



Protection of Children (Scotland) Act 2003

2003 asp 5

Inclusion in list

5 Inclusion in list following referral under section 2(1) or 4(1)

- (1) The Scottish Ministers, on being satisfied as to the matters set out in subsection (2) below in relation to a reference to them under section 2(1) or 4(1) above, shall proceed in accordance with subsections (3) to (6) below.
- (2) Those matters are—
 - (a) that the reference is not vexatious or frivolous; and
 - (b) that the information submitted to the Scottish Ministers with the reference indicates that it may be appropriate for an individual to be included in the list kept under section 1(1) above.
- (3) The Scottish Ministers shall—
 - (a) invite observations from the individual—
 - (i) on the information submitted with the reference; and
 - (ii) if the Scottish Ministers think fit, on any observations made in response to an invitation under paragraph (b) below; and
 - (b) invite observations from the organisation which, or person who, made the reference—
 - (i) on any observations made by the individual on the information submitted with the reference; and
 - (ii) if the Scottish Ministers think fit, on any other observations made in response to an invitation under paragraph (a) above.
- (4) The Scottish Ministers, having considered the information submitted with the reference, any observations submitted to them and any other information which they consider relevant, shall—
 - (a) where they are satisfied as to the matters set out in subsection (5) below, include the individual in the list by—
 - (i) where the individual is provisionally included under section 7(1) below in the list, amending the list so as to indicate that the individual's inclusion is no longer provisional; or

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- (ii) where the individual has been removed under section 7(4) below from the list, restoring the individual to the list; or
 - (b) where they are not so satisfied, remove or, as the case may be, confirm the removal of the individual from the list.
- (5) Those matters are—
 - (a) that the organisation which, or person who, made the reference reasonably considered the individual to have (whether or not in the course of the individual's work) harmed a child or placed a child at risk of harm; and
 - (b) that the individual is unsuitable to work with children.
- (6) Where the Scottish Ministers have made a determination under subsection (4)(a) above they shall—
 - (a) provide the individual in respect of whom the determination is made with notice specifying whether the individual is to be included in the list; and
 - (b) if they are aware that the individual is working in a child care position for an organisation at the time of the determination, provide the organisation with such notice.