



Protection of Children (Scotland) Act 2003

2003 asp 5

Interpretation and general

17 Meaning of “disqualified from working with children”

- (1) References in this Act to being disqualified from working with children are to be treated as references to being—
- (a) included (otherwise than provisionally) in the list kept under section 1(1) above;
 - (b) included (otherwise than provisionally) in the list kept under section 1 (duty of Secretary of State to keep list of individuals considered unsuitable to work with children) of the Protection of Children Act 1999 (c. 14);
 - (c) subject to a direction under subsection (1)(a) of section 142 (prohibition from teaching etc.) of the Education Act 2002 (c. 32), given on the grounds mentioned in subsection (4)(b) of that section, not to carry on work to which that section applies;
 - (d) subject to a disqualification order (within the meaning of Part II (protection of children) of the Criminal Justice and Court Services Act 2000 (c. 43)); or
 - (e) an individual falling within subsection (2) below.
- (2) An individual falls within this subsection if, under the law of Northern Ireland, the Channel Islands, the Isle of Man, any British overseas territory or any other territory or country outwith the United Kingdom, the individual is subject to a prohibition or disqualification which the Scottish Ministers by order provide corresponds to disqualification (by virtue of any of paragraphs (a) to (d) of subsection (1) above) from working with children.

18 Interpretation

- (1) In this Act—
- “the 2001 Act” means the Regulation of Care (Scotland) Act 2001 (asp 8);
 - “agency for the supply of nurses” has the meaning given by section 32 of the Nurses (Scotland) Act 1951 (c. 55);
 - “child” means a person under the age of 18;
 - “child care position” has the meaning given by schedule 2 to this Act;

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“disciplinary proceedings” means proceedings in which the regulatory body for a profession is to decide whether disciplinary action should be taken against an individual carrying on that profession;

“disqualified from working with children” is to be construed in accordance with section 17 above;

“employment agency” and “employment business” have the same meanings as in the Employment Agencies Act 1973 (c. 35);

“harm” includes harm which is not physical harm;

“legal proceedings” means civil or criminal proceedings in or before any court or tribunal;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);

“managers of an educational establishment” has the same meaning as in the Education (Scotland) Act 1980 (c. 44);

“organisation” means—

- (a) a body corporate or unincorporate;
- (b) an individual who, in the course of a business, employs or otherwise gives work to other persons;
- (c) the managers of an educational establishment;

“prescribed” means prescribed by regulations made by the Scottish Ministers;

“term of detention” means a term of detention—

- (a) in a young offenders institution; or
- (b) by virtue of section 208 of the [Criminal Procedure \(Scotland\) 1995 Act \(c.46\)](#), in some other place;

“work” includes—

- (a) work of any kind, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract;
- (b) an office established by or by virtue of a prescribed enactment, and
- (c) caring for, or supervising, children whilst participating in any other organised activity,

and references to an individual “working” are to be construed accordingly.

(2) For the purposes of this Act, an individual is made redundant if—

- (a) the individual is dismissed; and
- (b) for the purposes of the Employment Rights Act 1996 (c. 18) the dismissal is by reason of redundancy.

19 Notices

(1) A notice required by section 5(6)(a), 6(5)(a), 7(3)(a) or 10(8)(a) above to be given by the Scottish Ministers to an individual may be given—

- (a) by delivering it to the individual,
- (b) by leaving it at the individual’s proper address, or
- (c) by sending it to the individual at that address.

(2) For the purposes of subsection (1) above and of paragraph 4 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and

Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (S.I.1999/1379), a person's proper address is that person's last known address.

20 Offences by bodies corporate etc.

- (1) Where an offence under this Act committed—
- (a) by a body corporate other than a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a director, manager or secretary of the body corporate; or
 - (ii) purports to act in any such capacity;
 - (b) by a local authority, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is an officer or member of the authority; or
 - (ii) purports to act in any such capacity;
 - (c) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is a partner; or
 - (ii) purports to act in that capacity;
 - (d) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—
 - (i) is concerned in the management or control of the association; or
 - (ii) purports to act in the capacity of a person so concerned;
- the individual (as well as the body corporate or, as the case may be, the local authority, Scottish partnership or unincorporated association) is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

21 Orders and regulations

- (1) Any power of the Scottish Ministers under this Act to make an order or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
- (a) different provision for different cases and for different classes of case; and
 - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient.
- (3) Subject to subsection (4) below, a statutory instrument containing an order (other than an order made under section 22(2) below) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing an order made under section 10(10) or 12(3) above or paragraph 13 of schedule 2 to this Act shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

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22 Short title and commencement

- (1) This Act may be cited as the Protection of Children (Scotland) Act 2003.
- (2) This Act (except this section and section 21 above) comes into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) above may appoint different days for different purposes.