

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

GUIDANCE FOR ORGANISATIONS



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SCOTTISH EXECUTIVE



PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

GUIDANCE FOR ORGANISATIONS

Scottish Executive Education Department
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INTRODUCTION

New laws to strengthen the safeguards for children will come into force on **10 January 2005**. This guidance note is a practical guide to help organisations understand the new Act¹ and to help them put in place the procedures they will need to follow in order to comply with the law and help improve child protection. **It is not a definitive interpretation of the law which only the courts can provide.**

The Protection of Children (Scotland) Act 2003 applies to your organisation if you employ (paid or unpaid) people to work² in child care positions. Annex A explains what is meant by child care position for the purposes of this new legislation. The definition is widely drawn and covers a range of posts, not just those involved in directly caring for, training, supervising or being in sole charge of children. For example it covers all those whose normal duties include work in educational establishments or hospitals which are mainly for children. You are advised to check Annex A to identify any positions in your organisation that fall into the definition of child care position. It is not possible to list or describe all the actual posts covered by the definition or offer general advice on the interpretation of Annex A as much depends on the circumstances specific to each post.

Please disseminate this guidance widely to those in your organisation with an interest. Further copies can be obtained from Blackwell's Bookshop by telephoning 0131 622 8283 or 0131 622 8258. The guidance is also in the publications section of the Scottish Executive website (www.scotland.gov.uk).

^{1,2} See Glossary

SUMMARY OF THE ACT

- The Act plugs a gap in existing safeguards which allows unsuitable people to move from one child care post to another without detection if they have not been convicted of an offence.
- The Act provides for Scottish Ministers to keep the Disqualified from Working with Children List (DWCL).³
- An individual working in a child care position⁴, whether paid or unpaid, is to be referred to Scottish Ministers for inclusion on the DWCL, when they have harmed⁵ a child⁶ or put a child at risk of harm and have been dismissed or moved away from contact with children as a consequence.
- Organisations⁷ have a duty to refer such individuals to the Scottish Ministers for possible inclusion on the DWCL.
- Failure to make a referral is an offence under the Act.
- The DWCL will also include those convicted of an offence against a child, when the court has referred them because it considers them to be unsuitable to work with children.
- Those on the DWCL (other than provisionally) are disqualified from working with children and will commit a criminal offence if they apply to or work with children.
- The Act extends disqualifications which already exist in England and Wales to Scotland too, except for those listed provisionally on the list kept for England and Wales under the Protection of Children Act 1999.

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- It will be an offence for an organisation to knowingly employ a person to work with children if that person is disqualified from working with children.
- The Act provides safeguards for an individual including the right to appeal to a sheriff against inclusion on the DWCL.
- The fact that someone is disqualified from working with children will be released as part of a Disclosure for a child care position available from Disclosure Scotland.

WHEN TO MAKE A REFERRAL

Section 2 of the Act sets out the circumstances in which organisations are to refer individuals to the Scottish Ministers for consideration for inclusion on the DWCL. An organisation will be guilty of an offence if it does not make referrals to the DWCL in the circumstances set out in the Act.

An organisation has a **duty** to refer an individual who is or has been working in a child care position if the individual has (whether or not in the course of their work):

- harmed a child or placed a child at risk of harm and been dismissed as a consequence.
- harmed a child or placed a child at risk of harm and the organisation would have dismissed⁸ or considered dismissing⁹ the individual as a consequence, but for the fact that the individual resigned, retired or was made redundant before the organisation could take action to dismiss them.
- harmed a child or placed a child at risk of harm and as a consequence was transferred to a position within the organisation which is not a child care position.
- harmed a child or placed a child at risk of harm and the organisation would have dismissed or considered dismissing the individual as a consequence, but for the fact that the individual was on a fixed term contract which was about to expire or had expired before the organisation could consider dismissal proceedings.

^{8, 9} See Glossary

An organisation also has a **duty** to refer an individual if information not available to the organisation at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available. A referral will be required where the organisation has formed the opinion that, if the information had been available at the time the organisation would have dismissed the individual or would have considered dismissing the individual on the grounds that the individual had (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm.

It is important to note that a referral to the DWCL is additional to the organisation taking all appropriate steps to notify the police and any appropriate professional bodies.

