



# Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

## PART 6

### INTERPRETATION

#### 91 Regulated work

- (1) Regulated work means regulated work with children or protected adults.
- (2) Regulated work with children is work of the type described in schedule 2.
- (3) Regulated work with adults is work of the type described in schedule 3.
- (4) References in this Act to types of regulated work are to be construed accordingly.

#### 92 Individuals barred from regulated work

- (1) An individual is barred from regulated work with children if the individual is—
  - (a) listed in the children's list,
  - (b) included in the children's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),
  - (c) included (otherwise than provisionally) in the list kept under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
  - (d) an individual falling within subsection (3).
- (2) An individual is barred from regulated work with adults if the individual is—
  - (a) listed in the adults' list,
  - (b) included in the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),
  - (c) included (otherwise than provisionally) in the list kept under article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
  - (d) an individual falling within subsection (4).

- (3) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with children by virtue of any of paragraphs (a) to (c) of subsection (1).
- (4) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with adults by virtue of any of paragraphs (a) to (c) of subsection (2).
- (5) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers' opinion corresponds to the children's list for a list mentioned in subsection (1)(b) and (c).
- (6) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers' opinion corresponds to the adults' list for a list mentioned in subsection (2)(b) or (c).

### 93      **Meaning of “harm”**

- (1) For the purposes of this Act, an individual (“A”) harms another (“B”) if—
  - (a) A’s conduct causes B physical harm,
  - (b) A’s conduct causes B psychological harm (for example: by putting B in a state of fear, alarm or distress), or
  - (c) A engages in unlawful conduct which appropriates or adversely affects B’s property, rights or interests (for example: theft, fraud, embezzlement or extortion),
 and references to harm are to be construed accordingly.
- (2) For the purposes of this Act, an individual (“C”) places another (“D”) at risk of harm if—
  - (a) C attempts to harm D,
  - (b) C incites another to harm D,
  - (c) C encourages D to self-harm, or
  - (d) C’s conduct otherwise causes, or is likely to cause, D to be harmed,
 and references to being placed at risk of harm are to be construed accordingly.

### 94      **Meaning of “protected adult”**

- (1) For the purposes of this Act, a “protected adult” is an individual aged 16 or over who is provided with—
  - (a) a service by a person carrying on—
    - (i) a support service,
    - (ii) an adult placement service,
    - (iii) a care home service, or
    - (iv) a housing support service,
 which is registered under Part 1 of the 2001 Act,
  - (b) a prescribed service—

- (i) by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29),
    - (ii) which is secured by a health body acting in exercise of such functions,
    - (iii) by an independent hospital,
    - (iv) by a private psychiatric hospital,
    - (v) by an independent clinic, or
    - (vi) by an independent medical agency,
  - (c) a community care service—
    - (i) provided or secured by a council under the Social Work (Scotland) Act 1968 (c. 49) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
    - (ii) in respect of which a council has made a direct payment, or
  - (d) a prescribed welfare service.
- (2) Ministers may by order modify subsection (1) in order to change the definition of “protected adult” as they think appropriate.
- (3) Expressions used in paragraphs (a) and (b) of subsection (1) have the same meaning as in the 2001 Act.
- (4) In subsection (1)(c)—  
“community care service” has the same meaning as in the Social Work (Scotland) Act 1968 (c. 49),  
“direct payment” means a payment made under section 12B of that Act.
- (5) In subsection (1)(d), “welfare service” includes any service which provides support, assistance, advice or counselling to individuals with particular needs.

## **95 Meaning of “work”**

- (1) In this Act “work” means work of any kind and, in particular, includes—
  - (a) paid and unpaid work,
  - (b) work under a contract (for example: under a contract of service or apprenticeship or under a contract for services),
  - (c) carrying out the functions of any office established by virtue of an enactment,
  - (d) being a foster carer, and
  - (e) caring for, or supervising, individuals participating in any organised activity,and references to a “worker” and to “working” are to be construed accordingly.
- (2) Despite the generality of subsection (1), “work” does not include work falling within subsection (3) or (4).
- (3) Work falls within this subsection if it is done for an individual (“A”)—
  - (a) in the course of a family relationship, and
  - (b) for the benefit of A or a member of A’s family.
- (4) Work falls within this subsection if it is done for an individual (“B”)—
  - (a) in the course of a personal relationship,
  - (b) for no commercial consideration, and
  - (c) for the benefit of B, a member of B’s family or B’s friend.

