

**PROTECTION OF CHILDREN (SCOTLAND) ACT 2003  
INFORMATION NOTE**

**DISQUALIFIED FROM WORKING WITH CHILDREN LIST**



SCOTTISH EXECUTIVE

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INFORMATION NOTE

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Scottish Executive Education Department  
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### Information Note Summary

- The Act provides for Scottish Ministers to keep the Disqualified from Working with Children List.
- An individual working with children, whether paid or unpaid, is to be referred to the List when they have harmed a child or put a child at risk of harm **and** have been dismissed or moved away from contact with children as a consequence.
- Organisations will have a duty to refer people to the List backed up by an offence for failing to make referrals.
- The List will include those convicted of an offence against a child, when the court considers them to be unsuitable to work with children.
- Those on the List (other than provisionally) will commit a criminal offence if they apply to or work with children.
- It will be an offence for an organisation to knowingly employ a person to work with children if that person is on the List (other than provisionally).
- Safeguards for the individual are included in the Act including the right to appeal to a sheriff.
- The fact that someone is on the List will be released as part of a Disclosure available from Disclosure Scotland.
- The List helps to strengthen the safeguards already in place to protect children.

## Introduction

- 1 This information note outlines the provisions in the new Protection of Children (Scotland) Act 2003 which aims to improve safeguards for children by preventing unsuitable people from working with them. This note is for information only and is not an interpretation of the law which only the courts can provide. It will take some time to implement this new legislation and it will not come into force before Spring 2004 at the earliest. The Act is available on the HMSO website ([www.hmso.gov.uk](http://www.hmso.gov.uk)) – or a printed version can be purchased from The Stationery Office Limited (Tel 0870 600 5522 or at [www.tso.co.uk](http://www.tso.co.uk)), ISBN 0 10 590047 8, cost £5.00.

## Referrals to the List

- 2 The Act provides for Scottish Ministers to maintain a List of persons unsuitable to work in a child care position (for definition see Annex A) in either paid employment or as unpaid volunteers. The List will be known as the Disqualified from Working with Children List. For the purposes of this Act a child is under 18. An organisation will have a duty to make a referral to Scottish Ministers if a person working in a child care position harms a child or puts a child at risk of harm **and** is dismissed or moved away from access to children as a consequence. A person in a child care position who harms a child or puts a child at risk of harm and would have been dismissed if they had not resigned, retired, been made redundant or left at the end of a temporary contract, must also be referred to Scottish Ministers. Employment agencies<sup>1</sup> and agencies for the supply of nurses will also have a duty to make referrals to the List if they decide not to do any further business with an individual on the grounds that the individual has harmed a child or placed a child at risk of harm. Employment businesses<sup>1</sup>, the Scottish Commission for the

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<sup>1</sup> Employment agency and employment business have the same meanings as in the Employment Agencies Act 1973

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Regulation of Care, the Scottish Social Services Council and the General Teaching Council for Scotland will also be able to make referrals to the List as will formal inquiries involving children.

- 3 Scottish Ministers will consider the evidence submitted with the referral. Where on initial assessment it is considered that it may be appropriate to include the person on the Disqualified from Working with Children List, the person will be provisionally listed while further consideration is given to the case. Provisional listing does not disqualify the individual from working with children, but Disclosures for child care positions will show that the person is on the List provisionally.
- 4 Once provisionally listed, the individual will be given the opportunity to submit observations on the evidence put forward with the referral and the referring organisation will in turn be invited to comment on these observations. In normal circumstances the period of provisional listing will not exceed 6 months. Scottish Ministers will then decide the case and a person will be listed if Scottish Ministers are satisfied that:
  - the organisation which made the referral reasonably considered the individual to have harmed a child or placed a child at risk of harm; **and**
  - the individual is unsuitable to work with children.
- 5 Both the person concerned and any organisations known to be employing that person in a child care position will be notified of the provisional listing and outcome of the decision process.

- 6 The List will also include those convicted of an offence against a child, when the court considers them to be unsuitable to work with children. Again, the person concerned and any organisations known to be employing that person in a child care position will be notified of the listing.

### New offences

- 7 The following offences are contained in the Act:
- Those on the List (other than provisionally) will be disqualified from working with children and will commit a criminal offence if they apply for, offer to do, accept or do any work in a child care position.
  - An organisation<sup>2</sup> that knowingly employs a disqualified person to work in a child care position; procures work in a child care position for a disqualified person; or fails to remove a disqualified person from a child care position will be guilty of an offence.
  - An organisation will also be guilty of an offence if they fail to comply with the duty to make referrals to the List as outlined at paragraph 2 above.

