

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 1 – the Lists

Section 39. Restriction on listing in children’s list

74. [Section 39](#) covers the cross-border interaction with the Independent Barring Board (IBB) established by the SVG Act where an individual would, in the absence of the SVG Act, be considered for listing or listed in children's list in Scotland. This section gives the Scottish Ministers the discretion not to consider for listing or list an individual in certain circumstances. It is likely that detailed rules for exercising this discretion will be set out administratively by the Central Barring Unit in consultation with the IBB. The SVG Act makes corresponding, but not identical, provision at paragraph 6 of schedule 3 to that Act.
75. Where an individual is already included on the children’s barred list maintained under section 2 of the SVG Act, they are barred from undertaking regulated work with children in Scotland by virtue of section 92. Section 39(1) allows the Scottish Ministers not to include an individual in the children’s list where that individual is already barred. Listing an individual who is already barred has no benefit in terms of protection but would create difficulties for both administrations and the listed individual in handling any appeal or application for removal.
76. In some cases, it will be more appropriate for the individual be considered for listing by the IBB under the SVG Act rather than in Scotland. For example, where the individual does regulated work both in Scotland and elsewhere in the UK and the incident which triggers consideration for listing occurs outside Scotland. In these circumstances, section 39(2) allows the Scottish Ministers not to consider an individual for inclusion on the children’s list, but section 39(4) ensures the necessary notifications are made to organisational employers and regulatory bodies.
77. In other cases, the IBB may have already considered whether the individual should be included in the children’s list under the SVG Act, and decided not to include the individual. In such cases, it only makes sense for the Scottish Ministers to consider the individual for listing if there is new information available which was not available to the IBB at the time the IBB considered whether to list the individual. Section 39(3) allows the Scottish Ministers not to consider an individual for listing in the children’s list where the IBB has already considered the case.
78. Finally, there may be instances where an individual meets the automatic listing criteria under this Act and the SVG Act at more or less the same time. For example, conviction for a very serious offence, whether or not the individual is a scheme member in either jurisdiction. Again, it makes sense for the individual to be listed by one jurisdiction only, since that has the desired effect of barring the individual from regulated work

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

across the UK. Section 39(5) allows the Scottish Ministers not to list an individual who meets the criteria prescribed by order under section 14 where the IBB will automatically list that individual.