



Criminal Justice (Scotland) Act 2003

2003 asp 7

PART 12

MISCELLANEOUS AND GENERAL

Miscellaneous

73 Public defence

In section 28A of the Legal Aid (Scotland) Act 1986 (c. 47) (power of Scottish Legal Aid Board directly to employ solicitors to provide criminal legal assistance)—

- (a) subsections (2), (3) and (10) to (15) are repealed; and
- (b) ^{F1}

Textual Amendments

- F1** S. 73(b) repealed (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [112\(2\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch.

74 Offences aggravated by religious prejudice

- (1) This section applies where it is—
 - (a) libelled in an indictment; or
 - (b) specified in a complaint,and, in either case, proved that an offence has been aggravated by religious prejudice.
- (2) For the purposes of this section, an offence is aggravated by religious prejudice if—
 - (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or

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- (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

[^{F2}(2A) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.]

(3) ^{F3}

(4) ^{F3}

[^{F4}(4A) The court must—

- (a) state on conviction that the offence was aggravated by religious prejudice,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.]

(5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.

(6) In subsection (2)(a)—
“membership” in relation to a group includes association with members of that group; and
“presumed” means presumed by the offender.

(7) In this section, “religious group” means a group of persons defined by reference to their—
(a) religious belief or lack of religious belief;
(b) membership of or adherence to a church or religious organisation;
(c) support for the culture and traditions of a church or religious organisation; or
(d) participation in activities associated with such a culture or such traditions.

Textual Amendments	
F2	S. 74(2A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(a), 206; S.S.I. 2010/413, art. 2, Sch.
F3	S. 74(3)(4) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(b), 206; S.S.I. 2010/413, art. 2, Sch.
F4	S. 74(4A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(c), 206; S.S.I. 2010/413, art. 2, Sch.

75 Reintroduction of ranks of deputy chief constable and chief superintendent

- (1) The Police (Scotland) Act 1967 (c. 77) is amended as follows.
- (2) For section 5 there is substituted—

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“5 Deputy and assistant chief constables

- (1) Every police force shall have a deputy chief constable.
- (2) The ranks which may be held in a police force shall include that of assistant chief constable.
- (3) Appointments and promotions to the rank of deputy chief constable or assistant chief constable shall be made, in accordance with regulations under section 26 of this Act, by the police authority after consultation with the chief constable and subject to the approval of the Scottish Ministers.
- (4) Subsections (4) to (7) of section 4 of this Act shall apply to a deputy chief constable or an assistant chief constable as they apply to a chief constable.

5A Power of deputy or assistant chief constable to exercise functions of chief constable

- (1) The deputy chief constable of a police force may exercise or perform any or all of the powers and duties of the chief constable of that force—
 - (a) during any absence, incapacity or suspension from duty of the chief constable;
 - (b) during any vacancy in the office of the chief constable; or
 - (c) at any other time, with the consent of the chief constable.
 - (2) A person holding the rank of assistant chief constable in a police force may be designated by the police authority to exercise or perform any or all of the powers and duties of the chief constable of that force during—
 - (a) any absence, incapacity or suspension from duty of;
 - (b) any vacancy in the offices of,both the chief constable and the deputy chief constable.
 - (3) Only one person shall be authorised to act at any one time by virtue of a designation under subsection (2) above.
 - (4) Exercise for a continuous period of more than three months of any power conferred by virtue of subsection (1)(a) or (b) or (2) above shall require the consent of the Scottish Ministers.
 - (5) The provisions of subsections (1) and (2) above shall be without prejudice to any other enactment which makes provision for the exercise by any other person of powers conferred on a chief constable.”.
- (3) In section 7(1) (ranks), after the words—
 - (a) “of chief constable” there is inserted “, deputy chief constable ”; and
 - (b) “assistant chief constable” there is inserted “, chief superintendent ”.
 - (4) In section 26(2A)(b) (regulations as to dismissal etc. of constable holding a rank above that of superintendent), after the words “that of” there is inserted “ chief ”.
 - (5) In section 31 (powers of Scottish Ministers in relation to compulsory retirement of chief constable or assistant chief constable)—
 - (a) in subsection (2)—

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- (i) after the words “with respect to” there is inserted “ the deputy or ”; and
- (ii) for the words “chief constable or assistant chief constable” there is substituted “ officer in respect of whom the power is to be exercised ”; and
- (b) in subsection (4), after the words “a chief constable” there is inserted “ or deputy ”.