Retrospective Referrals

The Act allows for, but does not require, organisations to make retrospective referrals. An organisation may refer the case of an individual to the DWCL where a child was harmed or put at risk of harm and the dismissal, resignation, retirement, redundancy, or transfer took place prior to the Act coming into force. There is no time bar on making referrals. It will be the organisation's judgement as to the nature of the harm or risk of harm to a child, the availability and adequacy of the information about the case and the wider public interest that will be of importance rather than the age of the case on its own.

Employment Businesses

An employment business, as defined by the Employment Agencies Act 1973, employs individuals and then supplies those individuals to work for others. The **duty** to make a referral to the DWCL applies to employment businesses if the individual has been offered or supplied by the organisation for work in a child care position if any of the following has arisen:

- The individual has (whether or not in the course of their work) harmed a child or placed a child at risk of harm and been dismissed as a consequence;
- The individual has (whether or not in the course of their work) harmed a child or placed a child at risk of harm and the organisation would have dismissed or considered dismissing the individual as a consequence, but the individual resigned, retired or was made redundant before the organisation could dismiss them;
- The organisation has, on such ground, decided not to offer or supply the individual for further work in a child care position.

Employment Agencies

An employment agency or an agency for the supply of nurses, does not directly employ individuals, but places individuals with other employers. The individual may then either be employed directly by that agency or other employer. An employment agency may make referrals to the DWCL the case of an individual who is or has been working in a child care position if any of the following has arisen, but does not have a duty to do so:

- The agency has decided not to do any further business with the individual on the ground that the individual has (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm: or
- The agency has decided on such ground not to find the individual further work, or to offer or supply the individual for further work, in a child care position.

HOW TO MAKE A REFERRAL

To assist organisations, a form for making referrals is at Annex B. It sets out the information which should be submitted with a referral if available. It is important to note that a referral should still be made even if some of the information is unavailable. The form can be downloaded in PDF format from the Act's websection on the Scottish Executive's website at www.scotland.gov.uk/childprotection or a paper copy can be obtained by telephoning 0131 244 1567.

The envelope containing the referral and supporting information should be clearly marked with "Restricted – Personal Information" and sent to:

The Manager
PO Box Number 23628
Edinburgh
EH6 6ZH

Any enquiries about the referral process can be posted to the above address or sent to:

DWCL@scotland.gsi.gov.uk or

Fax 0131 244 0709

A general enquiry line is available at Tel 0131 244 1567

DETERMINATION PROCESS

On receipt of a referral from an organisation the Scottish Ministers must determine whether an individual should be put on the DWCL. The procedures to be followed in reaching the determination are summarised here. They are prescribed in Scottish Statutory Instrument 2004 No 523 entitled *The Protection of Children (Scotland) Act 2003 Determination Regulations 2004*. There is an accompanying information note on the determination procedures – *Protection of Children (Scotland) Act 2003 Procedure Note – Determination Process*. Please see Annex D for details of how to obtain copies of these publications.

The Scottish Ministers have nominated a number of senior officials to form a panel to make decisions on their behalf. The panel of three will be chaired by a Senior Civil Servant, with a member of Her Majesty's Inspectorate of Education, and a member of Social Work Services Inspectorate. A case management team provide support to the panel and deal with the day to day administration of cases.

Initial Assessment

When a referral is made, an acknowledgement will be sent to the referring organisation and the individual concerned will be notified of the fact that they have been referred to Scottish Ministers for possible inclusion on the DWCL. The individual will be advised of the referring organisation.

An initial assessment of the evidence submitted will be made. The Scottish Ministers have to be satisfied that a referral is not vexatious or frivolous before proceeding. If any key information is missing the referring organisation will be asked to provide that within 14 days.

The Scottish Ministers may decide not to proceed any further in relation to a referral, for example, where it is clear that the

individual was not in fact working in a child care position or where they have not been dismissed or moved away from a child care position as a result of harming a child or placing a child at risk of harm. The individual and referring organisation will be notified as soon as possible when a case is dismissed at this preliminary stage.

