

Draft Order laid before the Scottish Parliament under section 100(4) of the Protection of Vulnerable Groups (Scotland) Act 2007 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2010 No.

**CHILDREN AND YOUNG PERSONS
PROTECTION OF VULNERABLE ADULTS**

**The Protection of Vulnerable Groups (Scotland) Act
2007 (Automatic Listing) (Specified Criteria) Order 2010**

Made - - - -

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 14(3) and (4), 98(1) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007⁽¹⁾ and of all other powers enabling them to do so.

In accordance with section 100(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 and comes into force on the same day as section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007.

Interpretation

2.—(1) In this Order—

“the Act” means the Protection of Vulnerable Groups (Scotland) Act 2007;

“relevant circumstances” means the circumstances, if any, included in the description of any offence in Schedules 1, 2, 3 and 4 relating to the commission of that offence;

“similar offence” means any sexual offence which is similar in nature to an offence specified in Schedules 1 to 4 and which—

(a) was provided for in an enactment which is no longer in force or was an offence at common law which has been abolished by an enactment; and

(1) 2007 asp 14.

(b) was committed by penetrating the victim’s vagina, anus or mouth by any part of the body or with anything else without the victim consenting.

(2) In articles 3 and 4, a reference to an offence specified in one of the Schedules includes a reference to an offence which is a similar offence in relation to an offence specified in that Schedule.

Specified criteria for children’s list

3.—(1) The criteria specified for the purposes of section 14(1) of the Act (automatic listing in the children’s list) are the criteria specified in paragraphs (2), (3) and (4).

(2) On or after the coming into force of this Order the individual has been convicted on indictment of an offence listed in Schedule 1.

(3) On or after the coming into force of this Order—

(a) the individual has been charged on indictment with an offence listed in paragraphs 1 to 11 of Schedule 1;

(b) either—

(i) the individual is acquitted of the charge on the ground of insanity; or

(ii) the court makes a finding under section 55(2) (insanity in bar of trial) of the 1995 Act in respect of the individual; and

(c) the court makes any order mentioned in section 57(2)(a) to (d) (disposal in cases of insanity) of the 1995 Act in relation to the acquittal or finding.

(4) Since becoming a scheme member⁽²⁾ the individual has been convicted on indictment of an offence listed in Schedule 3.

Specified criteria for adults’ list

4.—(1) The criteria specified for the purposes of section 14(2) of the Act (automatic listing in the adults’ list) are the criteria specified in paragraphs (2), (3) and (4).

(2) On or after the coming into force of this Order the individual has been convicted on indictment of an offence listed in Schedule 2.

(3) On or after the coming into force of this Order—

(a) the individual has been charged on indictment with an offence listed in paragraphs 1 to 11 of Schedule 2;

(b) either—

(i) the individual is acquitted of the charge on the ground of insanity; or

(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) Since becoming a scheme member the individual has been convicted on indictment of an offence listed in Schedule 4.

Provision of information by court

5.—(1) Where a court convicts an individual of an offence listed in Schedule 1 or 2, it must give Ministers—

(2) “scheme member” is defined in section 45 of the Protection of Vulnerable Groups (Scotland) Act 2007.

- (a) a statement of the offence of which the individual was convicted, including a copy of the indictment; and
- (b) any other information which Ministers require for the purpose of determining whether the offence falls within Schedule 1 or 2.

(2) Where a court acquits an individual of an offence listed in paragraphs 1 to 11 of Schedule 1 or 2 on the ground of insanity, or makes a finding under section 55(2) of the 1995 Act in respect of the individual, and makes any order mentioned in section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding, it must give Ministers—

- (a) a statement of the charge of which the individual has been acquitted, including a copy of the indictment;
- (b) a copy of the acquittal or finding under section 55(2) of the 1995 Act;
- (c) a copy of any order mentioned in section 57(2)(a) to (d) of the 1995 Act; and
- (d) any other information which Ministers require for the purpose of determining whether the offence falls within paragraphs 1 to 11 of Schedule 1 or 2.

St Andrew's House,
Edinburgh
Date

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Articles 3(2), 3(3), 5(1) and 5(2)

Scottish offences leading to automatic listing in the children's list

1. Murder where the offence was committed against a child.
2. Rape.
3. Sodomy.
4. An offence under section 5(1) (intercourse with a girl under 13) of the Criminal Law Consolidation) (Scotland) Act 1995⁽³⁾.
5. An offence under section 311(2)(a) (non consensual sexual acts with a mentally disordered person) of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽⁴⁾.
6. An offence under section 1 (rape) of the Sexual Offences (Scotland) Act 2009⁽⁵⁾.
7. An offence under section 2 (sexual assault by penetration) of that Act.
8. An offence under section 3(1) and (2)(a) (sexual assault by penetrating the victim's vagina, anus or mouth by any means) of that Act.
9. An offence under section 18 (rape of a young child under 13) of that Act.
10. An offence under section 19 (sexual assault on a young child (under 13) by penetration) of that Act.
11. An offence under section 20(1) and (2)(a) (sexual assault on a young child (under 13) by penetration of the vagina, anus or mouth by any means) of that Act.
12. Any offence contrary to section 42 (criminal conduct) of the Armed Forces Act 2006⁽⁶⁾ where the corresponding offence under the law of England and Wales is one which corresponds to an offence specified in this Schedule, provided that where it corresponds to an offence at paragraph 1 the offence under the Armed Forces Act 2006 was committed in the relevant circumstances applicable to that offence.

