

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 1 – the Lists

Sections 34 – 37. Offences relating to regulated work

68. [Sections 34 to 36](#) specifies the offences committed by individuals, organisations and personnel suppliers in respect of barred individuals undertaking regulated work. [Section 37](#) sets out the penalty for committing any of these offences. This offence attracts a penalty of up to 12 months imprisonment and /or a fine not exceeding the statutory maximum on summary conviction. On conviction on indictment, the penalty is up to 5 years imprisonment and / or an unlimited fine. The penalty is in line with that for failing to refer under [section 9](#). These are the most serious offences in relation to the scheme since they concern unsuitable individuals accessing vulnerable groups through their work, which is what the Act is designed to prevent.
69. [Section 34](#) deals with offences committed by the barred individual. It is an offence for them to undertake any regulated work. It is a defence for that individual if they did not know, and could not reasonably know, that they were barred. This defence covers scenarios such as the individual never receiving notification of being barred. The defence of not knowing that the work was regulated work is designed to protect the individual where it is difficult to determine whether the work is regulated work or not and an employer falsely reassures the individual that the work was not regulated work.
70. [Sections 35](#) and [36](#) deal with offences committed by organisations and personnel suppliers in using or supplying barred individuals for regulated work. [Section 35\(1\)](#) makes it an offence to *offer* regulated work to a barred individual. [Section 35\(2\)](#) provides a regulation-making power (subject to affirmative procedure) to specify organisations required to *remove* barred individuals from regulated work. Until such time as such regulations come into force, an organisation can *continue to employ* a barred individual in regulated work without committing an offence (although the individual would be committing an offence). It is a defence for an organisation not to know that the individual was barred from undertaking regulated work. Such a defence might be used if an individual presented them with a forged certificate and ID, perhaps impersonating a different individual. Note that the defence of not knowing that the work was regulated work does not apply here.
71. [Section 36\(1\)\(b\)](#) protects a personnel supplier from being misled by the organisation to which it is supplying workers. For example, if an events organiser asks a personnel supplier to provide kitchen staff for a conference, those positions would not normally be considered regulated work. If the events organiser then diverts one of the people provided by the personnel supplier to work in the creche (normally regulated work with children), then the personnel supplier is not responsible for the consequences if it transpires that the individual is barred from regulated work with children. This is

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provided, of course, that the personnel supplier did not know, or have reason to believe, that the individual supplied would be used for regulated work with children.

72. The offences in sections 34 to 37 apply to barred individuals, organisations and personnel suppliers. Note that they do not apply to personal employers, meaning private citizens who make arrangements for an individual to do regulated work for them. For example, a parent employing an individual to give their child tuition is a personal employer. The Act provides a mechanism for personal employers to ensure they do not employ a barred individual through disclosure of scheme membership under section 54. It is entirely discretionary whether personal employers make use of such a facility (which may, for example, depend on their prior knowledge of the individual) but the barred individual *would* be committing an offence by seeking or accepting such work.