

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 6: Interpretation

Section 96. Fostering

Scope of foster carer in this Act

168. [Section 96](#) sets out what constitutes “foster carer” for the purposes of the Act. Subsection (1) defines foster carer under the Act to cover:
- Public fostering arranged by councils under section 26(1)(a) of the Children (Scotland) Act 1995. This would cover many foster care placements and also include the situation where a looked after child is placed by the council with a relative or friend, even though that individual is not a career foster carer. It would thereby include some kinship care scenarios.
 - Private fostering under the Foster Children (Scotland) Act 1984. This covers the situation where a parent or guardian places a child in the care of another person who is not a close relative for more than 28 days. Parents have a duty to report the arrangement to the relevant council who must inspect and monitor the accommodation and other aspects of the arrangements, but the parent or guardian assesses and approves the carers.
 - Those looking after a child in pursuance of a permanence order (see paragraphs 170 to 172 below).
 - Those looking after a child under a supervision requirement (see paragraph 173 below).

Employers and referrals

169. Subsection (2) deems who the ‘employer’ of the foster carer is considered to be, which is significant in terms of entitlement to disclosure records. For public fostering, the employer is deemed to be the council or voluntary agency who made the arrangements; for permanence orders and supervision requirements the employer is deemed to be the council; and for private fostering it is the person who made the fostering arrangements *and* has the power to terminate those arrangements. Subsection (3) disapplies the offences in sections 34 to 37 of the Act in relation to work as a foster carer under a permanence order or a supervision requirement.
170. Subsection (5) provides that section 3 (referral following disciplinary action) will apply to foster carers and ‘dismissing an individual’ in employment situations should be read as ‘terminating the fostering arrangements’ in the context of fostering.

Permanence orders

171. Subsection (1) includes an individual who looks after children in pursuance of permanence orders, created by the Adoption and Children (Scotland) Act 2007, within the definition of foster carer. These orders can only be applied for by a council and are granted by a court. The order consists of:
- the mandatory provision, whereby the right to regulate the child's residence and the responsibility to provide guidance to the child are vested in the council;
 - the ancillary provisions, whereby other parental responsibilities and rights (PRRs) in respect of the child (as set out in sections 1 and 2 of the Children (Scotland) Act 1995) may be vested in the council or any other person or persons as the court considers appropriate. Ancillary provisions may also take these PRRs away from the birth parents; and
 - if appropriate, provision granting authority for the child to be adopted.
172. Since the child remains a looked after child and the responsibility for his or her care rests ultimately with the council, any carer of a child on a permanence order is regarded as doing regulated work so that disclosure records can be obtained and the carer is subject to continuous vetting. This will apply whether or not the carer is a relative or friend. The council is treated as an employer of the foster carer in this context.
173. The offences in sections 34 to 37 of the Act do not apply to carers of children on a permanence order, so that an administrative decision by the Central Barring Unit (on behalf of Scottish Ministers) cannot override a court decision made in the best interests of the child, by listing an individual who also happens to be the foster carer of a child on a permanence order. This is to avoid the individual and the council committing a serious offence by following the order of the court and allowing the child to remain with the individual beyond the date of the listing decision.

Supervision requirements

174. An individual who looks after a child in pursuance of a supervision requirement, which cover other types of foster care arrangement, is also brought within the definition of foster carer. For the duration of the requirement, the child is a looked after child (in terms of the Children (Scotland) Act 1995) and the foster carer should be regarded as doing regulated work. This allows disclosure records to be obtained and continuous vetting of the carer. This applies whether or not the carer is a relative or friend.

Foster care and work

175. Subsection (4) disapplies subsections (2) to (7) of section 95 of the Act (meaning of work). These subsections in section 95 concern 'work' done in the course of family or personal relationships which are excluded from the generality of work in section 95. Subsection (4) prevents any foster care relationships being excluded from regulated work by being interpreted as family or personal relationships. Section 95(9) could be used to specify in greater detail the boundary of what constitutes work in terms of family and personal relationships, if this proves necessary.

Definitions

176. Subsection (8) imports into this section the meanings of "parental responsibilities", "parental rights", "permanence order" and "supervision requirement" as defined in the Children (Scotland) Act 1995 and the Adoption and Children (Scotland) Act 2007, as appropriate.