SCOTTISH STATUTORY INSTRUMENTS

2004 No. 523

CHILDREN AND YOUNG PERSONS

The Protection of Children (Scotland) Act 2003 Determination Regulations 2004

Made - - - -	*30th November 2004*
Laid before the Scottish Parliament - - - -	*2nd December 2004*
Coming into force - -	*10th January 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 8 and 21 of the Protection of Children (Scotland) Act 2003(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Protection of Children (Scotland) Act 2003 Determination Regulations 2004 and shall come into force on 10th January 2005.

Interpretation

2. In these Regulations, unless the context otherwise requires–

"the Act" means the Protection of Children (Scotland) Act 2003;

"the individual" is the person who is the subject of a reference under section 2(1) or 4(1) of the Act or named in a report of a relevant inquiry to which the provisions of section 6 of the Act apply;

"the List" means the list of individuals unsuitable to work with children kept by the Scottish Ministers in terms of section 1(1) of the Act;

"referring body" means the organisation or person making a reference to the Scottish Ministers under section 2(1) or 4(1) of the Act;

"relevant time limits" means the time limits prescribed in, or specified by the Scottish Ministers under, these Regulations; and

(**1**) 2003 asp 5.

"working day" means a day which is not a Saturday, Sunday, a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(**2**), or a day appointed for public thanksgiving or mourning.

Procedure for determinations

3.—(1) The procedure set out in Schedule 1 shall apply to a determination by the Scottish Ministers of a reference to them made under sections 2(1) or 4(1) of the Act.

(2) The procedure set out in Schedule 2 shall apply to a determination by the Scottish Ministers under section 6 of the Act.

Extension of time

4.—(1) Where these Regulations require or authorise the individual or the referring body or any other person to do something within a period of time, the Scottish Ministers may, on the application of the individual or the referring body or any other person, on cause shown, or otherwise where they consider it to be in the interests of justice to do so, grant such further period or periods of time as they consider appropriate.

(2) Where the Scottish Ministers have granted a further period of time, reference in these Regulations to that period of time shall be construed as a reference to the period of time as so extended.

Manner and time of service of notices

5.—(1) Any notice required to be given by the Scottish Ministers to the individual under these Regulations may be given in accordance with section 19 of the Act and where the notice is sent by post, it shall be sent by first class recorded delivery post properly addressed and prepaid to that individual's last known address, and shall be deemed to have been received the day after the date of posting.

(2) Any notice required to be given to the referring body or to any organisation or other person under these Regulations shall be deemed to have been given or sent, if it was sent by first class recorded delivery post properly addressed and prepaid to the last notified address of the referring body or that organisation or other person and shall be deemed to have been received the day after the date of posting.

(3) If a period of notice expires on a day which is not a working day the period of notice shall be deemed to expire on the next working day after that day.

St Andrew's House, Edinburgh
30th November 2004

EUAN MACFARLANE ROBSON
Authorised to sign by the Scottish Ministers

(**2**) 1971 c. 80.

SCHEDULE Regulation 3(1)

DETERMINATIONS UNDER SECTION 5 OF REFERENCES UNDER SECTIONS 2(1) AND 4(1) OF THE ACT

Information to be submitted with a reference

1. Where a reference is made by a referring body in terms of sections 2(1) and 4(1) of the Act, the following information shall, if known or available to the referring body, be submitted with that reference–

(a) identity details relating to the individual, including the individual's full name and any other names by which the individual is, or has been known; any address or addresses at which the individual is or has been resident in the 10 years preceding the date of the reference; the individual's date and place of birth and National Insurance number;

(b) information as to any checks carried out by the referring body to verify the individual's identity;

(c) details as to the child care position held by the individual;

(d) full details of the circumstances in which the referring body considers that the individual harmed a child or placed a child at risk of harm;

(e) where the reference is made in terms of section 2(1) of the Act, details of any circumstance referred to in section 2(3) or (4) of the Act;

(f) details of any investigation carried out by the referring body, any documentation relevant to that investigation and the conclusions of such investigation;

(g) information as to any relevant disciplinary policies or practices or conditions of employment of the referring body;

(h) details of all relevant action taken by the referring body prior to making the reference;

(i) information as to the involvement of any other organisation or body in matters relating to the reference; and

(j) details of any associated disciplinary appeal or legal proceedings.

Acknowledgement and recording of a reference

2.—(1) Where the Scottish Ministers have received a reference from the referring body in terms of sections 2(1) and 4(1) of the Act, they shall immediately send an acknowledgement of its receipt to that referring body and at the same time notify the individual of receipt of that reference and the name of the referring body.

(2) The Scottish Ministers shall maintain a record of all references made to them under section 2(1) and 4(1) of the Act, and shall enter particulars of a reference and the date of its receipt in that record.

(3) Where insufficient information has been sent with a reference to enable the Scottish Ministers to proceed further with their determination, they may send a notice to the referring body, inviting that referring body to submit within fourteen days of the date of that notice such further information as the Scottish Ministers think fit.

Preliminary matters

3.—(1) Where the Scottish Ministers decline to consider further any reference made under section 2(1) or 4(1) of the Act the Scottish Ministers shall notify the referring body and the individual.