



# Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

## PART 2

### VETTING AND DISCLOSURE

#### *The Scheme*

#### **44 The Scheme**

Ministers are to administer a scheme (“the Scheme”) under which information about individuals who do, or wish to do, regulated work with children or protected adults is—

- (a) collated, and
- (b) disclosed,

in accordance with this Part.

#### **45 Participation in Scheme**

- (1) An individual may apply to Ministers to join the Scheme in relation to—
  - (a) regulated work with children,
  - (b) regulated work with adults, or
  - (c) both types of regulated work.
- (2) Ministers must allow an individual to be a member of the Scheme (a “scheme member”) in relation to a type of regulated work if the individual is not barred from doing that work.

#### **46 Statement of scheme membership**

- (1) Ministers must disclose a statement of scheme membership to each scheme member.
- (2) A statement of scheme membership is a document which—

- (a) sets out the type of regulated work in relation to which an individual participates in the Scheme,
  - (b) confirms that the individual is not barred from doing that work,
  - (c) if Ministers are considering whether to list the individual in relation to that type of work, says so, and
  - (d) contains such other information about the individual as may be prescribed.
- (3) Ministers need not comply with subsection (1) where—
- (a) the individual makes a disclosure request at the same time as the individual applies to join the Scheme, and
  - (b) Ministers make the requested disclosure.

### *Vetting information*

#### **47 Enquiries about scheme members**

- (1) Ministers must, after making enquiries for the purpose of discovering whether any vetting information exists in relation to a new scheme member, create a scheme record for the member.
- (2) Ministers must make arrangements for the purpose of discovering whether any new vetting information arises in relation to scheme members while those members participate in the Scheme.
- (3) Ministers must update a scheme record if they discover any new vetting information about the scheme member to whom it relates.
- (4) Vetting information is new if Ministers did not discover it as a result of earlier enquiries made in pursuance of subsection (1) or (2) in relation to the scheme member concerned (regardless of whether it existed when they made those earlier enquiries).

#### **48 Scheme record**

A scheme record is a document comprising—

- (a) a scheme member's statement of scheme membership, and
- (b) vetting information about the scheme member which Ministers discover as a result of enquiries or arrangements made under section 47.

#### **49 Vetting information**

- (1) Vetting information, in relation to a scheme member, is—
  - (a) the information referred to in section 113A(3)(a) of the 1997 Act (prescribed details of every relevant matter relating to the scheme member which is recorded in central records),
  - (b) if the scheme member is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c. 42), information about those requirements,
  - (c) information which the chief officer of a relevant police force thinks might be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and
  - (d) such other information as may be prescribed.

- (2) Regulations prescribing information for the purposes of subsection (1)(d) may require persons holding information of the type prescribed to disclose it to Ministers for the purposes of this Act.

## **50 Duty to notify certain changes**

- (1) A scheme member must give Ministers notice of—
- (a) a change in the member's name,
  - (b) the issue of a full gender recognition certificate to the member 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 3 months 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 a fine not exceeding level 3 on the standard scale.

## **51 Correction of inaccurate scheme record**

- (1) Ministers must correct a scheme record if they are satisfied (following a request by a scheme member for correction, notification under section 50 or otherwise) that any information included in it is inaccurate.
- (2) After correcting an inaccurate scheme record, Ministers must disclose the corrected information to—
- (a) the scheme member, and
  - (b) any organisation for which they know the scheme member is doing regulated work.
- (3) Subsection (2) applies only if Ministers have previously disclosed the inaccurate information under this Part to the scheme member or, as the case may be, the organisation.
- (4) A scheme member may, in particular, request a review of any information included in a scheme record by virtue of section 49(1)(c).
- (5) Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether the chief officer still thinks that the information concerned might be relevant in relation to the type of regulated work in relation to which the scheme member participates in the scheme.
- (6) Information which was considered accurate when included in a scheme record but which—
- (a) is subsequently found to have always been inaccurate, or
  - (b) subsequently becomes inaccurate for any reason,
- is to be regarded as being inaccurate information for the purposes of this section.

