



Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

PART 1

THE LISTS

Duty to keep lists

1 Duty of Scottish Ministers to keep lists

- (1) Ministers must keep—
- (a) the children's list, and
 - (b) the adults' list.
- (2) An individual may be listed in—
- (a) the children's list,
 - (b) the adults' list, or
 - (c) both lists,
- only in accordance with this Part.
- (3) In this Act, “listed”, in relation to an individual, means included in the children's list or, as the case may be, the adults' list, and references to listing an individual are to be construed accordingly.

Referrals

2 Referral ground

The referral ground—

- (a) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with children, is that the individual has, whether or not in the course of the individual's work—
 - (i) harmed a child,

- (ii) placed a child at risk of harm,
 - (iii) engaged in inappropriate conduct involving pornography,
 - (iv) engaged in inappropriate conduct of a sexual nature involving a child,
 - or
 - (v) given inappropriate medical treatment to a child,
- (b) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with adults, is that the individual has, whether or not in the course of the individual's work—
 - (i) harmed a protected adult,
 - (ii) placed a protected adult at risk of harm,
 - (iii) engaged in inappropriate conduct involving pornography,
 - (iv) engaged in inappropriate conduct of a sexual nature involving a protected adult, or
 - (v) given inappropriate medical treatment to a protected adult.

3 Reference following disciplinary action etc.

- (1) An organisation must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if—
 - (a) it has, on the referral ground—
 - (i) dismissed the individual, or
 - (ii) transferred the individual to a position which does not involve that type of regulated work, or
 - (b) it would or might have dismissed or so transferred the individual on the referral ground if the individual had not—
 - (i) otherwise stopped doing regulated work, or
 - (ii) been working for the organisation for a fixed term.
- (2) An organisation must give Ministers any prescribed information which it holds in relation to an individual who has been doing regulated work if—
 - (a) the individual stops doing the regulated work in circumstances not falling within subsection (1),
 - (b) the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work, and
 - (c) the organisation considers that, if—
 - (i) it had been aware of that information at that time, and
 - (ii) the individual had not stopped doing regulated work,
 it would or might have dismissed the individual on the referral ground.
- (3) In subsections (1) and (2)—
 - (a) an individual suspended from regulated work is not to be treated as having stopped doing that work, and
 - (b) the duty to give Ministers information in relation to the temporary transfer of an individual to another position applies only if the organisation subsequently makes a final decision not to permit the individual to resume the type of regulated work from which the individual was transferred.
- (4) This section does not apply to personnel suppliers (see sections 4 and 5).

4 Reference by employment agency

A personnel supplier which carries on an employment agency must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if it has, on the referral ground, decided—

- (a) not to do any further business with the individual, or
- (b) not to—
 - (i) find the individual further regulated work, or
 - (ii) offer or supply the individual for such work.

5 Reference by employment business

A personnel supplier which carries on an employment business must give Ministers any prescribed information which it holds in relation to an individual whom it has offered or supplied for regulated work if—

- (a) it has dismissed the individual on the referral ground,
- (b) the individual has otherwise stopped doing regulated work in circumstances in which it would or might have dismissed the individual on the referral ground if the individual had not so stopped, or
- (c) it has, on the referral ground, decided not to offer or supply the individual for further regulated work.

6 Reference relating to matters occurring before provisions come into force

- (1) The duties in sections 3 to 5 do not apply where the individual stopped doing the regulated work (or, as the case may be, the organisation's opinion was formed) before the date on which the provisions imposing the duties come into force.
- (2) But an organisation may give Ministers any prescribed information which it holds in relation to such an individual if it wishes to do so.

7 Reference by court

- (1) Where a court convicts an individual of a relevant offence, it must give Ministers any prescribed information that it holds in relation to the convicted individual.
- (2) Subsection (3) applies where a court—
 - (a) convicts an individual of an offence (other than a relevant offence), and
 - (b) is satisfied that it may be appropriate for the individual to be listed in the children's list or in the adults' list (or in both lists).
- (3) Where this subsection applies, the court may give Ministers any prescribed information that the court holds in relation to the convicted individual.
- (4) This section applies in relation to offences committed before and after this section comes into force.