SCHEDULE 2

Articles 4(2), 4(3), 5(1) and 5(2)

Scottish offences leading to automatic listing in the adults' list

1. Murder where the offence was committed against a child.
2. Rape.
3. Sodomy.
4. An offence under section 5(1) of the Criminal Law (Consolidation) (Scotland) Act 1995.
5. An offence under section 311(2)(a) of Health (Care and Treatment) (Scotland) Act 2003.
6. An offence under section 1 of the Sexual Offences (Scotland) Act 2009.
7. An offence under section 2 of that Act.
8. An offence under section 3(1) and (2)(a) of that Act.

(3) 1995 c.39 to which there are no relevant amendments.

(4) 2003 asp 9.

(5) 2009 asp 9.

(6) 2006 c.52.

9. An offence under section 18 of that Act.
10. An offence under section 19 of that Act.
11. An offence under section 20(1) and (2)(a) of that Act.

12. Any offence contrary to section 42 of the Armed Forces Act 2006 where the corresponding offence under the law of England and Wales is one which corresponds to an offence specified in this Schedule, provided that where it corresponds to an offence at paragraph 1 the offence under the Armed Forces Act 2006 was committed in the relevant circumstances applicable to that offence.

SCHEDULE 3

Article 3(4)

Non-Scottish offences leading to automatic listing in the children's list

1. Murder contrary to the common law of England and Wales where the offence was committed against a child.
2. Murder contrary to the common law of Northern Ireland where the offence was committed against a child.
3. Murder contrary to the customary law of Jersey where the offence was committed against a child.
4. Murder contrary to the common law of Guernsey, Alderney or Sark where the offence was committed against a child.
5. Murder contrary to section 18 of the Criminal Code 1872 (an Act of Tynwald)(7) where the offence was committed against a child.
6. Rape contrary to the common law of Northern Ireland.
7. Rape contrary to the customary law of Jersey.
8. Rape contrary to the common law of Guernsey, Alderney or Sark.
9. Rape contrary to section 1 of the Sexual Offences Act 1992 (an Act of Tynwald)(8).
10. Sodomy contrary to the customary law of Jersey.
11. An offence under section 4 (defilement of girl under 13) of the Criminal Law Amendment Act 1885(9).
12. An offence under article 2 of the "Loi relative à la protection des Femmes et des Filles mineures" (Law for the Protection of Women and Young Girls) 1914 (carnal knowledge of a girl under 13)(10).
13. An offence under article 122(1)(a) (sexual intercourse with a woman suffering from severe mental handicap) of the Mental Health (Northern Ireland) Order 1986(11).
14. An offence under article 3(b) of the "Loi relative à la protection des Femmes et des Filles mineures" (Law for the Protection of Women and Young Girls) 1914 (carnal knowledge of a woman suffering from a mental handicap).

(7) iv p.160.

(8) 1992 c.6.

(9) 48 & 49 Vict. c.69. The whole Act was repealed by Schedule 2 to the Sexual Offences (Scotland) Act 1976 (c.67) in relation to Scotland.

(10) Guernsey Ordres en Conseil (Orders in Council) Vol. V, p.74, as amended.

(11) S.I. 1986/595 (N.I. 4).

15. An offence under article 5 (rape) of the Sexual Offences (Northern Ireland) Order 2008⁽¹²⁾.
16. An offence under article 6 (assault by penetration) of that Order.
17. An offence under article 12 (rape of a child under 13) of that Order.
18. An offence under article 13 (assault of a child under 13 by penetration) of that Order.
19. An offence under articles 43(3)(a) and (b) (sexual assault of a person with a mental disorder impeding choice) of that Order.
20. Intercourse with a person under the age of 13 contrary to section 4(1) of the Sexual Offences Act 1992 (an Act of Tynwald)⁽¹³⁾.
21. An offence under section 1 (rape) of the Sexual Offences Act 2003⁽¹⁴⁾.
22. An offence under section 2 (assault by penetration) of that Act.
23. An offence under section 5 (rape of a child under 13) of that Act.
24. An offence under section 6 (assault of a child under 13 by penetration) of that Act.
25. An offence under section 30(1) and (3)(a) or (b) (sexual assault by penetration with a person with a mental disorder impeding choice) of that Act.
26. Any offence contrary to section 42 of the Armed Forces Act 2006 where the corresponding offence under the law of England and Wales is one which corresponds to an offence specified in this Schedule, provided that where it corresponds to an offence at paragraphs 1, 2, 3, 4 or 5 it was committed in the relevant circumstances applicable to that offence.

