

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

DETERMINATION PROCESS





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

DETERMINATION PROCESS

Scottish Executive Education Department
December 2004

© Crown copyright 2004

ISBN: 0-7559 4424 0

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B38831 12/04

Published by the Scottish Executive, December, 2004

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

The text pages of this document are printed on recycled paper
and are 100% recyclable

Introduction

- 1 The Protection of Children (Scotland) Act 2003 (the Act) provides for Scottish Ministers to maintain a list of persons considered unsuitable to work with children. The Disqualified from Working with Children List (DWCL) will be operational from 10 January 2005 and the aim of this note is to set out the procedures which will be followed in deciding if those referred to the Scottish Ministers should be included on the DWCL. It supplements the Act and the Determination Regulations 2004 which are contained in a Scottish Statutory Instrument (SSI). A list of associated guidance on the Act is at Annex D along with details of how to access that guidance, the Act and the SSI.

Determination Panel

- 2 During the passage of the legislation concerns were expressed about the decision making process. The Scottish Ministers agreed that it would be appropriate to authorise a panel of civil servants to consider the referrals and decide cases on their behalf. The well established Carltona Doctrine allows Ministers to authorise officials of appropriate seniority, to act on their behalf, although Ministers remain answerable to Parliament. The arrangements for establishing the panel to decide if a person is to be included in the DWCL either provisionally or fully or to decide if the case is to be dismissed are set out here.
- 3 Ministers will authorise responsible officials to determine cases under section 5 and 6 of the Act on behalf of Scottish Ministers. A panel of three authorised officials will decide cases and any decision must be either unanimous or be taken by a majority.

The panel will be made up of:

- The Chair, who will be a senior civil servant with responsibility for the development of policy for, or the provision of, services relating to children and young persons;
- One member who is experienced in monitoring the provision of social work services or responsible for advising Ministers on child protection matters; and
- One member who is experienced in monitoring the provision of education services or responsible for advising the Scottish Ministers on matters relating to education.

4 A case management team will operate an electronic case management system, and will deal with all the administration associated with the referrals to the DWCL. The case management team will also provide administrative support to the panel.

Court Referrals

5 A person convicted of an offence against a child can be referred by the courts to the Scottish Ministers for inclusion in the DWCL. Section 10 of the Act sets out the procedures the courts are to follow in deciding when a referral is to be made. On receipt of a referral from the court the Scottish Ministers must include the individual in the DWCL and there is no discretion. Case officers will therefore enter the details onto the DWCL and notify the individual and any appropriate organisations accordingly. Where the conviction which resulted in the referral to the List is overturned, the court will notify Scottish Ministers and the individual will be removed from the DWCL (see paragraph 8 below).

See Flow Chart at Annex A

Organisational Referrals

6 Sections 2, 3 & 4 of the Act provide for organisational referrals and the chart below sets out the procedures to be followed. These sections apply where the individual is or has been working in a child care position. Before making a determination, Section 5 of the Act requires the Scottish Ministers to be satisfied that a referral is:

- Not vexatious or frivolous; and
- That the information submitted with the referral indicates that it may be appropriate for the individual to whom the referral relates to be listed.

These are referred to in this Note as “initial tests”. Where the referral does not meet these initial tests then it will be dismissed and the referring organisation and individual will be notified by the case management team. Where the initial tests are met the individual will be added to the DWCL provisionally and the individual and appropriate organisations will be notified accordingly by the case management team. Thereafter all decisions will be taken by the determination panel authorised by Ministers to take decisions on their behalf.

See flow chart at Annex B

Individuals Named in Certain Inquiries

7 Section 6 of the Act allows Scottish Ministers to consider the inclusion in the DWCL of individuals named in relevant inquiries as defined in Section 6. The chart below sets out the procedures to be followed.

