



Protection of Children (Scotland) Act 2003

2003 asp 5

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 12th February 2003 and received Royal Assent on 19th March 2003

An Act of the Scottish Parliament to require the Scottish Ministers to keep a list of individuals whom they consider to be unsuitable to work with children; to prohibit individuals included in the list, and individuals who are similarly regarded in other jurisdictions, from doing certain work relating to children; to make further provision in relation to that list; and for connected purposes.

Annotations:

Modifications etc. (not altering text)

- C1 Act modified (temp.) (20.1.2009) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Transitory Provisions in Consequence of the Safeguarding Vulnerable Groups Act 2006\) Order 2009 \(S.S.I. 2009/4\)](#), arts. 1(2), 4 (with art. 3)
- C2 Act savings for effects of 2007 asp 14 Sch. 4 para. 42 (28.2.2011) by [The Protection of Vulnerable Groups \(Scotland\) Act 2007 \(Savings and Transitional Provisions\) Order 2010 \(S.S.I. 2010/180\)](#), arts. 1, arts. 3-12

Duty to keep list

^{F1} Duty of Scottish Ministers to keep list

Annotations:

Amendments (Textual)

- F1 Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), **Sch. 4 para. 42** (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

Changes to legislation: Protection of Children (Scotland) Act 2003 is up to date with all changes known to be in force on or before 22 April 2018. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Referrals

2 Reference following disciplinary action etc.

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

3 Reference by employment agency etc.

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

4 Reference by certain other persons

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

Inclusion in list

5 Inclusion in list following referral under section 2(1) or 4(1)

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

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6 Individuals named in the findings of certain inquiries

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

Provisional inclusion in list

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

8 Determination under section 5 or 6: power to regulate procedure

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Annotations:

Amendments (Textual)

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9 Protection from actions of defamation

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Annotations:

Amendments (Textual)

- F1** Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\), s. 101\(2\), Sch. 4 para. 42](#) (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

10 Individuals convicted of an offence against a child

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Effect of inclusion in list

11 Offences relating to work in a child care position

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Annotations:**Amendments (Textual)**

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^{F2}12 Searches of lists: amendment of Police Act 1997

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Annotations:**Amendments (Textual)**

- F2** S. 12 repealed (1.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(8), **Sch. 17 Pt. 2**; S.S.I. 2006/166, art. 2(1)(d)(ii)

^{F3}13 Amendment of Teaching Council (Scotland) Act 1965

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Annotations:**Amendments (Textual)**

- F3** S. 13 repealed (2.4.2012) by [The Public Services Reform \(General Teaching Council for Scotland\) Order 2011 \(S.S.I. 2011/215\)](#), art. 2, **Sch. 7**

Removal from list and appeals

14 Applications for removal from list

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Annotations:

Amendments (Textual)

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

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Annotations:

Amendments (Textual)

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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;”;
 - (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—

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- “(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”;
 - (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) ”.

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(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) ”.

Annotations:

Commencement Information

II [S. 16](#) in force at 10.1.2005 by [S.S.I. 2004/522](#), [art. 2\(1\)](#)

Interpretation and general

17 Meaning of “disqualified from working with children”

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Annotations:

Amendments (Textual)

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18 Interpretation

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Annotations:

Amendments (Textual)

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19 Notices

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Annotations:

Amendments (Textual)

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20 Offences by bodies corporate etc.

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Annotations:

Amendments (Textual)

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21 Orders and regulations

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Annotations:

Amendments (Textual)

F1 Act (with the exception of ss. 13, 16) repealed (28.2.2011) by [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(asp 14\)](#), s. 101(2), **Sch. 4 para. 42** (with ss. 90, 99); S.S.I. 2011/157, art. 2(a) (with savings for effects of 2007 asp 14, Sch. 4 para. 42 by S.S.I. 2010/180, arts. 1, 3-12)

22 Short title and commencement

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SCHEDULE 1

(introduced by section 10(9))

OFFENCES AGAINST A CHILD

- 1
- 2

Annotations:

Amendments (Textual)

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SCHEDULE 2

(introduced by section 18(1))

CHILD CARE POSITIONS

- 1
- 2

Annotations:

Amendments (Textual)

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- 2A

Annotations:

Amendments (Textual)

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- 2B

Annotations:

Amendments (Textual)

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Annotations:

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Annotations:

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Annotations:

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11

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12

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Changes and effects yet to be applied to :

- s. 10(11)(a)(i) words substituted by [2010 asp 13 Sch. 7 para. 70\(a\)](#)
- s. 10(11)(a)(ii) words substituted by [2010 asp 13 Sch. 7 para. 70\(b\)](#)