Provisional Listing

If, following the initial assessment of the referral, the Scottish Ministers are satisfied that it may be appropriate for the individual to be included in the DWCL, a provisional listing will be made. The individual will be notified of the provisional listing as will the referring organisation and any other organisations as appropriate eg other organisations for which the individual is working in a child care position or relevant professional bodies. Provisional listing will not normally last for any longer than 6 months unless there are other proceedings on going (see below).

An individual who is provisionally included on the DWCL is not banned from working in a child care position and an organisation will not be committing an offence if they employ a provisionally listed person in a child care position. The provisional listing will, however, be shown on a Disclosure check for a child care position to allow prospective employers to take the provisional listing into account when considering the appointment. Should an organisation decide to employ an individual in a child care position although they are on the DWCL provisionally, that organisation may wish to contact the case management team so that they are notified of the decision on final listing. If in due course the decision is to include the individual on the DWCL then the employer will need to take action to comply with the full listing including where appropriate removing the individual from work in a child care positions.

Inviting Observations on the Evidence

At the same time as notifying the individual of their provisional listing, the referral and all of the supporting information submitted by the organisation will be copied to the individual concerned who will be invited to submit observations on it. All the information provided in connection with the case will be shared with the individual concerned and the individual's observations on the information will be shared with the organisations. On occasions the information supporting a referral may contain information on people not connected with the referral or may contain details of a sensitive nature or where release could prejudice an ongoing criminal or other (eg disciplinary) investigation. In such circumstances the organisation making the referral or anyone submitting information or observations on a referral will need to take their own legal advice including on any data protection implications. Any request to withhold information or details will be considered by the Scottish Ministers on its own merits but is likely to be granted only where fully justified.

The Act sets a deadline for the retention of an individual provisionally on the DWCL. In any event it is desirable to keep to a minimum the period of provisional listing and so the regulations specify time limits for submitting observations. In most cases 21 days from the date of the notice will be allowed for submitting observations but the letter inviting observations will give the time limit in any particular case. These time limits may be extended when there is good reason to do so on application to the DWCL case manager.

The Decision on the Referral

The process of gathering observations and information will continue until the Scottish Ministers are satisfied that they have sufficient information to enable them to come to a decision as to whether to include an individual on the DWCL. Before an individual's name is added to the DWCL the Scottish Ministers need to be satisfied that:

- the organisation which or person who made the reference reasonably considered the individual to have (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm: and
- that the individual is unsuitable to work with children.

If satisfied, the individual's name will be added to the full (rather than provisional) DWCL. The individual will be notified of the listing as will others with an interest as considered appropriate, including any organisation for whom the individual is known to be working in a child care position at the time of the determination.

Other Proceedings

A decision on listing may be deferred pending the outcome of other proceedings in connection with the incident which led to the referral. For example if the incident is the subject of legal proceedings which includes civil or criminal proceedings in or before any court or tribunal or a professional body is conducting a disciplinary hearing. It is therefore important that organisations notify Scottish Ministers of any known legal or other proceedings at the time of the referral or subsequently as appropriate. If a decision has been taken to include the person on the DWCL provisionally then the person may remain on the DWCL provisionally for up to 6 months after such legal or disciplinary proceeding have been finally determined as defined in the Act.

APPEALS AND APPLICATIONS FOR REMOVAL

Appeals Procedures

An individual who is included in the DWCL (otherwise than provisionally) has the right to appeal to the sheriff within three months of the decision of the Scottish Ministers to include them on the DWCL. The Scottish Ministers will be party to the appeal and will normally provide evidence as to the circumstances for the inclusion of the individual in the DWCL. Representatives from the referring organisations and other interested parties may also be required to attend as witnesses to give evidence.

An appeal shall be allowed unless the sheriff is satisfied that:

- the individual has harmed a child or placed a child at risk of harm; and
- the individual is unsuitable to work with children.

The individual or the Scottish Ministers have a right of appeal against any decision of the sheriff to allow or dismiss the appeal. There is a further right of appeal to the sheriff principal and to the Court of Session with leave of the sheriff principal.

Application for Removal from the List

In recognition that circumstances can change and that individuals can undergo successful rehabilitation for problems such as drug and alcohol misuse, a listed individual may be able to apply to the sheriff for a review of their listing. If satisfied that the individual is not unsuitable to work with children, the sheriff will direct that they are removed from the DWCL.

