



Protection of Children (Scotland) Act 2003

2003 asp 5

Referrals

2 Reference following disciplinary action etc.

- (1) An organisation shall refer to the Scottish Ministers the case of an individual who is or has been working in a child care position if—
 - (a) any of the circumstances mentioned in subsection (3) below; or
 - (b) the circumstance mentioned in subsection (4) below, has arisen.
- (2) An organisation which fails to comply with the duty imposed by subsection (1) above is, subject to subsection (5) below, guilty of an offence and 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 a conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (3) The circumstances referred to in subsection (1)(a) above are—
 - (a) that the organisation has dismissed the individual on the ground that the individual has (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm;
 - (b) that the individual has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed the individual, or would have considered dismissing the individual, on such ground if the individual had not resigned, retired or been made redundant;
 - (c) that the organisation has, on such ground, transferred the individual to a position within the organisation which is not a child care position;
 - (d) that the individual is, or was, employed by the organisation for a fixed term and the organisation has formed the opinion that—
 - (i) if the individual's employment was not due to expire at the end of the fixed term, the organisation would dismiss the individual, or would consider dismissing the individual, on such ground; or
 - (ii) if the individual's employment has expired at the end of the fixed term, the organisation, if the individual were still employed by the

Status: This is the original version (as it was originally enacted).

organisation, would have dismissed the individual, or would have considered dismissing the individual, on such ground.

- (4) The circumstance referred to in subsection (1)(b) above is that—
- (a) the individual has, in circumstances not falling within subsection (3) above—
 - (i) been dismissed by the organisation;
 - (ii) resigned, retired or been made redundant; or
 - (iii) been transferred by the organisation to a position within the organisation which is not a child care position;
 - (b) information not available to the organisation at the time of the dismissal, resignation, retirement, redundancy or transfer has since become available; and
 - (c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned, retired or been made redundant, the organisation would have dismissed the individual, or would have considered dismissing the individual, on such ground as is mentioned in subsection (3)(a) above.
- (5) An organisation may (but, despite subsection (1) above, need not) refer the case of an individual to the Scottish Ministers under this section where the dismissal, resignation, retirement, redundancy, transfer or suspension took place or, as the case may be, the organisation's opinion was formed before the date on which this section comes into force.

3 Reference by employment agency etc.

- (1) Section 2 above has effect in relation to an organisation which carries on an employment agency or an agency for the supply of nurses as if—
- (a) in subsection (1), for “shall” there were substituted “may”;
 - (b) for paragraphs (a) and (b) of subsection (1) and the words “has arisen” which follow those paragraphs there were substituted—
 - “(a) the organisation has decided not to do any further business with the individual on the ground that the individual has (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm; or
 - (b) the organisation has decided on such ground not to find the individual further work, or to offer or supply the individual for further work, in a child care position.”; and
 - (c) subsections (2), (3) and (4) were omitted.
- (2) Section 2 above has effect in relation to an organisation which carries on an employment business as if—
- (a) in subsection (1)—
 - (i) for “is or has been working” there were substituted “has been offered or supplied by the organisation for work”; and
 - (ii) paragraph (b) and the word “or” preceding it were omitted;
 - (b) for paragraphs (c) and (d) of subsection (3) there were substituted—
 - “(c) that the organisation has, on such ground, decided not to offer or supply the individual for further work in a child care position.”; and
 - (c) subsection (4) were omitted.

4 Reference by certain other persons

- (1) A person to whom this section applies may refer to the Scottish Ministers the case of an individual who is or has been working in a child care position if—
- (a) on the basis of evidence obtained by the person in the exercise of relevant functions, the person considers that the individual has (whether or not in the course of the individual's work and whether before or after this section comes into force) harmed a child or placed a child at risk of harm; and
 - (b) that case has not been referred to the Scottish Ministers under section 2 above in respect of the act which harmed a child or placed a child at risk of harm.
- (2) This section applies to—
- (a) the Scottish Commission for the Regulation of Care;
 - (b) the Scottish Social Services Council;
 - (c) the General Teaching Council for Scotland; and
 - (d) any other person specified for the purposes of this section in an order made by the Scottish Ministers.
- (3) For the purposes of subsection (1)(a) above, “relevant functions” means—
- (a) in relation to the Scottish Commission for the Regulation of Care and the Scottish Social Services Council, such functions as are conferred on the Commission or, as the case may be, the Council by the 2001 Act or any other enactment;
 - (b) in relation to the General Teaching Council for Scotland, such functions as are conferred on it by or under the Teaching Council (Scotland) Act 1965 (c. 19); and
 - (c) in relation to a person specified in an order made under subsection (2)(d) above, such functions as are specified for the purposes of this section by the order.