
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the Act”). Article 2(1) brings into force, on 18th April 2010, all the provisions of the Act listed in the Schedule. Article 2(3) provides that (subject to article 2(4)) all these provisions come into force only for the purpose of enabling regulations or orders to be made under them. Article 2(4) provides that, where a purpose is specified in column 3 of the Schedule in relation to any provision, that provision comes into force only for the purpose specified. The effect is therefore that section 88 of the Act comes into force only in relation to paragraph 29 of schedule 4 to the Act and the remaining provisions listed in the Schedule come into force for the purpose of making regulations or orders.

Section 3(1) and (2) require organisations to give the Scottish Ministers prescribed information concerning an individual who is doing or has done regulated work in certain circumstances involving disciplinary action. (“Prescribed” is defined in section 97(1) as being prescribed in regulations made by the Scottish Ministers.) Sections 4 and 5 require personnel suppliers carrying on an employment business or an employment agency to give the Scottish Ministers prescribed information in certain circumstances concerning an individual who is doing or has done regulated work. Section 6(2) allows persons who are subject to the duties in sections 3 to 5 to give the Scottish Ministers prescribed information concerning an individual who was doing regulated work before the duties in sections 3 to 5 came into force.

Section 7(1) requires a court to give the Scottish Ministers prescribed information concerning an individual who is convicted of a relevant offence (which is an offence listed in schedule 1). Section 7(3) allows a court to give the Scottish Ministers prescribed information concerning an individual who is convicted of any other offence where the court is satisfied that it may be appropriate for the individual to be listed in the children’s list or the adults’ list kept under section 1.

Section 8(1) allows certain persons to give the Scottish Ministers prescribed information concerning an individual who is doing or has done regulated work where the person considers that the referral ground in section 2 of the Act has been met. Section 8(2) lists the persons to whom section 8(1) applies. The Scottish Ministers may also specify other persons in an order.

Section 14(3) gives the Scottish Ministers the power to specify by order the criteria which will apply for the purposes of section 14(1) and (2). Under section 14(1) and (2) the Scottish Ministers must list an individual in the children’s list or the adults’ list where it appears to them that the specified criteria have been satisfied. Section 14(4) provides an illustrative list of criteria which may be specified.

Section 17(5) defines “relevant finding of fact”. Section 17(5)(d) gives the Scottish Ministers the power to specify by order that a relevant finding of fact includes a finding of fact made by any other person or in any other circumstance.

Under section 25(3)(a) an application for removal from the children’s list or the adults’ list is competent only if it is made after the end of such period as is prescribed.

Section 32(2) gives the Scottish Ministers a power to make an order to modify schedule 1 so as to modify the circumstances in which an individual is to be treated as having committed a relevant offence.

By virtue of section 35(2) the Scottish Ministers can make regulations to 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. Section 35(3) provides that regulations may

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impose prohibitions or requirements in relation to particular organisations or particular types of regulated work and may limit the purpose for which the prohibition or requirement is to apply.

Section 42(1)(c) gives the Scottish Ministers the power to make regulations to make further provision about the procedure which is to be followed in relation to any decision which they are authorised or required to take under Part 1. Section 42(2) allows provision to be made in such regulations in relation to the time within which anything is to be done.

Section 49 defines vetting information. Under section 49(1)(d) vetting information includes such other information as may be prescribed.

Section 63(1) allows the Scottish Ministers to require an applicant to join the Scheme, or a scheme member, to have fingerprints taken in such manner and at such place as may be prescribed for the purposes of enabling or assisting them to satisfy themselves as to the identity of the applicant or scheme member.

Section 64(1) allows the Scottish Ministers to use information given to them by personal data holders to check evidence of identity of applicants and scheme members. Personal data holders are defined in section 64(2) and include such other persons holding data about individuals as may be prescribed.

Section 67(1) provides that it is an offence to request provision of, or to otherwise seek sight of, a disclosure record for a purpose other than the permitted purpose. Under section 67(3) the permitted purpose is to enable or assist a person (“Z”) to consider an individual’s suitability to do regulated work (section 67(3)(a)) or to consider an individual’s suitability to do regulated work in prescribed circumstances for any person other than Z in pursuance of arrangements under which services are provided to Z (section 67(3)(b)).

Section 70(1) gives the Scottish Ministers a power to prescribe fees to be charged for applications to join, or be removed from, the Scheme, for disclosure requests and in respect of the performance of their functions under Part 2. Under section 70(2) the regulations may provide for different fees in different circumstances, for annual or recurring fees or for reduction, waiver or refund of fees in prescribed circumstances. Section 70(3) requires that, before prescribing fees, the Scottish Ministers must have regard to the circumstances in which fees are payable and the desirability of maintaining an appropriate balance among the quality of the performance of their vetting, barring and disclosure functions, the cost of that performance and the fees paid to them in respect of that performance.

Section 72(1) gives the Scottish Ministers the power to make regulations to make such further provision about the administration of the Scheme as they think fit. Section 72(2) provides that regulations may prescribe further procedure relating to applications to join, or be removed, from the Scheme, prescribe circumstances in which scheme members are to be removed from the Scheme, prescribe circumstances in which disclosure condition A can be satisfied and prescribe further procedure relating to making disclosure requests and to disclosing information pursuant to such requests.

Under section 73(g) any references to considering an individual’s suitability to do regulated work include references to considering an individual’s suitability for any other prescribed purpose.

Section 92(1)(a) to (c) and (2)(a) to (c) specify the circumstances in which an individual will be barred from regulated work. These circumstances include being listed on the children’s list or the adults’ list or on specified lists in England and Wales and Northern Ireland. Section 92(3) gives the Scottish Ministers the power to make an order which provides that a prohibition or disqualification 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 corresponds to being barred from regulated work with children by virtue of section 92(1)(a) to (c). Section 92(4) gives the Scottish Ministers the power to make an order which provides that a prohibition or disqualification 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 corresponds to being barred from regulated work with adults by virtue of section 92(2)(a) to (c). Section 92(5) allows the Scottish Ministers by order to substitute the lists

mentioned in section 92(1)(b) or (c) with any list maintained in England and Wales or Northern Ireland which corresponds to the children's list. Section 92(6) allows the Scottish Ministers by order to substitute the lists mentioned in section 92(2)(b) or (c) with any list maintained in England and Wales or Northern Ireland which corresponds to the adults' list.

Section 94(1) defines "protected adult". A protected adult includes an individual aged over 16 who is provided with under section 94(1)(b) a prescribed service by certain specified persons or under section 94(1)(d) a prescribed welfare service.

Under paragraph 28 of schedule 2 the Scottish Ministers may by order modify schedule 2 which describes the types of regulated work with children. Paragraph 29 allows the Scottish Ministers, when making an order under paragraph 28, to disapply or otherwise modify the application of sections 34 to 37 in relation to particular kinds of regulated work with children.

Under paragraph 13 of schedule 3 the Scottish Ministers may by order modify schedule 3 which describes the types of regulated work with adults.

Section 88 and paragraph 29 of schedule 4 insert new sections 113CA, 113CB and 113CC into the Police Act 1997. Under the new section 113CA an enhanced criminal record certificate must include suitability information relating to children in such cases as are prescribed. Under section 113CB an enhanced criminal record certificate must include suitability information relating to adults in such cases as are prescribed. Under the new section 113CC(1)(a) the Scottish Ministers may by order amend section 113CA for the purpose of altering the meaning of suitability information relating to children. Under the new section 113CC(1)(b) the Scottish Ministers may by order amend section 113CA for the purpose of altering the meaning of suitability information relating to adults.