SCREENING STAFF FOR CHILD CARE POSITIONS

New Appointments

The Act introduces a new offence which organisations will commit if they offer work in a child care position to a person who is disqualified from working with children. It will also be an offence to procure child care work for a disqualified person or to fail to remove a disqualified individual from such work. It is a defence for an organisation charged with an offence to prove that the organisation did not know and could not reasonably be expected to have known that the individual was at the time of the alleged offence disqualified from working with children.

Annex C explains the ways in which a person can be disqualified from working with children. To find out if a person is disqualified from working with children, organisations will want to obtain a Disclosure under Part V of the Police Act 1997. Further information on how to obtain a Disclosure is available from the Disclosure Scotland website (www.disclosurescotland.co.uk). Voluntary organisations requiring Disclosures 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).

Existing Staff and Volunteers

One of the deterrents in the legislation takes the form of a new offence which an organisation would commit if it failed to remove a disqualified individual from a child care position. The primary purpose of this provision is to ensure that newly disqualified individuals were not allowed to remain in post. However, there is a possibility that those already disqualified in England and Wales may have secured child care positions in Scotland. This arises because under the 2003 Act disqualifications which previously applied to England and Wales only will now apply in Scotland too.

The Scottish Executive is considering how to manage checks on existing staff and volunteers not just in relation to the 2003 Act but also in connection with the recommendations arising from the Bichard Inquiry into the tragic events in Soham. For the time being the decision has been taken not to bring into force the offence for failing to remove an individual. Until that offence provision is commenced there is no legal duty under the 2003 Act to check existing staff and volunteers. Organisations should however still ensure that they do not continue to employ a person in a child care position if they are notified of a new disqualification. Further advice on checks on existing staff and volunteers will be issued as soon as possible.

It is very important to note that Disclosures are only a part of effective recruitment measures. A clear Disclosure does not in itself confirm that a person is suitable to work with children and it is important to follow other rigorous recruitment and employment practices including interviews, taking up references, checking qualifications, supervising staff during probation and monitoring performance on an ongoing basis.

NEW OFFENCES AND THE EXTENT OF THE LEGISLATION

Offences

A number of new offences are created by the Act. It will be an offence for:

- an individual who is disqualified from working with children to apply for, offer to do, accept or do any work (paid or unpaid) in a child care position.
- an organisation to fail to comply with the duty to make referrals to the DWCL.
- an organisation to offer work in a child care position to, or procure work for, an individual who is disqualified from working with children.
- an organisation to fail to remove an individual who is so disqualified from such work. **(NB this offence is not being commenced for the time being and further advice will be issued in due course. The previous section on screening staff refers.)**

The penalty for any of the offences outlined above will be:

- on summary conviction, imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both
- on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Defences

The Act provides a defence for an individual where the individual can prove that they did not know and could not reasonably be expected to have known that at the time of the alleged offence they were disqualified from working with children.

Similarly the Act provides a defence for organisations to prove that they did not know and could not reasonably be expected to have known of the disqualifications.

Extent of the Legislation

The Act applies to Scotland and to child care positions in Scotland and to organisations operating in Scotland. Organisations based in Scotland but employing an individual to work in a child care position within the meaning of the Act outside Scotland, will have a duty to make a referral if that individual is dismissed or moved away from that position because they harmed a child or put a child at risk of harm.

PROTECTION FROM DEFAMATION ACTIONS

The Act makes it clear that for the purposes of the law of defamation, qualified privilege applies to any information submitted with a reference and to any observations invited by the Scottish Ministers to enable them to make their decision on listing. This means that unless an organisation acts with malice in making a referral or in making observations there will be no grounds for a defamation case. Where a statement made in good faith turns out to be wrong, the person providing that would be protected. On the other hand, where a person knowingly makes a false accusation or deliberately provides misleading information, this could be considered malicious and they will not have the protection afforded by the Act if a defamation claim is made. Malice must be proved for a claim of defamation to be successful.

GLOSSARY

Child – for the purposes of this Act a child is defined as anyone under the age of 18.

DWCL – is short hand in this guidance for the Disqualified from Working with Children List which is to be established under section 1 of the Act.