*Disclosure***52 Disclosure of scheme records**

- (1) Ministers must disclose a scheme member's scheme record if—
  - (a) disclosure conditions A to D are satisfied, and
  - (b) section 53 does not require them to disclose the scheme member's short scheme record.
- (2) Ministers must send a copy of a record disclosed under subsection (1) to the scheme member who made the disclosure request.

**53 Disclosure of short scheme records**

- (1) Ministers must disclose a scheme member's short scheme record if—
  - (a) disclosure conditions A to D are satisfied,
  - (b) they have previously disclosed the member's scheme record, and
  - (c) the scheme member requests disclosure of a short scheme record only.
- (2) Ministers must send a copy of a record disclosed under subsection (1) to the scheme member who made the disclosure request.
- (3) A short scheme record is a document which—
  - (a) includes a scheme member's statement of scheme membership,
  - (b) specifies the date on which the scheme member's scheme record was last disclosed under section 52,
  - (c) says whether any vetting information was included in the scheme member's scheme record on that date,
  - (d) if any new vetting information has been included in the scheme member's scheme record since that date, says when that information was so included, and
  - (e) if any vetting information has been removed from the scheme member's scheme record since that date, says when that information was so removed.
- (4) A short scheme record must not disclose any vetting information of the types referred to in paragraphs (c) to (e) of subsection (3).

**54 Disclosure of scheme membership**

- (1) If disclosure conditions A to C are satisfied, Ministers must disclose a scheme member's statement of scheme membership.
- (2) Ministers must send a copy of a statement disclosed under subsection (1) to the scheme member who made the disclosure request.

**55 Disclosure conditions**

The disclosure conditions are—

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*Condition A*

The scheme member requests Ministers to make the disclosure to a person, and

	in relation to a type of regulated work, specified in the request.
<i>Condition B</i>	The scheme member participates in the Scheme in relation to that type of regulated work.
<i>Condition C</i>	The person to whom the disclosure is to be made declares that the disclosure is requested for the purpose of enabling or assisting the person (or any other person for whom the person acts) to consider the scheme member's suitability to do, or to be offered or supplied for, that type of regulated work.
<i>Condition D</i>	The person to whom the disclosure is to be made is a registered person for the purposes of Part 5 of the 1997 Act.

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## **56 Crown work**

- (1) This section applies where a disclosure declaration is made by—
  - (a) a Minister of the Crown,
  - (b) a member of the Scottish Executive,
  - (c) any other office-holder in the Scottish Administration, or
  - (d) a nominee of any person mentioned in paragraphs (a) to (c).
- (2) Where this section applies Ministers may, despite disclosure condition D, disclose the relevant scheme record or short scheme record.

## **57 Disclosure restrictions**

- (1) Regulations under section 49(1)(d) may prohibit Ministers (at any time or in prescribed circumstances)—
  - (a) from including a prescribed type of information in scheme records,
  - (b) from disclosing a prescribed type of information under section 52 or 53.
- (2) Subsection (3) applies where—
  - (a) a scheme member participates in the Scheme in relation to both types of regulated work, and
  - (b) Ministers receive a disclosure request which includes a disclosure declaration made in relation to only one of those types of regulated work.
- (3) Where this subsection applies, Ministers must not—
  - (a) disclose information which appears in the member's scheme record only because the member participates in the Scheme in relation to the other type of regulated work, or
  - (b) reveal whether any such information has been included in, or removed from, the member's scheme record.

### *Removal from scheme*

#### **58 Removal from scheme**

- (1) Ministers must remove a scheme member from the Scheme in relation to a type of regulated work if they—
  - (a) bar the member from doing that work by listing the member, or
  - (b) become aware that the member has otherwise been barred from doing that work.
- (2) Ministers may remove from the Scheme any scheme member who fails to pay any fee for participation in the Scheme which is prescribed under section 70.

