

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 5: Supplementary and General

Section 84. Guidance

148. This section places a duty on Ministers to provide guidance on such matters relating to the operation of Parts 1 and 2 of the Act as they think appropriate. Subsection (2) gives Ministers the power to vary or revoke such guidance issued at any time. Therefore there is a clear statutory duty to issue guidance but Ministers have discretion to decide on what matters they think it appropriate to issue guidance about.

Section 85. Annual report

149. This section places a duty on Scottish Ministers to prepare, and lay before the Scottish Parliament, an annual report on the performance of the Scottish Ministers' "vetting, barring and disclosure functions". Vetting, barring and disclosure functions are defined at section 97(4) to include Ministers' functions under Parts 1 and 2 of this Act and Part 5 of the Police Act 1997 (except for powers to make secondary legislation). The reporting year ends on 31 March and the report must be laid before the Scottish Parliament as soon as practicable after that date.

Section 86. Transfer of Disclosure Scotland staff etc.

150. Disclosure Scotland was staffed in part by employees from Strathclyde Joint Police Board until 1 October 2007, when they transferred to the Scottish Administration. (The remaining staff were, and continue to be, contractors for BT plc.) This section sets out the arrangements for that transfer and enables the Scottish Ministers to make a "staff transfer order" to effect it. This section could be used to transfer other staff of the Strathclyde Joint Police Board (other than constables) but there is no intention to do so.
151. Subsections (4) to (9) concern employees of Strathclyde Joint Police Board who are subject to a staff transfer order. Subsections (4) to (6) provide that contract rights and obligations transfer from the former employer to the Scottish Ministers on the transfer date. Subsection (7) provides that employed staff may object in advance of their contract being transferred to the Scottish Ministers, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person. Subsection (8) provides that an employee can terminate their contract of employment if they can show that a substantial detrimental change has been made to their working conditions.
152. Previously, it had been intended that Disclosure Scotland staff would transfer to the Scottish Police Services Authority on 1 April 2007, together with the remainder of the Scottish Criminal Records Office. Paragraph 46 of schedule 4 repeals the provisions

*These notes relate to the Protection of Vulnerable Groups (Scotland)
Act 2007 (asp 14) which received Royal Assent on 18 April 2007*

in the Police, Public Order and Criminal Justice (Scotland) Act 2006 that would have transferred the Scottish Ministers' functions under Part 5 of the Police Act (the functions carried out by Disclosure Scotland) to the Authority.

Section 87. Power to give effect to corresponding legislation in England, Wales and Northern Ireland

153. The power provided in section 87(1) can be used to make provision, including amendments to devolved legislation, to ensure that the equivalent scheme for England and Wales functions properly. Given the complexities of this Act and the SVG Act, it may be necessary to make some provision as the schemes develop.
154. The power included in section 87(2) provides Scottish Ministers with a similar power in respect of any future legislation establishing a similar scheme in Northern Ireland. The Scottish Ministers will be able to make provision responding to any legislation in Northern Ireland, that corresponds with this Act, in the same way that they can in respect of the SVG Act.

Section 88. Modification of enactments

155. **Section 88** introduces schedule 4 which makes modifies other Acts in consequence of this Act.

Section 89. Offences by bodies corporate etc.

156. Where an offence under the Act is committed by an organisation, this section provides that the organisation and, in some cases, a senior individual in that organisation are both to be held responsible. On the whole, the more junior member of staff whose conduct may have given rise to the offence is not criminally liable. The member of staff may still be disciplined by the organisation and, if one of the referral grounds at section 2 is met, he or she can be referred for consideration for listing.

Section 90. Crown application

157. This section binds the Crown as is normal practice for Acts of the Scottish Parliament. The Crown will not, however, be held criminally liable for any contravention of a provision of the Act but, in such circumstances, application may be made to the Court of Session concerning the contravention. Section 90(5) provides that the provisions of the Act apply to civil servants in the same way as they apply to other persons.