SCHEDULE 4

Article 4(4)

Non-Scottish offences leading to automatic listing in the adults' list

1. Murder contrary to the common law of England and Wales where the offence is committed against a child.
2. Murder contrary to the common law of Northern Ireland where the offence is committed against a child.
3. Murder contrary to the customary law of Jersey where the offence was committed against a child.
4. Murder contrary to the common law of Guernsey, Alderney or Sark where the offence was committed against a child.
5. Murder contrary to section 18 of the Criminal Code 1872 (an Act of Tynwald) where the offence was committed against a child.
6. Rape contrary to the common law of Northern Ireland.
7. Rape contrary to the customary law of Jersey.
8. Rape contrary to the common law of Guernsey, Alderney or Sark.
9. Rape contrary to section 1 of the Sexual Offences Act 1992 (an Act of Tynwald).
10. Sodomy contrary to the customary law of Jersey.

⁽¹²⁾ S.I. 2008/1769.

⁽¹³⁾ 1992 c.6 .

⁽¹⁴⁾ 2003 c.42.

11. An offence under section 4 of the Criminal Law Amendment Act 1885.
12. An offence under article 2 of the “Loi relative à la protection des Femmes et des Filles mineures” 1914.
13. An offence under article 122(1)(a) of the Mental Health (Northern Ireland) Order 1986.
14. An offence under article 3(b) of the “Loi relative à la protection des Femmes et des Filles mineures” 1914.
15. An offence under article 5 of the Sexual Offences (Northern Ireland) Order 2008.
16. An offence under article 6 of that Order.
17. An offence under article 12 of that Order.
18. An offence under article 13 of that Order.
19. An offence under articles 43(3)(a) and (b) of that Order.
20. Intercourse with a person under the age of 13 contrary to Section 4(1) of the Sexual Offences Act 1992 (an Act of Tynwald).
21. An offence under section 1 of the Sexual Offences Act 2003.
22. An offence under section 2 of the Sexual Offences Act 2003.
23. An offence under section 5 of the Sexual Offences Act 2003.
24. An offence under section 6 of the Sexual Offences Act 2003.
25. An offence under section 30(1) and (3)(a) or (b) of the Sexual Offences Act 2003.
26. Any offence contrary to section 42 (criminal conduct) of the Armed Forces Act 2006⁽¹⁵⁾ where the corresponding offence under the law of England and Wales is one which corresponds to an offence specified in this Schedule, provided that where it corresponds to an offence at paragraphs 1, 2, 3, 4 or 5 it was committed in the relevant circumstances applicable to that offence.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 14(3) and (4), 98(1) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) (“the Act”).

Section 14(1) and (2) of the Act requires the Scottish Ministers to list in the children’s list and the adults’ list individuals who meet the specified criteria for inclusion in either or both lists. Sections 14(3) and (4) empower the Scottish Ministers to specify what those criteria are to be. The effect of “listing” is to bar the individual from regulated work with children or adults in accordance with section 92 of the Act.

Article 3 specifies that the criteria which will result in listing in the children’s list are being convicted on indictment of any of the offences in Schedule 1 (Scottish offences); being charged on indictment with an offence listed in paragraphs 1 to 11 of Schedule 1, followed by acquittal of

⁽¹⁵⁾ 2006 c.52.

the charge on the ground of insanity, or a finding under section 55(2) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), and an order under section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding; and, in the case of existing scheme members, being convicted on indictment of any of the offences in Schedule 3 (non-Scottish offences).

Article 4 specifies that the criteria which will result in listing in the adults’ list are being convicted on indictment of any of the offences in Schedule 2 (Scottish offences); being charged on indictment with an offence listed in paragraphs 1 to 11 of Schedule 2, followed by acquittal of the charge on the ground of insanity, or a finding under section 55(2) of the 1995 Act, and an order under section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding; and, in the case of existing scheme members, being convicted on indictment of any of the offences in Schedule 4 (non-Scottish offences).

Article 5(1) provides that where a court convicts an individual of an offence listed in Schedule 1 or 2 (Scottish offences), it must give Ministers a statement of the offence, including a copy of the indictment and any other information which Ministers require for the purpose of determining whether the offence falls within Schedule 1 or 2.

Article 5(2) provides that where a court acquits an individual on the ground of insanity of an offence listed in paragraphs 1 to 11 of Schedule 1 or 2 (Scottish offences) or makes a finding under section 55(2) of the 1995 Act, and makes an order mentioned in section 57(2)(a) to (d) of the 1995 Act in relation to the acquittal or finding, it must give Ministers a statement of the charge of which the individual has been acquitted, including a copy of the indictment; a copy of the acquittal or finding under section 55(2) of the 1995 Act; a copy of any order mentioned in section 57(2)(a) to (d) of the 1995 Act; and any other information which Ministers require for the purpose of determining whether the offence falls within Schedule 1 or 2.