#### **59 Withdrawal from scheme**

Ministers must remove a scheme member from the Scheme in relation to a type of regulated work if—

- (a) the scheme member applies to be so removed, and
- (b) they are satisfied that the scheme member is not doing that type of regulated work.

#### **60 Notice of removal**

- (1) Ministers must give notice confirming that they have removed an individual from the Scheme under section 58 or 59 to—
  - (a) the individual, and
  - (b) any other person whom they think fit.
- (2) A notice under subsection (1) must—
  - (a) state the type of regulated work in relation to which the individual has been removed, and
  - (b) say why the individual has been removed.
- (3) A notice under subsection (1)(b) need not comply with subsection (2)(b) if Ministers think that it would be inappropriate for the recipient to be informed of the reason for removal.

#### **61 Retention of scheme records after removal**

- (1) Ministers may keep the scheme record of an individual removed from the Scheme and may continue to use that record for the purposes of enabling or assisting them to perform their functions under this Act.
- (2) Subsection (1) does not—
  - (a) entitle Ministers to continue to make enquires in relation to the individual in pursuance of section 47(2), or
  - (b) require Ministers to otherwise ensure that the retained scheme record is updated.

### *Evidence of identity*

#### **62 Evidence of identity**

- (1) An individual making—
  - (a) an application to join, or to be removed from, the Scheme,
  - (b) a request to correct a scheme record, or
  - (c) a disclosure request,must provide Ministers with such evidence of identity as they may require.
- (2) Ministers need not consider such an application or request if—
  - (a) the individual fails to comply with a requirement under this section or section 63, or
  - (b) the evidence provided does not satisfy them as to the individual's identity.

#### **63 Power to use fingerprints to check applicant's identity**

- (1) Ministers may 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 Ministers to satisfy themselves as to the identity of the applicant or, as the case may be, scheme member.
- (2) But Ministers may require an individual to have fingerprints taken under subsection (1) only if they are not satisfied by other evidence provided under section 62(1) as to the individual's identity.
- (3) Ministers must arrange the destruction of any such fingerprints as soon as reasonably practicable after they have been used for the purposes mentioned in subsection (1).
- (4) Any person who holds records of fingerprints for the use of police forces generally must make those records available to Ministers for the purposes of this section.
- (5) This section does not affect the generality of section 62 in relation to any other type of evidence of identity.

#### **64 Power to use personal data to check applicant's identity**

- (1) Ministers may use information given to them by personal data holders to check evidence of identity given to them for the purposes of section 62.
- (2) Personal data holders are—
  - The Identity and Passport Service
  - The Driver and Vehicle Licensing Agency
  - Ministers of the Crown in connection with keeping of records of national insurance numbers
  - Such other persons holding data about individuals as may be prescribed

### *Offences relating to vetting information*

#### **65 Falsification of scheme records etc.**

- (1) It is an offence for a person, with intent to deceive, to—

- (a) make a document which purports to be a disclosure record,
  - (b) alter a disclosure record,
  - (c) use, or allow another person to use, a disclosure record in a way which suggests that it relates to an individual other than the scheme member in respect of whom it was disclosed.
- (2) It is an offence for a person to knowingly make a false or misleading declaration or other statement for the purposes of—
- (a) obtaining, or enabling another person to obtain, a disclosure record, or
  - (b) satisfying Ministers that an individual who is doing regulated work is not doing so.

