

Protection of Vulnerable Groups (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 73-EN. A Policy Memorandum is printed separately as SP Bill 73-PM.

Protection of Vulnerable Groups (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to bar certain individuals from working with children or certain adults; to require the Scottish Ministers to keep lists of those individuals; to make further provision in relation to those lists; to establish a scheme under which information about individuals working or seeking to work with children or certain adults is collated and disclosed; to make provision about the sharing of information relevant to the protection of children; to amend Part 5 of the Police Act 1997; to amend the meaning of school care accommodation service in the Regulation of Care (Scotland) Act 2001; and for connected purposes.

PART 1

THE LISTS

Duty to keep lists

1 Duty of Scottish Ministers to keep lists

- (1) Ministers must keep—
 - (a) the children’s list, and
 - (b) the adults’ list.
- (2) An individual may be listed in the children’s list or in the adults’ list only in accordance with this Part.
- (3) In this Act, “listed”, in relation to an individual, means included in the children’s list or, as the case may be, the adults’ list, and references to listing an individual are to be construed accordingly.

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.

5 (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,
- 10 (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.

15 (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.

25 (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
30 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.

35 (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.

5 (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—

10 (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

15 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,

20 (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

25 (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

30 (1) Subsection (2) applies where the court—

(a) convicts an individual of—

(i) an offence against a child (other than a relevant offence), or

(ii) an offence against a protected adult, and

35 (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).

(2) Where this subsection applies, the court may give Ministers any prescribed information that the court holds in relation to the convicted individual.

- (3) 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 evidence 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 evidence 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 evidence relates.

- (2) This section applies to—

The General Teaching Council for Scotland

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 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

(c) 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 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.

Consideration whether to list

10 Consideration whether to list: organisational referrals etc.

- (1) This section applies where—

(a) prescribed information relating to an individual has been given to Ministers in pursuance of sections 3 to 6 or 8, and

(b) they are satisfied that the information was not given for vexatious or frivolous purposes.

(2) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the children's list, they must consider listing the individual in that list.

(3) Where Ministers are satisfied that the information indicates that it may be appropriate for the individual to be included in the adults' list, they must consider listing the individual in that list.

(4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work which the individual is or has been doing.

11 Consideration whether to list: court referrals

(1) This section applies where prescribed information relating to an individual has been given to Ministers in pursuance of section 7.

(2) Ministers must consider listing the individual in the children's list where they are satisfied that—

(a) the information indicates that it may be appropriate for the individual to be included in that list, and

(b) the individual does, has done or is likely to do regulated work with children.

(3) Ministers must consider listing the individual in the adults' list where they are satisfied that—

(a) the information indicates that it may be appropriate for the individual to be included in that list, and

(b) the individual does, has done or is likely to do regulated work with adults.

12 Consideration whether to list: vetting information etc.

(1) Ministers must consider listing an individual in the children's list if they are satisfied that—

(a) either—

(i) vetting information about the individual, or

(ii) information received when considering whether to list the individual in the adults' list,

indicates that it may be appropriate for the individual to be included in the children's list, and

(b) the individual does, has done or is likely to do regulated work with children.

(2) Ministers must consider listing an individual in the adults' list if they are satisfied that—

(a) either—

(i) vetting information about the individual, or

(ii) information received when considering whether to list the individual in the children's list,

indicates that it may be appropriate for the individual to be included in the adults' list, and

(b) the individual does, has done or is likely to do regulated work with adults.

13 Consideration whether to list: inquiries

(1) This section applies where—

(a) a relevant inquiry report names an individual who is or has been doing regulated work, and

(b) it appears to Ministers from the report that the person who held the inquiry found that the referral ground was met at a time when the individual was doing regulated work (whether that time was before or after this section comes into force).

(2) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the children's list, they may consider listing the individual in the children's list.

(3) Where it appears to Ministers from the report that it may be appropriate for the individual to be included in the adults' list, they may consider listing the individual in the adults' list.

(4) For the avoidance of doubt, subsections (2) and (3) apply in relation to an individual regardless of the type of regulated work which the individual was doing.

Inclusion in list

14 Automatic listing

(1) Ministers must list an individual in the children's list where—

(a) the individual is convicted of a relevant offence (committed before or after this section comes into force), or

(b) it appears to Ministers that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.

(2) Ministers must list an individual in the adults' list where it appears to them that any of the criteria specified for the purposes of this subsection is satisfied in relation to the individual.

(3) It is for Ministers to specify by order criteria for the purposes of subsections (1)(b) and (2).

(4) Criteria which may be so specified include—

(a) that an individual has been convicted of, or cautioned in relation to, an offence of a specified description, including offences under—

(i) the law of England, Wales, Northern Ireland, the Channel Islands or the Isle of Man,

(ii) section 70 of the Army Act 1955 (c.18),

(iii) section 70 of the Air Force Act 1955 (c.19),

(iv) section 42 of the Naval Discipline Act 1957 (c.53),

(b) that an order of a specified description imposing requirements about an individual's conduct has been made.

(5) Where a court convicts an individual of a relevant offence, it must inform Ministers of the conviction.

15 Inclusion in children’s list after consideration

Ministers must list an individual in the children’s list if, after considering whether to do so, they are satisfied by information relating to the individual’s conduct that the individual is unsuitable to work with children.

16 Inclusion in adults’ list after consideration

Ministers must list an individual in the adults’ list if, after considering whether to do so, they are satisfied by information relating to the individual’s conduct that the individual is unsuitable to work with protected adults.

Information relevant to listing decisions

17 Information relevant to listing decisions

- (1) Ministers must, before making a decision under section 15 or 16—
- (a) give the individual whom they are considering whether to list an opportunity to make representations as to why the individual should not be listed, and
 - (b) consider any such representations.
- (2) Ministers may, when deciding whether to list an individual, also consider—
- (a) any information which caused them to consider listing the individual,
 - (b) any information relating to the individual which they obtain—
 - (i) in pursuance of a requirement made under any of sections 18 to 20, or
 - (ii) by performing their functions in relation to the Scheme, and
 - (c) any other information which they think relevant.
- (3) An individual who is given an opportunity to make representations under subsection (1) must be given the opportunity to make representations in relation to all of the information on which Ministers intend to rely in deciding whether to list the individual.
- (4) The opportunity to make representations under subsection (1) does not include the opportunity to make representations that any relevant finding of fact was wrongly made.
- (5) A “relevant finding of fact” is a finding of fact—
- (a) on which any conviction is based,
 - (b) made in a relevant inquiry report,
 - (c) made by the General Teaching Council for Scotland,
 - (d) made by the Scottish Commission for the Regulation of Care,
 - (e) made by the Scottish Social Services Council, or
 - (f) made by any other person, or in any other circumstance, specified by order made by Ministers.
- (6) Subsections (1) and (3) do not apply if Ministers do not know and cannot reasonably ascertain the individual’s whereabouts.

18 Police information etc.

- 5 (1) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require the chief constable of a police force to provide them with any information relating to the individual which the chief constable thinks might be relevant in relation to the type of regulated work concerned.
- (2) A chief constable must not provide information to Ministers under subsection (1) if the chief constable thinks that disclosing it to the individual to whom it relates would be contrary to the interests of the prevention or detection of crime.
- 10 (3) Ministers must pay the appropriate police authority such fee as Ministers think appropriate for information provided under subsection (1).
- (4) Ministers may, for the purpose of enabling or assisting them to decide whether to list an individual, require—
- 15 (a) any person who holds records of convictions and other information for the use of police forces generally to provide them with any information relating to the individual which the record holder thinks might be relevant in relation to the type of regulated work concerned,
- (b) any person who holds such records to provide them with the prescribed details of every relevant matter relating to the individual which is recorded in those records (within the meaning of section 113A of the 1997 Act).

19 Information held by public bodies etc.

- 20 (1) Ministers may, for the purpose of enabling or assisting Ministers to decide whether to list an individual, require—
- 25 (a) any person who holds vetting information of a type prescribed under section 46(a)(c) to provide them with any such vetting information relating to the individual,
- (b) any of the persons set out in subsection (3) to provide them with any information held by the person which Ministers think might be relevant.
- (2) Information provided under subsection (1)(b) may, in particular, be information which relates to—
- 30 (a) the regulated work concerned, or
- (b) the protection of children or protected adults in general, or of any child or protected adult in particular.
- (3) The persons who may be required to provide information under subsection (1)(b) are—
- 35 Councils
- The General Teaching Council for Scotland
- Health Boards and Special Health Boards
- Her Majesty's Chief Inspector of Prisons for Scotland
- Her Majesty's Inspectors of Schools
- The Registrar of Independent Schools in Scotland
- 40 The Scottish Commission for the Regulation of Care
- The Scottish Social Services Council

Social work inspectors

Any other person specified in an order made by Ministers

20 Information held by regulated work providers

- 5 (1) Ministers may require a person falling within subsection (2) to provide them with any information held by the person which Ministers think might be relevant for the purpose of enabling or assisting them to decide whether to list an individual.
- (2) A person falls within this subsection if—
- 10 (a) the individual is doing, or has done, regulated work for the person,
- (b) the individual has been offered regulated work by the person (whether or not the individual subsequently did the work),
- (c) it is an employment agency which has offered or supplied, or made arrangements with a view to offering or supplying, the individual to another person for regulated work (whether or not the arrangements are still in place), or
- 15 (d) it is an employment business which employs or has employed the individual to do regulated work for another person.
- (3) A person who fails, without reasonable excuse, to comply with a requirement made under subsection (1) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Appeals against listing

20 **21 Appeals against inclusion in children's list**

- (1) An individual listed under section 15 may appeal to the sheriff against Ministers' decision to list the individual in the children's list.
- (2) Such an appeal must be lodged—
- 25 (a) within 3 months of the date on which the individual was listed, or
- (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—
- 30 (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with children, by confirming Ministers' decision to list the individual in the children's list, or
- (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the children's list.

