

*Status: Point in time view as at 01/07/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Protection of Children (Scotland) Act 2003, SCHEDULE 2. (See end of Document for details)*

## SCHEDULE 2

(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.

#### Commencement Information

- II** Sch. 2 para. 1 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

- 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;
  - [<sup>F1</sup>(c) a school;
  - (ca) a further education institution;
  - (cb) a hostel used mainly by pupils attending a school or further education institution; 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).

#### Textual Amendments

- F1** Sch. 2 para. 2(c)-(cb) substituted (1.7.2008) for Sch. 2 para. 2(c) by virtue of [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, 3

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#### Commencement Information

**I2** Sch. 2 para. 2 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

[<sup>F2</sup>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.]

#### Textual Amendments

**F2** Sch. 2 paras. 2A, 2B inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, 4

[<sup>F2</sup>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.]

#### Textual Amendments

**F2** Sch. 2 paras. 2A, 2B inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, 4

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.

#### Commencement Information

**I3** Sch. 2 para. 3 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

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.

#### Commencement Information

**I4** Sch. 2 para. 4 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

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.

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#### Commencement Information

**I5** Sch. 2 para. 5 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

- 6 The positions mentioned in paragraph 1(h) above are—
- (a) manager <sup>F3</sup>...<sup>F4</sup>, 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)];
  - (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).

#### Textual Amendments

**F3** Words in Sch. 2 para. 6(a) omitted (1.7.2008) by virtue of [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, **5**

**F4** Words in Sch. 2 para. 6(a) inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, **5**

#### Commencement Information

**I6** Sch. 2 para. 6 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

- 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.

#### Commencement Information

**I7** Sch. 2 para. 7 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

- 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.

#### Commencement Information

**I8** Sch. 2 para. 8 in force at 10.1.2005 by [S.S.I. 2004/522](#), **art. 2(1)**

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- 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.

#### Commencement Information

**I9** Sch. 2 para. 9 in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

- 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.

#### Commencement Information

**I10** Sch. 2 para. 10 in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

- 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.

#### Commencement Information

**I11** Sch. 2 para. 11 in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

- 12 In this schedule—
- “care home service” has the same meaning as in the 2001 Act;
  - [<sup>F5</sup> “charity ” means a body entered in the Scottish Charity Register; ]
  - “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;

<sup>F6</sup> ...

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“employment” means paid employment, whether under a contract of service or apprenticeship or under a contract for services;

[<sup>F7</sup> “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 \(asp 6\)](#)]

“hospital” has the meaning given by section 108(1) (interpretation) of the National Health Service (Scotland) Act 1978 (c. 29); and

[<sup>F8</sup> “hostel” means a hostel used mainly by pupils attending a school or further education institution]

“independent health care service” has the same meaning as in the 2001 Act.

[<sup>F9</sup> “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).

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**Textual Amendments**

- F5** Words in Sch. 2 para. 12 substituted (1.4.2006) by [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#), s. 107(2), [Sch. 4 para. 15](#); S.S.I. 2006/189, art. 2(1), Sch. Pt. 1
- F6** Words in Sch. 2 para. 12 omitted (1.7.2008) by virtue of [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, [6\(a\)](#)
- F7** Words in Sch. 2 para. 12 inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, [6\(b\)](#)
- F8** Words in Sch. 2 para. 12 inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, [6\(c\)](#)
- F9** Words in Sch. 2 para. 12 inserted (1.7.2008) by [Protection of Children \(Scotland\) Act 2003 \(Amendment of the Definition of Child Care Position\) Order 2008 \(S.S.I. 2008/260\)](#), arts. 1, [6\(d\)](#)

**Commencement Information**

- I12** Sch. 2 para. 12 in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

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.

**Commencement Information**

- I13** Sch. 2 para. 13 in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

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