8 Reference by certain other persons

- (1) A person to whom this section applies may give Ministers any prescribed information that the person holds in relation to an individual who is or has been doing regulated work if—

Status: This is the original version (as it was originally enacted).

- (a) on the basis of information obtained by the person in the exercise of relevant functions, the person considers that the referral ground is met (regardless of whether the conduct to which the information relates occurred before or after this section comes into force), and
- (b) prescribed information in relation to the individual has not been given to Ministers under sections 3 to 6 in respect of the conduct to which the information relates.

(2) This section applies to—

The General Teaching Council for Scotland
 The Registrar of Chiropractors
 The registrar of dentists and dental care professionals
 The registrar of the General Medical Council
 The registrar of the General Optical Council
 The Registrar of health professionals
 The Registrar of nurses and midwives
 The Registrar of Osteopaths
 The registrar of pharmaceutical chemists
 The Scottish Commission for the Regulation of Care
 The Scottish Social Services Council
 Any other person specified in an order made by Ministers

(3) For the purposes of this section, “relevant functions” means—

- (a) in relation to the General Teaching Council for Scotland, such functions as are conferred on it by virtue of the Teaching Council (Scotland) Act 1965 (c. 19),
- (b) in relation to registrars mentioned in subsection (2), such functions as are conferred on them by virtue of any enactment,
- (c) in relation to the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, such functions as are conferred on the Commission or, as the case may be, the Council by virtue of the 2001 Act and any other enactment, and
- (d) in relation to a person specified in an order made under subsection (2), such functions as are specified by the order.

9 Failure to refer: offence

An organisation which fails, without reasonable excuse, to comply with a duty imposed by any of sections 3 to 5 within 3 months of the date on which the duty arose is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on a conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

Consideration whether to list

10 Consideration whether to list: organisational referrals etc.

(1) This section applies where—

- (a) prescribed information relating to an individual has been given to Ministers in pursuance of sections 3 to 6 or 8, and
 - (b) they are satisfied that the information was not given for vexatious or frivolous purposes.
- (2) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the children's list, they must consider listing the individual in that list.
- (3) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the adults' list, they must consider listing the individual in that list.
- (4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work which the individual is or has been doing.

11 Consideration whether to list: court referrals

- (1) This section applies where prescribed information relating to an individual has been given to Ministers in pursuance of section 7.
- (2) Where the individual has been convicted of a relevant offence, Ministers must consider listing the individual in the children's list.
- (3) In any other case, Ministers must consider listing the individual in the children's list where they are satisfied that—
 - (a) the information indicates that it may be appropriate for the individual to be included in that list, and
 - (b) the individual does, has done or is likely to do regulated work with children.
- (4) Ministers must consider listing the individual in the adults' list where they are satisfied that—
 - (a) the information indicates that it may be appropriate for the individual to be included in that list, and
 - (b) the individual does, has done or is likely to do regulated work with adults.

12 Consideration whether to list: vetting information etc.

- (1) Ministers must consider listing an individual in the children's list if they are satisfied that—
 - (a) either—
 - (i) vetting information about the individual, or
 - (ii) information received when considering whether to list the individual in the adults' list,indicates that it may be appropriate for the individual to be included in the children's list, and
 - (b) the individual does, has done or is likely to do regulated work with children.
- (2) Ministers must consider listing an individual in the adults' list if they are satisfied that—
 - (a) either—
 - (i) vetting information about the individual, or

- (ii) information received when considering whether to list the individual in the children's list, indicates that it may be appropriate for the individual to be included in the adults' list, and
- (b) the individual does, has done or is likely to do regulated work with adults.

13 Consideration whether to list: inquiries

- (1) This section applies where—
 - (a) a relevant inquiry report names an individual who is or has been doing regulated work, and
 - (b) it appears to Ministers from the report that the person who held the inquiry found that the referral ground was met at a time when the individual was doing regulated work (whether that time was before or after this section comes into force).
- (2) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the children's list, they may consider listing the individual in the children's list.
- (3) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the adults' list, they may consider listing the individual in the adults' list.
- (4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work which the individual was doing.

