



Protection of Children (Scotland) Act 2003

2003 asp 5

Inclusion in list

10 Individuals convicted of an offence against a child

- (1) Subject to subsections (3) and (4) below, on convicting an individual of an offence against a child the court—
 - (a) where the offence is a relevant offence, shall; or
 - (b) where the offence is not a relevant offence, may (if it thinks fit), propose to refer the case of the individual to the Scottish Ministers.
- (2) Subsection (1) above applies in relation to offences committed before and after this section comes into force.
- (3) Where an individual convicted of an offence against a child was under 18 years of age when the offence was committed, the court may propose to refer the case only if it is satisfied that the individual is likely to commit a further offence against a child.
- (4) Where an individual convicted of an offence against a child was 18 years of age or over when the offence was committed, the court shall not propose to refer the case if it is satisfied that the individual is unlikely to commit a further offence against a child.
- (5) The court shall, subject to subsection (6) below, make the proposed reference to the Scottish Ministers.
- (6) The court shall not make the proposed reference unless—
 - (a) the time limit for applications for leave to appeal against the proposed reference expires without leave being granted; or
 - (b) in a case where leave to appeal against a proposed reference is granted, the appeal is dismissed or abandoned.
- (7) The Scottish Ministers shall include an individual referred to them under subsection (5) above in the list kept under section 1(1) above.
- (8) On so including an individual in the list the Scottish Ministers shall—
 - (a) provide the individual who is so included with notice of that fact; and

Status: This is the original version (as it was originally enacted).

- (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.
- (9) For the purposes of this section—
- (a) an individual commits a relevant offence if the individual—
 - (i) commits any offence mentioned in paragraph 1 of schedule 1 to this Act; or
 - (ii) falls within paragraph 2 of that schedule; and
 - (b) an individual commits an offence against a child if the individual—
 - (i) commits a relevant offence;
 - (ii) commits any other offence in respect of which the person in relation to whom the offence was committed was a child,and references to being convicted of, or charged with, a relevant offence or, as the case may be, an offence against a child are to be read accordingly.
- (10) The Scottish Ministers may by order amend subsection (9)(b) above or schedule 1 to this Act so as to modify, for the purposes of this section, the meaning of “offence against a child” or “relevant offence” by—
- (a) adding offences to or, as the case may be, removing them from those referred to in that subsection or, as the case may be, schedule; or
 - (b) varying any of the descriptions of the offences there referred to.
- (11) Subsection (12) below applies to an individual charged with an offence against a child—
- (a) if—
 - (i) the individual is acquitted on the ground of insanity; or
 - (ii) the court, following an examination of facts under subsection (1) of section 55 (examination of facts) of the Criminal Procedure (Scotland) Act 1995 (c. 46), makes a finding under subsection (2) of that section in respect of the individual; and
 - (b) the court makes any order mentioned in section 57(2)(a) to (d) of that Act of 1995 in relation to the acquittal or finding.
- (12) An individual to whom this subsection applies is—
- (a) to be treated, for the purposes of this section, as having been convicted of the offence; and
 - (b) entitled to appeal, under section 106(1)(db) (right of appeal in solemn proceedings) or, as the case may be, 175(2)(cb) (right of appeal in summary proceedings) of that Act of 1995, against a reference made under subsection (1) above as if the individual had been convicted of the offence.