

**2004 No. 523**

**CHILDREN AND YOUNG PERSONS**

**The Protection of Children (Scotland) Act 2003 Determination  
Regulations 2004**

*Made* - - - - - *30th November 2004*

*Laid before the Scottish Parliament* *2nd December 2004*

*Coming into force* - - - *10th January 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 8 and 21 of the Protection of Children (Scotland) Act 2003(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Protection of Children (Scotland) Act 2003 Determination Regulations 2004 and shall come into force on 10th January 2005.

**Interpretation**

2. In these Regulations, unless the context otherwise requires—

“the Act” means the Protection of Children (Scotland) Act 2003;

“the individual” is the person who is the subject of a reference under section 2(1) or 4(1) of the Act or named in a report of a relevant inquiry to which the provisions of section 6 of the Act apply;

“the List” means the list of individuals unsuitable to work with children kept by the Scottish Ministers in terms of section 1(1) of the Act;

“referring body” means the organisation or person making a reference to the Scottish Ministers under section 2(1) or 4(1) of the Act;

“relevant time limits” means the time limits prescribed in, or specified by the Scottish Ministers under, these Regulations; and

“working day” means a day which is not a Saturday, Sunday, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(b), or a day appointed for public thanksgiving or mourning.

**Procedure for determinations**

3.—(1) The procedure set out in Schedule 1 shall apply to a determination by the Scottish Ministers of a reference to them made under sections 2(1) or 4(1) of the Act.

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(a) 2003 asp 5.  
(b) 1971 c.80.

(2) The procedure set out in Schedule 2 shall apply to a determination by the Scottish Ministers under section 6 of the Act.

#### **Extension of time**

**4.**—(1) Where these Regulations require or authorise the individual or the referring body or any other person to do something within a period of time, the Scottish Ministers may, on the application of the individual or the referring body or any other person, on cause shown, or otherwise where they consider it to be in the interests of justice to do so, grant such further period or periods of time as they consider appropriate.

(2) Where the Scottish Ministers have granted a further period of time, reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.

#### **Manner and time of service of notices**

**5.**—(1) Any notice required to be given by the Scottish Ministers to the individual under these Regulations may be given in accordance with section 19 of the Act and where the notice is sent by post, it shall be sent by first class recorded delivery post properly addressed and prepaid to that individual's last known address, and shall be deemed to have been received the day after the date of posting.

(2) Any notice required to be given to the referring body or to any organisation or other person under these Regulations shall be deemed to have been given or sent, if it was sent by first class recorded delivery post properly addressed and prepaid to the last notified address of the referring body or that organisation or other person and shall be deemed to have been received the day after the date of posting.

(3) If a period of notice expires on a day which is not a working day the period of notice shall be deemed to expire on the next working day after that day.

*EUAN MACFARLANE ROBSON*  
Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
30th November 2004

## DETERMINATIONS UNDER SECTION 5 OF REFERENCES UNDER SECTIONS 2(1) AND 4(1) OF THE ACT

### Information to be submitted with a reference

1. Where a reference is made by a referring body in terms of sections 2(1) and 4(1) of the Act, the following information shall, if known or available to the referring body, be submitted with that reference—

- (a) identity details relating to the individual, including the individual's full name and any other names by which the individual is, or has been known; any address or addresses at which the individual is or has been resident in the 10 years preceding the date of the reference; the individual's date and place of birth and National Insurance number;
- (b) information as to any checks carried out by the referring body to verify the individual's identity;
- (c) details as to the child care position held by the individual;
- (d) full details of the circumstances in which the referring body considers that the individual harmed a child or placed a child at risk of harm;
- (e) where the reference is made in terms of section 2(1) of the Act, details of any circumstance referred to in section 2(3) or (4) of the Act;
- (f) details of any investigation carried out by the referring body, any documentation relevant to that investigation and the conclusions of such investigation;
- (g) information as to any relevant disciplinary policies or practices or conditions of employment of the referring body;
- (h) details of all relevant action taken by the referring body prior to making the reference;
- (i) information as to the involvement of any other organisation or body in matters relating to the reference; and
- (j) details of any associated disciplinary appeal or legal proceedings.

### Acknowledgement and recording of a reference

2.—(1) Where the Scottish Ministers have received a reference from the referring body in terms of sections 2(1) and 4(1) of the Act, they shall immediately send an acknowledgement of its receipt to that referring body and at the same time notify the individual of receipt of that reference and the name of the referring body.