22 Appeals against inclusion in adults' list

- (1) An individual listed under section 16 may appeal to the sheriff against Ministers' decision to list the individual in the adults' list.
- 35 (2) Such an appeal must be lodged—
- (a) within 3 months of the date on which the individual was listed, or
- (b) by such later date as the sheriff may, on cause shown, allow.
- (3) The sheriff must determine an appeal under subsection (1)—

- (a) where the sheriff is satisfied by information relating to the individual's conduct that the individual is unsuitable to work with protected adults, by confirming Ministers' decision to list the individual in the adults' list, or
- (b) where the sheriff is not so satisfied, by directing Ministers to remove the individual from the adults' list.

23 Further appeals against inclusion in either list

- (1) The sheriff's determination under section 21 or 22 may be appealed to the sheriff principal by—
- (a) the individual, or
- (b) Ministers.
- (2) The sheriff principal's determination of an appeal under subsection (1) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session on a point of law by—
- (a) the individual, or
- (b) Ministers.
- (3) The decision of—
- (a) the sheriff principal, or
- (b) if leave is granted to appeal to the Inner House, that House,
- on any appeal is final.

24 Appeals against listing: supplementary

- (1) No finding of fact on which any conviction is based may be challenged on an appeal under section 21, 22 or 23.
- (2) Any court proceedings under section 21, 22 or 23 may take place in private if the court considers it appropriate in all the circumstances.

Removal from list

25 Application for removal from list

- (1) A listed individual may apply to the sheriff for removal from—
- (a) the children's list, or
- (b) the adults' list.
- (2) References in this section to "the list" are to be read as references to the list from which the individual has applied for removal.
- (3) An application for removal from the list is competent only if—
- (a) the applicant has been listed for such period as may be prescribed (beginning on such date as may be prescribed), or
- (b) the sheriff is satisfied that the applicant's circumstances have changed since the applicant—
- (i) was listed, or

(ii) last made an application under this section,
such that the sheriff should consider the application.

- (4) An applicant's circumstances are to be treated as having changed if—
- (a) the applicant was convicted of an offence in relation to conduct which Ministers had regard to when considering whether to list the applicant, and
 - (b) the conviction is subsequently quashed.
- (5) Subsection (4) does not affect the generality of subsection (3)(b).

26 Determination of application for removal from list

- (1) The sheriff must determine a competent application for removal from the children's list—
- (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with children, by directing Ministers to remove the individual from the list, or
 - (b) where the sheriff is not so satisfied, by refusing the application.
- (2) The sheriff must determine a competent application for removal from the adults' list—
- (a) where the sheriff is satisfied that the applicant is no longer unsuitable to work with protected adults, by directing Ministers to remove the individual from the list, or
 - (b) where the sheriff is not so satisfied, by refusing the application.
- (3) The sheriff's determination may be appealed to the sheriff principal by—
- (a) the individual, or
 - (b) Ministers.
- (4) The sheriff principal's determination of an appeal under subsection (3) may, with the leave of the sheriff principal, be appealed to the Inner House of the Court of Session by—
- (a) the individual, or
 - (b) Ministers.
- (5) The Inner House may, in determining an appeal under subsection (4), by order modify the period prescribed for the purposes of section 25(3) in so far as that period is to apply to any further application by the individual concerned for removal from the children's list or, as the case may be, the adults' list.
- (6) The decision of—
- (a) the sheriff principal, or
 - (b) if leave is granted to appeal to the Inner House, that House,
- on any appeal is final.

27 Late representations

- (1) This section applies where an individual listed under section 15 or 16—
- (a) was not, because of section 17(6), given an opportunity to make representations as to why the individual should not be listed, and

(b) subsequently makes representations to Ministers as to why the individual should not have been listed.

(2) Where this section applies, Ministers must—

(a) consider the individual's representations, and

(b) if satisfied that the individual should not have been listed, remove the individual from the list.

28 Removal from list

(1) Ministers—

(a) must remove an individual from the children's list or adults' list—

(i) if directed to do so by the court, or

(ii) where section 27 requires them to do so, and

(b) may, at any other time, remove an individual from the children's list or adults' list if they are satisfied that the individual should not have been listed.

(2) Where Ministers appeal against a direction to remove an individual from the children's list or adults' list, the duty imposed by subsection (1)(a) does not apply until that appeal is finally determined.

Listing: supplementary

29 Notice of listing etc.

(1) Subsection (2) applies where—

(a) an individual has been listed under section 14, 15, or 16,

(b) Ministers become aware that an individual has otherwise been barred from doing regulated work with children or adults, or

(c) Ministers are considering whether to list an individual by virtue of sections 10 to 13.

(2) Where this subsection applies, Ministers must notify the persons specified in subsection (3) of the fact—

(a) that the individual has been barred from doing regulated work with children or adults, or, as the case may be

(b) that they are considering whether to list the individual.

(3) Those persons are—

(a) the individual concerned,

(b) where—

(i) the individual has been barred from regulated work with children, or

(ii) Ministers are considering whether to list the individual in the children's list,

any organisation for which they know the individual is doing regulated work with children,

(c) where—

- (i) the individual has been barred from regulated work with adults, or
- (ii) Ministers are considering whether to list the individual in the adults' list, any organisation for which they know the individual is doing regulated work with adults, and
- 5 (d) any relevant regulatory body whom Ministers think it would be appropriate to notify of that fact.
- (4) Minister may publish guidance about what steps, if any, an organisation for which an individual whom Ministers are considering whether to list is doing regulated work should take to protect children or, as the case may be, protected adults.
- 10 (5) Ministers may vary or revoke any such guidance.
- (6) Where, after considering whether to list an individual, Ministers decide not to do so, they must give notice of that fact to—
- (a) the individual,
- 15 (b) where Ministers have decided not to include the individual in the children's list, any organisation for which they know the individual is doing regulated work with children,
- (c) where Ministers have decided not to include the individual in the adults' list, any organisation for which they know the individual is doing regulated work with adults, and
- 20 (d) any relevant regulatory body to whom Ministers gave notice under subsection (2) of the fact that they were considering whether to list the individual.
- (7) The following persons are “relevant regulatory bodies”—
- The General Teaching Council for Scotland
- The Scottish Commission for the Regulation of Care
- 25 The Scottish Social Services Council
- Any other person specified in an order made by Ministers
- (8) A notice which this section requires to be given to an individual may be given—
- (a) by delivering it to the individual,
- (b) by leaving it at the individual's usual or last known place of abode, or
- 30 (c) by sending it by post to the individual at that place.

30 Relevant inquiries

- (1) This section applies for the purposes of section 13 and 17.
- (2) A relevant inquiry is any of the following—
- (a) an inquiry held—
- 35 (i) by Ministers,
- (ii) by the Scottish Parliament (including an inquiry held by a committee or sub-committee of the Parliament),
- (b) an inquiry held under the Inquiries Act 2005 (c.12),

- (c) any other inquiry or hearing designated for the purposes of this section by an order made by Ministers.
- (3) “Relevant inquiry report” means the report by the person who held the relevant inquiry.

31 Offences against children and protected adults

- 5 (1) For the purposes of this Part—
- (a) an individual commits a relevant offence if the individual—
- 10 (i) commits an offence which falls within paragraph 1 of schedule 1, or
- (ii) falls within paragraph 2 of that schedule,
- (b) an individual commits an offence against a child if the individual—
- (i) commits a relevant offence, or
- (ii) commits any other offence in respect of which the person in relation to whom the offence was committed was a child, and
- 15 (c) an individual commits an offence against a protected adult if the individual commits an offence in respect of which the person in relation to whom the offence was committed was a protected adult,
- and references to being convicted of, or charged with, a relevant offence, an offence against a child or, as the case may be, an offence against a protected adult are to be construed accordingly.
- 20 (2) Ministers may by order modify subsection (1)(b) or (c) or schedule 1 so as to modify the circumstances in which an individual is to be treated for the purposes of this Part as having committed a relevant offence, any other offence against a child or an offence against a protected adult.
- (3) Subsection (4) applies to an individual if—
- (a) the individual is charged with—
- 25 (i) an offence against a child, or
- (ii) an offence against a protected adult,
- (b) either—
- (i) the individual is acquitted of the charge on the ground of insanity, or
- 30 (ii) the court makes a finding under section 55(2) of the 1995 Act in respect of the individual, and
- (c) the court makes any order mentioned in section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding.
- (4) An individual to whom this subsection applies is to be treated, for the purposes of sections 7 and 14, as having been convicted of the offence.