- (5) A family relationship includes a relationship between two individuals who—
  - (a) live in the same household, and
  - (b) treat each other as though they were members of the same family.
- (6) A personal relationship is a relationship between or among friends.
- (7) Any friend of a member of an individual’s family is to be regarded as being the individual’s friend.
- (8) “Benefit” does not include commercial benefit.
- (9) Ministers may prescribe circumstances in which work either is or is not to be treated for the purposes of this Act as being done in the course of a family or personal relationship.

## 96 Fostering

- (1) For the purposes of this Act, a “foster carer”, in relation to a child, is an individual other than a parent of the child—
  - (a) with whom the child has been placed under section 26(1)(a) (placement by councils) of the Children (Scotland) Act 1995 (c. 36) (“the 1995 Act”),
  - (b) who looks after the child in pursuance of arrangements made by a council under 26(1)(c) (arrangements for accommodating children) of the 1995 Act,
  - (c) who—
    - (i) maintains the child as a foster child for the purposes of the Foster Children (Scotland) Act 1984 (c. 56), or
    - (ii) otherwise looks after the child in circumstances in which that Act applies by virtue of section 17 of that Act, or
  - (d) who looks after the child in pursuance of—
    - (i) a permanence order, or
    - (ii) a supervision requirement.
- (2) A foster carer is to be treated as doing work for—
  - (a) in the case of a foster carer of the type described in subsection (1)(a), the council which placed the child with that foster carer under section 26(1)(a) of the 1995 Act,
  - (b) in the case of a foster carer of the type described in subsection (1)(b) or (c), any person who—
    - (i) made arrangements with the foster carer in pursuance of which the foster carer looks after the child, and
    - (ii) has power to terminate those arrangements,
  - (c) in the case of a foster carer of the type described in subsection (1)(d)(i), the council which has the right to regulate the child’s residence,
  - (d) in the case of a foster carer of the type described in subsection (1)(d)(ii), the council in whose area the child is looked after.
- (3) Sections 34 to 37 do not apply in relation to work as a foster carer where the work is done in pursuance of—
  - (a) a permanence order which vests any parental responsibility or parental right in the foster carer, or
  - (b) a supervision requirement.

- (4) Subsections (2) to (7) of section 95 do not apply in relation to work as a foster carer.
- (5) References in section 3 to dismissing an individual doing regulated work are, in relation to foster carers, to be read as references to terminating the fostering arrangements concerned.
- (6) References in this section to looking after a child in pursuance of a permanence order are references to looking after a child in consequence of the exercise by the council to which the order relates of its right to regulate the child's residence.
- (7) References in this section to the council's right to regulate a child's residence are references to the parental right vested in the council by virtue of section 81(1)(b) of the Adoption and Children (Scotland) Act 2007 (asp 4) (mandatory provision in permanence order).
- (8) In this section—
  - “parental responsibilities” and “parental rights” have the same meaning as they have in the 1995 Act,
  - “permanence order” means an order made under section 80(1) of the Adoption and Children (Scotland) Act 2007 (asp 4),
  - “supervision requirement” means a requirement made under section 70(1) of the 1995 Act.