(2) The Scottish Ministers shall maintain a record of all references made to them under section 2(1) and 4(1) of the Act, and shall enter particulars of a reference and the date of its receipt in that record.

(3) Where insufficient information has been sent with a reference to enable the Scottish Ministers to proceed further with their determination, they may send a notice to the referring body, inviting that referring body to submit within fourteen days of the date of that notice such further information as the Scottish Ministers think fit.

### Preliminary matters

3.—(1) Where the Scottish Ministers decline to consider further any reference made under section 2(1) or 4(1) of the Act the Scottish Ministers shall notify the referring body and the individual.

(2) Where the Scottish Ministers are satisfied from the information submitted with the reference that it may be appropriate for the name of the individual to be included in the List, they shall enter the name of the individual in the List marking that entry as provisional.

(3) Where a provisional entry is made by the Scottish Ministers under sub-paragraph (2), they shall immediately provide the individual with notice of and the date of that entry and at the same time notify the referring body of that entry and its date.

(4) Where the Scottish Ministers are aware that as at the time a provisional entry is made under sub-paragraph (2), the individual is working for any organisation in a child care position, they shall give notice of the entry to that organisation and such other persons as the Scottish Ministers consider appropriate.

#### **Notification and response to the reference**

4.—(1) Where the Scottish Ministers make a provisional entry under paragraph 3(2), they shall give to the individual, with the notice of that entry, a copy of the reference and any information provided by the referring body in support of the reference, together with a notice inviting the individual to submit observations to the Scottish Ministers within 21 days of the date of that notice being received, or deemed to have been received in accordance with regulation 5.

(2) Any response given to the Scottish Ministers by the individual shall—

- (a) acknowledge that the individual has received a copy of the reference;
- (b) indicate whether or not the individual opposes the reference and if they do, give reasons why they oppose the reference;
- (c) provide any observations on the reference and the supporting information; and
- (d) submit any further information which the individual wishes to be taken into account by the Scottish Ministers in making their determination.

#### **Observations by the referring body**

5. The Scottish Ministers shall give to the referring body a copy of any observations made by the individual, together with a notice inviting the referring body to provide within 21 days of the date of that notice and those observations being received, or deemed to have been received in accordance with regulation 5 any observations and any further supporting information that the referring body may wish to make on those observations.

#### **Further observations or information to be sent to the Scottish Ministers**

6. Having invited any observations and further supporting information under paragraph 5 the Scottish Ministers may by notice invite the referring body, the individual or such other persons as the Scottish Ministers consider appropriate to give to the Scottish Ministers further observations or information dealing with any matter relating to the reference within such time and in such manner as may be specified by the Scottish Ministers in that notice.

#### **Determination**

7. The Scottish Ministers may proceed to a determination under section 5 of the Act of a reference under section 2(1) or 4(1) of the Act taking into account such observations and information as have been sent to them within the relevant time limits if it appears to them that they have sufficient material to enable them to make a determination on the reference.

#### **Recording and notification of the determination**

8.—(1) Any determination under section 5 of the Act shall be recorded without delay in a document dated and signed on behalf of the Scottish Ministers.

(2) The document referred to in sub-paragraph (1) shall state the reasons for the determination.

(3) The Scottish Ministers shall, as soon as reasonably practicable after such determination, give to the individual–

- (a) a copy of the document referred to in sub-paragraph (1);
- (b) notice of any entry, modified entry or removal of any entry relating to the individual in the List; and
- (c) information as to any right of appeal which the individual may have against the Scottish Ministers' determination.

(4) At the same time as giving notice to any individual in accordance with sub-paragraph (3) the Scottish Ministers shall give notice of such determination to the referring body, any known organisation for which the individual is working in a child care position, any other persons notified in accordance with sub-paragraph (4) of paragraph 3 and such other persons as the Scottish Ministers then consider appropriate.

## DETERMINATIONS UNDER SECTION 6 OF THE ACT

**Record of individuals named in the report of certain inquiries**

1. The Scottish Ministers shall maintain a record of any individuals named in the reports of relevant inquiries to which the provisions of section 6 of the Act apply.

