

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

EXPLANATORY NOTES

THE ACT

Section 5 – Inclusion in list following referral under section 2(1) or 4(1)

13. This section describes the procedures to be followed by the Scottish Ministers in considering a reference.
14. Subsections (1) and (2) require the Scottish Ministers to proceed to make a determination where they are satisfied that—
 - the referral is not vexatious or frivolous; and
 - the information submitted with the reference under section 2(1) or 4(1) indicates that it may be appropriate for the individual to which the reference relates to be listed.
15. Subsection (3) requires the Scottish Ministers to request the individual to submit observations on the information submitted with the reference; and the organisation will be invited to make observations on the individual's observations. It also allows, where the Scottish Ministers think it is appropriate, for further rounds of observations from both the referring organisation and the individual who has been referred for listing.
16. Subsection (4) requires the Scottish Ministers to make a determination as to whether or not to list an individual based on the reference, observations made and any other information submitted to them. Before making any determination the Scottish Ministers must be satisfied that the tests set out in subsection (5) are met. The tests are that the Scottish Ministers consider that the organisation which made the reference reasonably considered the individual to have harmed a child or placed a child at risk of harm and that the individual is unsuitable to work with children.
17. Subsection (6) requires the Scottish Ministers to notify the individual of the decision of whether to include him or her in the list. In addition, where the individual is, at the time the determination is made, working in a child care position and the present employer is known, a notice of the determination must also be served on that employer.