

PROTECTION OF VULNERABLE GROUPS (SCOTLAND) ACT 2007

EXPLANATORY NOTES

OVERVIEW

Part 1 – the Lists

Sections 17 – 20. Information relevant to listing decisions

46. The Central Barring Unit may use a number of sources of information as part of considering an individual for listing. An important principle enshrined in the Act is that the individual being considered for listing should have the opportunity to comment on all information which will be considered by the determination panel. Section 17 of the Act sets out the individual's right to make representation on all the information which will be used in making a listing decision. It is intended that regulations under section 42 will set out the detailed determination procedure and set time limits for making representation etc.
47. [Section 17\(2\)\(b\)](#) and (c) provide for the Scottish Ministers to consider information beyond that which led them to begin their consideration. Most importantly, the Scottish Ministers can consider vetting information about a scheme member ([section 17\(2\)\(b\)\(ii\)](#)) alongside any referral. It is intended that any listing decision is made on the basis of all relevant information about an individual and, for scheme members, this will include all relevant information from their scheme record.
48. [Section 18](#) effectively allows the Scottish Ministers as the Central Barring Unit to ask the Scottish Ministers as the Vetting and Disclosure Unit to provide police information about an individual who is not a scheme member for the purposes of making a determination. Subsections (1) and (2) give the Scottish Ministers access to relevant non-conviction information and subsection (4)(a) will, in practice, be used to access criminal convictions on the Criminal History System (operated by the Scottish Police Services Authority since 1 April 2007) and information relating to convictions and cautions on the Police National Computer.
49. The Act does not allow the Scottish Ministers to pass vetting information received in their capacity as the Vetting and Disclosure Unit to employers only (i.e. without also providing it to the individual). This differs from provision in the Police Act in respect of enhanced disclosures, whereby the police can provide the Vetting and Disclosure Unit with a sealed envelope to go to an employer, but not an individual. The Act does not allow this because the Scottish Ministers need to be able to use all the information they receive from the police when considering an individual for listing and all such information must be shared with the individual so that they can make representation or appeal a decision to list effectively.
50. [Section 19](#) gives the Scottish Ministers the power to obtain information from other Scottish and UK-wide public bodies when deciding whether to list an individual. For example, a referral about a doctor from a Health Board might cause the Scottish

*These notes relate to the Protection of Vulnerable Groups (Scotland)
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Ministers to require further information from the General Medical Council. Subsection (2) gives the Scottish Ministers the flexibility to ask about the individual's performance of his or her duties (paragraph (a)) and to put that in the context of, for example, more general child protection policies (paragraph (b)). Consideration of an individual's case should take into account the organisational context: in assessing a member of staff whose behaviour is inappropriate, it may be relevant to take into account whether such behaviour was endemic or unique to that individual.

51. **Section 20** gives the Scottish Ministers the power to obtain information from employers and employment agencies with an involvement with the individual. There is an offence for these persons of failing to provide the required information because they might otherwise choose not to cooperate. This compares with section 19 where there is no equivalent offence and this is because public bodies are subject to other remedies (e.g. judicial review) for failing to comply with statutory duties.