



Protection of Children (Scotland) Act 2003

2003 asp 5

VALID FROM 10/01/2005

Removal from list and appeals

14 Applications for removal from list

- (1) An individual who is included in the list kept under section 1(1) above may, with the leave of the sheriff, apply to the sheriff for a determination as to whether or not the individual should continue to be included in the list.
- (2) On an application under subsection (1) above, the sheriff, if satisfied that the individual is not unsuitable to work with children, shall by order direct the removal of the individual from the list; otherwise the sheriff shall dismiss the application.
- (3) An application for leave to make an application under subsection (1) above may not be made unless—
 - (a) subject to subsection (7)(a) below, the condition set out in subsection (4) below is fulfilled; and
 - (b) the individual has made no other such application for leave—
 - (i) in the period of ten (or, in the case of an individual who was a child at the relevant time, five) years ending with the date on which the individual makes the application for leave; or, as the case may be
 - (ii) in any other period specified in an order made under section 15(8) below.
- (4) That condition is—
 - (a) in the case of an individual included in the list under section 10(7) above, that—
 - (i) at least ten (or, in the case of an individual who was a child at the relevant time, five) years have elapsed since the day on which the individual was so included; and
 - (ii) in the case of an individual—
 - (A) whose sentence is a term of imprisonment or a term of detention; or
 - (B) detained in a hospital pursuant to an order of the court,

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the individual has been released or, as the case may be, ceases to be liable to be detained in the hospital; and

- (b) in the case of any other individual, that the individual has been included (otherwise than provisionally) in the list for a continuous period of at least ten (or, in the case of an individual who was a child at the relevant time, five) years.

(5) For the purposes of subsections (3) and (4) above, the “relevant time” is—

- (a) the time at which the offence in relation to which the individual was referred, under section 10(1) above, to the Scottish Ministers was committed; or, as the case may be
- (b) the time at which the individual is considered by the person—
 - (i) who referred the individual, under section 2(1) or 4(1) above, to the Scottish Ministers; or, as the case may be
 - (ii) who held the inquiry in respect of which the individual was included, under section 6 above, in the list,
 to have harmed a child or placed a child at risk of harm.

(6) Where—

- (a) an individual is released on licence under Part I (detention, transfer and release of prisoners) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9); or
- (b) a supervised release order is, in relation to the release of an individual, granted under section 209 (supervised release orders) of the Criminal Procedure (Scotland) Act 1995 (c. 46),

the individual is, for the purposes of subsection (4)(a)(ii) above, to be treated as being released on the day on which the licence expires (otherwise than by being revoked) or, as the case may be, the order expires.

(7) The sheriff may—

- (a) on being satisfied as to the matters set out in subsection (8) below, consider an application for leave to make an application under subsection (1) above despite the fact that it does not fulfil one or both of the conditions set out in subsection (3) above;
- (b) grant such an application for leave only if the sheriff is satisfied as to those matters.

(8) Those matters are—

- (a) that the individual’s circumstances have changed since the individual was included (otherwise than provisionally) in the list, or, as the case may be, since the individual last made such an application for leave; and
- (b) that the change is such that the application should be considered or, as the case may be, leave should be granted.

15 Appeals: inclusion in list under section 5 or 6 etc.

- (1) An individual who is included (otherwise than provisionally) in the list kept under section 1(1) above may appeal to the sheriff against a determination, under section 5 or 6 above, of the Scottish Ministers to include the individual in the list.

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- (2) An appeal under subsection (1) above may not be lodged later than three months after the date on which the Scottish Ministers made the determination or decision being appealed unless the sheriff, on cause shown, so allows.
- (3) The sheriff, unless satisfied—
 - (a) that the individual has harmed a child or placed a child at risk of harm; and
 - (b) that the individual is unsuitable to work with children,shall allow an appeal under subsection (1) above and direct the removal of the individual from the list; otherwise the sheriff shall dismiss the appeal.
- (4) A party to an appeal under subsection (1) above may appeal to the sheriff principal against any decision of the sheriff to allow or dismiss the appeal.
- (5) An appeal may be made by—
 - (a) an individual who has made an application under section 14(1) above; or
 - (b) the Scottish Ministers,to the sheriff principal against the decision of the sheriff on the application.
- (6) An appeal may, with the leave of the sheriff principal, be made by—
 - (a) the individual who is included in the list kept under section 1(1) above; or
 - (b) the Scottish Ministers,to the Inner House of the Court of Session against any decision of the sheriff principal to allow or dismiss an appeal under subsection (4) or (5) above.
- (7) The decision of—
 - (a) the sheriff principal; or
 - (b) if leave is granted to appeal to the Inner House, that House,on any appeal shall be final.
- (8) In allowing or dismissing an appeal, under subsection (6) above, of the decision of a sheriff principal on an appeal under subsection (5) above, the Inner House may by order specify a period other than the period specified in section 14(3)(b) above as the period during which the individual may not make an application to the sheriff for leave to make a further application for an order under section 14(2) above.
- (9) Where an individual has been convicted of an offence involving conduct (whether or not in the course of the individual's work) which harmed a child or placed a child at risk of harm, no finding of fact on which the conviction is based may be challenged on an appeal under subsection (1) or (4) above.