## **66 Unlawful disclosure of scheme records etc.**

- (1) A person to whom disclosure information is disclosed under section 51, 52, 53 or 54 commits an offence if the person discloses it to any other person.
- (2) A person does not commit an offence under subsection (1) by disclosing the disclosure information—
- (a) to any of the person's employees,
  - (b) where the person is not an individual, to any member or officer of the person, or
  - (c) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
    - (i) to that other person,
    - (ii) to any of that other person's employees, or
    - (iii) where that other person is not an individual, to any member or officer of that other person.
- (3) An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(a) or (b) or (4)(a) commits an offence if the individual discloses it to any other person.
- (4) An individual does not commit an offence under subsection (3) by disclosing the disclosure information, in the course of the individual's duties—
- (a) to any other individual who is a member, officer or employee of the person to whom the corresponding disclosure was made under section 52, 53 or 54, or
  - (b) where the disclosure was made for the purpose of enabling or assisting another person to consider a scheme member's suitability to do, or to be offered or supplied for, regulated work—
    - (i) to that other person,
    - (ii) to any of that other person's employees, or
    - (iii) where that other person is not an individual, to any member or officer of that other person.
- (5) A person to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(i) or (4)(b)(i) commits an offence if the person discloses it to any other person.
- (6) A person does not commit an offence under subsection (5) by disclosing the disclosure information—



- (a) to any of the person's employees, or
  - (b) where the person is not an individual, to any member or officer of the person.
- (7) An individual to whom disclosure information is disclosed lawfully by virtue of subsection (2)(c)(ii) or (iii), (4)(b)(ii) or (iii) or (6) commits an offence if the person discloses it to any other person.
- (8) An individual does not commit an offence under subsection (7) by disclosing the disclosure information, in the course of the individual's duties, to any other individual who is a member, officer or employee of the person for whose purposes the corresponding disclosure was made under section 52, 53 or 54.
- (9) A person to whom disclosure information is disclosed unlawfully commits an offence if the person discloses it to any other person.

## **67 Unlawful requests for scheme records etc.**

- (1) 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.
- (2) It is an offence to use disclosure information for a purpose other than the permitted purpose.
- (3) The permitted purpose is to enable or assist a person ("Z") to consider the suitability of the individual to whom the record or information relates—
  - (a) to do, or to be offered or supplied for, the type of regulated work to which the disclosure record relates, or
  - (b) to do that type of regulated work in prescribed circumstances for any person other than Z in pursuance of arrangements under which services are provided to Z.
- (4) References in subsection (1) to disclosure records do not include references to information included in disclosure records.

## **68 Unlawful disclosure etc.: supplementary**

- (1) Nothing in section 66 prevents disclosure of disclosure information—
  - (a) by the scheme member to whom the information relates,
  - (b) by any other person with the consent of the scheme member to whom the information relates,
  - (c) to an office-holder in the Scottish Administration or a government department,
  - (d) to a person appointed to any office by virtue of any enactment,
  - (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
  - (f) for the purposes of answering a prescribed type of exempted question, or
  - (g) for some other prescribed purpose.
- (2) Nothing in subsections (2), (4), (6) or (8) of section 66 makes lawful any disclosure of disclosure information made otherwise than for the purpose of enabling or assisting the person in relation to whom the corresponding disclosure request was made to consider the suitability of the scheme member concerned to do, or to be offered or supplied for, the type of regulated work concerned.

- (3) Nothing in section 67 prevents use of disclosure information for a purpose other than the permitted purpose—
- (a) by the scheme member to whom the information relates,
  - (b) by any other person with the consent of the scheme member to whom the information relates,
  - (c) by an office-holder in the Scottish Administration or a government department,
  - (d) by a person appointed to any office by virtue of any enactment,
  - (e) in accordance with any obligation to provide information imposed by virtue of any enactment,
  - (f) in order to answer a prescribed type of exempted question, or
  - (g) in any other prescribed circumstances.
- (4) References in sections 66 and 67 and in this section to disclosure information are references to—
- (a) disclosure records disclosed under section 52, 53 or 54, and
  - (b) any information in such a disclosure record which is obtained only by virtue of section 51, 52, 53 or 54.
- (5) “Exempted question”, where used in subsections (1)(f) and (3)(f), means a question in relation to which section 4(2)(a) or (b) of the Rehabilitation of Offenders Act 1974 (c. 53) has been excluded by order made under section 4(4) of that Act.