Harm – is not defined in the Act other than to say that harm includes harm which is not physical harm. It would therefore include neglect as well as physical harm. Whether there was harm or risk of harm will depend on all the circumstances of the case.

Organisations – for the purposes of the Act, an organisation means:

- a body corporate or unincorporated;
- an individual who in the course of a business employs or otherwise gives work to other persons;
- the managers of an educational establishment.

The Act or The 2003 Act – throughout this guidance this refers to the Protection of Children (Scotland) Act 2003 unless otherwise specified.

Work – The definition of work for the purposes of this Act is very broad. It applies to more than just paid employment. It includes any kind of work, whether paid or unpaid, whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract. It also includes an office holder under legislation and caring for or supervising children whilst participating in any other organised activity. The definition of work therefore covers the public, private, voluntary and volunteering sectors.

Would have dismissed – covers the situation where as a result of the organisation’s investigations (and possibly disciplinary hearing) they have established that misconduct has occurred which has harmed a child or put a child at risk of harm and the individual concerned should be dismissed or moved to a non child care post. However, before the organisation can act on this decision, the individual resigns, retires, is made redundant or their short term contract comes to an end. The important point to note is that a referral should be made if the organisation has come to the conclusion that dismissal was appropriate in the circumstances after carrying out the necessary enquiries into the facts.

Would have considered dismissing – covers the situation where an allegation has come to light that a person harmed a child or put a child at risk of harm. However, before the organisation has had the opportunity to fully investigate, the individual retires, resigns, is made redundant or their short term contract comes to an end. The organisation may be able to conclude the investigation, but where this proves impossible a referral should be made where on the evidence assembled the organisation would have dismissed or moved the individual to a non child care post. A referral is not required where the organisation would not have taken action to dismiss or move the individual.

Annex A

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

SCHEDULE 2¹⁰

(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.

¹⁰ Reproduced under the terms of Crown Copyright Policy Guidance issued by the Queen's Printer for Scotland

- 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.

- 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; and
 - (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.

Annex B

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

REFERRAL TO THE DISQUALIFIED FROM WORKING WITH CHILDREN LIST

Full name of the individual including maiden name and any aliases,
if known.

Date and place of birth.

Current address and length of time at this address.

Any known previous addresses and dates of occupancy.

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National Insurance Number.

Details of any identity checks which have been carried out to verify the personal details.

Confirmation that the person occupied a child care post within the meaning of Schedule 2 of the Act.

Detailed explanation about the alleged misconduct and how the individual harmed a child or placed a child at risk of harm.

Details of investigations carried out by the organisation to date and their conclusions. This should include copies of all relevant papers including statements, notes of interviews, witness statements, minutes of meetings and minutes/notes of disciplinary hearings.



Details of the organisation's relevant disciplinary policies or practices or conditions of employment.



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Details of action taken by the organisation against the individual, for example has he or she been dismissed or transferred from a child care position.

Information on any related police involvement or the involvement of any other agency eg General Teaching Council for Scotland or Scottish Social Services Council. **Please note that a referral to the DWCL should be made in addition to notifying the police and any relevant professional bodies as appropriate.**

Confirmation from the organisation as to whether any dismissal is subject to appeal and if so what stage the appeal is at and what further stages it may go through.



Information as to whether the individual is known to be engaged in any other work or volunteering involving contact with children, along with any appropriate details.



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I hereby refer the above named person to Scottish Ministers for inclusion on the Disqualified from Working with Children List.

Signed

Name in Block Capitals

Position in Organisation

Date

Address

Tel No

E-mail

Annex C

DISQUALIFICATIONS FROM WORKING WITH CHILDREN

There are four ways in which a person can be disqualified from working with children and these are outlined here. The disqualifications described in 1 to 3 below applied in England and Wales only, but section 17 of the Protection of Children (Scotland) Act 2003 extends these disqualifications to Scotland too. Disclosure Scotland will have access to the Lists outlined at 1&2 below from 10 January 2005 and will include any information from the various lists on standard or enhanced disclosures issued in connection with a child care position. Disqualifications outlined at 3 below are part of the court disposal and are included in disclosures.