Inclusion in list

14 Automatic listing

- (1) Ministers must list an individual in the children's list where it appears to them that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.
- (2) Ministers must list an individual in the adults' list where it appears to them that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.
- (3) It is for Ministers to specify by order criteria for the purposes of subsections (1) and (2).
- (4) Criteria which may be so specified include—
 - (a) that an individual has been convicted of, or cautioned in relation to, an offence of a specified description, including offences under—
 - (i) the law of England, Wales, Northern Ireland, the Channel Islands or the Isle of Man,
 - (ii) section 70 of the Army Act 1955 (c. 18),
 - (iii) section 70 of the Air Force Act 1955 (c. 19),
 - (iv) section 42 of the Naval Discipline Act 1957 (c. 53),
 - (v) section 42 of the Armed Forces Act 2006 (c. 52),

- (b) that an order of a specified description imposing requirements about an individual's conduct has been made.

15 Inclusion in children's list after consideration

Ministers must list an individual in the children's list if, after considering whether to do so, they are satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children.

16 Inclusion in adults' list after consideration

Ministers must list an individual in the adults' list if, after considering whether to do so, they are satisfied by information relating to the individual's conduct that the individual is unsuitable to work with protected adults.

Information relevant to listing decisions

17 Information relevant to listing decisions

- (1) Ministers must, before making a decision under section 15 or 16—
 - (a) give the individual whom they are considering whether to list an opportunity to make representations as to why the individual should not be listed, and
 - (b) consider any such representations.
- (2) Ministers may, when deciding whether to list an individual, also consider—
 - (a) any information which caused them to consider listing the individual,
 - (b) any information relating to the individual which they obtain—
 - (i) in pursuance of a requirement made under any of sections 18 to 20, or
 - (ii) by performing their functions in relation to the Scheme, and
 - (c) any other information which they think relevant.
- (3) An individual who is given an opportunity to make representations under subsection (1) must be given the opportunity to make representations in relation to all of the information on which Ministers intend to rely in deciding whether to list the individual.
- (4) The opportunity to make representations under subsection (1) does not include the opportunity to make representations that any relevant finding of fact was wrongly made.
- (5) A “relevant finding of fact” is a finding of fact—
 - (a) made in legal proceedings,
 - (b) made in a relevant inquiry report (other than a report relating to an inquiry of the type mentioned in sub-paragraph (ii) of section 31(2)(a)),
 - (c) made in proceedings before one of the following bodies or any of its committees—
 - (i) the Council of the Pharmaceutical Society of Great Britain,
 - (ii) the General Chiropractic Council,
 - (iii) the General Dental Council,
 - (iv) the General Medical Council,

- (v) the General Optical Council,
 - (vi) the General Osteopathic Council,
 - (vii) the General Teaching Council for Scotland,
 - (viii) the Health Professions Council,
 - (ix) the Nursing and Midwifery Council,
 - (x) the Scottish Commission for the Regulation of Care,
 - (xi) the Scottish Social Services Council, or
 - (d) made by any other person, or in any other circumstance, specified by order made by Ministers.
- (6) Subsections (1) and (3) do not apply if Ministers do not know and cannot reasonably ascertain the individual's whereabouts.

18 Police information etc.

- (1) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require the chief constable of a police force to provide them with any information relating to the individual which the chief constable thinks might be relevant in relation to the type of regulated work concerned.
- (2) A chief constable must not provide information to Ministers under subsection (1) if the chief constable thinks that disclosing it to the individual to whom it relates would be contrary to the interests of the prevention or detection of crime.
- (3) Ministers must pay the appropriate police authority such fee as Ministers think appropriate for information provided under subsection (1).
- (4) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require—
 - (a) any person who holds records of convictions, cautions or other information for the use of police forces generally to provide them with any information relating to the individual which the record holder thinks might be relevant in relation to the type of regulated work concerned,
 - (b) any person who holds such records to provide them with the information referred to in section 113A(3)(a) of the 1997 Act (prescribed details of every relevant matter relating to the individual which is recorded in central records).

