

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 1 – the Lists

Sections 2 – 6. Referrals by organisations, businesses, agencies and others

15. **Section 2** sets out the grounds for a referral by an employer, employment agency, employment business or professional regulatory body to one or other of the lists. Sections 3, 4 and 5 place duties on organisational employers, employment agencies (including nurse agencies) and employment businesses to make a referral when certain criteria are met.
16. A referral can only take place if at least one of the grounds set out in section 2 has been met. An organisation can only make a referral in respect of the type of regulated work which the individual does. For example, a teacher who is undertaking regulated work with children can only be referred by the education authority, for consideration for inclusion in the children’s list, on a ground in section 2(a). But the incident(s) which trigger the referral are not limited to workplace incidents.
17. The referral grounds at section 2 are identical for both the children’s and adults’ lists. Note that referrals can be made where there has been inappropriate conduct but no harm. A referral can be made on the basis of inappropriate conduct in relation to pornography or inappropriate conduct of a sexual nature involving a child or a protected adult. The conduct criteria ensure that a referral can be made where an individual has, for example, accessed child pornography. The criterion in respect of inappropriate medical treatment encompasses, for example, the sedation of children or protected adults in order to make it easier to manage them, rather than for their own benefit.
18. Some of the grounds for referral rely on the meaning of “harm” and “risk of harm”. Section 93 defines harm and risk of harm. The definition of harm makes clear that harm goes wider than physical harm; for example, including threatening behaviour (one type of psychological harm) or harm to the interests of an individual. The definition of risk of harm ensures that the individual does not need to be the direct agent of harm nor does it matter if the individual’s actions are ineffective. For example, the firing of a gun at a child which the individual did not know was unloaded would be an attempt to harm under section 93(2)(a) and, therefore, would constitute placing the child at risk of harm.
19. With organisational referrals under section 3, the intention is that a referral should be triggered by an organisation permanently removing an individual from regulated work. Provision is made at section (1)(b)(i) to accommodate referral grounds being identified after the individual has otherwise stopped doing regulated work for the organisation, for example of their own accord. A temporary removal, such as a suspension whilst circumstances are investigated, should not lead to a referral and this is made clear by subsection (3).

*These notes relate to the Protection of Vulnerable Groups (Scotland)
Act 2007 (asp 14) which received Royal Assent on 18 April 2007*

20. [Sections 3, 4, 5 and 8](#) give the Scottish Ministers the power to prescribe the information which constitutes a referral. The Scottish Ministers will use this power to ensure that all necessary information is included in a referral to expedite the processing of a case and minimise the need to correspond with employers for clarification.
21. [Section 6](#) gives employers and employment organisations the power to make referrals in respect of incidents which took place prior to the Act being commenced.