



PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

GUIDANCE TO THE VOLUNTARY SECTOR ON WHO NEEDS TO BE CHECKED AGAINST THE DISQUALIFIED FROM WORKING WITH CHILDREN LISTS

Scottish Executive Education Department
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Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

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Purpose

This guidance is intended to help people in the voluntary sector consider whether a position in which they are asking someone to work needs them to be checked against the Disqualified from Working with Children Lists. It is written as a general guide to aid consideration and is not intended, and cannot be considered, to be definitive or legal advice on the Protection of Children (Scotland) Act 2003 or for specific positions.

If having considered the position in the light of this and other guidance available you are still uncertain specific advice should be sought from organisations providing guidance on the Act or from your own legal advisers. Organisations from which you can seek further guidance include headquarters offices if you belong to a membership organisation, your local Council for Voluntary Services or Volunteer Centre, an appropriate umbrella body such as Youth Scotland, Youthlink or SCVO and the CRBS Helpline (phone: 01786 849777 or www.crbs.org.uk). This list is not exhaustive and there may be others who can help.

What Does the Act Mean for My Organisation in Checking People We Want to Appoint?

The Act makes it an offence, among others, for an organisation to offer work (paid or unpaid) in a child care position to anyone who is disqualified from working with children. It applies when someone new to the organisation is offered work in a child care position and when someone already in the organisation is moved into a child care position for the first time.

Who Do I Need To Check?

Most people would readily understand child care positions as covering people such as nursery nurses, teachers or those working in a crèche. But the Act includes its own definitions of “organisation” and “child care position” which mean that it covers a wider set of positions, some of which might not normally be thought of as child care positions. It is therefore important that each individual position is carefully considered.

There are two stages to think through when considering whether or not a position would fall within the scope of the Act and therefore require a check to be carried out. The stages you need to consider are:

- first, whether your group is an organisation within the terms of the Act; and then
- second, whether the post is one which falls within the definition in the Act of child care position.

It is possible that even when your group is included in the scope of the Act the position in which you are asking someone to work is not a child care position as defined and there is therefore no legal requirement under this Act to check whether the individual is disqualified from working with children.

How Do I Know Whether My Organisation Is Covered?

The Act has been deliberately drafted to cover a very wide range of organisations from the large and structured to the small and informal. This is to ensure that our children are protected whenever they are taking part in activities organised by groups of individuals or are in their care. The full definition of organisation is set out at Annex A.

Most voluntary organisations are likely to be covered by the meaning of “body corporate or unincorporate”. This means an organisation can be:

- any size, from a large local or national concern to a small group of half a dozen or so individuals;
- of any nature, for example very formally set up with a written constitution, or less formally run with the purpose of the group being clearly understood but where nothing is set out in writing;
- one with a formal management structure, perhaps involving a Committee or Board of Directors, or one run by members of the group itself with no formal management structure but where everyone understands who is in charge;
- part of a wider body of affiliated groups such as the Scouts, or stand alone with no connection to a wider body, for example local Saturday morning football teams.

Some examples of the kinds of organisations that will be covered include:

- youth clubs and after school groups;
- uniformed organisations such as the Girl Guides, Boys Brigade and Scouts;
- sports clubs and groups such as football and swimming clubs;
- arts groups such as local drama or dance groups;
- outdoor pursuits clubs;
- skills based groups, such as photography or craft clubs.

Personal arrangements, such as friends agreeing to look after each other's children, would not be covered by the Act.

If your group falls, or is likely to fall, within the definition of organisation you then need to consider whether the position within which an individual is being asked to work falls within the definition of child care position.

What Is A Child Care Position?

There are many positions, including those outside of the voluntary sector, covered in the definition of child care position in the Act. The full range is set out in Schedule 2 to the Act, see Annex A. The sections most likely to apply to positions in voluntary organisations define child care positions as those:

- whose normal duties include caring for, training, supervising or being in sole charge of children (paragraph 1(d));
- whose normal duties involve unsupervised contact with children under arrangements made by a responsible person (paragraph 1(e)); or
- whose normal duties include supervising or managing an individual in a child care position (paragraph 1(i)).

In addition, for those voluntary sector bodies that are also Scottish charities then trustees of that charity who are concerned with its management or control may be covered under paragraph 6(e) of Schedule 2.

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Examples of the kind of positions covered by the sections set out above in relation to children and young people are:

- **caring for** – care worker, befriender, lay children’s advocate, nurse, home help, crèche worker;
- **training** - sports leader, music group leader, dance class leader;
- **supervising** – classroom assistant, life guard, pool attendant, Scout leader, volunteer helper which could include parent helper;
- **sole charge of** – youth worker, leader of faith groups, golf coach where this is carried out by an individual
- charity trustees of a children’s charity.

If the work includes any of the activities covered a key question to consider is whether this is part of the normal duties of the position.