19 Information held by public bodies etc.

- (1) Ministers may, for the purpose of enabling or assisting Ministers to decide whether to list an individual, require—
 - (a) any person who holds vetting information of a type prescribed under section 49(1)(d) to provide them with any such vetting information relating to the individual,
 - (b) any of the persons set out in subsection (3) to provide them with any information held by the person which Ministers think might be relevant.
- (2) Information provided under subsection (1)(b) may, in particular, be information which relates to—
 - (a) the regulated work concerned, or
 - (b) the protection of children or protected adults in general, or of any child or protected adult in particular.

(3) The persons who may be required to provide information under subsection (1)(b) are—

Councils

The General Teaching Council for Scotland

Health Boards and Special Health Boards

Her Majesty's Chief Inspector of Prisons for Scotland

Her Majesty's Inspectors of Schools

The Registrar of Chiropractors

The registrar of dentists and dental care professionals

The registrar of the General Medical Council

The registrar of the General Optical Council

The Registrar of health professionals

The Registrar of Independent Schools in Scotland

The Registrar of nurses and midwives

The Registrar of Osteopaths

The registrar of pharmaceutical chemists

The Scottish Commission for the Regulation of Care

The Scottish Social Services Council

Social work inspectors

Any other person specified in an order made by Ministers

20 Information held by regulated work providers

(1) Ministers may require a person falling within subsection (2) to provide them with any information held by the person which Ministers think might be relevant for the purpose of enabling or assisting them to decide whether to list an individual.

(2) A person falls within this subsection if—

(a) the individual is doing, or has done, regulated work for the person,

(b) the individual has been offered regulated work by the person (whether or not the individual subsequently did the work),

(c) it is an employment agency which has offered or supplied, or made arrangements with a view to offering or supplying, the individual to another person for regulated work (whether or not the arrangements are still in place),
or

(d) it is an employment business which employs or has employed the individual to do regulated work for another person.

(3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (1) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Appeals against listing

21 Appeals against inclusion in children's list

(1) An individual listed under section 15 may appeal to the sheriff against Ministers' decision to list the individual in the children's list.

(2) Such an appeal must be lodged—

- (a) within 3 months of the date on which the individual was listed, or
 - (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—
 - (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children, by confirming Ministers' decision to list the individual in the children's list, or
 - (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the children's list.

22 Appeals against inclusion in adults' list

- (1) An individual listed under section 16 may appeal to the sheriff against Ministers' decision to list the individual in the adults' list.
- (2) Such an appeal must be lodged—
 - (a) within 3 months of the date on which the individual was listed, or
 - (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—
 - (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with protected adults, by confirming Ministers' decision to list the individual in the adults' list, or
 - (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the adults' list.

23 Further appeals in relation to inclusion in either list

- (1) The sheriff's determination under section 21 or 22 may be appealed to the sheriff principal by—
 - (a) the individual, or
 - (b) Ministers.
- (2) The sheriff principal's determination of an appeal under subsection (1) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
 - (a) the individual, or
 - (b) Ministers.
- (3) The decision of—
 - (a) the sheriff principal, or
 - (b) if leave is granted to appeal to the Inner House, that House,on any appeal is final.

24 Appeals in relation to listing: supplementary

- (1) No finding of fact on which any conviction is based may be challenged on an appeal under section 21, 22 or 23.
- (2) Any court proceedings under section 21, 22 or 23 may take place in private if the court considers it appropriate in all the circumstances.