16 Appeals: inclusion in list following conviction of offence against a child

- (1) The Criminal Procedure (Scotland) Act 1995 (c. 46) is amended as follows.
- (2) In section 106(1) (right of appeal in solemn proceedings)—
 - (a) after paragraph (da), there is inserted—
 - “(db) against any reference proposed under section 10(1) of the Protection of Children (Scotland) Act 2003 (asp 5) in respect of the conviction;
 - (dc) against such reference and, subject to subsection (2) below, such sentence, disposal or order or any order deferring sentence;”;

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- (b) in paragraph (f), the words after “against” become sub-paragraph (i); and
- (c) at the end of that paragraph there is inserted—
- “(ii) both such a conviction and such a reference; or
- (iii) such a conviction, such a reference and, subject to subsection (2) below, such sentence, disposal or order.”.
- (3) In section 116 (abandonment of appeal in solemn proceedings), for subsection (2) there is substituted—
- “(2) A person who has appealed under section 116(1)(dc) or (f) of this Act may abandon the appeal in so far as it is against conviction, reference or sentence, decision, disposal or order and may proceed with it against—
- (a) both reference and sentence, decision, disposal or order; or
- (b) reference alone; or, as the case may be
- (c) sentence, decision, disposal or order alone.”.
- (4) In section 118 (disposal of appeals in solemn proceedings)—
- (a) after subsection (4), there is inserted—
- “(4AA) The High Court may dispose of an appeal against a reference proposed under subsection (1) of section 10 of the Protection of Children (Scotland) Act 2003 (asp 5)—
- (a) by dismissing the appeal and affirming such reference; or
- (b) if it thinks—
- (i) in a case to which subsection (3) of that section applies, that the court which is proposing to make the reference should not have been satisfied as to the condition mentioned in that subsection;
- (ii) in a case to which subsection (4) of that section applies, that the court which is proposing to make the reference should have been satisfied as to the condition mentioned in that subsection,
- by directing the court not to make the reference.”;
- (b) in subsection (7), the words after “on” become paragraph (a); and
- (c) at the end of that subsection there is inserted “; or, as the case may be,
- (b) whether a reference is appropriate in any similar case.”.
- (5) In section 121A(1) (suspension of certain sentences pending appeal), after “(e)” there is inserted “ (other than an appeal under section 106(1)(db) or (dc)) ”.
- (6) In section 173(2) (quorum of High Court for appeals in summary proceedings), after “(c)” there is inserted “ or (cb) ”.
- (7) In section 175 (right of appeal in summary proceedings)—
- (a) the word “or” which precedes paragraph (ca) of subsection (2) is repealed;
- (b) after that paragraph, there is inserted—
- “(cb) against any reference proposed under section 10(1) of the Protection of Children (Scotland) Act 2003 (asp 5) in respect of the conviction or, as the case may be, against such reference and such sentence, disposal or order; or”;

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- (c) in paragraph (d) of that subsection, the words after “against” become subparagraph (i);
 - (d) at the end of that paragraph there is inserted—
 - “(ii) both such a conviction and such a reference; or
 - (iii) such a conviction, such a reference and such sentence, disposal or order.”;
 - (e) in subsection (8), for the words from “against”, where first occurring, to “alone,” there is substituted “under subsection (2)(cb) or (d) above may abandon the appeal in so far as it is against conviction, reference or sentence and may proceed with it against—
 - (a) both reference and sentence; or
 - (b) reference alone; or, as the case may be
 - (c) sentence alone.”; and
 - (f) in subsection (9), after “(c)” there is inserted “ or (cb) ”.
- (8) In section 186 (appeals against sentence in summary proceedings), after “(c)”, where it appears in subsections (1), (2), (9) and (10), there is in each case inserted “ or (cb) ”.
- (9) In section 187(1) (leave to appeal in summary proceedings), after “(c)” there is inserted “ or (cb) ”.
- (10) In section 189 (disposal of appeals in summary proceedings)—
 - (a) after subsection (2), there is inserted—

“(2A) The High Court may dispose of an appeal against a reference proposed under subsection (1) of section 10 of the Protection of Children (Scotland) Act 2003 (asp 5) by—
 - (a) dismissing the appeal and affirming such reference; or
 - (b) if it thinks—
 - (i) in a case to which subsection (3) of that section applies, that the court which is proposing to make the reference should not have been satisfied as to the condition mentioned in that subsection;
 - (ii) in a case to which subsection (4) of that section applies, that the court which is proposing to make the reference should have been satisfied as to the condition mentioned in that subsection,

by directing the court not to make the reference.”;
 - (b) in subsection (7), the words after “on” become paragraph (a); and
 - (c) at the end of that subsection there is inserted “; or, as the case may be,
 - (b) whether a reference is appropriate in any similar case.”.
- (11) In section 193A(1) (suspension of certain sentences pending appeal), after “Act” there is inserted “ (other than by way of an appeal under section 175(2)(cb) of this Act against a reference only) ”.

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