For example, in a local football club there may be five adults who were asked to help in the running of the club. Three of them were asked to join specifically to coach the teams within the club. Their normal duties would therefore involve training or supervising children. One was asked to join to organise refreshments which they do only when the coaches of the teams are there although, once at the site, they will have some dealings with the children and will be known by them to be part of the club. The fifth was asked to care for the kit which is delivered to and picked up from their home such that they rarely if ever attend on site.

The first three are clearly within child care positions within the meaning of the Act and would therefore need to be checked.

The normal duties of the fourth person organising the refreshments appear from the information available not to involve any of the activities set out in the definitions and may therefore not require a check. But if the contact with children at the site is frequent or if they take on a supervisory role, perhaps for children who are taking a turn at sitting out a game, they may fall into a child care position and therefore require a check.

The normal duties of the fifth person do not involve any of the activities set out in the definitions and therefore there would be no legal requirement to have them checked against the lists. If this person was asked on a very infrequent and ad hoc basis, say once a year or so, to help out with transport for getting some of the children to games this would be unlikely to change the nature of their role to that of a childcare position.

Many organisations have policies on risk assessment that require different pre-appointment checks to be made on people not in child care positions as defined in the Act and for which there is therefore no legal requirement under this Act for a check against the Lists. This may be based on organisational policy or understanding of best practice in relation to the particular activities or posts being considered. **Nothing in this guidance on the scope of the Act should be taken to be discouraging such practice as the Act is not intended as a substitute for good recruitment and appointment policies.**

Can I Appoint Someone Under Supervision While Waiting For Their Check To Clear?

When someone offers their services as a volunteer they are often keen to start the work they are going to do as soon as possible. Organisations are concerned that, if the post is one which falls within the definition of child care position and the individual therefore needs to be disclosure checked, the check itself may take some time to complete if there are delays in the system. This is a particular concern for organisations that have completed all their own recruitment checks more quickly than the disclosure check system.

One possible way to work round this difficulty is to allow the person to take on the work under supervision, for a limited period, pending receipt of the final check. Disclosure checks are just one part of wider recruitment practices which should include other checks, for example taking up references. They are also only one part of good management and child protection practices and procedures which all organisations putting people in positions of care for children should have in place. If all other checks have been satisfactorily carried out, the disclosure application has been signed and sent off without delay, and only the disclosure check is outstanding the organisation may want to consider the risk to the children in their care by carrying out its own risk assessment of the specific post and deciding whether they want to appoint someone in a supervised capacity on a temporary basis.

This solution may not be appropriate for some organisations, for example where supervision is not possible. A risk assessment by the organisation of the specific position is therefore important.

If an organisation pursues this approach it may wish to advise the individual that they would be committing an offence themselves if they are disqualified from working with children and apply for any work in a child care position.

ANNEX A

Section 18

“organisation” means-

- (a) a body corporate or unincorporate;
- (b) an individual who, in the course of a business, employs or otherwise give work to other persons;
- (c) the managers of an educational establishment;

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SCHEDULE 2 *(introduced by section 18(1))* CHILD CARE POSITIONS

- 1 For the purpose 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 a day care premises;
 - (d) whose normal duties include care 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.

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) or the Mental Health (Scotland) Act 1984 (c36).

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.

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- 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 – ASSOCIATED DOCUMENTS AND GUIDANCE

Publication	Hard Copy	Web-Based Version
Protection of Children (Scotland) Act 2003	The Stationery Office Ltd. Tel: 0870 600 5522 ISBN – 0 10 590047 8 Cost £5.00	Available on HMSO website at www.hmso.gov.uk
Protection of Children (Scotland) Act 2003 – Information Note	Telephone the Case Management Team on 0131 244 1567 or e-mail dwcl@scotland.gsi.gov.uk	Publication Section of the Scottish Executive website www.scotland.gov.uk Link available www.scotland.gov.uk/childprotection
Protection of Children (Scotland) Act 2003 – Determination Regulations 2004 Scottish Statutory Instrument 2004 No. 523	The Stationery Office Ltd Tel: 0870 600 5522	Available on HMSO website at 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 of the Scottish Executive website www.scotland.gov.uk Link available www.scotland.gov.uk/childprotection
Protection of Children (Scotland) Act 2003 – Guidance for Organisations	Telephone the Case Management Team on 0131 244 1567 or e-mail dwcl@scotland.gsi.gov.uk or Blackwell’s Bookshop Telephone orders and enquiries 0131 622 8283 or 0131 622 8258	Publication Section of the Scottish Executive website www.scotland.gov.uk Link available 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
Protection of Children (Scotland) Act 2003 – Guidance to the Voluntary Sector on Who Needs to be Checked against the Disqualified from Working with Children Lists	Telephone the Central Registered Body in Scotland’s Helpline on 01786 849777 or Blackwell’s Bookshop Telephone orders and enquiries 0131 622 8283 or 0131 622 8258	Publication Section of the Scottish Executive Website www.scotland.gov.uk Link available on www.scotland.gov.uk/childprotection www.crbs.org.uk www.youthlink.co.uk