Removal from list

25 Application for removal from list

- (1) A listed individual may apply to Ministers for removal from—
 - (a) the children's list, or
 - (b) the adults' list.
- (2) References in this section to “the list” are to be read as references to the list from which the individual has applied for removal.
- (3) An application for removal from the list is competent only if—
 - (a) it is made after the end of such period as may be prescribed (beginning on such date as may be prescribed), or
 - (b) Ministers are satisfied that the applicant's circumstances have changed since the applicant—
 - (i) was listed, or
 - (ii) last made an application for removal from the list under this section, such that Ministers should consider the application.
- (4) A period may not be prescribed under subsection (3)(a) in relation to a particular individual.
- (5) An applicant's circumstances are to be treated as having changed if—
 - (a) the applicant was convicted of an offence in relation to conduct which Ministers had regard to when considering whether to list the applicant, and
 - (b) the conviction is subsequently quashed.
- (6) Subsection (5) does not affect the generality of subsection (3)(b).

26 Determination of application for removal from list

- (1) Ministers must determine a competent application for removal from the children's list—
 - (a) where they are satisfied that the applicant is no longer unsuitable to work with children, by removing the individual from the list, or
 - (b) where they are not so satisfied, by refusing the application.
- (2) Ministers must determine a competent application for removal from the adults' list—
 - (a) where they are satisfied that the applicant is no longer unsuitable to work with protected adults, by removing the individual from the list, or
 - (b) where they are not so satisfied, by refusing the application.
- (3) Sections 18 to 20 apply to Ministers' determination of an application for removal from the list as they apply to a decision whether to list an individual (with references to deciding whether to list an individual being read as references to determining whether to remove an individual from the list).

27 Appeals against refusal to remove individual from list

- (1) An individual may appeal to the sheriff against Ministers' decision to refuse an application for removal from the list under section 26.

- (2) The sheriff must determine an appeal under subsection (1) in relation to removal from the children's list—
 - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with children, by directing Ministers to remove the individual from the list, or
 - (b) where the sheriff is not so satisfied, by refusing the application.
- (3) The sheriff must determine an appeal under subsection (1) in relation to removal from the adults' list—
 - (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with protected adults, by directing Ministers to remove the individual from the list, or
 - (b) where the sheriff is not so satisfied, by refusing the application.
- (4) The sheriff's determination may be appealed to the sheriff principal by—
 - (a) the individual, or
 - (b) Ministers.
- (5) The sheriff principal's determination of an appeal under subsection (4) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
 - (a) the individual, or
 - (b) Ministers.
- (6) The Inner House may, in determining an appeal under subsection (5), by order modify the period prescribed for the purposes of section 25(3) in so far as that period is to apply to any further application by the individual concerned for removal from the children's list or, as the case may be, the adults' list.
- (7) The decision of—
 - (a) the sheriff principal, or
 - (b) if leave is granted to appeal to the Inner House, that House,
 on any appeal is final.
- (8) Any court proceedings under this section may take place in private if the court considers it appropriate in all the circumstances.

28 Late representations

- (1) This section applies where an individual listed under section 15 or 16—
 - (a) was not, because of section 17(6), given an opportunity to make representations as to why the individual should not be listed, and
 - (b) subsequently makes representations to Ministers as to why the individual should not have been listed.
- (2) Where this section applies, Ministers must—
 - (a) consider the individual's representations, and
 - (b) if satisfied that the individual should not have been listed, remove the individual from the list.

29 Removal from list

- (1) Ministers—

- (a) must remove an individual from the children's list or adults' list—
 - (i) if directed to do so by the court, or
 - (ii) where section 26 or 28 requires them to do so, and
 - (b) may, at any other time, remove an individual from the children's list or adults' list if they are satisfied that the individual should not have been listed.
- (2) Where Ministers appeal against a direction to remove an individual from the children's list or adults' list, the duty imposed by subsection (1)(a) does not apply until that appeal is finally determined.

