

# **PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **OVERVIEW**

#### **Part 1 – the Lists**

##### *Sections 15 and 16. Inclusion in the lists*

43. **Section 15** deals with inclusion in the children’s list and section 16 deals with inclusion in the adults’ list. There is one test no matter what triggered consideration for listing.
44. The nature of the tests in sections 15 and 16 take account of three important aspects of the listing process. Firstly, there is a wide range of triggers for consideration for listing: organisational referrals, court referrals, vetting information and inquiries. The information available from each of these triggers is likely to differ quite significantly. Secondly, the referral ground at section 2 is fairly wide and extends outside of the workplace (although organisational referrals require to meet work-related criteria in subsequent sections). Thirdly, an individual can be considered for listing for one type of regulated work because of an incident which took place in respect of the other (as provided for by section 12(1)(a)(ii) and (2)(a)(ii)). For example, an individual may be included on the children's list under section 15 because their conduct indicated that they were unsuitable to work with children but the incident(s) may relate exclusively to protected adults (e.g. abuse of an elderly resident in a care home).
45. For the reasons given in the preceding paragraph, the tests for inclusion on either list cannot be very specific. However, it is important to note that both tests rely on past conduct, i.e. an individual can only be listed on the basis of things they have done (evidenced through convictions, police intelligence, other vetting information, workplace incidents etc). No individual can be listed solely on the basis of anticipation of future conduct. It is also important to note that there is a margin of appreciation around the threshold for “unsuitability”, although this must be exercised in a manner compliant with ECHR. The test applied at sections 15 and 16 is that used in civil proceedings, i.e. that *on the balance of probabilities* the individual is unsuitable.