

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 4: Positions

199. Paragraphs 18 to 27 make provision to cover specific positions which might not otherwise be caught by provision in Parts 2 and 3. These are positions which, by their very nature, put the post-holder in a position of power and trust in respect of children and those who work with children and could enable the post-holder to demand access to children or sensitive information about them. Additionally, some of these positions give the post-holder the power to influence or determine recruitment decisions or organisational policy and practice. A post-holder of a position included in Part 4 is doing regulated work with children without exception (i.e. there is no normal duties test and it is immaterial whether or not the post-holder is or is not covered by any other provision).
200. In particular, paragraph 26 brings foster carers (as defined by section 96) within the scope of regulated work with children.
201. Paragraph 27 brings charity trustees of children's charity to the scope of regulated work with children. A charity whose main purpose is to provide benefits for children is a children's charity for the purposes of this Act (paragraph 27(b)). Additionally, a charity is a children's charity if its workers normally include persons doing regulated work and those workers are working under arrangements made for purposes which are not incidental to (i.e. which are for) the purposes for which the charity is established (paragraph 27(a)). Therefore, whether a charity is a children's charity by virtue of paragraph 27(a) is dependent on the scope of the other provisions of schedule 2.
202. Consider, for example, the trustees of Higher Education Institutions with charitable status. To determine whether they fall within the scope of regulated work with children, a two step process needs to be followed. The first step is to identify which of the charity's workers are doing regulated work. Having identified that there will be some doing regulated work (e.g. first year tutors with classes dominated by under-18's), the second step is to determine whether those workers are working under arrangements incidental to the purposes for which the charity was established. As an HEI is established to provide education, those workers doing regulated work with children by virtue of teaching children are doing so for the primary purpose for which the charity is established. Therefore, charity trustees of Higher Education Institutions do fall within the scope of regulated work with children.