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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2008 No.**

**CHILDREN AND YOUNG PERSONS**

**The Protection of Children (Scotland) Act 2003 (Amendment of  
the Definition of Child Care Position) Order 2008**

*Made* - - - - 2008

*Coming into force* - - 2008

The Scottish Ministers make the following Order in exercise of the powers conferred by paragraph 13 of schedule 2 to, and section 21(2) of, the Protection of Children (Scotland) Act 2003<sup>(a)</sup> and all other powers enabling them to do so.

In accordance with section 21(4) of that Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

1. This Order may be cited as the Protection of Children (Scotland) Act 2003 (Amendment of the Definition of Child Care Position) Order 2008 and comes into force on 1st July 2008.

**Amendment of the Protection of Children (Scotland) Act 2003**

2. Schedule 2 (child care positions) to the Protection of Children (Scotland) Act 2003 is amended in accordance with articles 3 to 6.

3. Omit paragraph 2(c) and insert—

- “(c) a school;
- (ca) a further education institution;
- (cb) a hostel used mainly by pupils attending a school or further education institution;  
and”.

4. After paragraph 2 insert—

“**2A.** For the purposes of paragraphs 1(a) and 2(c), (ca) and (cb) above, work done in a school, further education institution or hostel is treated as not being done in that place to the extent that it is done by a member of a Parent Council, Combined Parent Council or other parental body.

**2B.** For the purposes of paragraphs 1(a) and 2(c) and (ca) above, work done in a school or further education institution is treated as not being done in that place to the extent that it—

- (a) involves an activity which is primarily intended for persons aged 18 or over; and
- (b) if done in a further education institution, is done by a person who is not employed by the further education institution.”.

5. In paragraph 6(a) omit “of an educational establishment” and insert “, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel (but not a member of a local authority)”.

6. In paragraph 12–

- (a) omit the definitions of “educational establishment” and “managers of an educational establishment”;
- (b) after the definition of “employment” insert–  
 ““further education institution” means a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6)”;
- (c) after the definition of “hospital” insert–  
 ““hostel” means a hostel used mainly by pupils attending a school or further education institution”; and
- (d) after the definition of “independent health care service” insert–  
 ““Parent Council” and “Combined Parent Council” have the same meaning as in the Scottish Schools (Parental Involvement) Act 2006 (asp 8); and  
 “school” has the same meaning as in the Education (Scotland) Act 1980 (c.44).”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh

2008

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under the Protection of Children (Scotland) Act 2003 (“the Act”) which provides for a list of individuals considered unsuitable to work with children to be established and maintained by the Scottish Ministers and for those on the list to be prohibited from working with children.

“Child care position” is defined by section 18(1) of, and schedule 2 (“the schedule”) to, the Act. This Order amends that definition. Article 3 amends paragraph 2 of the schedule to replace educational establishment with school, further education institution and hostel. Paragraph 1(a) of the schedule provides that a child care position is a position whose normal duties include work in an establishment in paragraph 2.

Article 4 inserts new paragraphs 2A and 2B into the schedule. Paragraph 2A removes from a child care position, for the purposes of paragraphs 1(a) and 2(c), (ca) and (cb) of the schedule, work done in schools, further education institutions and hostels by members of Parent Councils and similar bodies. Paragraph 2B removes from a child care position, for the purposes of paragraphs 1(a) and 2(c) and (ca) of the schedule: work done in schools, to the extent that it involves an activity which is primarily intended for adults; and work done in further education institutions, to the extent that it involves an activity primarily intended for adults and is done by those not employed by the institution.

Article 5 amends paragraph 6(a) of the schedule to reflect the replacement of educational establishment with school, further education institution and hostel. Article 6 amends paragraph 12 of the schedule to remove definitions relating to educational establishment and insert definitions relating to school, further education institution, hostel and Parent Council.

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