



# Protection of Children (Scotland) Act 2003

## 2003 asp 5

### *Effect of inclusion in list*

#### **11 Offences relating to work in a child care position**

- (1) It is an offence for an individual who is disqualified from working with children to apply for, offer to do, accept or do any work in a child care position.
- (2) It is a defence for an individual charged with an offence under subsection (1) above to prove that the individual did not know, and could not reasonably be expected to have known, that the individual was, at the time of the offence, disqualified from working with children.
- (3) It is an offence for an organisation to—
  - (a) offer work in a child care position to, or procure such work for, an individual who is disqualified from working with children; or
  - (b) fail to remove an individual who is so disqualified from such work.
- (4) An organisation commits an offence under subsection (3) above if the organisation offers work in a child care position to, or procures work in a child care position for, an individual who is already working for the organisation.
- (5) It is a defence for an organisation charged with an offence under subsection (3) above 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 offence, disqualified from working with children.
- (6) An act which would, but for this subsection, be an offence under subsection (1) or (3) above is not an offence if—
  - (a) the individual who commits the act or, as the case may be, the individual in relation to whom the organisation commits the act, is disqualified from working with children by virtue only of paragraph (c) of section 17(1) below;
  - (b) that individual is, by virtue of subsection (1)(b) or (c) of section 142 (prohibition from teaching etc.) of the Education Act 2002 (c. 32), allowed to carry out work to which that section applies only—
    - (i) in circumstances specified in a direction under that section; or
    - (ii) if conditions specified in such a direction are satisfied; and

- (c) the act relates to such work or to any other work in a child care position being carried out in such circumstances or, as the case may be, in satisfaction of such conditions.
- (7) A person guilty of an offence under subsection (1) or (3) above is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

## 12 Searches of lists: amendment of Police Act 1997

- (1) The amendments made to sections 113 (criminal record certificates) and 115 (enhanced criminal record certificates) of the Police Act 1997 (c. 50) (“the 1997 Act”) by—
- (a) section 8 of the Protection of Children Act 1999 (c. 14);
  - (b) sections 102 and 104 of, and paragraph 25 of Schedule 4 to, the Care Standards Act 2000 (c. 14); and
  - (c) paragraphs 13 to 15 of Schedule 12, paragraph 7 of Schedule 13 and paragraphs 72 and 73 of Schedule 21 to the Education Act 2002 (c. 32),
- extend, in so far as they do not already do so, to Scotland.
- (2) Those sections of the 1997 Act are further amended as follows—
- (a) in subsection (3A)(a) of section 113, after sub-paragraph (i) there is inserted—
    - “(ia) the list kept under section 1(1) of the Protection of Children (Scotland) Act 2003 (asp 5);”;
  - (b) in subsection (3B) of that section, after paragraph (a) there is inserted—
    - “(aa) a child care position within the meaning of the Protection of Children (Scotland) Act 2003 (asp 5);”;
  - (c) in subsection (3E) of that section—
    - (i) after “to”, where it first occurs, there is inserted “considering the applicant’s”;
    - (ii) after “to”, where it fourth occurs, there is inserted “—
      - (a) considering the applicant’s”;
    - (iii) paragraphs (a), (b) and (c) are renumbered as sub-paragraphs (i), (ii) and (iv) respectively;
    - (iv) the word “or”, at the end of sub-paragraph (ii) (as re-numbered above) is repealed;
    - (v) after that sub-paragraph there is inserted—
      - “(iii) under Part 3 of the Regulation of Care (Scotland) Act 2001 (asp 8) (social workers); or”;
    - (vi) at the end, there is inserted; and
      - “(b) considering the applicant’s application to have a care service, consisting of the provision of child minding or the day care of children, registered under Part 1 of the Regulation of Care (Scotland) Act 2001 (asp 8) (care services)”;
  - (d) in subsection (6A)(a) of section 115, after sub-paragraph (i) there is inserted—

“(ia) the list kept under section 1(1) of the Protection of Children (Scotland) Act 2003 (asp 5);”.

- (3) The Scottish Ministers may by order modify sections 113(3A)(a) and 115(6A)(a) of the 1997 Act by adding to each of them provision which describes any list kept under the law of Northern Ireland, the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom which, in the opinion of the Scottish Ministers, corresponds to any of the lists mentioned in paragraphs (a), (b), (ba) and (ca) of section 17(1) below.

### **13 Amendment of Teaching Council (Scotland) Act 1965**

In section 6 (register of teachers) of the Teaching Council (Scotland) Act 1965 (c. 19), after subsection (2B) there is inserted—

“(2C) A person shall not be entitled to be registered if he is included (otherwise than provisionally) in the list kept under section 1(1) of the Protection of Children (Scotland) Act 2003 (asp 5).

(2D) Any person who is registered and is, at any time after being registered, included (otherwise than provisionally) in that list shall be removed from the register.”.