

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT

Section 10 – Individuals convicted of an offence against a child

26. This section provides for individuals who have been convicted of an offence against a child (or acquitted on grounds of insanity) to be referred by the sheriff or judge to the Scottish Ministers for inclusion in the list. The sheriff or judge is obliged (subject to being satisfied as required by subsections (3) and (4)) to make a reference if the offence is a relevant offence (within the meaning of schedule 1). The decision on whether to refer to the list is, in the case of any other offence against a child, to be at the discretion of the sheriff or judge.
27. Subsection (2) provides that the duty imposed, and the discretion conferred, by subsection (1) apply in relation to offences committed before the commencement of this section.
28. Subsections (3) and (4) prevent the sheriff or judge from referring an individual to the Scottish Ministers unless the test in the relevant subsection is satisfied. Subsection (3) deals with individuals under 18 when the offence was committed. In these cases, to make a referral, the sheriff or judge must be satisfied that the accused is likely to commit a further offence against a child. Subsection (4) deals with individuals over 18 when the offence was committed and allows a sheriff or judge not to make a referral only if satisfied that the individual is unlikely to commit a further offence against a child.
29. Subsections (5) and (6) provide that a reference is not to be made under this section until the appeals process is exhausted in relation to the offence in respect of which the reference is to be made.
30. Subsection (7) requires the Scottish Ministers to include individuals referred by the court in the list.
31. Subsection (8) requires the Scottish Ministers to inform the individual of the listing. If the Scottish Ministers are aware that the individual referred by the court is working in a child care position at the time of listing, they must also inform the employing organisation of the listing.
32. Subsection (9) defines the expressions “relevant offence” and “offence against a child”. Relevant offences are those listed in or falling within schedule 1. “Offence against a child” includes all relevant offences and any other offences committed in relation to children. Subsection (10) confers a regulation making power on the Scottish Ministers to amend the definitions of “offence against a child” and “relevant offence”.
33. Subsections (11) and (12) provide for individuals who have been acquitted on the grounds of insanity etc. to be considered for inclusion in the list on the same terms as if they had been convicted of the offence.