32 Duty to notify certain changes

- 35 (1) An individual who is listed, or whom Ministers are considering whether to list, must give Ministers notice of—
- (a) a change in the individual’s name or address,

(b) the issue of a full gender recognition certificate to the individual under section 4 of the Gender Recognition Act 2004 (c.7), or

(c) any other change in circumstance of a prescribed type.

5 (2) A notice under subsection (1) must be given within 1 month 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.

10 (4) An individual guilty of an offence under subsection (3) 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.

Offences relating to regulated work

33 Barred individuals not to do regulated work

(1) It is an offence for an individual to do, or to seek or agree to do, any regulated work from which the individual is barred.

15 (2) It is a defence for an individual charged with an offence under subsection (1) to prove that the individual did not know, and could not reasonably be expected to have known—

(a) that the individual was barred from that regulated work, or

(b) that the work concerned was regulated work.

34 Organisations not to use barred individuals for regulated work

20 (1) It is an offence for an organisation to—

(a) offer regulated work to an individual barred from that work, or

(b) permit an individual to do, or fail to remove an individual from, regulated work from which it knows or has reason to believe that the individual is barred.

25 (2) An organisation commits an offence under subsection (1)(a) if it offers regulated work to a barred individual who is already working for the organisation.

(3) It is a defence for an organisation charged with an offence under subsection (1)(a) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.

30 (4) For the purposes of subsection (1)(a), an organisation is not to be treated as having offered regulated work to an individual if the offer is subject to the organisation being satisfied (by virtue of information disclosed under Part 2 or otherwise) that the individual is suitable to do that work.

35 Personnel suppliers not to supply barred individuals for regulated work

(1) A personnel supplier commits an offence if it—

35 (a) offers or supplies an individual who is barred from doing regulated work to an organisation, and

(b) knows or has reason to believe that the organisation will make arrangements for the individual to do regulated work from which the individual is barred.

- (2) It is a defence for a personnel supplier charged with an offence under subsection (1) to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing the regulated work.

36 Penalties for offences relating to regulated work

5 A person guilty of an offence under section 33, 34 or 35 is 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 conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

General and supplementary

37 Police access to lists

Ministers must make available prescribed information contained in the children's list or adults' list to chief constables of police forces for the purpose of—

- (a) the prevention or detection of crime, or
- 15 (b) the apprehension or prosecution of offenders.

38 Protection from actions for damages

- (1) No proceedings are competent in respect of any loss or damage incurred by any person because of—

- (a) the fact that an individual is or is not listed,
- 20 (b) the fact that Ministers have or have not considered whether to list an individual,
- (c) the provision of information in pursuance of any of sections 3 to 8 and 18 to 20.

- (2) Subsection (1)(c) does not apply if the provider of the information—

- (a) knew, or was reckless as to whether, it was untrue or misleading in a material respect, and
- 25 (b) provided it—
 - (i) in purported compliance with any of sections 3 to 8 and 18 to 20, or
 - (ii) in other circumstances in which the provider knew, or could reasonably be expected to have known, that it would be used by Ministers, or provided to them for use, in connection with the performance of their functions under this Part.
- 30

39 Power to regulate procedure etc.

- (1) Ministers may, by regulations, make further provision about—

- (a) the information about listed individuals which is to be included in the children's list and adults' list,
- 35 (b) the maintenance of those lists, and
- (c) the procedure which is to be followed in relation to any decision which Ministers are authorised or required to take under this Part.

- (2) The regulations may, in particular, make provision in relation to the time within which anything has to be done.

40 Transfer from 2003 Act list

5 (1) Ministers must list in the children’s list each individual who was included (otherwise than provisionally) in the list kept under section 1 of the Protection of Children (Scotland) Act 2003 (asp 5) (“the 2003 Act”) immediately before that section was repealed.

(2) Ministers must give notice of listing under subsection (1) to each individual listed under that subsection.

10 (3) An individual who is listed under subsection (1) is to be treated for the purposes of this Act as having been so listed—

(a) under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of that Act, and

15 (b) on the day on which the individual was included in the list kept under section 1 of the 2003 Act.

(4) The provisions of this Part are accordingly to apply in relation to such an individual with any necessary modifications.

20 (5) Section 28(1)(b) is not to be read as requiring or authorising Ministers to remove such an individual from the children’s list where it appears to them that the individual—

(a) would not have been listed under the provision of this Part which most closely corresponds to the provision in the 2003 Act under which the individual was included in the list kept under section 1 of the 2003 Act, but

25 (b) should have been included in the list kept under the 2003 Act under the provision of that Act which corresponds most closely with the provision of this Part under which the individual is to be treated as having been listed.

(6) A notice required by subsection (2) may be given—

(a) by delivering it to the listed individual,

(b) by leaving it at the listed individual’s usual or last known place of abode, or

30 (c) by sending it by post to the listed individual at that place.

PART 2

VETTING AND DISCLOSURE

The scheme

41 The scheme

35 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.

42 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 protected 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.

43 Statement of barred status

- (1) Ministers must disclose a statement of barred status to each scheme member.
- (2) A statement of barred status 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, and
 - (c) if Ministers are considering whether to list the individual in relation to that type of work, says so.
- (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***44 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).

45 Scheme record

- A scheme record is a document comprising—
- (a) a scheme member’s statement of barred status, and

- (b) vetting information about the scheme member which Ministers discover as a result of enquiries or arrangements made under section 44.

46 Vetting information

- (1) Vetting information, in relation to a scheme member, is—

- (a) the prescribed details of every relevant matter relating to the scheme member which is recorded in central records (within the meaning of section 113A of the 1997 Act),
- (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.

47 Duty to notify certain changes

- (1) A scheme member must give Ministers notice of—

- (a) a change in the member's name or address,
- (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.

48 Correction of inaccurate scheme record

- (1) Ministers must correct a scheme record if they are satisfied (following notification under section 47 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.

*Disclosure***49 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 50 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.

50 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 barred status,
 - (b) specifies the date on which the scheme member's scheme record was last disclosed under section 49, and
 - (c) if any new vetting information has been included in the member's scheme record since that date, says when that information was so included.
- (4) A short scheme record must not disclose any vetting information of the type referred to in subsection (3)(c).

51 Disclosure of barred status

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

52 Disclosure conditions

The disclosure conditions are—

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.

Condition B The scheme member participates in the Scheme in relation to that type of regulated work.

Condition C 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.

Condition D The person to whom the disclosure is to be made is a registered person for the purposes of Part 5 of the 1997 Act.

53 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.

54 Disclosure restrictions

(1) Regulations under section 46(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 49 or 50.

(2) 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,

Ministers may not 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.

Removal from scheme

55 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 67.

56 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
- 5 (b) they are satisfied that the scheme member is not doing that type of regulated work.

57 Notice of removal

(1) Ministers must give notice confirming that they have removed an individual from the Scheme under section 55 or 56 to—

- (a) the individual, and
- 10 (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.

15 (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.

58 Retention of scheme records after removal

20 (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 44(2), or
- 25 (b) require Ministers to otherwise ensure that the retained scheme record is updated.

*Evidence of identity***59 Evidence of identity**

(1) An individual making—

- (a) an application to join, or to be removed from, the Scheme,
- 30 (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 60,
- 35 or
- (b) the evidence provided does not satisfy them as to the individual's identity.

60 Power to use fingerprints to check applicant's identity

- 5 (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 check evidence of identity given to them for the purposes of section 59.
- (2) Prescribed persons must destroy any such fingerprints in prescribed circumstances.
- (3) 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.
- 10 (4) This section does not affect the generality of section 59 in relation to any other type of evidence of identity.

61 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 59.
- 15 (2) Personal data holders are—
The United Kingdom Passport Agency
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

20 *Offences relating to vetting information*

62 Falsification of scheme records etc.

- (1) It is an offence for a person, with intent to deceive, to—
25 (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—
30 (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.

63 Unlawful disclosure of scheme records etc.

- 35 (1) A person to whom disclosure information is disclosed under section 48, 49, 50 or 51 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—

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- (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.

10

- (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—

15

- (a) to any other individual who is a member, officer or employee of the person to whom the corresponding disclosure was made under section 49, 50 or 51, 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—

20

- (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.

25

- (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.

30

- (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 49, 50 or 51.

35

- (9) A person to whom disclosure information is disclosed unlawfully commits an offence if the person discloses it to any other person.

64 Unlawful requests for scheme records etc.

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- (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 to consider the suitability of the individual to whom the record or information relates to do, or to be offered or supplied for, the type of regulated work to which the disclosure record relates.
- (4) References in subsection (1) to disclosure records do not include references to information included in disclosure records.

65 Unlawful disclosure etc.: supplementary

- (1) Nothing in section 63 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 63 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 64 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 63 and 64 and in this section to disclosure information are references to—
 - (a) disclosure records disclosed under section 49, 50 or 51, and
 - (b) any information in such a disclosure record which is obtained only by virtue of section 48, 49, 50 or 51.

- (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.