Listing: supplementary

30 Notice of listing etc.

- (1) Subsection (2) applies where—
- (a) an individual has been listed under section 14, 15 or 16,
 - (b) Ministers become aware that an individual has otherwise been barred from doing regulated work with children or adults, or
 - (c) Ministers are considering whether to list an individual by virtue of sections 10 to 13.
- (2) Where this subsection applies, Ministers must notify the persons specified in subsection (3) of the fact—
- (a) that the individual has been barred from doing regulated work with children or adults, or, as the case may be
 - (b) that they are considering whether to list the individual.
- (3) Those persons are—
- (a) the individual concerned,
 - (b) where—
 - (i) the individual has been barred from regulated work with children, or
 - (ii) Ministers are considering whether to list the individual in the children's list,
 any organisation for which they know the individual is doing regulated work with children,
 - (c) where—
 - (i) the individual has been barred from regulated work with adults, or
 - (ii) Ministers are considering whether to list the individual in the adults' list,
 any organisation for which they know the individual is doing regulated work with adults, and
 - (d) any relevant regulatory body whom Ministers think it would be appropriate to notify of that fact.
- (4) Where, after considering whether to list an individual, Ministers decide not to do so, they must give notice of that fact to—
- (a) the individual,
 - (b) where Ministers have decided not to include the individual in the children's list, any organisation for which they know the individual is doing regulated work with children,

- (c) where Ministers have decided not to include the individual in the adults' list, any organisation for which they know the individual is doing regulated work with adults, and
 - (d) any relevant regulatory body to whom Ministers gave notice under subsection (2) of the fact that they were considering whether to list the individual.
- (5) A notice given under subsection (2) or (4) may include—
- (a) such details as Ministers think appropriate—
 - (i) where the individual has been barred (by being listed or otherwise), about the circumstances in which the individual was barred,
 - (ii) where they have decided not to list an individual, about the circumstances in which the individual was considered for listing, and
 - (b) any other information about the individual which Ministers think appropriate.
- (6) Where Ministers remove an individual from a list under section 29, they must give notice of that fact to—
- (a) the individual, and
 - (b) any relevant regulatory body whom they think it would be appropriate to notify of that fact (having regard to the period for which the individual has been listed).
- (7) The following persons are “relevant regulatory bodies”—
- The General Teaching Council for Scotland
 - The Scottish Commission for the Regulation of Care
 - The Scottish Social Services Council
 - Any other person specified in an order made by Ministers
- (8) A notice which this section requires to be given to an individual may be given—
- (a) by delivering it to the individual,
 - (b) by leaving it at the individual’s usual or last known place of abode, or
 - (c) by sending it by post to the individual at that place.

31 Relevant inquiries

- (1) This section applies for the purposes of section 13 and 17.
- (2) A relevant inquiry is any of the following—
 - (a) an inquiry held—
 - (i) by Ministers,
 - (ii) by the Scottish Parliament (including an inquiry held by a committee or sub-committee of the Parliament),
 - (b) an inquiry held under the Inquiries Act 2005 (c. 12),
 - (c) any other inquiry or hearing designated for the purposes of this section by an order made by Ministers.
- (3) “Relevant inquiry report” means the report by the person who held the relevant inquiry.

32 Relevant offences etc.

- (1) For the purposes of this Part an individual commits a relevant offence if the individual—
 - (a) commits an offence which falls within paragraph 1 of schedule 1, or
 - (b) falls within paragraph 2 of that schedule,and references to being convicted of, or charged with, a relevant offence are to be construed accordingly.
- (2) Ministers may by order modify schedule 1 so as to modify the circumstances in which an individual is to be treated for the purposes of this Part as having committed a relevant offence.
- (3) Subsection (4) applies to an individual if—
 - (a) the individual is charged with an offence,
 - (b) either—
 - (i) the individual is acquitted of the charge on the ground of insanity, or
 - (ii) the court makes a finding under section 55(2) of the 1995 Act in respect of the individual, and
 - (c) the court makes any order mentioned in section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding.
- (4) An individual to whom this subsection applies is to be treated, for the purposes of sections 7, 17 and 24, as having been convicted of the offence.

33 Duty to notify certain changes

- (1) An individual who is listed, or whom Ministers are considering whether to list, must give Ministers notice of—
 - (a) a change in the individual's name or address,
 - (b) the issue of a full gender recognition certificate to the individual under section 4 of the Gender Recognition Act 2004 (c. 7), or
 - (c) any other change in circumstance of a prescribed type.
- (2) A notice under subsection (1) must be given within 1 month of the date of the change or issue of the certificate to which it relates.
- (3) An individual who fails, without reasonable excuse, to comply with subsection (1) commits an offence.
- (4) An individual guilty of an offence under subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the standard scale, or to both.

