

Protection of Children (Scotland) Act 2003

The City of Edinburgh Council

18 August 2005

Purpose of report

- 1 This report sets out the Council's responsibilities under the Act in relation to the appointment of elected members and other persons to certain committees and the action proposed to fulfil them.

The Legislation

- 2 The main effect of the 2003 Act is to prohibit an individual who is disqualified from working with children from working in a "childcare position". Schedule 2 to the Act gives a list of childcare positions to which the Act applies. Paragraph 6(b) of the schedule includes within that list "a member of a committee, including a joint committee, of a local authority (or any sub-committee thereof) which is concerned with the provision of education, accommodation, social services or healthcare services to children".
- 3 For the purposes of the Act, an individual is a disqualified individual if he or she is:
 - included (otherwise than provisionally) in the list kept by the Scottish Ministers of people considered unsuitable to work with children in terms of section 1 of the 2003 Act;
 - included (otherwise than provisionally) in the list kept by the Secretary of State of individuals considered unsuitable to work with children in terms of section 1 of the Protection of Children Act 1999 (the "1999 Act");
 - subject to a direction under section 142 of the Education Act 2002 (the "2002 Act") on the grounds that they are unsuitable to work with children;
 - subject to an order disqualifying them from working with children under Part II of the Criminal Justice and Court Services Act 2000 (the "2000 Act"); or
 - subject to a prohibition or disqualification which the Scottish Ministers have identified as equivalent to disqualification from working with children.

Annex A to this report lists the circumstances in which an individual would be added to one of the above lists or made subject to one of the above orders.

- 4 From 11 April 2005 it will be an offence for any organisation, including the Council, to offer work in a childcare position to, or procure work in such a position for, a disqualified individual. It would therefore be an offence for the Council to offer a position on a relevant Committee to any disqualified individual. The Act also states that it is an offence for an organisation to fail to remove a disqualified individual from a childcare position. However, the relevant provision has not yet come into force and there is no date specified for it to do so.

Proposed Action

- 5 It is essential that the Council adopts arrangements which disclose whether any potential Committee member is disqualified. This will ensure that the Council meets its obligation to prove that it did not know, and could not reasonably be expected to know, that an individual who was appointed to a relevant Committee was disqualified.
- 6 Following extensive consultation, the Convention of Scottish Local Authorities (COSLA) has prepared draft guidance to Councils on the application of the Act to elected members which has been approved by COSLA Leaders for distribution to member authorities. COSLA recommends that, before a position on a relevant Committee is taken up by any elected member, Councils should conduct an enhanced disclosure check on that elected member. This involves obtaining criminal record certificates from Disclosure Scotland in relation to the persons concerned. It is suggested that this potentially sensitive role should be undertaken either by the Chief Executive or the monitoring officer. Having taken advice from the Council Solicitor, I propose to follow COSLA's recommendations. Moreover, since the Council re-appoints members to Committees annually, and did so last on 12 May 2005, I need to apply these arrangements to all current members of relevant committees.

Relevant Committees

- 7 It is considered that the Council Committees and Sub-Committees to which paragraph 6(b) of Schedule 2 applies include:
 - the Executive
 - the Children and Young People Scrutiny Panel
 - the Committee on Pupil and Student Support
 - the Special Sub-Committee on Educational Standards
 - the Special Sub-Committee on Social Work Standards
 - the Placing in Schools Appeal Committee
 - the Social Work Complaints Review Committee

It could also apply to the Head Teacher Appointments Committee and, in certain circumstances, the Recruitment Committee and the Personnel Appeals Committee.

- 8 Almost every member of the Council is a member of at least one of these Committees or Sub-Committees. I therefore intend to conduct the enhanced disclosure check on all current and future elected members.
- 9 The Council has appointed persons, or accepted nominations, to a number of the Committees and Sub-Committees listed above who are not elected members of the Council. These include the church and teacher representatives on the Executive (Education) and the Children and Young People Scrutiny Panel, members of the Placing in Schools Appeal Committee and the Social Work Complaints Review Committee and the independent Convener of the Special Sub-Committee on Social Work Standards. While the COSLA guidance makes reference only to elected members, the legislation does not make this distinction. I therefore intend to conduct an enhanced disclosure check on all such appointments made since 11 April 2005.

Recommendation

- 10 To note the report.


Jim Inch
 Director of Corporate Services

05/04/05

Appendices	Annex A – The Scottish Minister’s Disqualification List under the 2003 Act
Contact/tel	John Sturt ☎ 529 4136 e-mail: john.sturt@edinburgh.gov.uk
Wards affected	All
Background Papers	E-mail letter dated 30 May 2005 from COSLA to Chief Executive and attached Members Vetting Guidelines

APPENDIX

ANNEX A

Why would an individual be added to a list or made subject to a disqualification order?

