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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2010 No.**

**CHILDREN AND YOUNG PERSONS**

**PROTECTION OF VULNERABLE ADULTS**

**The Protection of Vulnerable Groups (Scotland) Act 2007  
(Relevant Offences) (Modification) Order 2010**

*Made* - - - - - *2010*

*Coming into force in accordance with article 1*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 32(2) and 100(2) of the Protection of Vulnerable Groups (Scotland) Act 2007<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 100(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Protection of Vulnerable Groups (Scotland) Act 2007 (Relevant Offences) (Modification) Order 2010 and comes into force on the same day as section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007.

**Modification of schedule 1 (relevant offences) to the Protection of Vulnerable Groups (Scotland) Act 2007**

2. Schedule 1 (relevant offences) to the Protection of Vulnerable Groups (Scotland) Act 2007 is modified in accordance with articles 3 to 11.

3. In paragraph 1, omit sub-paragraph (g).

4. In paragraph 1(h), for “that Act” substitute “the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

5. In paragraph 1, for sub-paragraph (i) substitute—

“(i) an offence under section 5(2) (attempt to have intercourse with a girl under 13) of that Act,

- (ia) an offence under section 5(3) (intercourse or attempt to have intercourse with a girl of over 13 and under 16) of that Act,”.

6. After paragraph 1(v) insert—

- “(w)an offence under section 20(1) and (2)(a) (sexual assault on a young child (under 13) by penetration of the vagina, anus or mouth by any means) of the Sexual Offences (Scotland) Act 2009 (asp 9) where the conviction is in summary proceedings,
- (x) an offence under section 20(1) and (2)(b) to (e) (sexual assault on a young child) of that Act,
- (y) an offence under section 21 (causing a young child to participate in a sexual activity) of that Act,
- (z) an offence under section 22 (causing a young child to be present during a sexual activity) of that Act,
- (za) an offence under section 23 (causing a young child to look at a sexual image) of that Act,
- (zb) an offence under section 24 (communicating indecently with a young child etc.) of that Act,
- (zc) an offence under section 25 (sexual exposure to a young child) of that Act,
- (zd) an offence under section 26 (voyeurism towards a young child) of that Act,
- (ze) an offence under section 28 (having intercourse with an older child) of that Act,
- (zf) an offence under section 29 (engaging in penetrative sexual activity with or towards an older child) of that Act,
- (zg) an offence under section 30 (engaging in sexual activity with or towards an older child) of that Act,
- (zh) an offence under section 31 (causing an older child to participate in a sexual activity) of that Act,
- (zi) an offence under section 32 (causing an older child to be present during a sexual activity) of that Act,
- (zj) an offence under section 33 (causing an older child to look at a sexual image) of that Act,
- (zk) an offence under section 34 (communicating indecently with an older child etc.) of that Act,
- (zl) an offence under section 35 (sexual exposure to an older child) of that Act,
- (zm)an offence under section 36 (voyeurism towards an older child) of that Act,
- (zn) an offence under section 42 (sexual abuse of trust) of that Act,
- (zo) an offence in respect of attempting or conspiring to commit any offence referred to in this paragraph,
- (zp) an offence in respect of aiding and abetting, inciting, counselling or procuring any offence referred to in this paragraph,
- (zq) an offence in respect of attempting or conspiring to commit any offence listed in paragraphs 9, 10 or 11 of Schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010(a),
- (zr) an offence in respect of aiding and abetting, inciting, counselling or procuring any offence listed in paragraphs 9, 10 or 11 of Schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010,

- (zs) an offence which—
  - (i) is similar in nature to an offence referred to in this paragraph, and
  - (ii) was provided for in an enactment which is no longer in force or was an offence at common law which has been abolished by an enactment.”.

**7.** Before paragraph 2(a) insert—

“(za) commits an offence of culpable homicide in relation to a child,”.

**8.** After paragraph 2(a) insert—

“(aa) commits an offence under section 170 (penalty for fraudulent evasion of duty etc.) of the Customs and Excise Management Act 1979 (c.2) in relation to goods prohibited to be imported under section 42 (indecent or obscene articles) of the Customs Consolidation Act 1876 (c.36), if the prohibited goods included indecent photographs of persons under 16,”.

**9.** After paragraph 2(b) insert—

“(ba) commits an offence under section 2 (intercourse with a step-child) of that Act in relation to a child,”.

**10.** After paragraph 2(e) insert—

“(ea) commits an offence under section 83 (offence of ill treatment and wilful neglect) of the Adults with Incapacity (Scotland) Act 2000 (asp 4) in relation to a child,

(eb) commits an offence under section 311(1) and (2)(a) (non-consensual sexual acts) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) in relation to a child where the conviction is in summary proceedings,

(ec) commits an offence under section 311(1) and 2(b) (non-consensual sexual acts) of that Act in relation to a child,

(ed) commits an offence under section 313 (persons providing core services: sexual offences) of that Act in relation to a child,

(ee) commits an offence under section 315 (ill treatment and wilful neglect of mentally disordered person) of that Act in relation to a child,

(ef) commits an offence under section 4 (trafficking people for exploitation) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) in relation to a child,

(eg) commits an offence under section 1 (offence of female genital mutilation) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8) in relation to a child,

(eh) commits an offence under section 3 (aiding and abetting female genital mutilation) of that Act in relation to a child,

(ei) commits an offence under section 3(1) and 2(a) (sexual assault by penetration of the vagina, anus or mouth by any means) of the Sexual Offences (Scotland) Act 2009 (asp 9) in relation to a child where the conviction is in summary proceedings,

(ej) commits an offence under section 3(1) and (2)(b) to (e) (sexual assault) of that Act in relation to a child,

(ek) commits an offence under section 4 (sexual coercion) of that Act in relation to a child,

(el) commits an offence under section 5 (coercing a person into being present during a sexual activity) of that Act in relation to a child,

(em) commits an offence under section 6 (coercing a person into looking at a sexual image) of that Act in relation to a child,

(en) commits an offence under section 7 (communicating indecently etc.) of that Act in relation to a child,

- (eo) commits an offence under section 8 (sexual exposure) of that Act in relation to a child,
- (ep) commits an offence under section 9 (voyeurism) of that Act in relation to a child,
- (eq) commits an offence under section 11 (administering a substance for sexual purposes) of that Act in relation to a child,
- (er) commits an offence under section 46 (sexual abuse of trust of a mentally disordered person) of that Act in relation to a child.”.

11. After paragraph 2(g) insert—

- “(h) commits an offence in respect of attempting or conspiring to commit any offence referred to in this paragraph,
- (i) commits an offence in respect of aiding and abetting, inciting, counselling or procuring any offence referred to in this paragraph, other than an offence referred to in sub-paragraph (eh),
- (j) commits an offence in respect of attempting or conspiring to commit any offence listed in paragraphs 1, 2, 3, 5, 6, 7 or 8 of Schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010(a) in relation to a child,
- (k) commits an offence in respect of aiding and abetting, inciting, counselling or procuring any offence listed in paragraphs 1, 2, 3, 5, 6, 7 or 8 of Schedule 1 to the Protection of Vulnerable Groups (Scotland) Act 2007 (Automatic Listing) (Specified Criteria) Order 2010 in relation to a child,
- (l) commits an offence in relation to a child which—
  - (i) is similar in nature to an offence referred to in this paragraph, and
  - (ii) was provided for in an enactment which is no longer in force or was an offence at common law which has been abolished by an enactment.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
Date

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(a) S.S.I. 2010/ .

## 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.

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