

PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

GUIDANCE FOR INDIVIDUALS



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SCOTTISH EXECUTIVE



PROTECTION OF CHILDREN (SCOTLAND) ACT 2003

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Scottish Executive Education Department
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INTRODUCTION

You have been referred to Scottish Ministers for possible inclusion on the Disqualified from Working with Children List (DWCL). This guidance note aims to provide a brief explanation of what that means, the stages in the decision process and what you need to do. It also offers some advice on where to go if you need help. This note is intended to offer practical guidance to those who find they are the subject of a referral but it does not cover all aspects of the 2003 Act. Annex A sets out a list of the other guidance on the Act along with details of how to access that guidance, the Act and the related regulations. **This is not an interpretation of the law which only the courts can provide.**

If you have any additional requirements, or would benefit from documents in an alternative format, please contact us as soon as possible with details.

Why have I been referred to the Scottish Ministers?

In general an individual is to be referred to the DWCL if they:

- were working (paid or unpaid) in a child care position¹; **and**
- harmed a child or put a child at risk of harm (whether or not in the course of the individual's work); **and**
- were dismissed or moved away from contact with children.

The Act applies to a wide range of bodies that are required to, or can, make referrals to the list as set out below. The letter we send to say that you have been referred to the DWCL will tell you which body has made the referral in your case.

- **Organisations** – have a duty to refer to Scottish Ministers an individual who worked for them (paid or unpaid) in a child care position if they harmed a child or put a child at risk of harm and as a consequence were sacked or moved to a position which doesn't involve contact with children. The organisation also has a duty to refer the individual if they would have dismissed or moved them if they had not resigned, retired, been made redundant or come to the end of a short-term contract. A similar duty to refer applies where information becomes available after the dismissal, resignation, retirement, redundancy or transfer took place for other reasons.
- **Employment Agencies or Agencies Supplying Nurses** – may refer an individual if they have decided not to do any further business with the individual on the grounds that the individual has harmed a child or placed a child at risk of harm.
- **Employment Businesses** – have a duty to refer an individual who has been offered or supplied by the organisation for child care work and the organisation has decided not to offer or supply the individual for further work because they have harmed a child or put a child at risk of harm.

¹ See Annex B

- **The Scottish Commission for the Regulation of Care, Scottish Social Services Council and the General Teaching Council for Scotland** – can make referrals to the DWCL when, in exercising their functions, they consider a person has harmed a child or put a child at risk of harm.
- **The Scottish Ministers** – can consider listing an individual named in a relevant inquiry, if it appears to them from the report that the person who held the inquiry found that the individual harmed a child or placed a child at risk of harm and was working in a child care position; and that the individual is unsuitable to work with children.
- **The Courts** – are required to make referrals to the DWCL when a person is convicted of any listed offence against a child and in other cases the courts may, at their discretion, make a referral to the Scottish Ministers for inclusion on the DWCL. In these cases listing is automatic.

Who decides if I go on the DWCL?

The Scottish Ministers are responsible for keeping the DWCL. If you have been referred to the DWCL by the courts your name will automatically be added to the DWCL. All other cases will normally be referred to a panel of senior officials authorised by Scottish Ministers to consider the cases and take decisions on their behalf. A case management team supports the panel. The panel, on behalf of the Scottish Ministers, will consider all the information submitted with the referral, any observations and further information which you submit in support of your case and any further observations or information submitted as part of the exchanges as well as any other information which is considered relevant to the referral. The Procedural Note sets out the stages in the decision-making process (known as the determination).

The panel will add your name to the list if satisfied that:

- the referring body reasonably considered you had harmed a child or put a child at risk of harm (whether or not in the course of your work); and
- you are unsuitable to work with children.

What is provisional listing?

When there is information to indicate that your inclusion on the DWCL may be appropriate, your name will be put onto the DWCL provisionally while further consideration is given to your case. Provisional listing does not normally last any more than 6 months unless there are other proceedings ongoing in relation to the same incident (see below). If a decision on your case is not reached by the end of the 6 months, we can apply to a sheriff for an extension if we have good reason for the delay. If an extension is not granted by the court then we must remove your name from the DWCL at the end of the 6 months. We will continue to consider your case even if the provisional listing has lapsed.

You will be notified immediately if you are provisionally added to the DWCL. We will also tell any organisations we know for whom you are working in a child care position. We may also make contact with any other body known to be conducting any other proceedings at this stage to make sure we are kept up to date with progress on these proceedings. The fact that you are provisionally listed will also be included on Disclosures issued by Disclosure Scotland in relation to child care positions. **Provisional listing does not mean you are disqualified from working with children, and employers have discretion to reach their own decision as to whether you should be employed in a child care position while you are provisionally listed.**

Do I get a chance to comment on the evidence provided?

