



Protection of Children (Scotland) Act 2003

2003 asp 5

Removal from list and appeals

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 sub-paragraph (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) ”.

Commencement Information

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

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