVG procedures.

Article 7 makes provision in relation to the application of section 77 of the Act in relation to individuals whose status is changed from “provisionally listed” under the 2003 Act to “under consideration for listing” under the Act by virtue of articles 4 or 6 of the Order.

Article 8 makes transitional provision in relation to applications to the sheriff under section 7(6) of the 2003 Act to extend the period during which the provisional inclusion in DWCL of the individual could be displayed on enhanced disclosures. It provides for these applications to be treated as applications to extend “the relevant period” under section 77 of the Act for the purposes of the statement of scheme membership.

Article 9 makes saving provision in relation to referrals by courts under section 10 of the 2003 Act. It provides for section 10 of the 2003 Act to continue to apply in relation to any individual who, before the 2003 Act is repealed, is convicted of an offence to which that section applies.

Article 10 makes saving and transitional provision in relation to section 14 of the 2003 Act to provide that section 14 continues to apply to all applications commenced, but not concluded prior

to the repeal of the 2003 Act. Any application is to be treated as if it was an application to determine whether the individual should continue to be included in the children's list.

Article 11 makes saving and transitional provision in relation to appeals made under section 15 of the 2003 Act. It provides for section 15 of the 2003 Act to continue to apply in relation to any appeal commenced but not finally disposed of by the time of the repeal of the 2003 Act.

Article 12 saves various provisions of the 2003 Act for the purposes of the provisions of the Order.

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