

2010 No. 240

CHILDREN AND YOUNG PERSONS

**The Protection of Vulnerable Groups (Scotland) Act 2007
(Modification of Regulated Work with Children) Order 2010**

Made - - - -

9th June 2010

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by section 100(2) of, and paragraphs 28 and 29 of schedule 2 to, the Protection of Vulnerable Groups (Scotland) Act 2007(a) and all other powers enabling them to do so.

In accordance with section 100(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Modification of Regulated Work with Children) Order 2010 and comes into force on the same day as section 91 (regulated work) of the Protection of Vulnerable Groups (Scotland) Act 2007.

Modification of schedule 2 to the Protection of Vulnerable Groups (Scotland) Act 2007

2. Schedule 2 (regulated work with children) to the Protection of Vulnerable Groups (Scotland) Act 2007 is modified in accordance with articles 3 to 8.

3. For paragraph 1(b) substitute—

“(b) a position—

- (i) which is not a position mentioned in sub-paragraph (a),
- (ii) whose normal duties include work in an establishment mentioned in Part 3, and
- (iii) which gives the holder of the position, when doing anything permitted or required in connection with the position, the opportunity to have unsupervised contact with children.”

4. After paragraph 1 insert—

“Definitions in relation to unsupervised contact with children

1A. In this schedule—

“unsupervised contact with children” means contact with children in the absence of—

- (a) a responsible person,
- (b) a person carrying out an activity mentioned in paragraph 3, 4 or 5, or
- (c) an individual who, in relation to a child, has agreed to supervise the contact under arrangements made by the child’s parent or guardian or any person aged 18 or over with whom the child lives in the course of a family or personal relationship,

“responsible person” means, in relation to a child, any of the following persons—

- (a) the child’s parent or guardian,
- (b) any person aged 18 or over with whom the child lives,
- (c) the person in charge of any establishment mentioned in Part 3 in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person),
- (d) a person who provides day care of children, within the meaning of section 2 of the 2001 Act,
- (e) any person holding a position mentioned in Part 4, and
- (f) any person holding a position in a children’s charity, within the meaning of paragraph 27,

“family relationship” and “personal relationship” have the meanings given in section 95.”.

5. After paragraph 2 insert—

“Application of sections 35 and 36 to host parenting

2A. Work which—

- (a) consists of being a host parent (see paragraph 11A), but
- (b) does not include carrying out any other activity mentioned in Part 2 otherwise than in connection with being a host parent,

is not regulated work with children for the purposes of sections 35 and 36.”.

6. For paragraph 6 substitute—

“Unsupervised contact with children under arrangements made by a responsible person.”.

7. After paragraph 11 insert—

“Being a host parent

11A. Being a host parent.

A “host parent” is a person—

- (a) who provides overnight accommodation for, or otherwise looks after, a child (as if the child were part of that person’s family) in connection with an organised activity in which the child is participating, but
- (b) who is not responsible for looking after the child when the child is participating in that activity.”.

8. For paragraph 27 substitute—

“Charity trustee of a children’s charity.

“Children’s charity” means a charity whose—

- (a) main purpose is to provide benefits for children, and
- (b) principal means of delivery of those benefits is by its workers doing regulated work with children.

An individual works for a charity if the individual works under any arrangements made by the charity.”.

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
9th June 2010

EXPLANATORY NOTE

(This note is not part of the Order)

Section 91 of the Protection of Vulnerable Groups (Scotland) Act 2007 defines regulated work with children as the type described in schedule 2 to that Act. Schedule 2 describes regulated work in terms of activities (Part 2), establishments (Part 3) and positions (Part 4). This Order modifies schedule 2 in relation to regulated work in an establishment listed in Part 3, in relation to host parenting and in relation to the position of a charity trustee. It also modifies the application of sections 35 and 36 of the Act in relation to host parenting.

Article 3 substitutes a new paragraph 1(b) in schedule 2 to provide that regulated work with children is work in a position which is not a position mentioned in sub-paragraph (a), whose normal duties include work in an establishment mentioned in Part 3 and which gives the holder of the position, when doing anything permitted or required in connection with the position, the opportunity to have unsupervised contact with children.

Article 4 introduces a new paragraph 1A into schedule 2 which reinstates, but does not amend, definitions previously used in paragraph 6 of schedule 2. The definitions cannot remain in paragraph 6 since they are now also used in paragraph 1.

Article 5 inserts a new paragraph 2A into schedule 2 which modifies the application of sections 35 and 36 of the Act in relation to work which consists of being a host parent. Under sections 35 and 36 an organisation commits an offence if—

- it offers regulated work to a person who is barred from that work (section 35(1) and (5));
- it fails to comply with regulations made under section 35(2) which either prohibit it from permitting an individual to do, or require it to remove an individual from, regulated work from which the individual is barred (section 35(4)); the applicable Regulations are the Protection of Vulnerable Groups (Scotland) Act 2007 (Removal of Barred Individuals from Regulated Work) Regulations 2010;
- it is a personnel supplier and it offers or supplies an individual who is barred from doing regulated work to an organisation and the individual is to do regulated work for that organisation (section 36).

By virtue of article 5, these offences will, however, not apply to organisations which offer host parenting work to barred individuals. The offence in section 34 of the Act continues to apply. It is therefore an offence for a barred individual to do regulated work by being a host parent.

Article 6 substitutes paragraph 6 into schedule 2 without the definitions which have now been placed in paragraph 1A.

Article 7 inserts a new paragraph 11A into Part 2 of schedule 2 so that being a host parent is an activity under Part 2. This makes clear that a person whose normal duties include the activities described in paragraph 11A as being a host parent will be carrying out regulated work with children.

Article 8 modifies the definition of the position of a charity trustee of a children's charity in paragraph 27 of schedule 2 to restrict it to a trustee of a charity whose main purpose is to provide benefits to children and whose principal means of delivery of those benefits is by its workers doing regulated work with children.

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