## **69 Penalties for offences relating to vetting information**

A person guilty of an offence under section 65, 66 or 67 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.

### *Fees, forms and other procedures*

## **70 Fees**

- (1) Ministers may charge such fee as may be prescribed—
- (a) in respect of applications to join, or to be removed from, the Scheme,
  - (b) in respect of disclosure requests, and
  - (c) otherwise in respect of the performance of their functions under this Part.
- (2) Regulations may, in particular, provide for—
- (a) different fees in different circumstances,
  - (b) annual or other recurring fees in respect of participation in the Scheme,
  - (c) reduction, waiver or refund of fees in prescribed circumstances.
- (3) Before prescribing fees under this section, Ministers must have regard to—
- (a) the circumstances in which those fees are payable, and
  - (b) the desirability of maintaining an appropriate balance among—
    - (i) the quality of the performance of their vetting, barring and disclosure functions,
    - (ii) the cost of that performance, and

(iii) the fees paid to them in respect of that performance.

(4) Where regulations provide for a fee to be charged in respect of—

- (a) an application to join, or to be removed from, the Scheme, or
- (b) a disclosure request,

Ministers need not consider the application or request unless the fee is paid.

## **71 Forms**

(1) It is for Ministers to determine the form and manner in which—

- (a) applications to join, or to be removed from, the Scheme,
- (b) requests to correct a scheme record, and
- (c) disclosure requests (including disclosure declarations made in relation to them),

must be made.

(2) Ministers may, in particular, determine that any such application, request or declaration may be made in electronic form.

(3) Ministers need not consider any such application, request or declaration unless it is made in the form and manner determined by them (or in a form and manner as close to that as circumstances permit).

## **72 Procedure**

(1) Ministers may, by regulations, make such further provision about the administration of the Scheme as they think fit.

(2) Regulations may, in particular—

- (a) prescribe further procedure relating to applications to join, or to be removed from, the Scheme,
- (b) prescribe circumstances in which scheme members are to be removed from the Scheme,
- (c) prescribe circumstances in which disclosure condition A (see section 55) is to be treated as being satisfied when a person other than a scheme member makes a disclosure request in respect of that member,
- (d) prescribe further procedure relating to making disclosure requests and to disclosing information in pursuance of such requests.

### *Supplementary*

## **73 Consideration of suitability**

References in this Part to a person (“A”) considering an individual’s suitability to do, or to be offered or supplied for, any type of regulated work are references to A considering the individual’s suitability—

- (a) to do that type of regulated work for A,
- (b) to be supplied by A to do that type of regulated work for another person,
- (c) to be a teacher (for the purposes of section 6 of the Teaching Council (Scotland) Act 1965 (c. 19)),

- (d) to provide or manage a care service (for the purposes of the 2001 Act),
- (e) to be registered under Part 3 (registration of social workers etc.) of the 2001 Act,
- (f) to foster a child (for the purposes of any regulations made under section 5(2) of the Social Work (Scotland) Act 1968 (c. 49)), or
- (g) for any other prescribed purpose.

#### **74 Delegation of vetting and disclosure functions**

- (1) Ministers may, to such extent and subject to such conditions as they think appropriate, delegate any of their functions under this Part (other than excepted functions) to such person as they may determine.
- (2) An excepted function is a function—
  - (a) relating to the making of regulations or orders,
  - (b) under section 71, or
  - (c) relating to the determination of an appropriate fee under section 75(4).
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- (4) No proceedings are competent against a person performing functions delegated under this section by reason of an inaccuracy in the information made available or provided to the person in accordance with section 63(4) or 75.