76 Police custody and security officers

(1) The Police (Scotland) Act 1967 (c. 77) is amended as follows.

(2) In section 9 (civilian employees)—

- (a) in subsection (1), the existing words from “employ” to the end become paragraph (a) and after that paragraph there is inserted the word “ ; or ” and the following paragraph—
 - “(b) appoint for such purposes as such officers persons provided under a contract for services entered into by the authority with some other person”;
- (b) after that subsection there is inserted—

“(1A) The category of persons—

- (a) so employed or appointed; and
- (b) in respect of each of whom there is for the time being a certificate in force, certifying that he has been approved by the chief constable for the purposes of performing functions in relation to custody and security and is accordingly authorised to perform them for the police force,

shall be known as the police authority’s “police custody and security officers”.

(1B) Without prejudice to powers or duties which a police custody and security officer may have under or by virtue of any other enactment, for the purposes of the functions which he is authorised to perform by virtue of subsection (1A)(b) above, any such officer shall have the powers mentioned in subsection (1C) below and the duties mentioned in subsection (1E) below; except that no officer provided as is mentioned in subsection (1)(b) above shall have those powers and duties in the premises of any court or in land connected with such premises.

(1C) The powers are—

- (a) to transfer persons in legal custody from one set of relevant premises to another;
- (b) to have custody of persons held in legal custody on court premises (whether or not such persons would otherwise be in the custody of the court) and to produce them before the court;
- (c) to have custody of persons temporarily held in legal custody in relevant premises while in the course of transfer from one set of such premises to another;

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- (d) to apprehend a person who was in the custody of the officer in relevant premises or in such course of transfer but who is unlawfully at large;
- (e) to remove from relevant premises any person—
 - (i) who he has reasonable grounds to believe has committed or is committing an offence; or
 - (ii) who is causing a disturbance or nuisance;
- (f) in any place to search any person who is in legal custody or is unlawfully at large;
- (g) in relevant premises, or in any other place in which a person in his custody who is being transferred from one set of relevant premises to another is present, to search (any or all)—
 - (i) property;
 - (ii) any person who he has reasonable grounds to believe has committed or is committing an offence;
 - (iii) any person who is seeking access to a person in the officer's custody or to relevant premises;
- (h) in relevant premises, or in any other place in which a person in legal custody is or may be, to require any person who he has reasonable grounds for suspecting has committed or is committing an offence to give his name and address and either—
 - (i) to remain there with the officer until the arrival of a constable; or
 - (ii) where reasonable in all the circumstances, to go with the officer to the nearest police station,but only if before imposing any such requirement on a person the officer informs him of the nature of the suspected offence and of the reason for the requirement;
- (i) in fulfilment of his duties under subsection (1E)(d) below, to apprehend any person and to detain that person in custody in the premises of the court in question;
- (j) at a constable's direction, to photograph, or take relevant physical data from, any person held in legal custody; and
- (k) to use reasonable force (which may include the use of handcuffs and other means of restraint) where and in so far as it is requisite to do so in exercising any of the other powers.

(1D) In subsection (1C) above—

“legal custody” has the meaning given by section 295 of the Criminal Procedure (Scotland) Act 1995 (c. 46);

“relevant physical data” has the meaning given by section 18(7A) of that Act; and

“relevant premises” means—

- (a) the premises of any court, prison, police station or hospital (within the meaning of the Mental Health (Scotland) Act 1984 (c. 36)); or

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- (b) the premises of any other place from or to which a person may be required to be taken under that Act of 1984 or that Act of 1995,

and either (but not both) of the sets of premises mentioned in any of paragraphs (a), (c) and (g) of that subsection may be situated in a part of the British Islands outwith Scotland.

(1E) The duties are—

- (a) to attend to the well-being of persons in their custody;
- (b) to prevent the escape of such persons from their custody;
- (c) to prevent, or detect and report on, the commission or attempted commission by such persons of other unlawful acts;
- (d) to act with a view to preserving good order in the premises of any court and in land connected with such premises;
- (e) to ensure good order and discipline on the part of such persons (whether or not in the premises of any court or in land connected with such premises); and
- (f) to give effect to any order of a court.