1. PROTECTION OF CHILDREN ACT 1999

This Act came into effect in October 2002. It placed the existing Department of Health Consultancy Index (a list of persons considered to be unsuitable to work with children) onto a statutory basis. It also provided for organisations to make new referrals to the Protection of Children Act List if a person in a child care position harmed a child or put a child at risk of harm and was suspended, dismissed or moved away from access to children as a consequence. Those on the list are disqualified from working with the children. This list is now managed by the Department for Education and Skill and more information can be obtained from:

The Manager
The Protection of Children Act List
Ground Floor Area E
Mowden Hall
Staindrop Road
Darlington DL3 9BG

2. LIST 99 AND DIRECTIONS UNDER SECTION 142 OF THE EDUCATION ACT 2002

The Department for Education and Skills maintains List 99 which contains the names of people who are subject to a direction made by the Secretary of State under section 142 of the Education Act 2002. These directions prohibit or restrict a person from carrying out work in an educational setting. Inclusion on List 99 may mean that a person can continue to work in an educational setting providing they comply with certain conditions. However, a person on List 99 and subject to a direction under section 142 given on the grounds that they are unsuitable to work with children, is disqualified from working with children by virtue of section 35 of the Criminal Justice and Court Services Act 2000. Disqualifications under section 142 came into effect in January 2001. More information can be obtained on the DfES website at www.teachernet.gov.uk/barringprocedures. The List 99 team can be contacted on:

Tel: 01325 392101 or 392108

Fax: 01352 392178 or

Email: TSM.Casework@dfes.gsi.gov.uk

Or by writing to:

Child Protection Division
DfES
Ground Floor
Mowden Hall
Darlington
DL3 9BG

3. DISQUALIFICATION ORDERS UNDER CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

Since January 2001, courts in England have issued disqualification orders as part of the sentence imposed on certain offenders at conviction. These orders disqualify the individual from working with children. Those subject to disqualification orders will have been convicted of an offence against a child and will have received a sentence of 12 months or more.

4. PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

Individuals included (other than provisionally) in the Disqualified from Working with Children List established under section 1 of the Act.

Future Developments

Northern Ireland is currently setting up a statutory list of persons disqualified from working with children. When it is set up, an order will be made to extend the disqualifications to Scotland and arrangements will be made to release this information on disclosures. Similar orders can be laid in the future to ensure that corresponding disqualifications outwith the UK can be applied in Scotland.

Annex D

Associated Documents and Guidance

| Publication | Hard Copy | Web Based Version |
|--|--|---|
| Protection of Children (Scotland) Act 2003 | The Stationery Office Limited Telephone: 0870 600 5522 ISBN – 0 10 590047 8 Cost £5.00 | Available on HMSO website www.hmso.gov.uk |
| Protection of Children (Scotland) Act 2003 – Information Note | Telephone the Case Management Team on 0131 244 1567 or email: dwcl@scotland.gsi.gov.uk | Publications section of the Scottish Executive Website www.scotland.gov.uk Link available on www.scotland.gov.uk/childprotection |
| Protection of Children (Scotland) Act 2003 Determination Regulations 2004 Scottish Statutory Instrument 2004 | The Stationery Office Limited Telephone: 0870 600 5522 | Available on HMSO website www.hmso.gov.uk |
| Protection of Children (Scotland) Act 2003 Procedural Note – Determination Process | Blackwell's Bookshop Telephone orders and enquiries 0131 622 8283 or 0131 622 8258 | Publication Section on the Scottish Executive Website www.scotland.gov.uk Link available on www.scotland.gov.uk/childprotection |
| Protection of Children (Scotland) Act 2003 Guidance for Organisations | Telephone the Case Management Team on 0131 244 1567 or email: dwcl@scotland.gsi.gov.uk or Blackwell's Bookshop Telephone orders and enquiries 0131 622 8283 or 0131 622 8258 | Publications section of the Scottish Executive Website www.scotland.gov.uk Link available on www.scotland.gov.uk/childprotection |
| Protection of Children (Scotland) Act 2003 (Disqualified from Working with Children List) A Guide and Training Pack for the Voluntary Sector | Telephone the Central Registered Body in Scotland's Helpline on 01786 849777 | www.crbs.org.uk |



SCOTTISH EXECUTIVE

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