66 Penalties for offences relating to vetting information

5 A person guilty of an offence under section 62, 63 or 64 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

67 Fees

- 10 (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—
- 15 (a) annual or other recurring fees in respect of participation in the Scheme,
- (b) reduction, waiver or refund of fees in prescribed circumstances.
- (3) 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,
- 20 Ministers need not consider the application or request unless the fee is paid.

68 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),
- 25 must be made.
- (2) Minister 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
- 30 made in the form and manner determined by them (or in a form and manner as close to that as circumstances permit).

69 Procedure

- (1) Ministers may, by regulations, make such further provision about the administration of the Scheme as they think fit.
- 35 (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,
- 5 (c) prescribe circumstances in which disclosure condition A (see section 52) 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.

10 *Supplementary*

70 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.
- 15 (2) An excepted function is a function—
 - (a) relating to the making of regulations or orders,
 - (b) under section 68, or
 - (c) relating to the determination of an appropriate fee under section 71(4).
- (3) A delegation under subsection (1) may be varied or revoked at any time.
- 20 (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 60(3) or 71.

71 Sources of information

- 25 (1) Any person who holds records of convictions and 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 46(1)(c) for the purposes of enabling or assisting them to perform their functions under this Part.
- 30 (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).
- 35 (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 60(3).

72 Statements of barred status: disclosure of whether individual under consideration for listing

- (1) Despite section 43(2)(c), a statement of barred status 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) by such period of up to 6 months as the sheriff may specify.
- (4) Any court proceedings under subsection (3) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (5) 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.
- (6) For the purposes of subsection (5), 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.

PART 3

SHARING CHILD PROTECTION INFORMATION

73 Child protection information

“Child protection information” is information relating to a child which the holder of information considers, or should reasonably consider, to be relevant for the purposes of protecting the child, or any other child, from harm.

74 Duty to share child protection information

- (1) A relevant person who holds child protection information must report the information to the council for the area in which it considers the relevant child to be.
- (2) In subsection (1), “relevant child” means the child for whose protection the relevant person considers, or should reasonably consider, the information to be relevant.

75 Duty to co-operate

Relevant persons must, so far as consistent with the proper exercise of their functions, co-operate with—

- (a) a council making inquiries for the purpose of considering whether it might need to do anything in order to protect a child from harm, and
- (b) each other,

where such co-operation is likely to help the council making those inquiries.

76 Code of practice about child protection information

- (1) Ministers must prepare and publish a code of practice about child protection information (to be known as “the code of practice on sharing child protection information”).
- (2) The code of practice may include guidance, recommendations, advice or other information about—

- (a) the types of information which should be treated as child protection information,
- (b) the way and manner in which—
- (i) relevant persons, and
- (ii) their workers,

should share child protection information (in pursuance of duties imposed by sections 74 and 75 or otherwise).

- (3) Ministers may alter or replace the code of practice.
- (4) Before publishing the code of practice (or any significant alteration to it), Ministers must consult—
- (a) such relevant persons, or bodies representing relevant persons, as they think fit, and
- (b) such other persons as they think fit.
- (5) A relevant person must have regard to the code of practice when considering—
- (a) whether any information is child protection information, and
- (b) how to comply with the duties imposed by sections 74 and 75.

77 Duty to enable, encourage and help workers to share child protection information

- (1) A relevant person must take reasonable steps in order to enable, encourage and help its workers to, so far as is consistent with the proper exercise of those workers’ functions—
- (a) share child protection information among themselves for the purpose of protecting children from harm,

- (b) disclose child protection information to other relevant persons for that purpose, and
- (c) enable or help the relevant person to perform the duties imposed by sections 74 and 75.

- 5 (2) Steps which a relevant person must take include, in particular, reasonable steps to—
- (a) promote awareness and understanding among its workers of the code of practice on sharing child protection information, and
 - (b) ensure that its workers have regard to the code of practice on sharing child protection information when working for the relevant person.

10 **78 Lifting of restrictions on sharing child protection information**

- (1) Any person who, apart from this section—
- (a) does not have power to disclose child protection information to a relevant person, or
 - (b) would be, by virtue of any enactment (including subsection (3)) or rule of law, susceptible to a sanction or other remedy if the person disclosed child protection information to a relevant person,

has that power to disclose and is not to be susceptible to that sanction or other remedy.

- (2) Child protection information may be disclosed under that power only for the purpose of protecting a child from harm (and liability to sanction or other remedy is lifted only in respect of disclosures made for that purpose).

- (3) Where—
- (a) a person discloses child protection information to a relevant person in respect of which the discloser is subject to a duty of confidentiality, and
 - (b) on disclosing the information, the discloser informs the relevant person of the breach of that duty,

the relevant person must not disclose that information.

- (4) Subsection (3) does not prevent a disclosure which is permitted or required by virtue of any enactment or rule of law.

30 **79 Child's welfare to be paramount consideration**

- (1) A relevant person need not comply with a duty imposed by section 74 or 75 if the person considers—
- (a) that so complying would be in the interests of a child (“child A”) but contrary to the interests of another child (“child B”), and
 - (b) that the harm which so complying is likely to cause to child B will probably be more serious than the harm from which child A is likely to be protected by so complying.

- (2) A person considering whether to disclose child protection information by virtue of section 78 must have regard to how doing so may affect the interests of—

- (a) the child for whose protection the person considers the information to be relevant, and

- (b) any other child whose interests the person considers to be likely to be affected by the disclosure.
- (3) A person considering whether anything is in a child's interests for the purposes of this section must give paramount consideration to the child's welfare throughout childhood.

5 **80 Relevant persons**

The following persons are relevant persons for the purposes of this Part—

Councils

Chief constables of police forces in Scotland

The Scottish Crime and Drug Enforcement Agency

10 The Common Services Agency for the Scottish Health Service

Health Boards and Special Health Boards

The Mental Welfare Commission for Scotland

The Principal Reporter

The Scottish Commission for the Regulation of Care

15 The Scottish Social Services Council

The General Teaching Council for Scotland

Care service providers

Managers of educational establishments

Registered social landlords

20 Any other person, or type of person, specified by order made by Ministers

81 Enforcement etc.

- (1) Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate—
- 25 (a) for the purposes of ensuring that relevant persons comply with duties imposed on them by this Part, or
- (b) otherwise for the purposes of giving full effect to any provision of this Part.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

PART 4

AMENDMENT OF PART 5 OF THE POLICE ACT 1997

30 **82 Information in criminal conviction and record certificates**

- (1) In section 112(2) of the 1997 Act, for the words from “or” immediately following paragraph (a) to the end of paragraph (b) substitute “(or states that there is no such conviction); and
- 35 (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.”.

- (2) Section 113A of the 1997 Act is amended as follows—
- (a) in subsection (3), for the words from “or” immediately following paragraph (a) to the end of paragraph (b) substitute “(or states that there is no such matter); and
 - (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.”,
 - (b) in the definition of “central records” in subsection (6), for “and cautions” substitute “, cautions or other information”,
 - (c) in the definition of “relevant matter” in that subsection, the word “and” immediately following paragraph (a) is repealed,
 - (d) at the end of paragraph (b) of that definition, insert “and
 - (c) a prescribed court order.”.
- (3) In section 119(1) of the 1997 Act, for “or cautions” substitute “, cautions or other information”.
- (4) In section 119A of the 1997 Act—
- (a) in subsection (1), after “convictions” insert “or other information”,
 - (b) in subsection (2), for “or cautions” substitute “, cautions or other information”.

83 Form of Part 5 applications

- (1) In each of the following provisions of the 1997 Act, the words “in the prescribed manner and form” are repealed—
- section 112(1)(a)
 - section 113A(1)(a)
 - section 113B(1)(a)
 - section 114(1)(a)
 - section 116(1)(a)
- (2) In sections 117(1) and 120(2) of the 1997 Act, the words “in writing” are repealed.
- (3) After section 125 of the 1997 Act insert—

“125A Form of applications

- (1) It is for the Scottish Ministers to determine the form and manner in which applications must be made for the purposes of sections 112(1)(a), 113A(1)(a), 113B(1)(a), 114(1)(a), 116(1)(a), 117(1), and 120(2).
- (2) The Scottish Ministers may, in particular, determine that such applications may be made in electronic form (and may be signed or countersigned electronically).
- (3) The Scottish Ministers need not consider any such application 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).”.

84 Payment of fee for information from certain police forces

In section 113B of the 1997 Act, after subsection (5) insert—

“(5A) The Scottish Ministers must pay to such body as may be prescribed such fee as they think appropriate for information received from the chief officer of a body mentioned in subsection (10)(j) to (m) as a result of a request under subsection (4) or (5).”.

5 **85 Regulations about registration**

(1) Section 120 of the 1997 Act is amended as follows—

(a) in subsection (2), for “section 120A and regulations under subsection (3)” substitute “sections 120ZB and 120A”,

(b) subsection (3) is repealed.

10 (2) Before section 120A of the 1997 Act insert—

“120ZB Regulations about registration

(1) The Scottish Ministers may by regulations make further provision about registration.