**Notification of case**

2.—(1) Where the Scottish Ministers are considering the inclusion of an individual in the List in accordance with section 6 of the Act, they shall—

- (a) enter particulars of the individual and of the report of the relevant inquiry so far as it relates to the individual in the record kept in terms of paragraph 1; and
- (b) give a copy of the report to the individual with a notice inviting the individual to submit observations to the Scottish Ministers on the report so far as relating to the individual within 21 days of the date of receipt of that notice, or deemed receipt in accordance with regulation 5.

(2) Where the Scottish Ministers are satisfied from the report that it may be appropriate for an individual to be included in the List, they shall enter the name of the individual in the List marking that entry as provisional.

(3) Where a provisional entry is made by the Scottish Ministers under sub-paragraph (2), they shall immediately give the individual notice of that entry.

(4) Where the Scottish Ministers are aware that as at the time a provisional entry is made under sub-paragraph (2) the individual is working for any organisation in a child care position, they shall give notice of the entry to that organisation and to such other persons as they consider appropriate.

**Response by the individual**

3.—(1) Any response given to the Scottish Ministers by the individual shall—

- (a) acknowledge that the individual has received a copy of the report;
- (b) indicate whether or not the individual accepts the report's findings that they harmed a child or placed a child at risk of harm and that they are unsuitable to work with children;
- (c) provide any observations on the report so far as relating to the individual; and
- (d) submit any further information which the individual wishes to be taken into account by the Scottish Ministers in making their determination.

**Observations of other persons**

4. On receipt of a response by the individual, the Scottish Ministers shall give to the person for whom that individual worked when the act or omission which gave rise to the finding in the report that the individual harmed a child or placed a child at risk of harm occurred a notice with a copy of any observations provided by the individual, inviting that person to provide to the Scottish Ministers within 21 days of the date of receipt of that notice and those observations, or deemed receipt in accordance with regulation 5 any observations that person may have.

**Further observations or information to be sent to the Scottish Ministers**

5. The Scottish Ministers may by notice invite the individual, the person referred to in paragraph 4 and such other persons as the Scottish Ministers consider appropriate to send to them

additional observations or information dealing with any matter relating to the case within such time and in such manner as may be specified by them in that notice.

### **Determination**

6. The Scottish Ministers may proceed to a determination regarding inclusion of the individual in the List under section 6 of the Act taking into account such observations and information as have been sent to them within the relevant time limits if it appears to them that they have sufficient material to enable them to make such a determination.

### **Recording and notification of the determination**

7.—(1) Any determination under section 6 of the Act shall be recorded without delay in a document dated and signed on behalf of the Scottish Ministers.

(2) The document referred to in sub-paragraph (1) shall state the reasons for the determination.

(3) The Scottish Ministers shall, as soon as reasonably practicable after such determination, give to the individual—

- (a) a copy of the document referred to in sub-paragraph (1);
- (b) notice of any entry, modified entry or removal of any entry relating to the individual on the List; and
- (c) information as to any right of appeal which the individual may have against the Scottish Ministers' determination.

(4) At the same time as giving notice to the individual in accordance with sub-paragraph (3) the Scottish Ministers shall give notice of such determination to any organisation or person notified in accordance with sub-paragraph (4) of paragraph 2 and to such other persons as the Scottish Ministers consider appropriate.

## EXPLANATORY NOTE

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

These Regulations are made under the Protection of Children (Scotland) Act 2003 (“the Act”).

The Act 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.

These Regulations set out in further detail the procedure to be followed when the Scottish Ministers are deciding whether to include an individual on the list.

Regulation 3(1) and Schedule 1 make provision for determination under section 5 of the Act where cases have been referred by organisations to the Scottish Ministers under sections 2(1) or 4(1) of the Act. These are cases where the referring organisation has taken disciplinary action on the ground that the individual has harmed a child or placed a child at risk of harm.

Regulation 3(2) and Schedule 2 sets out in further detail the procedure to be followed for determinations under section 6 of the Act. That section relates to individuals named in reports of certain inquiries.

Regulation 4 allows the Scottish Ministers to grant an extension to any period of time for complying with any of the requirements of these Regulations.

Regulation 5 makes provision on the manner and time of serving of notices under these Regulations including provision on the date of deemed receipt of notices and provision for any period of notice expiring on a non working day to expire on the next working day as defined in regulation 2 of these Regulations.

£3.00

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under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland  
150 12/04 19593