(1F) A police custody and security officer is not to be regarded as acting in accordance with those powers and duties at any time when not readily identifiable as such an officer (whether or not by means of a uniform or badge worn).”;

- (c) in subsection (2), after the word “employed” there is inserted “, or appointed,”; and
- (d) in subsection (3)—
 - (i) after the word “employed” there is inserted “, or appointed,”; and
 - (ii) after the words “by the authority” there is inserted “ (not being police custody and security officers) ”.

(3) After section 9 there is inserted—

“9A Certification of police custody and security officers

- (1) A chief constable may, on the application of any person employed or appointed by his police authority, issue in respect of that person a certificate such as is mentioned in section 9(1A)(b) of this Act.
- (2) The chief constable shall not do so unless satisfied that the applicant—
 - (a) is a fit and proper person to perform for the police force the functions of a police custody and security officer; and
 - (b) has received training to such standard as the chief constable considers appropriate for the performance of those functions.
- (3) A certificate so issued shall, subject to any suspension under paragraph (a) of subsection (4) below or revocation under paragraph (b) of that subsection, continue in force until such date or occurrence as may be specified in the certificate.
- (4) If at any time it appears to the chief constable that the person in respect of whom the certificate has been issued—

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- (a) may not be a fit and proper person to perform the functions of a police custody and security officer he may suspend (pending his consideration of whether to proceed under paragraph (b) of this subsection);
 - (b) is not a fit and proper person to perform those functions he may revoke,
- the certificate and such authorisation as it confers.

9B False statements in relation to certification

A person who, for the purpose of obtaining a certificate such as is mentioned in section 9(1A)(b) of this Act for himself or any other person—

- (a) makes a statement which he knows to be; or
- (b) recklessly makes a statement which is,

false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.”.

(4) In section 39 (liability for wrongful acts of constables)—

- (a) in subsection (1), after the words “any constable” there is inserted “ or police custody and security officer ”;
- (b) in subsection (4), after the words “Police Act 1997” there is inserted “ or any police custody and security officer employed or appointed by them ”; and
- (c) at the end there is added—

“(8) This section is without prejudice to any obligation or indemnity arising by virtue of a contract entered into under section 9(1)(b) of this Act.”.

(5) In section 41 (assaults on constables etc.)—

- (a) in subsection (1)(a), after the word “constable” where it occurs for—
 - (i) the first time there is inserted “ or police custody and security officer ”; and
 - (ii) the second time there is inserted “ or any such officer ”; and
- (b) in subsection (2), after the words—
 - (i) “custody of a constable” there is inserted “ or police custody and security officer ”; and
 - (ii) “assisting a constable” there is inserted “ or any such officer ”.

(6) In section 43 (impersonation etc.)—

- (a) in subsection (1)(a), after the word “constable” there is inserted “ or police custody and security officer ”; and
- (b) in subsection (3), after the word “constables” there is inserted “ or police custody and security officers ”.

(7) In section 44 (offences by constables)—

- (a) in subsection (2), after the words “Any constable” there is inserted “ or police custody and security officer ”;
- (b) in subsection (3), after the words “Any constable” there is inserted “ or any such officer ”; and
- (c) in subsection (4), after the words “a constable”, in each of the two places they occur, there is inserted “ or such an officer ”.

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- (8) In section 45 (warrant to search for police accoutrements and clothing), after the words “a constable” there is inserted “ or a police custody and security officer ”.
- (9) In section 51(1) (interpretation), at the appropriate place there is inserted—
- ““police custody and security officer” shall be construed in accordance with section 9(1A) of this Act;”.
- (10) In section 102(5) of the Criminal Justice and Public Order Act 1994 (c33) (compliance with warrants or orders), at the end there is added “ or by a police custody and security officer in the performance of functions prescribed under section 9(1A)(b) of the Police (Scotland) Act 1967 (c. 77) ”.
- (11) In section 307(1) of the 1995 Act (interpretation), in paragraph (c) of the definition of “officer of law”—
- (a) after the word “employed” there is inserted “ or appointed ”;
 - (b) after the words “and who” there is inserted “ either ”; and
 - (c) at the end there is added “ or is a police custody and security officer ”.

77 Wildlife offences

Schedule 3 to this Act, which contains amendments to the Wildlife and Countryside Act 1981 (c. 69) relating to penalties for, and powers of arrest as regards, offences under Part I of that Act, has effect.