See flow chart at Annex C

Duplicate Referrals for the Same Individual

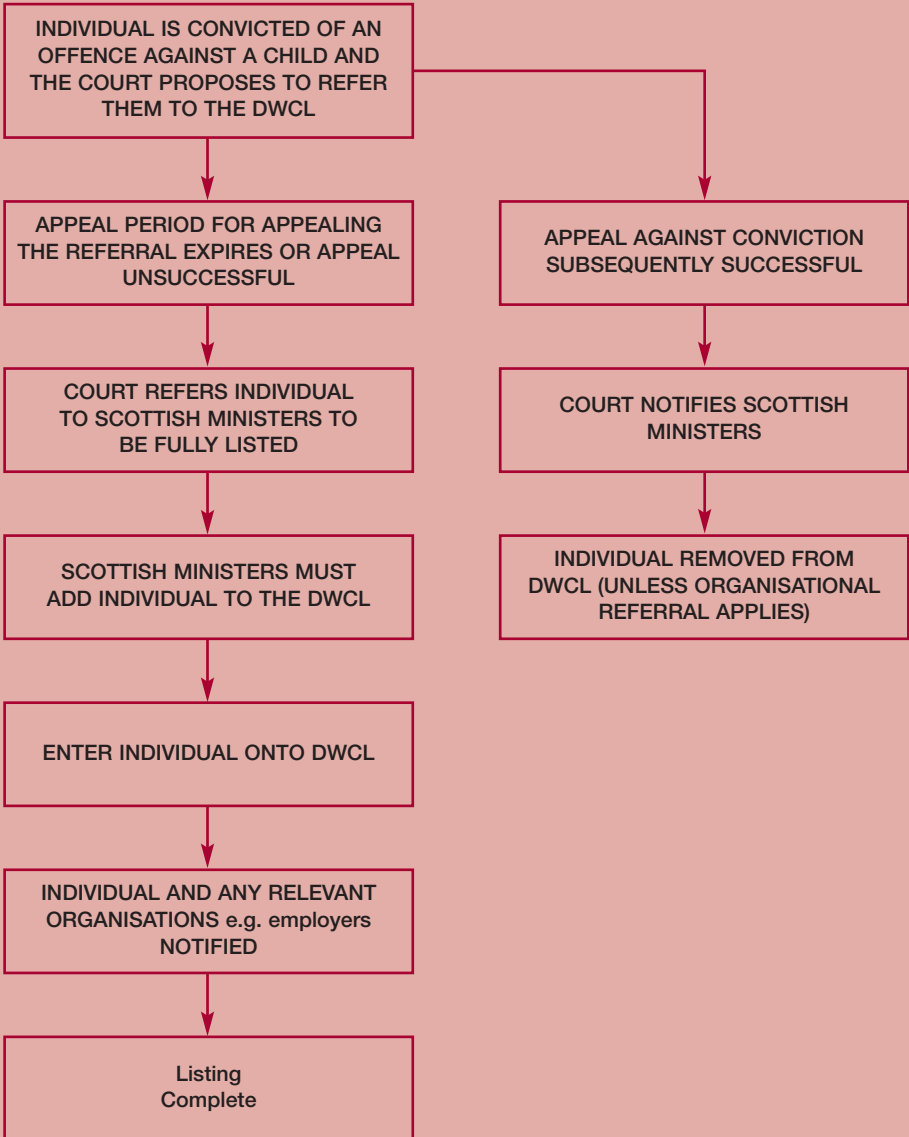
- 8 Where an individual is referred to the DWCL for the same incident by an organisation as well as the court, a duplicate entry will not be included in the DWCL. A separate file will be established for each new referral and the files will be linked on the case management system. A change in status for any of the files will result in a review of the status of the others. For example if the conviction which led to a court referral is subsequently overturned on appeal, the listing relating to the court referral will be removed, but any organisational referrals for the same incident will be reviewed to see if the person should continue to be on the DWCL on account of the organisational rather than the court referral.
- 9 The individual will be notified immediately of any change in their listing status as will any relevant organisations.

Appeals and Applications for Removal from the DWCL

- 10 Sections 14 and 15 of the Act set out the provisions for applying for removal from the DWCL or appealing against inclusion in the DWCL. In each case the application is made to the sheriff in the first instance.