(2) Regulations under this section may in particular make provision for—

15 (a) the payment of fees;

(b) the information to be included in the register;

(c) the registration of any person to be subject to conditions;

(d) the nomination by—

(i) a body corporate or unincorporated; or

20 (ii) a person appointed to an office by virtue of an enactment, whether that body or person is registered or applying to be registered,

of an individual to act for the body or, as the case may be, person in relation to the countersigning of applications under this Part;

25 (e) the refusal by the Scottish Ministers, on such grounds as may be specified in or determined under the regulations, to accept or to continue to accept any nomination made by virtue of this section;

30 (f) the refusal by the Scottish Ministers to include persons who, in the opinion of the Scottish Ministers, are likely to act in relation to fewer disclosure applications in any period of 12 months than a minimum number specified in the regulations;

(g) the removal from the register of persons who have, in any period of 12 months during which they were registered, acted in relation to fewer disclosure applications than the minimum number specified under paragraph (f);

35 (h) the removal from the register of persons who are, in the opinion of the Scottish Ministers, no longer likely to wish to act in relation to disclosure applications;

(i) the removal from the register of any person who has breached any condition of the person’s registration; and

40 (j) the period which must elapse before any person refused registration or removed from the register may apply to be included in the register.

(3) The provision which may be made by virtue of subsection (2)(c) includes provision—

- (a) for the registration or continued registration of any person to be subject to prescribed conditions or, if the regulations so provide, such conditions as the Scottish Ministers think fit; and
- (b) for the Scottish Ministers to vary or revoke those conditions.

(4) In subsection (2), references to acting in relation to disclosure applications are to be read as references to—

- (a) countersigning applications under section 113A or 113B, or
- (b) making declarations in relation to requests for disclosures under section 49 or 50 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00).”.

(3) Section 124A of the 1997 Act is amended as follows—

- (a) in subsection (1), for “section 120(3)(b)” substitute “section 120ZB(2)(h)”, and
- (b) in subsection (3), for “section 120(3)(ac)” substitute “section 120ZB(2)(j)”.

PART 5

MEANING OF “SCHOOL CARE ACCOMMODATION SERVICE”

86 Meaning of “school care accommodation service”

(1) In section 2 of the 2001 Act, for subsection (4) substitute—

“(4) A “school care accommodation service” is a service which—

- (a) consists of the provision of residential accommodation to a pupil in a place in or outwith a public, independent or grant-aided school;
- (b) is provided (whether or not during term-time) for the purpose of or in connection with the pupil’s attendance at the school (whether current or otherwise); and
- (c) is provided to the pupil by—
 - (i) an education authority or the managers of an independent or grant-aided school; or
 - (ii) any person under arrangements made between that person and any such authority or managers.

(4A) For the purposes of subsection (4)(c)(i) above, a service which—

- (a) falls within the description given by subsection (4)(a), (b) and (c)(ii) above; and
- (b) is provided to the pupil in domestic premises,

is to be regarded as being provided by that authority or (as the case may be) those managers.

(4B) A service may be excepted from the definition in subsection (4) above by regulations.”.

- (2) In section 77(1) of the 2001 Act, in the definition of “school care accommodation service”, for “has the meaning given by subsection (4) of section 2” substitute “is to be construed in accordance with subsections (4) to (4B) of section 2 of”.

PART 6

SUPPLEMENTARY AND GENERAL

87 Transfer of Disclosure Scotland staff etc.

- (1) Ministers may by order (a “staff transfer order”) make provision for persons employed by virtue of section 9 of the Police (Scotland) Act 1967 (c.77) (employees other than constables) by the Strathclyde Joint Police Board (the “Police Board”) to transfer to, and become members of the staff of, the Scottish Administration.
- (2) A staff transfer order may specify particular persons, or types of person, to whom the order applies.
- (3) Subsections (4) to (9) apply where—
- (a) a person is to be transferred by virtue of a staff transfer order, and
 - (b) immediately before the day on which the staff transfer order comes into force in relation to the person (the “transfer day”), the person has a contract of employment with the Police Board.
- (4) On and after the transfer day the contract of employment has effect as if originally made between the person and Ministers on behalf of the Crown.
- (5) On the transfer day, the rights, powers, duties and liabilities of the Police Board under or in connection with the contract of employment are transferred to Ministers.
- (6) Anything done before the transfer day by or in relation to the Police Board in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to Ministers.
- (7) If, before the transfer day, the person gives notice to Ministers or the Police Board that the person objects to becoming a member of staff of the Scottish Administration—
- (a) the contract of employment with the Police Board is, on the day immediately preceding the day that would, but for the objection, have been the transfer day, terminated, and
 - (b) the person is not to be treated (whether for the purpose of any enactment or otherwise) as having been dismissed by virtue of the giving of such notice.
- (8) Nothing in this section prejudices any right of the person to terminate the contract of employment if a substantial detrimental change in the person’s working conditions is made.
- (9) Where—
- (a) the identity of the person’s employer changes by virtue of the making of a staff transfer order, and
 - (b) it is shown that, in all the circumstances, the change is significant and detrimental to the person,
- the person has the right to terminate the contract of employment.

- (10) A staff transfer order may make such further provision about such transfers as Ministers think fit.

88 Power to give effect to the Safeguarding Vulnerable Groups Act 2006

- (1) Ministers may by order make such provision as they consider appropriate in consequence of, or for the purposes of giving full effect to, any provision made by virtue of the Safeguarding Vulnerable Groups Act 2006 (c.00).
- (2) An order under subsection (1) may modify any enactment, instrument or document.

89 Modification of enactments

Schedule 4 contains minor amendments and amendments and repeals consequential on the provisions of this Act.

90 Offences by bodies corporate etc.

- (1) Where—
- (a) an offence under this Act has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual,
- that individual as well as the body corporate, partnership or, as the case may be, unincorporated association is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) In subsection (1), “relevant individual” means—
- (a) in relation to a body corporate other than a council—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, the members,
 - (b) in relation to a council, an officer or member of the council,
 - (c) in relation to a Scottish partnership, a partner, and
 - (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.
- (3) Any penalty imposed on a body corporate, Scottish partnership or unincorporated association on conviction of an offence under this Act is to be recovered by civil diligence in accordance with section 221 of the 1995 Act.

PART 7

INTERPRETATION

91 Regulated work

- (1) Regulated work means regulated work with children or protected adults.
- 5 (2) Regulated work with children is work of the type described in schedule 2.
- (3) Regulated work with adults is work of the type described in schedule 3.
- (4) References in this Act to types of regulated work are to be construed accordingly.

92 Individuals barred from regulated work

- (1) An individual is barred from regulated work with children if the individual is—
- 10 (a) listed in the children’s list.
- (b) included in the children’s barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c.00),
- (c) included (otherwise than provisionally) in the list kept under article 3 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
- 15 (d) an individual falling within subsection (3).
- (2) An individual is barred from regulated work with adults if the individual is—
- (a) listed in the adults’ list,
- (b) included in the adults’ barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (c.00),
- 20 (c) included (otherwise than provisionally) in the list kept under article 35 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, or
- (d) an individual falling within subsection (4).
- (3) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the
- 25 United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with children by virtue of any of paragraphs (a) to (c) of subsection (1).
- (4) An individual falls within this subsection if, under the law of the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the
- 30 United Kingdom, the individual is subject to a prohibition or disqualification which Ministers by order provide corresponds to being barred from regulated work with protected adults by virtue of any of paragraphs (a) to (c) of subsection (2).
- (5) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers’ opinion corresponds to the children’s list for a list mentioned in subsection (1)(b) and (c).
- 35 (6) Ministers may by order substitute such other list maintained under the law of England and Wales or, as the case may be, Northern Ireland, which in Ministers’ opinion corresponds to the adults’ list for a list mentioned in subsection (2)(b) or (c).

93 Meaning of “harm”

- (1) For the purposes of this Act, an individual (“A”) harms another (“B”) if—
- (a) A’s conduct causes B physical harm,
 - (b) A’s conduct causes B psychological harm (for example: by putting B in a state of fear, alarm or distress), or
 - (c) A engages in unlawful conduct which appropriates or adversely affects B’s property, rights or interests (for example: theft, fraud, embezzlement or extortion),
- and references to harm are to be construed accordingly.
- (2) For the purposes of this Act, an individual (“C”) places another (“D”) at risk of harm if—
- (a) C attempts to harm D,
 - (b) C incites another to harm D,
 - (c) C encourages D to self-harm, or
 - (d) C’s conduct otherwise causes, or is likely to cause, D to be harmed,
- and references to being placed at risk of harm are to be construed accordingly.

94 Meaning of “protected adult”

- (1) For the purposes of this Act, a “protected adult” is an individual aged 16 or over who is provided with—
- (a) a service by a person carrying on—
 - (i) a support service,
 - (ii) an adult placement service,
 - (iii) a care home service, or
 - (iv) a housing support service,which is registered under Part 1 of the 2001 Act,
 - (b) a prescribed service—
 - (i) by a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c.29),
 - (ii) which is secured by a health body acting in exercise of such functions,
 - (iii) by an independent hospital,
 - (iv) by a private psychiatric hospital,
 - (v) by an independent clinic, or
 - (vi) by an independent medical agency, or
 - (c) a community care service—
 - (i) provided or secured by a council under the Social Work (Scotland) Act 1968 (c.49) or the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), or
 - (ii) in respect of which a council has made a direct payment.

