

PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT – COMMENTARY ON SECTIONS

Section 18 and the schedule – Minor and consequential amendments

58. **Section 18** introduces the schedule to the Act, which contains a number of minor and consequential amendments.
59. The offences at section 52A of the 1982 Act and sections 9 to 12 of the Act are added to section 16B of the Criminal Law (Consolidation) (Scotland) Act 1995 (commission of certain sexual acts outside the United Kingdom). The effect of this is that any act done by a British citizen or UK resident in a country or territory outside the UK which constituted an offence in that country and would also have been one of these offences if it had been done in Scotland shall constitute that offence, and proceedings can be taken in Scotland.
60. The offences at sections 52 and 52A of the 1982 Act and sections 1 and 9 to 12 of the Act are added to Schedule 1 to the Criminal Procedure (Scotland) Act 1995, in cases where the offences relate to children under 17 years of age. This provides the additional powers of arrest without warrant specified in section 21 of the 1995 Act and also allows child protection procedures to be undertaken.
61. Under section 48 of the Criminal Procedure (Scotland) Act 1995 a convicting court has the power to refer a child who was the victim of a Schedule 1 offence to the reporter to the children's panel. This additional protection would extend to any child living in the same household as the victim of one of these offences and any child living in the same household as a person convicted of one of the offences. The reporter could then refer to a children's hearing without the need to establish grounds of referral. Any specific measures needed to protect the child could be arranged by the children's hearing.
62. In addition to a referral by a convicting court at the time of the crime, inclusion of these offences in Schedule 1 would mean that children who are or become or are likely to become members of the same household as either the victim or the perpetrator, later on after the conviction, can be referred by a reporter to a hearing under section 52(2) (d), (e) or (f) of the Children (Scotland) Act 1995, even where there was no subsequent conviction with regard to those children.
63. It is important to note, however, that it is for the court to decide whether referral to the children's panel is appropriate in any particular case.
64. The schedule also makes a number of amendments to Schedule 3 to the Sexual Offences Act 2003 (offences which trigger certain provisions in Part 2 of that Act, notably the sex offender notification requirements). Paragraphs 45 and 46 of Schedule 3, which refer

*These notes relate to the Protection of Children and Prevention of Sexual Offences
(Scotland) Act 2005 (asp 9) which received Royal Assent on 12 July 2005*

to offences under sections 52 and 52A of the 1982 Act, are amended by sub-paragraphs 3(a) and (b) of the schedule to the Act so that the offences will apply for the purposes of Schedule 3 only if the child was under 16 and the offender was either 18 or over or was sentenced in respect of the offence to at least 12 months imprisonment.

65. The offence at section 1 of the Act is included at paragraph 59A of Schedule 3 to the 2003 Act in cases where the offender was 18 or over or has been sentenced in respect of the offence to at least 12 months imprisonment.
66. The offences at sections 9 to 12 of the Act are added at paragraphs 59B and 59C of Schedule 3 to the 2003 Act in cases where the victim was under 16 and the offender was 18 or over or has been sentenced in respect of the offence to at least 12 months imprisonment.
67. In respect of each of these offences, however, the schedule gives a discretion to the court so that it may determine that Part 2 of the 2003 Act should apply in cases where the specified conditions do not apply.