Offences relating to regulated work

34 Barred individuals not to do regulated work

- (1) It is an offence for an individual to do, or to seek or agree to do, any regulated work from which the individual is barred.

- (2) It is a defence for an individual charged with an offence under subsection (1) to prove that the individual did not know, and could not reasonably be expected to have known—
- (a) that the individual was barred from that regulated work, or
 - (b) that the work concerned was regulated work.

35 Organisations not to use barred individuals for regulated work

- (1) It is an offence for an organisation to offer regulated work to an individual barred from that work.
- (2) Ministers may, by regulations, prohibit an organisation from permitting an individual to do, or require an organisation to remove an individual from, regulated work from which the individual is barred.
- (3) Regulations may in particular—
- (a) impose prohibitions or requirements—
 - (i) in relation to particular types of organisations only,
 - (ii) in relation to particular kinds of regulated work only, or
 - (b) otherwise limit the purpose for which the prohibition or requirement is to apply (or the area in which it is to apply) in such manner as Ministers think appropriate.
- (4) An organisation which fails to comply with regulations made under subsection (2) commits an offence.
- (5) An organisation commits an offence under subsection (1) if it offers regulated work to a barred individual who is already working for the organisation.
- (6) It is a defence for an organisation charged with an offence under subsection (1) or (4) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.
- (7) For the purposes of subsection (1), an organisation is not to be treated as having offered regulated work to an individual if the offer is subject to the organisation being satisfied (by virtue of information disclosed under Part 2 or otherwise) that the individual is suitable to do that work.

36 Personnel suppliers not to supply barred individuals for regulated work

- (1) A personnel supplier commits an offence if it—
- (a) offers or supplies an individual who is barred from doing regulated work to an organisation, and
 - (b) knows or has reason to believe that the organisation will make arrangements for the individual to do regulated work from which the individual is barred.
- (2) It is a defence for a personnel supplier charged with an offence under subsection (1) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing the regulated work.

37 Penalties for offences relating to regulated work

A person guilty of an offence under section 34, 35 or 36 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

General and supplementary

38 Police access to lists

- (1) Ministers must make available to chief constables of police forces—
 - (a) the name of each individual included in the children’s list,
 - (b) the name of each individual included in the adults’ list, and
 - (c) any other information contained in those lists which Ministers consider should be disclosed for any purpose mentioned in subsection (2).
- (2) Information disclosed under subsection (1) may be used by police forces only for the purpose of—
 - (a) the prevention or detection of crime, or
 - (b) the apprehension or prosecution of offenders.

39 Restrictions on listing in children’s list

- (1) Ministers need not list an individual (nor consider an individual for listing) in the children’s list if the individual is already barred from regulated work with children by virtue of being included in the children’s barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47) (“the SVG Act”).
- (2) Ministers need not consider an individual for listing in the children’s list if—
 - (a) they consider that it would be more appropriate for the individual’s case to be considered by the Independent Barring Board (“IBB”), or
 - (b) subsection (3) applies.
- (3) This subsection applies where—
 - (a) IBB has decided, under paragraph 2, 3, 5, 17 or 18 of schedule 3 to the SVG Act, that it is not appropriate to include the individual in the children’s barred list maintained under section 2 of that Act, and
 - (b) Ministers are satisfied that all information relating to the individual which they consider relevant to their decision whether to consider to list the individual was considered by IBB before it made its decision.
- (4) Where—
 - (a) in pursuance of subsection (2)(a), Ministers do not consider an individual for listing in the children’s list, and
 - (b) IBB considers the individual’s case,section 30 applies (with any necessary modifications) as if Ministers are considering to list the individual in the children’s list.
- (5) Ministers need not list an individual in the children’s list under section 14 if—
 - (a) IBB is required, by virtue of paragraph 1 of schedule 3 to the SVG Act, to include the individual in the children’s barred list maintained under section 2 of that Act, and

- (b) Ministers consider that it would be more appropriate for the individual to be included in the list maintained under section 2 of that Act than in the children's list.