- (2) Ministers may by order modify subsection (1) in order to change the definition of “protected adult” as they think appropriate.
- (3) Expressions used in paragraphs (a) and (b) of subsection (1) have the same meaning as in the 2001 Act.
- 5 (4) In subsection (1)(c)—
“community care service” has the same meaning as in the Social Work (Scotland) Act 1968 (c.49),
“direct payment” means a payment made under section 12B of that Act.

95 Meaning of “work”

- 10 (1) In this Act “work” means work of any kind and, in particular, includes—
(a) paid and unpaid work,
(b) work under a contract (for example: under a contract of service or apprenticeship or under a contract for services),
(c) carrying out the functions of any office established by virtue of an enactment, and
15 (d) caring for, or supervising, individuals participating in any organised activity,
and references to a “worker” and to “working” are to be construed accordingly.
- (2) Despite the generality of subsection (1), “work” does not include work falling within subsection (3) or (4).
- (3) Work falls within this subsection if it is done for an individual (“A”)—
20 (a) in the course of a family relationship, and
(b) for the benefit of A or a member of A’s family.
- (4) Work falls within this subsection if it is done for an individual (“B”)—
(a) in the course of a personal relationship,
(b) for no commercial consideration, and
25 (c) for the benefit of B, a member of B’s family or B’s friend.
- (5) A family relationship includes a relationship between two individuals who—
(a) live in the same household, and
(b) treat each other as though they were members of the same family.
- (6) A personal relationship is a relationship between or among friends.
- 30 (7) Any friend of a member of an individual’s family is to be regarded as being the individual’s friend.
- (8) “Benefit” does not include commercial benefit.

96 General interpretation

- (1) In this Act—
35 “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46),
“the 1997 Act” means the Police Act 1997 (c.50),

“the 2001 Act” means the Regulation of Care (Scotland) Act 2001 (asp 8),

“care service” has the same meaning as in the 2001 Act,

“care service provider” means a person who provides a care service of a type specified by order made by Ministers,

5 “charity” means a body entered in the Scottish Charity Register,

“charity trustees” has the meaning given in section 106 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),

“chief constable” means the chief constable of a police force in Scotland,

10 “child” means an individual under the age of 18 (and “childhood” is to be construed accordingly),

“conduct” includes neglect and other failures to act,

“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

15 “disciplinary proceedings” means proceedings in which the regulatory body for a profession is to decide whether disciplinary action should be taken against an individual carrying on that profession,

“disclosure declaration” means a declaration of the type referred to in disclosure condition C (see section 52) which is made in relation to a disclosure request,

“disclosure record” means a—

- 20 (a) scheme record,
(b) short scheme record, or
(c) statement of barred status,

disclosed under Part 2,

25 “disclosure request” means a request for a disclosure under section 49, 50 or 51 of—

- (a) a scheme record,
(b) a short scheme record, or
(c) a statement of barred status,

30 “employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services (and “employee” and related words are to be construed accordingly),

35 “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding individuals employment with employers or of supplying employers with individuals for employment by them,

40 “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying individuals in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity,

“Health Board” means a board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978 (c.29),

“Her Majesty’s Inspectors of Schools” means the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c.44),

5 “legal proceedings” means civil or criminal proceedings in or before any court or tribunal,

“managers of an educational establishment” has the same meaning as in the Education (Scotland) Act 1980 (c.44),

“Ministers” means the Scottish Ministers,

10 “organisation” means—

(a) a body corporate or unincorporated,

(b) an individual who, in the course of a business, employs or otherwise gives work to other persons,

15 (c) the governing body, trustees, or other person or body of persons responsible for the management of any of the following—

(i) a school,

(ii) a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6),

20 (iii) a hostel used mainly by pupils attending a school or body mentioned in paragraph (i) or (ii) respectively,

“personnel supplier” means an organisation which carries on an employment agency or employment business.

“police authority” has the same meaning as in the Police (Scotland) Act 1967 (c.77),

25 “police force” has the same meaning as in Part 5 of the 1997 Act,

“prescribed” (except where used in sections 18(4)(b) and 46(1)(a)) means prescribed in regulations made by Ministers (and “prescribe” is to be construed accordingly),

30 “registered social landlord” means a body registered in the register maintained under section 57 of the Housing (Scotland) Act 2001 (asp 10),

“school” has the same meaning as in the Education (Scotland) Act 1980 (c.44),

“social work inspector” means a person appointed under section 4 of the Joint Inspections of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3),

35 “Special Health Board” means a board constituted by order under section 2(1)(b) of the National Health Service (Scotland) Act 1978 (c.29).

(2) For the purposes of this Act, Ministers must assume that an individual is doing regulated work for an organisation if they—

40 (a) have made a disclosure in respect of the individual, in relation to that type of regulated work, under section 49, 50 or 51,

- (b) know that the disclosure was sought for the purposes of enabling or assisting the organisation to consider the scheme member's suitability to do, or to be offered or supplied for, that type of regulated work, and
- (c) have not been satisfied that the individual has not been engaged to do, or has stopped doing, that type of regulated work for the organisation.
- (3) References in this Act to Ministers considering whether to list an individual are to be read as references to Ministers considering whether to list an individual in the children's list, in the adults' list or, as the case may be, in both lists in pursuance of section 10, 11, 12 or 13.
- (4) References in this Act to relevant police forces, and to the chief officers of those forces, are to be read in the same way as they are read in relation to an application under section 113B of the 1997 Act.
- (5) The words and other expressions listed in schedule 5 are defined or otherwise explained for the purposes of this Act by the provisions indicated in that schedule.

PART 8

FINAL PROVISIONS

97 Ancillary provision

- (1) Ministers may by order make—
- (a) such supplementary, incidental or consequential provision, or
- (b) such transitional, transitory or saving provision,
- as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may modify any enactment, instrument or document.

98 Saving: disclosure of information

Nothing in this Act affects any power which exists apart from this Act to disclose information.

99 Orders and regulations

- (1) Any power of Ministers under this Act to make an order or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as Ministers consider appropriate,
- (b) different provision for different purposes.
- (3) Unless subsection (4) makes contrary provision, a statutory instrument containing an order (other than an order made under section 100) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An order must not be made under any of the following provisions unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Scottish Parliament—

Section 14(3)

Section 31(2)

Section 81(1), 88(1) or 97(1) (but only if the order contains provisions which add to, replace or omit any part of the text of this or any other Act)

5

Section 94(2)

Paragraph 26 of schedule 2 (except an order of the type mentioned in paragraph 14 of that schedule)

Paragraph 15 of schedule 3

100 Commencement

10

- (1) This Part comes into force on Royal Assent.
- (2) The provisions of Parts 1 to 7 come into force on such day as Ministers may by order appoint.
- (3) Different days may be appointed for different purposes and for different areas.

101 Short title

15

This Act may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007.

SCHEDULE 1
(introduced by section 31)

RELEVANT OFFENCES

1 An offence falls within this paragraph if it is—

- 5 (a) an offence under section 12 (cruelty to children under 16) of the Children and Young Persons (Scotland) Act 1937 (c.37),
- (b) an offence under section 15 (causing or allowing children under 16 to be used for begging or procuring alms) of that Act,
- 10 (c) an offence under section 22 (exposing a child under 7 to risk of burning) of that Act,
- (d) an offence under section 33 (causing or allowing children under 17 to participate in performances which endanger life or limb) of that Act,
- (e) an offence under section 52 (taking, distributing, showing, or publishing etc. any indecent photograph or pseudo-photograph of a child) of the Civic Government (Scotland) Act 1982 (c.45),
- 15 (f) an offence under section 52A (possessing any indecent photograph or pseudo-photograph of a child) of that Act,
- (g) an offence under section 2 (intercourse with a step-child) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39),
- 20 (h) an offence under section 3 (intercourse of person in position of trust with child under 16) of that Act,
- (i) an offence under section 5 (intercourse with girl under 16) of that Act,
- (j) an offence under section 6 (indecent behaviour towards girl between 12 and 16) of that Act,
- 25 (k) an offence under section 8 (abduction and unlawful detention of unmarried girl under 18) of that Act,
- (l) an offence under section 9 (permitting girl under 16 to use premises for intercourse) of that Act,
- (m) an offence under section 10 (causing or encouraging the seduction of, the prostitution of, unlawful intercourse with or the commission of an indecent assault on a girl under 16) of that Act,
- 30 (n) an offence under section 12 (allowing child who is 4 or over but under 16 to be in a brothel) of that Act,
- (o) an offence under section 13(5)(c) (homosexual acts with a boy under 16) of that Act,
- 35 (p) an offence under section 3 (sexual activity of person in position of trust with child) of the Sexual Offences (Amendment) Act 2000 (c.44),
- (q) an offence under section 1 (meeting a child following certain preliminary contact) of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9),
- 40 (r) an offence under section 7 (breach of risk of sexual harm order or interim risk of sexual harm order) of that Act,

- (s) an offence under section 9 (paying for sexual services of a child) of that Act,
- (t) an offence under section 10 (causing or inciting provision by child of sexual services or child pornography) of that Act,
- (u) an offence under section 11 (controlling a child providing sexual services or involved in pornography) of that Act,
- (v) an offence under section 12 (arranging or facilitating provision by child of sexual services or child pornography) of that Act.