### Access to List information

- 8 Access to the information on the List will only be released as part of a Disclosure issued in relation to a child care position. Disclosure Scotland (part of the Scottish Criminal Record Office) issues Disclosures under Part V of the Police Act 1997 and further information can be found on their website ([www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)) or by telephoning 0870 609 6006. Voluntary organisations requiring Disclosures for volunteers can access them through the Central Registered Body in Scotland. More information on this service can be obtained on their website ([www.crbs.org.uk](http://www.crbs.org.uk)) or by telephoning 01786 849777.

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<sup>2</sup> "Organisation" means: a) a body corporate or unincorporate  
b) an individual who, in the course of a business, employs or otherwise gives work to other persons  
c) the managers of an educational establishment

## Safeguards for the individual

- 9 In drawing up the procedures for the establishment of the Disqualified from Working with Children List, careful account has been taken of the rights of the individual and the need for protection from malicious referrals. As well as giving the individual the opportunity to comment on the evidence submitted with the referral, the individual will have the right to appeal to a sheriff against inclusion on the List. If the appeal is unsuccessful a further appeal can be made to a sheriff principal and finally with the leave of the sheriff principal to the Court of Session.
- 10 There is also scope to apply to a sheriff for removal from the List when circumstances change, for example when a person has undergone successful drug rehabilitation.

## Links with other UK information

- 11 The Department for Education and Skills maintain Lists of people disqualified from working with children in England and Wales. Northern Ireland is in the process of setting up a similar list. The Act provides for information from all of these Lists to be included in a Disclosure for a child care position in Scotland and for a disqualification imposed elsewhere in the UK to apply in Scotland too.

## Other proceedings

- 12 It is important to note that there are cases where an incident will need to be reported to a professional or regulatory body and/or the police as well as to Scottish Ministers. A referral to Scottish Ministers has to be made in the circumstances outlined in paragraph 2 above even if the incident which led to a child being harmed or put at risk of harm is the subject of a criminal investigation or enquiry by a professional or



regulatory body such as the General Teaching Council for Scotland or the Scottish Social Services Council. A final determination will not be made by Scottish Ministers until those other proceedings are concluded.

## Next steps

- 13 The Act places a duty on all organisations to make referrals to the List in appropriate circumstances. Organisations employing people in child care positions will want to review their procedures to ensure they are well placed to fulfil their duty to make referrals to Scottish Ministers. During the passage of the Bill, Scottish Ministers recognised that the voluntary sector would need additional support and guidance to help them comply with the new legislation and work is in hand to provide this assistance.
- 14 As the Protection of Children (Scotland) Act 2003 creates a new offence for knowingly employing a person in a child care position if they are on the List, organisations will want to put in place procedures for ensuring Disclosures are obtained.
- 15 Further detailed guidance will be issued as implementation proceeds. Details of progress with implementation will be posted on the Scottish Executive website ([www.scotland.gov.uk](http://www.scotland.gov.uk)) but if you have specific queries please contact Karen Wastle ([DWCL@scotland.gsi.gov.uk](mailto:DWCL@scotland.gsi.gov.uk) or 0131 244 5486) in the first instance.

## Distribution

- 16 **Please circulate this information note widely within your organisation and to any other relevant contacts.** This note *Protection of Children (Scotland) Act 2003 – Information Note* and the full distribution list *Protection of Children (Scotland) Act 2003 – Information Note Distribution List* can be viewed in the Publications section of the Scottish Executive website ([www.scotland.gov.uk](http://www.scotland.gov.uk)).
- 17 For additional copies of this information note and/or a paper copy of the distribution list, please contact: Hazel Warne ([DWCL@scotland.gsi.gov.uk](mailto:DWCL@scotland.gsi.gov.uk) or 0131 244 3735).

## Conclusion

- 18 This new Act will significantly enhance the protection of children but it is important to stress that it complements rather than replaces other child protection measures. All organisations entrusted with the care of children need to practice the full range of pre-employment checks. This includes interviews, the full investigation of the applicant's employment history and taking up references. Supervision during any probationary period is also recommended where practical.

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## Annex A

### **PROTECTION OF CHILDREN (SCOTLAND) ACT 2003 (2003 ASP 5)**

#### **SCHEDULE 2<sup>3</sup>**

*(introduced by section 18(1))*

#### **CHILD CARE POSITIONS**

- 1** For the purposes of this Act a “child care position” is a position –
- (a) whose normal duties include work in an establishment mentioned in paragraph 2 below;
  - (b) whose normal duties include providing, or working for an organisation which provides, a care home service or an independent health care service which is provided exclusively or mainly for children;
  - (c) whose normal duties include work on day care premises;
  - (d) whose normal duties include caring for, training, supervising or being in sole charge of children;
  - (e) whose normal duties involve unsupervised contact with children under arrangements made by a responsible person;
  - (f) whose normal duties include caring for children under the age of 16 in the course of the children’s employment;
  - (g) a substantial part of whose normal duties include supervising or training children under the age of 16 in the course of the children’s employment;
  - (h) mentioned in paragraph 6 below; or
  - (i) whose normal duties include supervising or managing an individual in the individual’s work in any position mentioned in paragraphs (a) to (h) above.