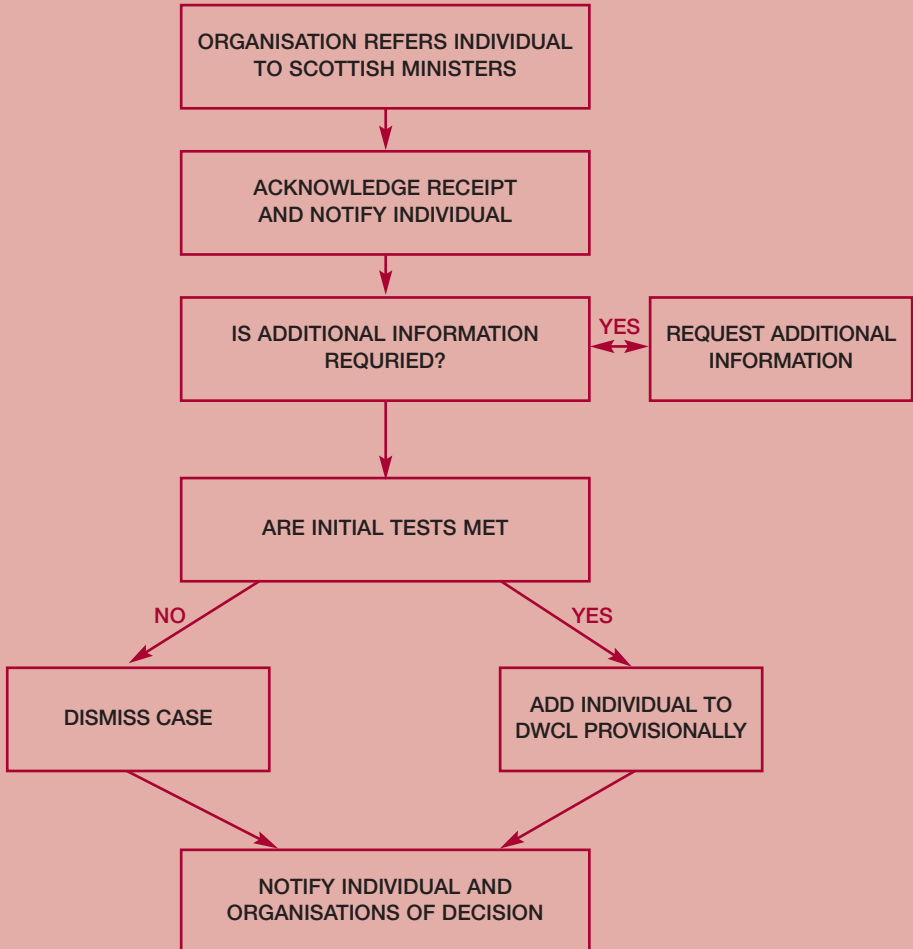
Annex A

Court Referrals

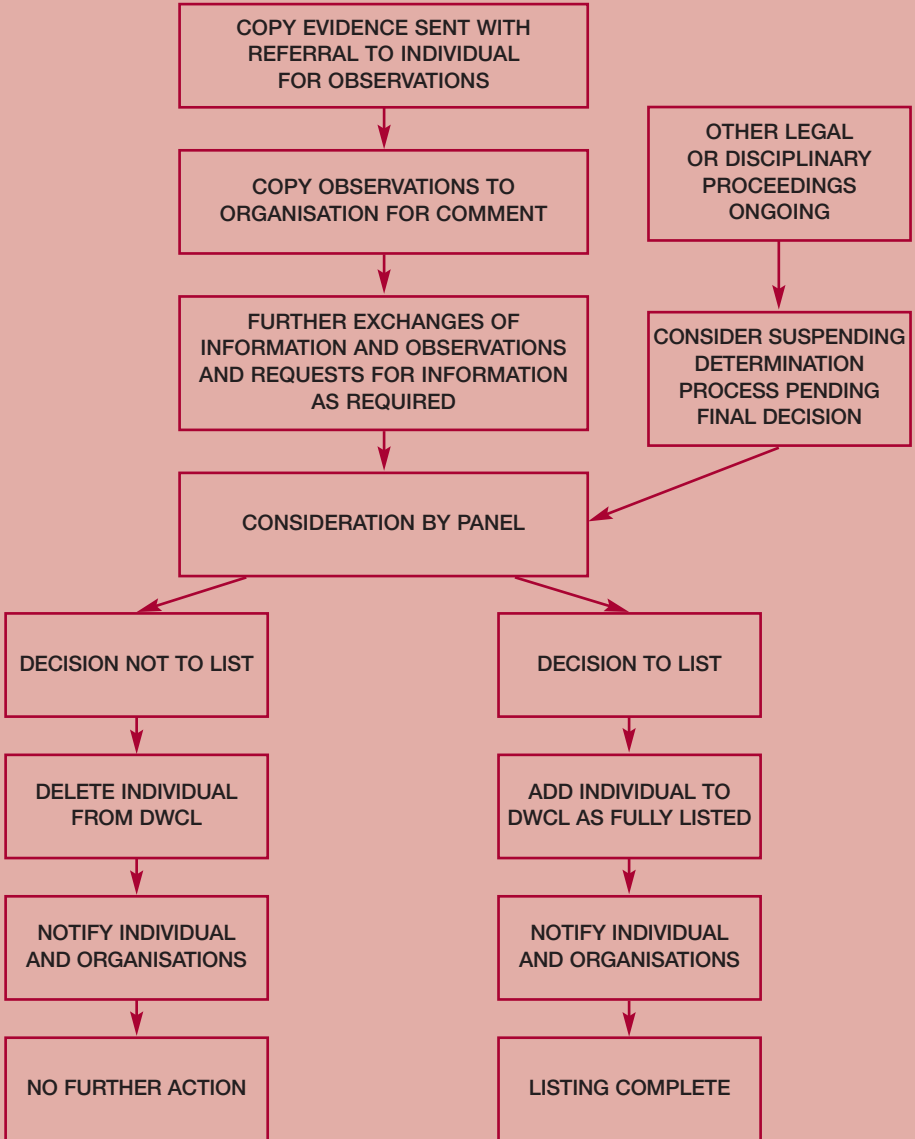


Annex B

Organisational Referral Preliminary Stage

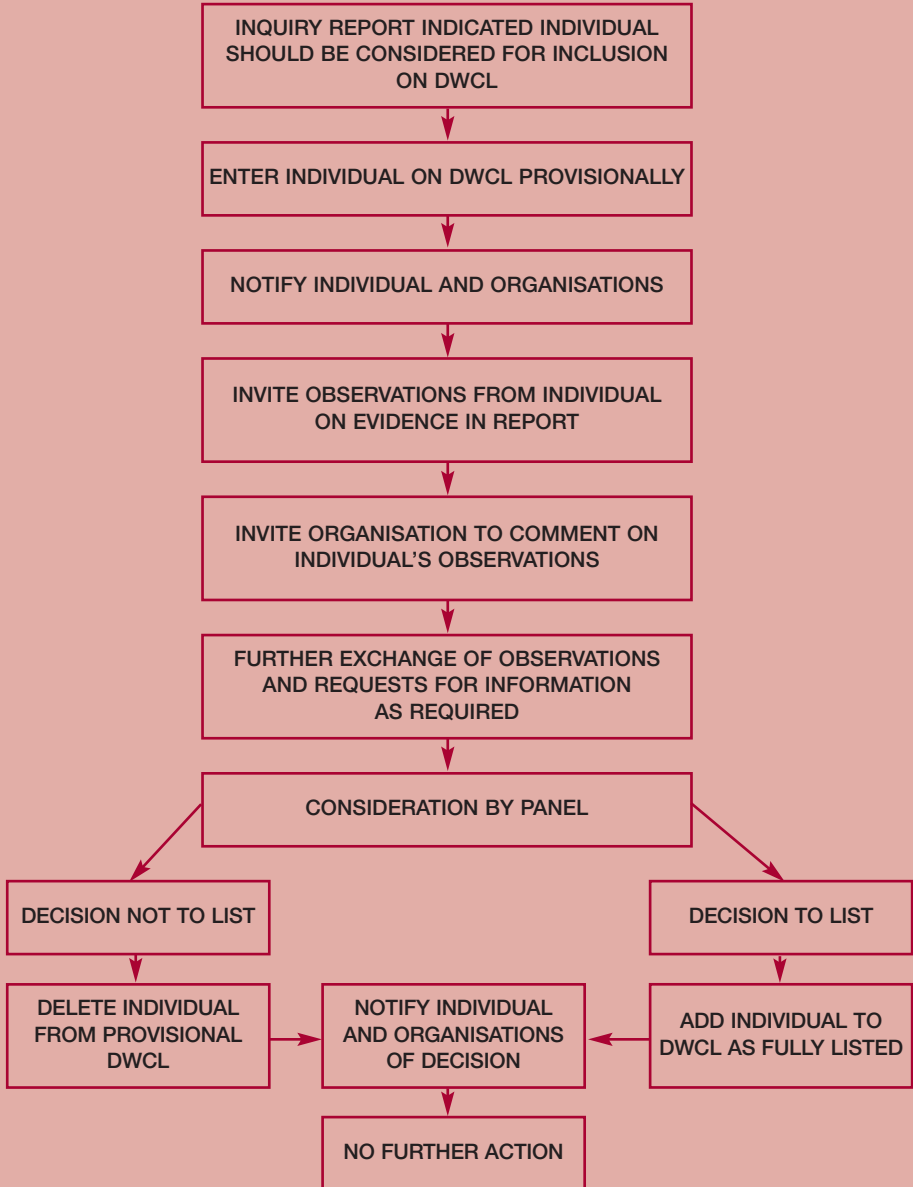


Organisational Referral Determination Stage



Annex C

Inquiry Referrals



Annex D

Associated Documents and Guidance

Publication	Hard Copy	Web Based Version
The 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 Guidance Note 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

© Crown copyright 2004

This document is also available on the Scottish Executive website:
www.scotland.gov.uk

Astron B38831 12/04

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

Telephone orders and enquiries
0131 622 8283 or 0131 622 8258

Fax orders
0131 557 8149

Email orders
business.edinburgh@blackwell.co.uk

