



# 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

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*Status: This is the original version (as it was originally enacted).*

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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.