
EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 32(2) and 100(2) of the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#) (“the Act”). Section 32(1) defines a relevant offence for the purposes of Part 1 of the Act. A relevant offence is an offence listed in schedule 1 to the Act. Under section 7(1) of the Act, a court is required to refer to the Scottish Ministers an individual who is convicted of a relevant offence and under section 11 of the Act the Scottish Ministers are required to consider the individual for listing in the children’s list.

In exercise of the power in section 32(2), this Order modifies schedule 1 to the Act in order to modify the circumstances in which an individual is to be treated for the purposes of Part 1 of the Act as having committed a relevant offence.

Articles 3 to 6 modify paragraph 1 of schedule 1 which lists offences which can only be committed against a child. Paragraph 1(g) is omitted as this offence is being moved to paragraph 2 of schedule 1 since a step-child under the Criminal Law Consolidation (Scotland) Act 1995 (c.39) is a child up to the age of 21 (articles 3 and 9). Article 4 is a consequential modification as a result of the modification of article 3. Section 5(1) of the Criminal Law Consolidation (Scotland) Act 1995 is now included in the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 (SSI 2010/xx), (“Automatic Listing Order”) but sections 5(2) and (3) remain as relevant offences (article 5).

Article 6 includes offences under the Sexual Offences (Scotland) Act 2009 (asp 9) and inchoate and art and part offences in respect of offences listed in paragraph 1 of schedule 1 to the Act or listed in specified paragraphs of the Automatic Listing Order; it also makes provision for repealed offences which are similar to those in paragraph 1 of schedule 1 to the Act under which historic conduct might still be prosecuted.

Articles 7 to 11 modify paragraph 2 of schedule 1 to the Act which lists offences which are not necessarily committed against children, but which are qualified for the purposes of the Act as having a child victim. Article 7 inserts the offence of culpable homicide in relation to a child. Articles 8, 9 and 10 insert various specified statutory offences into paragraph 2 of schedule 1, in particular offences under the Sexual Offences (Scotland) Act 2009. Article 11 inserts provisions to deal with inchoate and art and part offences in respect of offences listed in paragraph 2 of schedule 1 to the Act or listed in specified paragraphs of the Automatic Listing Order; it also makes provision for repealed offences which are similar to those in paragraph 2 of schedule 1 to the Act under which historic conduct might still be prosecuted.