



Protection of Vulnerable Groups (Scotland) Act 2007

2007 asp 14

PART 1

THE LISTS

Referrals

2 Referral ground

The referral ground—

- (a) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with children, is that the individual has, whether or not in the course of the individual's work—
 - (i) harmed a child,
 - (ii) placed a child at risk of harm,
 - (iii) engaged in inappropriate conduct involving pornography,
 - (iv) engaged in inappropriate conduct of a sexual nature involving a child,
or
 - (v) given inappropriate medical treatment to a child,
- (b) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with adults, is that the individual has, whether or not in the course of the individual's work—
 - (i) harmed a protected adult,
 - (ii) placed a protected adult at risk of harm,
 - (iii) engaged in inappropriate conduct involving pornography,
 - (iv) engaged in inappropriate conduct of a sexual nature involving a
protected adult, or
 - (v) given inappropriate medical treatment to a protected adult.

3 Reference following disciplinary action etc.

- (1) An organisation must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if—
 - (a) it has, on the referral ground—
 - (i) dismissed the individual, or
 - (ii) transferred the individual to a position which does not involve that type of regulated work, or
 - (b) it would or might have dismissed or so transferred the individual on the referral ground if the individual had not—
 - (i) otherwise stopped doing regulated work, or
 - (ii) been working for the organisation for a fixed term.
- (2) An organisation must give Ministers any prescribed information which it holds in relation to an individual who has been doing regulated work if—
 - (a) the individual stops doing the regulated work in circumstances not falling within subsection (1),
 - (b) the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work, and
 - (c) the organisation considers that, if—
 - (i) it had been aware of that information at that time, and
 - (ii) the individual had not stopped doing regulated work,it would or might have dismissed the individual on the referral ground.
- (3) In subsections (1) and (2)—
 - (a) an individual suspended from regulated work is not to be treated as having stopped doing that work, and
 - (b) the duty to give Ministers information in relation to the temporary transfer of an individual to another position applies only if the organisation subsequently makes a final decision not to permit the individual to resume the type of regulated work from which the individual was transferred.
- (4) This section does not apply to personnel suppliers (see sections 4 and 5).

4 Reference by employment agency

A personnel supplier which carries on an employment agency must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if it has, on the referral ground, decided—

- (a) not to do any further business with the individual, or
- (b) not to—
 - (i) find the individual further regulated work, or
 - (ii) offer or supply the individual for such work.

5 Reference by employment business

A personnel supplier which carries on an employment business must give Ministers any prescribed information which it holds in relation to an individual whom it has offered or supplied for regulated work if—

- (a) it has dismissed the individual on the referral ground,

- (b) the individual has otherwise stopped doing regulated work in circumstances in which it would or might have dismissed the individual on the referral ground if the individual had not so stopped, or
- (c) it has, on the referral ground, decided not to offer or supply the individual for further regulated work.

6 Reference relating to matters occurring before provisions come into force

- (1) The duties in sections 3 to 5 do not apply where the individual stopped doing the regulated work (or, as the case may be, the organisation's opinion was formed) before the date on which the provisions imposing the duties come into force.
- (2) But an organisation may give Ministers any prescribed information which it holds in relation to such an individual if it wishes to do so.

7 Reference by court

- (1) Where a court convicts an individual of a relevant offence, it must give Ministers any prescribed information that it holds in relation to the convicted individual.
- (2) Subsection (3) applies where a court—
 - (a) convicts an individual of an offence (other than a relevant offence), and
 - (b) is satisfied that it may be appropriate for the individual to be listed in the children's list or in the adults' list (or in both lists).
- (3) Where this subsection applies, the court may give Ministers any prescribed information that the court holds in relation to the convicted individual.
- (4) This section applies in relation to offences committed before and after this section comes into force.

8 Reference by certain other persons

- (1) A person to whom this section applies may give Ministers any prescribed information that the person holds in relation to an individual who is or has been doing regulated work if—
 - (a) on the basis of information obtained by the person in the exercise of relevant functions, the person considers that the referral ground is met (regardless of whether the conduct to which the information relates occurred before or after this section comes into force), and
 - (b) prescribed information in relation to the individual has not been given to Ministers under sections 3 to 6 in respect of the conduct to which the information relates.
- (2) This section applies to—
 - The General Teaching Council for Scotland
 - The Registrar of Chiropractors
 - The registrar of dentists and dental care professionals
 - The registrar of the General Medical Council
 - The registrar of the General Optical Council
 - The Registrar of health professionals
 - The Registrar of nurses and midwives

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

The Registrar of Osteopaths
The registrar of pharmaceutical chemists
The Scottish Commission for the Regulation of Care
The Scottish Social Services Council
Any other person specified in an order made by Ministers

- (3) For the purposes of this section, “relevant functions” means—
- (a) in relation to the General Teaching Council for Scotland, such functions as are conferred on it by virtue of the Teaching Council (Scotland) Act 1965 (c. 19),
 - (b) in relation to registrars mentioned in subsection (2), such functions as are conferred on them by virtue of any enactment,
 - (c) in relation to the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, such functions as are conferred on the Commission or, as the case may be, the Council by virtue of the 2001 Act and any other enactment, and
 - (d) in relation to a person specified in an order made under subsection (2), such functions as are specified by the order.

9 Failure to refer: offence

An organisation which fails, without reasonable excuse, to comply with a duty imposed by any of sections 3 to 5 within 3 months of the date on which the duty arose is guilty of an offence and liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,
- (b) on a conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.