



# Protection of Children (Scotland) Act 2003

## 2003 asp 5

### *Inclusion in list*

#### **6 Individuals named in the findings of certain inquiries**

(1) Where—

- (a) a relevant inquiry has been held;
- (b) the report of the person who held the inquiry names an individual who is or has been working in a child care position; and
- (c) it appears to the Scottish Ministers from the report—
  - (i) that the person who held the inquiry found that the individual has, at a time when the individual was working in a child care position (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
  - (ii) that the individual is unsuitable to work with children,the Scottish Ministers may proceed in accordance with subsections (2) to (4) below in order to determine whether the individual should be included in the list kept under section 1(1) above.

(2) The Scottish Ministers shall—

- (a) invite observations from the individual—
  - (i) on the report, so far as relating to the individual; and
  - (ii) if the Scottish Ministers think fit, on any observations submitted under paragraph (b) below; and
- (b) invite observations from the person for whom the individual, at the time of the act or omission which gave rise to the finding that the individual harmed a child or placed a child at risk of harm, worked—
  - (i) on any observations made by the individual on the report; and
  - (ii) if the Scottish Ministers think fit, on any other observations made in response to the invitation under paragraph (a) above.

(3) The Scottish Ministers, having considered the report, 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 (4) below, include the individual in the list by—

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*Status: This is the original version (as it was originally enacted).*

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- (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
    - (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.
- (4) Those matters are—
  - (a) that the person who held the inquiry reasonably considered that the individual has, at a time when the individual was working in a child care position (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.
- (5) Where the Scottish Ministers have made a determination under subsection (3)(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.
- (6) In this section “relevant inquiry” means any of the following—
  - (a) an inquiry held—
    - (i) by the Scottish Ministers;
    - (ii) by the Scottish Parliament (including an inquiry held by a committee or sub-committee of the Parliament);
  - (b) an inquiry held by a tribunal appointed under the Tribunals of Inquiry (Evidence) Act 1921 (c. 7);
  - (c) any other inquiry or hearing designated for the purposes of this section by an order made by the Scottish Ministers.