1 The Scottish Minister's disqualification list under the 2003 Act

An individual will be added to the Scottish Ministers' list only in certain circumstances. These circumstances are:

- 1.1. The Ministers have received a reference from an organisation that an individual working for that organisation in a child care position has harmed a child or placed a child at risk of harm, have satisfied themselves that the reference is not vexatious or frivolous, have invited and considered information and observations from the individual concerned, the referring organisation or person, and any other person the Ministers think fit, and have decided that the individual concerned is not suitable to work with children¹.
- 1.2. The Ministers have received a reference from the Scottish Commission for the Regulation of Care, the Scottish Social Services Council or the General Teaching Council for Scotland that an individual working in a child care position has harmed a child or placed a child at risk of harm, and have followed the same procedure and reached the same decision as above².
- 1.3. An individual has been named in an inquiry of the Scottish Ministers, the Scottish Parliament or a tribunal set up by the UK Parliament to take evidence on a matter of urgent public importance³, and it appears from that report that the individual, while working in a child care position, harmed a child or placed a child at risk of harm. The Scottish Ministers have then invited and considered observations and information from the individual concerned and the organisation or person for whom they worked at the time of the harmful act, and have decided that the individual is unsuitable to work with children⁴.
- 1.4. An individual has been convicted of one of the offences defined in Schedule 1 to the 2003 Act (which consists of sexual and neglect offences specific to children and other sexual offences and offences causing bodily injury where the victim is under 18), or has been acquitted of such an offence on grounds of insanity or is unfit to plead. The convicting court must then refer the case to the Scottish Ministers. The court may also decide to refer a case which involves any other offence where the victim is under 18. A reference can only be made if the court is satisfied that the individual is likely to commit a further offence against a child, and if the court's proposal

¹ s.5 of the 2003 Act, in terms of a reference under s.2

² s.5 of the 2003 Act, in terms of a reference under s.4

³ In terms of the Tribunals of Inquiry (Evidence) Act 1921

⁴ s.6 of the 2003 Act

to refer the case has not been appealed or has been appealed unsuccessfully⁵.

Where the Scottish Ministers are considering a case under paragraphs 1.1, 1.2 or 1.3, the individual shall be included on the list on a provisional basis⁶. Notice of that inclusion will be given to the individual and, if they work in a child care position at the time, to the organisation they work for. An individual should not be on the provisional list for more than six months, although this time can be extended by the courts. An individual whose name appears on the Scottish Ministers' list on a provisional basis is **not** considered a disqualified individual⁷. This will only be the case if inclusion on the list is made permanent.

2 The Secretary of State's disqualification list under the 1999 Act

The 1999 Act applies to England & Wales. The circumstances in which individuals will be placed on the Secretary of State's list are largely the same as those under paragraphs 1.1, 1.2 and 1.3 above. The procedures followed are also largely similar. There are some differences, but these have little relevance to Scottish councils. In terms of the 2003 Act, an individual whose name appears on the Secretary of State's list on a provisional basis is **not** considered a disqualified individual⁸. This will only be the case if inclusion on the list is made permanent.

3 Disqualification from teaching direction under section 142 of the Education Act 2002

Such a direction prohibits a person from providing education at a school or further education institution, or in terms of a contract with an education authority, and also from managing an independent school or performing work for an education authority or similar body which would involve regular contact with children. A direction can be made for several reasons, but will only be relevant for the purposes of the 2003 Act if it is made on the grounds that the individual is unsuitable to work with children⁹. A direction may allow work under certain specified circumstances or subject to certain conditions, in which case an individual will not be considered disqualified from such work under the 2003 Act. The 2002 Act applies only to England & Wales. The relevant procedure in Scotland would be for the General Teaching Council for Scotland to refer an individual to the Scottish Ministers¹⁰ and for that individual to be added to the Ministers' list.

4 Disqualification order under Part II of the Criminal Justice and Court Services Act 2000

Again, this Act applies only to England and Wales. An order under this section is made by a court in similar circumstances to those at paragraph 1.4 above¹¹. The circumstances in which the court will make such an order are narrower than

⁵ s.10 of the 2003 Act

⁶ s.7 of the 2003 Act

⁷ s.17(1)(a) of the 2003 Act

⁸ s.17(1)(b) of the 2003 Act

⁹ s.142(4)(b) of the 2002 Act, as specified by s.17(1)(c) of the 2003 Act

¹⁰ in terms of section 4 of the 2003 Act

¹¹ ss.28 & 29 of the 2000 Act

under the 2003 Act, as the sentence passed by the court must exceed 12 months¹². The 2003 Act contains no such minimum requirement. The 2000 Act makes it an offence for anyone in England and Wales to offer a child care position to an individual on the Secretary of State's list or subject to a disqualification order¹³.

5 Prohibition or disqualification made under the law of any other territory or country and identified by the Scottish Ministers as corresponding to disqualification from working with children

The Scottish Ministers have not made any orders identifying other prohibitions. However, inclusion on the list set up by the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003¹⁴, or a disqualification order made under that Order¹⁵, may be identified as corresponding to disqualification in the future.

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¹² s.30 of the 2000 Act

¹³ s.35 of the 2000 Act

¹⁴ ss.3-21 of that Order

¹⁵ ss.22-34 of that Order