



Protection of Children (Scotland) Act 2003

2003 asp 5

Inclusion in list

7 Provisional inclusion in list

- (1) Where the Scottish Ministers—
 - (a) are to determine, under section 5(4) above, a reference under section 2(1) or 4(1) above; or
 - (b) decide to make a determination under section 6 above,they shall provisionally include the individual in respect of whom the determination is to be made in the list kept under section 1(1) above.
- (2) The list shall indicate whether an individual's inclusion in it is provisional upon such a determination.
- (3) The Scottish Ministers shall—
 - (a) provide an individual who is provisionally included in the list with notice of that fact; and
 - (b) if they are aware that the individual is working in a child care position for an organisation at the time when the individual is provisionally included in the list, provide the organisation with such notice.
- (4) If the Scottish Ministers have not made a determination under section 5 or 6 above within the relevant period they shall remove the individual from the list pending their determination.
- (5) The “relevant period” is—
 - (a) where the circumstance or, as the case may be, act in respect of which a reference under section 2(1) or 4(1) above is made is the subject of legal or disciplinary proceedings, the period of six months which begins on the date on which the proceedings are finally determined;
 - (b) in any other case, the period of six months which begins on the date on which the individual is provisionally included in the list; or
 - (c) where either of the periods mentioned in paragraphs (a) and (b) above is extended under subsection (6) below, the extended period.

Status: This is the original version (as it was originally enacted).

- (6) The sheriff may, on an application by the Scottish Ministers and on cause shown, extend the period mentioned in paragraph (a) or (b) of subsection (5) above by such period of up to six months as the sheriff may specify.
- (7) For the purposes of subsection (5)(a) above, proceedings are finally determined when—
- (a) the proceedings are terminated without a decision being made;
 - (b) a decision is made against which no appeal (other than an appeal which need not be timeous) lies;
 - (c) in a case where an appeal lies with leave against a decision, the time limit for applications for leave expires without leave being granted; or
 - (d) in a case where leave to appeal against a decision is granted or is not required, the time limit for appeal expires without an appeal being brought.
- (8) For the purposes of subsection (7) above, an appeal which need not be timeous is—
- (a) an appeal under Part VIII (appeals from solemn proceedings) of the Criminal Procedure (Scotland) Act 1995 (c. 46) in relation to which the High Court must, if the appeal is to be competent, extend the time within which intimation of intention to appeal or note of appeal or both may be given; or
 - (b) an appeal under section 191 (appeal by suspension on ground of miscarriage of justice) of that Act.