Yes. The information and evidence which the referring body has submitted in support of their referral will be copied to you when we write to tell you that you have been included on the DWCL provisionally. You will be invited to send us your observations on that information and if you disagree with the referral you will have the chance to say why. You can also submit any further information including information in support of your opposition to the referral which you wish to be taken into account in the decision on your case.

You will be given 21 days to submit your comments. You can however apply to us for more time if you have good reasons and you should tell us these when asking for an extension. If you fail to respond on time or make only a partial response, the regulations allow the Scottish Ministers or the panel on their behalf to make their decision on the basis of observations and information already held. **It is in your interest therefore to do all you can to respond within the timescales set out in the formal notices.**

We will copy your observations to the referring organisation and invite their comments on it. This exchange of observations and requests for additional information will continue until the panel considers they have sufficient material on which to make a decision.

What happens if other proceedings are ongoing for the same incident?

If you have been included on the DWCL provisionally the Act allows for any other legal or disciplinary proceedings for the same incident to be finally determined before a decision on full inclusion on the DWCL is made. **Please remember to notify us of any other proceedings such as disciplinary proceedings or an application to an employment tribunal or criminal proceedings.**

What are the consequences of being included on the DWCL?

If you are included on the DWCL (other than provisionally) then you are disqualified from working in a child care position (as defined in the Act and set out in Annex B of this guidance). If you apply for, offer to do, accept or do any work (paid or unpaid) in a child care position, then you will be committing an offence.

Who will know I am on the DWCL?

The information on the list is kept very secure. The referring body is notified of the listing decisions. We will also tell any organisations we know of for whom you are working in a child care position and other organisations as considered appropriate, e.g. professional bodies. The only other way to access the information is as part of a disclosure check for a child care position. Disclosures are issued by Disclosure Scotland and further information can be obtained from www.disclosurescotland.co.uk or by telephoning 0870 609 6006.

How do I appeal?

If you are fully listed on the DWCL as a result of a referral from a body or as a consequence of an inquiry, you may appeal to the sheriff within 3 months of the determination. The sheriff has discretion to allow an appeal lodged late if you can show a good reason for the late submission of your appeal. An appeal is made by means of a summary application. You may wish to consult a solicitor for advice on how to go about making an appeal or seek assistance from the sheriff clerk. If your appeal is unsuccessful you have further right of appeal to the sheriff principal against the decision of the sheriff. A further appeal to the Court of Session may then be made but only with leave of the sheriff principal.

An appeal against a proposed referral by the criminal court to the DWCL following conviction for an offence against a child, is made to the High Court.

If you are fully listed as a result of a referral from the criminal court you will remain on the DWCL unless your circumstances change (see below) or the conviction which resulted in your referral to the DWCL is overturned when the court will notify Scottish Ministers and your name will be removed.

Is there any other way to get off the DWCL?

Yes. You can apply to a sheriff for a decision as to whether or not you should continue to be included on the DWCL. You will need the agreement of the sheriff to make such an application. Normally applications will only be considered after 10 years on the DWCL for those over 18 years at the time they were included on the list and after 5 years for those under 18 years. However the sheriff may waive the time limits where he considers your circumstances have changed.

Where can I get help?

Advice from a Solicitor – The Law Society of Scotland has a helpful website at www.lawscot.org.uk. The Society produces a step-by-step guide on how to use the services of a solicitor and what to expect. This guide can be accessed through the above website or you can telephone 0131 226 7411.

Citizens Advice Bureaux (CAB) – Citizens advice bureaux provide free, confidential and impartial advice. You can find your nearest CAB office number in your local telephone directory or you can access the website of Citizens Advice Scotland at www.cas.org.uk.

Will I qualify for legal aid?

You may qualify for legal aid. It is means-tested and in addition to the question of financial eligibility there are qualifying tests relating to the case itself. The Scottish Legal Aid Board can be contacted directly on 0131 226 7061 for more detailed information specific to your circumstances. Alternatively your local Citizens Advice Bureau will be able to give you information.

Further information

See Annex A for a list of associated guidance on the Act along with details of how to access that guidance, the Act and related Scottish Statutory Instruments.

Contact details

For further information please e-mail: dwcl@scotland.gsi.gov.uk,
telephone 0131 244 1567,
or write to Scottish Executive Education Department,
PO Box Number 23628, EH6 6ZH.

Annex A – 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

Annex B

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

SCHEDULE 2²

(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.

- 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.



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