## 97 General interpretation

- (1) In this Act—
  - “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46),
  - “the 1997 Act” means the Police Act 1997 (c. 50),
  - “the 2001 Act” means the Regulation of Care (Scotland) Act 2001 (asp 8),
  - “care service” has the same meaning as in the 2001 Act,
  - “charity” means a body entered in the Scottish Charity Register,
  - “charity trustees” has the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
  - “chief constable” means the chief constable of a police force in Scotland,
  - “child” means an individual under the age of 18,
  - “conduct” includes neglect and other failures to act,
  - “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
  - “disciplinary proceedings” means proceedings in which the regulatory body for a profession is to decide whether disciplinary action should be taken against an individual carrying on that profession,
  - “disclosure declaration” means a declaration of the type referred to in disclosure condition C (see section 55) which is made in relation to a disclosure request,
  - “disclosure record” means a—
    - (a) scheme record,
    - (b) short scheme record, or
    - (c) statement of scheme membership,disclosed under Part 2,
  - “disclosure request” means a request for a disclosure under section 52, 53 or 54 of—

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

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- (a) a scheme record,
- (b) a short scheme record, or
- (c) a statement of scheme membership,

“employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services (and “employee” and related words are to be construed accordingly),

“employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding individuals employment with employers or of supplying employers with individuals for employment by them,

“employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying individuals in the employment of the person carrying on the business to act for, and under the control of, other persons in any capacity,

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c. 29),

“Her Majesty’s Inspectors of Schools” means the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c. 44),

“Independent Barring Board” and “IBB” mean the body established by section 1 of the Safeguarding Vulnerable Groups Act 2006 (c. 47),

“legal proceedings” means civil or criminal proceedings in or before any court or tribunal,

“Ministers” means the Scottish Ministers,

“organisation” means—

- (a) a body corporate or unincorporated,
- (b) an individual who, in the course of a business, employs or otherwise gives work to other persons,
- (c) the governing body, trustees, or other person or body of persons responsible for the management of any of the following—
  - (i) a school,
  - (ii) a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6),
  - (iii) a hostel used mainly by pupils attending a school or body mentioned in paragraph (i) or (ii) respectively,

“personnel supplier” means an organisation which carries on an employment agency or employment business,

“police authority” has the same meaning as in the Police (Scotland) Act 1967 (c. 77),

“police force” has the same meaning as in Part 5 of the 1997 Act,

“prescribed” (except where used in sections 18(4)(b) and 49(1)(a)) means prescribed in regulations made by Ministers (and “prescribe” is to be construed accordingly),

“registrar of dentists and dental care professionals” means the registrar appointed under section 14 of the Dentists Act 1984 (c. 24),

“Registrar of health professionals” means the Registrar appointed under Article 4 of the Health Professions Order 2001 (S.I. 2002/254),

“Registrar of nurses and midwives” means the Registrar appointed under Article 4 of the Nursing and Midwifery Order 2001 (S.I. 2002/253),

“registrar of pharmaceutical chemists” means the registrar appointed under section 1 of the Pharmacy Act 1954 (c. 61),

“school” has the same meaning as in the Education (Scotland) Act 1980 (c. 44),

“social work inspector” means a person appointed under section 4 of the Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3),

“Special Health Board” means a board constituted by order under section 2(1) (b) of the National Health Service (Scotland) Act 1978 (c. 29).

- (2) For the purposes of this Act, Ministers must assume that an individual is doing regulated work for an organisation if they—
  - (a) have made a disclosure in respect of the individual, in relation to that type of regulated work, under section 52, 53 or 54,
  - (b) know that the disclosure was sought for the purposes of enabling or assisting the organisation to consider the scheme member’s suitability to do, that type of regulated work for the organisation (or to be offered such work by the organisation), and
  - (c) have not been satisfied that the individual has not been engaged to do, or has stopped doing, that type of regulated work for the organisation.
- (3) References in this Act to Ministers considering whether to list an individual are to be read as references to Ministers considering whether to list an individual in the children’s list, in the adults’ list or, as the case may be, in both lists in pursuance of section 10, 11, 12 or 13.
- (4) References in this Act to Ministers’ vetting, barring and disclosure functions are references to their functions under Parts 1 and 2 of this Act and Part 5 of the 1997 Act (other than functions relating to the making of regulations and orders).
- (5) References in this Act to relevant police forces, and to the chief officers of those forces, are to be read in the same way as they are read in relation to an application under section 113B of the 1997 Act.
- (6) The words and other expressions listed in schedule 5 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.