40 Restrictions on listing in adults' list

- (1) Ministers need not list an individual (nor consider an individual for listing) in the adults' list if the individual is already barred from regulated work with adults by virtue of being included in the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47) ("the SVG Act").
- (2) Ministers need not consider an individual for listing in the adults' list if—
 - (a) they consider that it would be more appropriate for the individual's case to be considered by the Independent Barring Board ("IBB"), or
 - (b) subsection (3) applies.
- (3) This subsection applies where—
 - (a) IBB has decided, under paragraph 8, 9, 11, 17 or 18 of schedule 3 to the SVG Act, that it is not appropriate to include the individual in the adults' barred list maintained under section 2 of that Act, and
 - (b) Ministers are satisfied that all information relating to the individual which they consider relevant to their decision whether to consider to list the individual was considered by IBB before it made its decision.
- (4) Where—
 - (a) in pursuance of subsection (2)(a), Ministers do not consider an individual for listing in the adults' list, and
 - (b) IBB considers the individual's case,
 section 30 applies (with any necessary modifications) as if Ministers are considering to list the individual in the adults' list.
- (5) Ministers need not list an individual in the adults' list under section 14 if—
 - (a) IBB is required, by virtue of paragraph 7 of schedule 3 to the SVG Act, to include the individual in the adults' barred list maintained under section 2 of that Act, and
 - (b) Ministers consider that it would be more appropriate for the individual to be included in the list maintained under section 2 of that Act than in the adults' list.

41 Protection from actions for damages

- (1) No proceedings are competent in respect of any loss or damage incurred by any person because of—
 - (a) the fact that an individual is or is not listed,
 - (b) the fact that Ministers have or have not considered whether to list an individual,
 - (c) the provision of information in pursuance of any of sections 3 to 8 and 18 to 20.
- (2) Subsection (1)(c) does not apply if the provider of the information—
 - (a) knew, or was reckless as to whether, it was untrue or misleading in a material respect, and

- (b) provided it—
 - (i) in purported compliance with any of sections 3 to 8 and 18 to 20, or
 - (ii) in other circumstances in which the provider knew, or could reasonably be expected to have known, that it would be used by Ministers, or provided to them for use, in connection with the performance of their functions under this Part.

42 Power to regulate procedure etc.

- (1) Ministers may, by regulations, make further provision about—
 - (a) the information about listed individuals which is to be included in the children's list and adults' list,
 - (b) the maintenance of those lists, and
 - (c) the procedure which is to be followed in relation to any decision which Ministers are authorised or required to take under this Part.
- (2) The regulations may, in particular, make provision in relation to the time within which anything has to be done.

43 Transfer from 2003 Act list

- (1) Ministers must list in the children's list each individual who was included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children (Scotland) Act 2003 (asp 5) ("the 2003 Act") immediately before that section was repealed.
- (2) Ministers must give notice of listing under subsection (1) to each individual listed under that subsection.
- (3) An individual who is listed under subsection (1) is to be treated for the purposes of this Act as having been so listed—
 - (a) under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of that Act, and
 - (b) on the day on which the individual was included in the list kept under section 1 of the 2003 Act.
- (4) The provisions of this Part are accordingly to apply in relation to such an individual with any necessary modifications.
- (5) Section 29(1)(b) is not to be read as requiring or authorising Ministers to remove such an individual from the children's list where it appears to them that the individual—
 - (a) would not have been listed under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of the 2003 Act, but
 - (b) should have been included in the list kept under the 2003 Act under the provision of that Act which corresponds most closely with the provision of this Part under which the individual is to be treated as having been listed.
- (6) A notice required by subsection (2) may be given—
 - (a) by delivering it to the listed individual,
 - (b) by leaving it at the listed individual's usual or last known place of abode, or

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- (c) by sending it by post to the listed individual at that place.