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- 2 The establishments referred to in paragraph 1(a) are –
  - (a) an institution which is exclusively or mainly for the detention of children;
  - (b) a hospital which is exclusively or mainly for the reception and treatment of children;
  - (c) an educational establishment; and
  - (d) a home which is exclusively or mainly for children and is provided by a local authority under section 59 (provision by local authorities of residential and other establishments) of the Social Work (Scotland) Act 1968 (c.49) or section 7 (provision by local authorities of residential accommodation for persons with mental disorder) of the Mental Health (Scotland) Act 1984 (c.36).
- 3 For the purposes of paragraph 1(c) above, work done on any premises is treated as not being done on day care premises to the extent that it is done –
  - (a) in a part of the premises in which children are not looked after; or
  - (b) at times when children are not looked after there.
- 4 The duties referred to in paragraph 1(d) and (e) above do not include (respectively):
  - (a) caring for, training, supervising or being in sole charge of children in the course of the children's employment, or
  - (b) duties involving contact with children in the course of the children's employment.
- 5 The reference in paragraph 1(e) above to unsupervised contact is to contact in the absence of any responsible person or carer; and in this paragraph, "carer" means a person who holds a position such as is mentioned in paragraph 1(d) above.

- 6** The positions mentioned in paragraph 1(h) above are –
- (a) manager of an educational establishment;
  - (b) member of a committee, including joint committee, of a local authority (or any sub-committee thereof) which is concerned with the provision of education, accommodation, social services or health care services to children;
  - (c) chief social work officer of a local authority;
  - (d) director of education of an education authority;
  - (e) charity trustee of a children’s charity;
  - (f) member of a children’s panel established by section 39(1) (formation of children’s panels) of the Children (Scotland) Act 1995 (c.36);
  - (g) member of a Children’s Panel Advisory Committee (including a member of a sub-committee of such committee); and
  - (h) member of a joint advisory committee established under paragraph 8(1) (arrangements for Children’s Panel Advisory Committee to be formed for more than one local authority area) of Schedule 1 to that Act of 1995 (including a member of a sub-committee of such committee).
- 7** For the purposes of paragraph 6(e) above a charity is a children’s charity if –
- (a) the individuals who are workers for the charity normally include individuals working in child care positions; or
  - (b) the main purpose of the charity is to provide benefits for children.
- 8** For the purposes of paragraph 7 above, an individual is a worker for a charity if the individual does work under arrangements made by the charity.

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- 9 The arrangements referred to in paragraph 8 above do not include any arrangements made for purposes which are merely incidental to the purposes for which the charity is established.
- 10 For the purposes of paragraph 1(i) above, the holder of a position –
- (a) only supervises an individual if the holder of the position supervises the day-to-day performance of the individual's duties; and
  - (b) only manages an individual if –
    - (i) the individual is directly responsible to the holder of the position for the performance of the individual's duties; or
    - (ii) the holder of the position has authority to dismiss the individual.
- 11 For the purposes of this schedule, the following are responsible persons in relation to a child –
- (a) the child's parent or guardian and any person aged 18 or over with whom the child lives;
  - (b) the person in charge of any establishment mentioned in paragraph 2 above in which the child is accommodated, is a patient or receives education (and any person acting on behalf of such a person);
  - (c) a person who provides a service which is registered under Part 1 of the 2001 Act and which consists of providing day care of children;
  - (d) any person holding a position mentioned in paragraph 6 above; and
  - (e) any person holding a position in a body which is a children's charity.

**12** In this schedule –

“care home service” has the same meaning as in the 2001 Act;

“charity” means any body which is entitled, by virtue of section 1(7) (bodies entitled to be described as a Scottish charity) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40), to describe itself as “a Scottish charity”;

“charity trustee” means any person concerned in the management or control of a charity;

“day care of children” has the meaning given by section 2(20) (care services) of the 2001 Act;

“day care premises” means premises at which a person provides a service registered under Part 1 of the 2001 Act which consists of day care of children;

“detention” means detention by virtue of an order of a court or under an enactment;

“educational establishment” and “managers of an educational establishment” have the same meaning as in the Education (Scotland) Act 1980 (c.44);

“employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services;

“hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978 (c.29); and

“independent health care service” has the same meaning as in the 2001 Act.

**13** The Scottish Ministers may, for the purpose of amending the definition of “child care position”, by order make any amendment of this schedule (apart from this paragraph) which they think appropriate.

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