2 An individual falls within this paragraph if the individual—

- (a) commits an offence under section 4(3) (offering or supplying controlled drugs) of the Misuse of Drugs Act 1971 (c.38) in relation to a child,
- (b) commits an offence under section 1 (incest) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) by having sexual intercourse with a child,
- (c) commits an offence under section 7 (procuring unlawful intercourse etc.) of that Act in relation to a child,
- (d) commits an offence under section 11 (trading in prostitution and brothel-keeping) of that Act in relation to a child,
- (e) commits an offence under section 13(6) (procuring commission of homosexual act between males) of that Act by procuring, or attempting to procure, a child to commit a homosexual act,
- (f) commits any other offence which caused, or was intended to cause, bodily injury to a child,
- (g) commits any other offence by engaging in lewd, indecent or libidinous practice or behaviour towards a child.

SCHEDULE 2

(introduced by section 91)

REGULATED WORK WITH CHILDREN

PART 1

PRELIMINARY

Regulated work with children

1 Regulated work with children is work in—

- (a) a position whose normal duties include carrying out an activity mentioned in Part 2,
- (b) a position (other than a position mentioned in sub-paragraph (a)) whose normal duties include work in an establishment mentioned in Part 3,
- (c) a position mentioned in Part 4, or
- (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with children by virtue of sub-paragraph (a) or (b).

PART 2

ACTIVITIES

Caring for children

2 Caring for children—

- 5 (a) other than in the course of the children’s employment, or
 (b) under the age of 16 in the course of the children’s employment.

Teaching, instructing, training or supervising children

3 Teaching, instructing, training or supervising children—

- 10 (a) other than in the course of the children’s employment, or
 (b) under the age of 16 in the course of the children’s employment (but only where a substantial part of the normal duties of the position include such teaching, instructing, training or supervising).

Being in sole charge of children

4 Being in sole charge of children (other than being in sole charge of children in the
 15 course of the children’s employment).

Unsupervised contact with children

5 Contact with children (other than contact in the course of the children’s employment)—

- (a) under arrangements made by a responsible person, but
 (b) in the absence of—
 20 (i) a responsible person, or
 (ii) a person carrying out an activity mentioned in paragraph 2, 3 or 4.

“Responsible person” means, in relation to a child, any of the following persons—

- (a) the child’s parent or guardian,
 (b) any person aged 18 or over with whom the child lives,
 25 (c) the person in charge of any establishment mentioned in Part 3 in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person),
 (d) a person who provides day care of children, within the meaning of section 2 of the 2001 Act,
 30 (e) any person holding a position mentioned in Part 4, and
 (f) any person holding a position in a children’s charity, within the meaning of paragraph 25.

Providing advice or guidance to children

- 6 Providing advice or guidance to a child or to particular children which relates to physical or emotional well-being, education or training.

Moderating certain interactive communication services

- 5 7 Moderating a public electronic interactive communication service which is intended for use wholly or mainly by children.

A person moderates such a service if, for the purpose of protecting children, the person has any function relating to—

- 10 (a) monitoring the content of matter which forms any part of the service,
(b) removing matter from, or preventing the addition of matter to, the service, or
(c) controlling access to, or use of, the service.

Provision of care home services

- 15 8 Providing, or working for an organisation which provides, a care home service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).

“Care home service” has the same meaning as in the 2001 Act.

Provision of independent health care services

- 20 9 Providing, or working for an organisation which provides, an independent health care service which is provided exclusively or mainly for children (but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with children).

“Independent health care service” has the same meaning as in the 2001 Act.

Work on day care premises

- 25 10 Work on any part of day care premises at times when children are being looked after in that part.

“Day care premises” means premises at which day care of children, within the meaning of section 2 of the 2001 Act, is provided.

PART 3

30 ESTABLISHMENTS

Children’s detention institution

- 11 An institution which is exclusively or mainly for the detention of children.

“Detention” means detention by virtue of an order of a court or under an enactment.

Children’s hospital

- 12 A hospital which is exclusively or mainly for the reception and treatment of children.
 “Hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978 (c.29).

5 *Educational institutions etc.*

13 A school.

14 A further education institution.

10 “Further education institution” means a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6) and any other body added to that schedule as Ministers may by order specify.

15 A hostel used mainly by pupils attending a school or institution mentioned in paragraph 13 or 14 respectively.

Children’s home

15 16 A home which is exclusively or mainly for children and is provided by a council under—

- (a) section 59 (provision by councils of residential and other establishments) of the Social Work (Scotland) Act 1968 (c.49), or
 (b) section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

PART 4

POSITIONS

Manager of educational institutions etc.

25 17 Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel mentioned in paragraphs 13 to 15 (but not a member of a council).

Member of council committee

18 Member of—

- 30 (a) a committee (including joint committee) of a council which is concerned with the provision of education, accommodation, social services or health care services to children,
 (b) a sub-committee which discharges any functions of any such committee.

Member of children’s panel etc.

19 Member of—

- 5
- (a) a children’s panel established by section 39(1) of the Children (Scotland) Act 1995 (c.36),
 - (b) a Children’s Panel Advisory Committee,
 - (c) a joint advisory committee established under paragraph 8(1) of Schedule 1 to that Act,
 - (d) a sub-committee which discharges any functions of any committee mentioned in sub-paragraph (b) or (c).

Chief social work officer

20 Chief social work officer of a council.

10 *Director of education*

21 Director of education of a council.

Commissioner for Children and Young People in Scotland

22 Commissioner for Children and Young People in Scotland.

23 Member of that Commissioner’s staff.

15 *Registrar of Independent Schools in Scotland*

24 Registrar of Independent Schools in Scotland.

Charity trustee

25 Charity trustee of a children’s charity.

“Children’s charity” means a charity whose—

- 20
- (a) workers normally include individuals doing regulated work with children (other than work which is regulated work with children by virtue only of this paragraph), or
 - (b) main purpose is to provide benefits for children.

25 An individual works for a charity if the individual works under any arrangements made by the charity (other than arrangements made for purposes which are incidental to the purposes for which the charity is established).

PART 5

GENERAL

Power to amend schedule

30 26 Ministers may by order modify this schedule as they think appropriate.

SCHEDULE 3
(introduced by section 91)

REGULATED WORK WITH ADULTS

PART 1

PRELIMINARY

Regulated work with adults

- 1 Regulated work with adults is work in—
- (a) a position whose normal duties include carrying out an activity mentioned in Part 2,
 - 10 (b) a position (other than a position mentioned in paragraph (a)) whose normal duties include work in an establishment mentioned in Part 3,
 - (c) a position mentioned in Part 4, or
 - (d) a position whose normal duties include the day to day supervision or management of an individual doing regulated work with adults by virtue of sub-paragraph (a) or (b).
- 15 2 Work in a position mentioned in paragraph 1(a) is not, despite that provision, regulated work with adults if—
- (a) the activity concerned is carried out only in relation to protected adults who are under the age of 18, and
 - 20 (b) the carrying out of the activity concerned in relation to those protected adults is merely incidental to the carrying out of that activity in relation to children generally.

PART 2

ACTIVITIES

Caring for adults

- 3 Caring for protected adults.

Teaching, instructing, training and supervising adults

- 4 Teaching, instructing, training or supervising protected adults—
- (a) other than in the course of the adults' employment, or
 - 30 (b) in the course of the adults' employment (but only where a substantial part of the normal duties of the position include such teaching, instructing, training or supervising).

Being in sole charge of adults

- 5 Being in sole charge of protected adults (other than being in sole charge of protected adults in the course of the adults' employment).

Providing advice or guidance to adults

6 Providing advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training.

Work in certain educational institutions etc.

5 7 Working—
(a) for a body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6),
(b) in a hostel used mainly by pupils attending a body mentioned in sub-paragraph (a),
10 but only if doing anything permitted or required in connection with the position gives the holder of the position the opportunity to have contact with protected adults.

Provision of care home services

8 Providing, or working for an organisation which provides, a care home service but only if doing anything permitted or required in connection with the position gives the holder
15 of the position the opportunity to have contact with protected adults.
“Care home service” has the same meaning as in the 2001 Act.

PART 3

ESTABLISHMENTS

Care home

20 9 A care home.
“Care home” means accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service (within the meaning of the 2001 Act).

Residential establishment or accommodation

25 10 A residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under—
(a) the Social Work (Scotland) Act 1968 (c.49), or
30 (b) section 25 (provision of care and support services by local authority) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

PART 4

POSITIONS

Manager of educational institutions etc.

- 5 11 Manager, or member of a governing body, body of trustees or other body responsible for the management, of a body or hostel mentioned in paragraph 7 (but not a member of a council).

Member of council committee

- 10 12 Member of a committee (including joint committee) of a council which is concerned with the provision of education, accommodation, social services or health care services to protected adults.
- Any reference to a committee includes a reference to any sub-committee which discharges any functions of that committee.

Chief social work officer

- 13 Chief social work officer of a council.