#### **75 Sources of information**

- (1) Any person who holds records of convictions, cautions or other information for the use of police forces generally must make those records available to Ministers for the purposes of enabling or assisting them to perform their functions under this Part.
- (2) A chief constable must, as soon as practicable, comply with a request by Ministers to provide them with information of the type described in section 49(1)(c) for the purposes of enabling or assisting them to perform their functions under this Part.
- (3) A chief constable must not provide information to Ministers under subsection (2) if the chief constable thinks that disclosing that information to the individual to whom it relates would be contrary to the interests of the prevention or detection of crime.
- (4) Ministers must pay the appropriate police authority such fee as Ministers think appropriate for information provided under subsection (2).
- (5) No proceedings are competent against Ministers by reason of an inaccuracy in the information made available or provided to them in accordance with this section or section 63(4).

#### **76 Police access to scheme information**

- (1) Ministers must make available to chief constables of police forces and the Scottish Police Services Authority—
  - (a) the name of each individual participating in the Scheme,
  - (b) confirmation of whether each such individual participates in the Scheme in relation to regulated work with—
    - (i) children,
    - (ii) adults, or

- (iii) both, and
  - (c) any other information held by Ministers by virtue of their administration of the Scheme which Ministers consider would enable or assist police forces or the Scottish Police Services Authority to satisfy themselves as to the identity of such individuals.
- (2) Information disclosed under subsection (1) may be used by police forces and the Scottish Police Services Authority only for the purpose of—
  - (a) enabling or assisting them to perform their functions under or by virtue of this Part,
  - (b) the prevention or detection of crime, or
  - (c) the apprehension or prosecution of offenders.

**77      Statements of scheme membership: disclosure of whether individual under consideration for listing**

- (1) Despite section 46(2)(c), a statement of scheme membership must not disclose whether Ministers are considering whether to list an individual if Ministers have not made a decision under section 15 or, as the case may be, 16 within the relevant period.
- (2) The “relevant period” is—
  - (a) where the information which caused Ministers to consider whether to list the individual is the subject of legal or disciplinary proceedings, the period of 6 months which begins on the date on which the proceedings are finally determined,
  - (b) in any other case, the period of 6 months which begins on the date on which Ministers made a decision under section 10, 11, 12 or 13 to consider whether to list the individual, or
  - (c) where either of the periods mentioned in paragraphs (a) and (b) is extended under subsection (3), the extended period.
- (3) The sheriff may, on an application by Ministers and on cause shown, extend the period mentioned in paragraph (a) or (b) of subsection (2) (or, as the case may be, that period as previously extended under this subsection).
- (4) A period may not be extended (or further extended) under subsection (3) for a period of longer than 6 months beginning with the date on which the extension (or further extension) is granted.
- (5) An application under subsection (3) must be made before the expiry of the relevant period.
- (6) Where an application under subsection (3) is made, the relevant period is to be treated for the purposes of subsection (1) as not having expired until the application is determined.
- (7) The sheriff may, on cause shown, dispense with any requirement—
  - (a) to intimate an application under subsection (3) to the individual,
  - (b) to notify the individual of any interlocutor relating to the application.
- (8) For the purposes of subsection (5), an application is made when it is lodged with the sheriff clerk.

- (9) Any court proceedings under subsection (3) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (10) For the purposes of subsection (2)(a), proceedings are finally determined when—
- (a) the proceedings are terminated or abandoned without a decision being made,
  - (b) a decision is made against which no appeal lies, or
  - (c) where a decision is made which may be appealed, the period during which an appeal (other than an appeal which need not be timeous) may be brought expires without an appeal being brought.
- (11) For the purposes of subsection (10), an appeal which need not be timeous is—
- (a) an appeal under Part 8 (appeals from solemn proceedings) of the 1995 Act in relation to which the High Court must, if the appeal is to be competent, extend the time within which intimation of intention to appeal or note of appeal or both may be given,
  - (b) an appeal under Part 10 (appeals from summary proceedings) of the 1995 Act in relation to which the High Court must, if the appeal is to be competent, extend the time within which an application for a stated case may be made, or
  - (c) an appeal under section 191 (appeal by suspension on ground of miscarriage of justice) of the 1995 Act.