15 *Charity trustee*

- 14 Charity trustee of a charity whose—
- (a) workers normally include individuals doing regulated work with adults (other than work that is regulated work with adults by virtue only of this paragraph), or
 - (b) main purpose is the relief of those in need by reason of vulnerability.
- 20 An individual works for a charity if the individual works under any arrangements made by the charity (other than arrangements made for purposes which are incidental to the purposes for which the charity is established).

PART 5

GENERAL

25 *Power to amend schedule*

- 15 Ministers may by order modify this schedule as they think appropriate.

SCHEDULE 4
(introduced by section 89)

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

Teaching Council (Scotland) Act 1965 (c.19)

- 5 1 In section 6 of the Teaching Council (Scotland) Act 1965—
- (a) in subsection (2C), for the words from “included” to “(asp 5)” substitute “listed in the children’s list kept under section 1(1)(a) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00)”,
 - (b) in subsection (2D), for “included (otherwise than provisionally)” substitute “listed”.
- 10

Education (Scotland) Act 1980 (c.44)

- 2 The Education (Scotland) Act 1980 is amended as follows.
- 3 In section 98A—
- (a) in subsection (5)(a)(ii), for “disqualified from working with children” substitute “barred from regulated work with children”,
 - (b) in subsection (6), for the definition of “disqualified from working with children” substitute—
“barred from regulated work with children” shall be construed in accordance with the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00);”.
- 15
- 4 In section 99(1A)—
- (a) in paragraph (g)(ii), for “disqualified from working with children” substitute “barred from regulated work with children”,
 - (b) in paragraph (h)(ii), for “disqualified from working with children” substitute “barred from regulated work with children”.
- 20
- 5 In section 135(1)—
- (a) after the definition of “attendance order” insert—
““barred from regulated work with children” has the meaning given by section 98A(6) of this Act;”,
 - (b) the definition of “disqualified from working with children” is repealed.
- 25
- 30

Criminal Procedure (Scotland) Act 1995 (c.46)

- 6 The 1995 Act is amended as follows.
- 7 In section 106(1)—
- (a) paragraphs (db) and (dc) are repealed,
 - (b) in paragraph (f), sub-paragraphs (ii) and (iii) are repealed.
- 35
- 8 In section 110(1)(a), the words “, the proposal to make a reference was made” are repealed.

9 Section 111(3) is repealed.

10 In section 116, for subsection (2) substitute—

5 “(2) A person who has appealed against both conviction and sentence (or, as the case may be, against both conviction and a decision mentioned in section 106(1)(bb) or both conviction and disposal and order) may abandon the appeal in so far as it is against conviction and may proceed with it against sentence (or, as the case may be, decision, disposal or order) alone.”.

11 In section 118—

10 (a) in subsection (4), for the words “106(1)(ba), (bb), (c), (d), (da), (dc), (e) or (f)” substitute “106(1)(ba), (bb), (c), (d), (da), (e) or (f)”,

(b) subsection (4AA) is repealed,

(c) in subsection (7)—

(i) the words “or, as the case may be,” at the end of paragraph (a), and

(ii) paragraph (b),

15 are repealed.

12 In section 121A(1), the words “(other than an appeal under section 106(1)(db) or (dc))” are repealed.

13 In section 173(2), the words “or (cb)” are repealed.

14 In section 175—

20 (a) in subsection (2)—

(i) paragraph (cb) (but not the word “or” which appears immediately after that paragraph) is repealed,

(ii) in paragraph (d), sub-paragraphs (ii) and (iii) are repealed,

25 (b) in subsection (8), for the words from “under” to the end of paragraph (c) substitute “against both conviction and sentence may abandon the appeal in so far as it is against conviction and may proceed with it against sentence alone,”,

(c) in subsection (9), the words “or (cb)” are repealed.

15 Section 181(4) is repealed.

16 In section 186—

30 (a) the words “or (cb)”, where they appear in subsections (1), (2), (9) and (10), are repealed,

(b) in subsection (2)(a)—

(i) at the end of sub-paragraph (i) insert “or”,

35 (ii) sub-paragraph (iii) (and the word “or” which immediately precedes it) are repealed.

17 In section 187(1), the words “or (cb)” are repealed.

18 In section 189—

(a) subsection (2A) is repealed,

(b) in subsection (7)(b)—

- (i) the words “or, as the case may be,” at the end of paragraph (a), and
 - (ii) paragraph (b),
- are repealed.

19 In section 193A(1), the words “(other than by way of an appeal under section 175(2)(cb)
5 of this Act against a reference only)” are repealed.

Police Act 1997 (c.50)

20 Part 5 of the 1997 Act is amended as follows.

21 In section 113A, after subsection (5) insert—

10 “(5A) The Scottish Ministers need not issue a criminal record certificate under
subsection (1) if the statement accompanying the application states that the
purpose for which the certificate is required is the purpose mentioned in
disclosure condition C (set out in section 52 of the Protection of Vulnerable
Groups (Scotland) Act 2007) (asp 00).”.

22 In section 113C—

15 (a) in subsection (2), after paragraph (a) insert—

“(aa) the applicant’s suitability for any of the purposes set out in section
113F,”,

20 (b) in subsection (3)(b), for “1(1) of the Protection of Children (Scotland) Act 2003”
substitute “1(1)(a) of the Protection of Vulnerable Groups (Scotland) Act 2007
(asp 00)”,

(c) subsection (5)(b) is repealed.

23 In section 113D—

(a) in subsection (2)—

25 (i) the words after “considering” are to form paragraph (a),

(ii) after the new paragraph (a) insert “, or

“(b) the applicant’s suitability for any of the purposes set out in section
113F.”,

(b) in subsection (3), after paragraph (a) insert—

30 “(aa) the list kept under section 1(1)(b) of the Protection of Vulnerable Groups
(Scotland) Act 2007 (asp 00);”.

24 In section 113F(1), for the words from “to be employed” to “considering” substitute “for
any of the purposes set out in this section are references to considering any of the
following”.

25 In section 114—

35 (a) in subsection (2), for “a Minister of the Crown” substitute “a person mentioned in
subsection (2A)”,

(b) after subsection (2) insert—

“(2A) Any of the following persons may make a statement for the purposes of
subsection (2)—

- (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).”.

5 26 In section 116—

(a) in subsection (2), for “a Minister of the Crown, or a person nominated by a Minister of the Crown,” substitute “a person mentioned in subsection (2A)”,

(b) after subsection (2) insert—

10 “(2A) Any of the following persons may make a statement for the purposes of subsection (2)—

- (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).”.

15 27 In section 120(5)(b) for the words from “countersign” to “113B” substitute “—

- “(i) countersign applications under section 113A or 113B; or
- (ii) make declarations in relation to disclosure requests made under section 49 or 50 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00),”.

20 28 In section 120A(4)(b)(iii), after “applications” insert “, or the making of declarations,”.

29 Section 121 is repealed.

30 In section 122—

(a) in subsection (3)—

- 25 (i) after “113B” insert “, or make a disclosure under section 49 or 50 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00),”,
- (ii) after “application” insert “or, as the case may be, made the declaration in relation to the disclosure request”,
- (iii) after “countersigned”, where it appears in paragraph (b), insert “or, as the case may be, made the declaration”,

30 (b) in subsection (4)(b)—

- (i) the words after “person” become sub-paragraph (i), and
- (ii) after that new sub-paragraph insert “; or

35 “(ii) has made or is likely to make a declaration in relation to a disclosure request made under section 49 or 50 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 00)”.

31 Before section 123 insert—

“122B Delegation of functions of Scottish Ministers

(1) The Scottish 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) relating to the publishing or revising of a code of practice;

(c) relating to the laying of a code of practice before the Scottish Parliament;

(d) relating to the determination of an appropriate fee under section 113B(5A) or 119(3); or

(e) under section 125A.

(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 119.”.

32 In section 126(1), after the definition of “Minister of the Crown” insert—

““office-holder in the Scottish Administration” has the same meaning as in the Scotland Act 1998 (c.46);”.

Protection of Children (Scotland) Act 2003 (asp 5)

33 The whole Act (other than sections 13 and 16) is repealed.

Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)

34 Section 24(1) of the Criminal Procedure (Amendment) (Scotland) Act 2004 is repealed.

Charities and Trustee Investment (Scotland) Act 2005 (asp 10)

35 Paragraph 15 of schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 is repealed.

Inquiries Act 2005 (c.12)

36 Part 2 of Schedule 2 to the Inquiries Act 2005 is repealed.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

37 The following provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 are repealed—

(a) section 3(2)(d),

(b) section 3(8), and

(c) paragraph 14(2) of schedule 1.

SCHEDULE 5
(introduced by section 96(5))

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Protection of Vulnerable Groups (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to bar certain individuals from working with children or certain adults; to require the Scottish Ministers to keep lists of those individuals; to make further provision in relation to those lists; to establish a scheme under which information about individuals working or seeking to work with children or certain adults is collated and disclosed; to make provision about the sharing of information relevant to the protection of children; to amend Part 5 of the Police Act 1997; to amend the meaning of school care accommodation service in the Regulation of Care (Scotland) Act 2001; and for connected purposes.

Introduced by: Peter Peacock
On: 25 September 2006
Bill type: Executive Bill

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