78 Disqualification from jury service

- (1) In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55) (ineligibility for and disqualification and excusal from jury service), in Part II, after paragraph (b) there is inserted—
- “(bb) persons who have been convicted of an offence if, in respect of the conviction, one or more of the following orders was made—
- (i) a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (section 247 of that Act being disregarded for the purposes of this head);
 - (ii) a drug treatment and testing order under section 234B(2) of that Act;
 - (iii) a community service order under section 238(1) of that Act;
 - (iv) a restriction of liberty order under section 245A(1) of that Act;
 - (v) a community order as defined by section 33(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
 - (vi) a community order as defined by article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (N.I.24));
 - (vii) a drug treatment and testing order under article 8(2) of the Criminal Justice (Northern Ireland) Order 1998 (SI 1998/2839 (N.I.20)),
- except where they are rehabilitated persons for the purposes of the Rehabilitation of Offenders Act 1974 (c. 53);”.

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(2) Subject to subsection (3), the insertion made by subsection (1) has effect even in relation to a case where the probation order, drug treatment and testing order, community service order, restriction of liberty order or community order is made before the date on which subsection (1) is brought into force.

(3) A person—

- (a) cited under section 85(4) of the 1995 Act (citation of jurors); or
- (b) summoned by virtue of section 12 of the Court of Session Act 1988 (c. 36) (summoning of jury),

before that date is not, by virtue of subsection (1), excused from attending in compliance with the citation or disqualified from serving as a juror at the sitting, or trial, in question.

79 Separation of jury after retreat

It shall no longer be mandatory for the period during which a jury, after retiring to consider their verdict, are enclosed to be continuous; and accordingly, in section 99 of the 1995 Act (seclusion of jury to consider verdict)—

- (a) in subsection (1), for the word “after” there is substituted “ while ”;
- (b) in subsection (2), for the words “until the jury” there is substituted “ while the jury are enclosed and until they ”;
- (c) in subsection (4)(b), after the word “and” there is inserted “ , unless under subsection (7) below the court permits them to separate, ”; and
- (d) at the end there is added—

“(7) The court may, if it thinks fit, permit the jury to separate even after they have retired to consider their verdict.”.

80 Television link from court to prison or other place of detention

(1) In proceedings in the High Court or sheriff court the court may, on application to it, make in relation to—

- (a) any diet other than—
 - (i) the first calling of the case in a summary prosecution; or
 - (ii) a diet at which evidence as to the charge may be led or presented;
- (b) the hearing, on an occasion other than a first occasion such as is mentioned in section 22A(1) of the 1995 Act (which relates to first appearance), of a petition under section 34(1) of that Act (petition for warrant); or
- (c) any judicial examination conducted, other than on such a first occasion, by virtue of such a petition,

arrangements whereby any due participation, at the diet, hearing or examination, of an accused who is a person imprisoned, or detained, in any place in Scotland is through a live television link from that place, the accused not being brought to the court-room or as the case may be to chambers; but this subsection is subject to subsection (5).

(2) Where such arrangements are made the place is, for the purposes of the proceedings, to be deemed part of the court-room or as the case may be of chambers and any proceedings conducted in accordance with the arrangements are to be deemed to take place in the presence of the accused.

(3) The court—

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- (a) may at any time before or during the diet, hearing or examination; and
- (b) in the case of a diet, must, where the arrangements were made by virtue of subsection (5) but at the diet a party seeks duly to lead or present evidence as to the charge,

determine that, in the interests of justice, the arrangements shall not be continued with and postpone the diet, or as the case may be the hearing or examination, to the next day which is not a Saturday, Sunday or court holiday prescribed for the court.

- (4) The period of any such postponement is not to count towards any time limit applying in respect of the case.
- (5) Paragraph (a)(ii) of subsection (1) does not apply where, in relation to an application under that subsection, the court is satisfied that neither (or as the case may be none) of the parties intends to lead or present, at the diet mentioned in that paragraph, evidence as to the charge.

81 Warrants issued in Northern Ireland for search of premises in Scotland

- (1) Where a warrant issued by a magistrate or county court judge in Northern Ireland for the search of premises in Scotland is duly endorsed by a sheriff or justice of the peace in whose jurisdiction the warrant purports to authorise search, the warrant has effect as if granted by the sheriff or, as the case may be, justice of the peace.
- (2) The reference in subsection (1) to the warrant being duly endorsed is to its being endorsed in the manner specified in subsection (1) of section 4 of the Summary Jurisdiction (Process) Act 1881 (c. 24) as if it were a process mentioned in that subsection.

82 Use of electronic communications or electronic storage in connection with warrants to search

- (1) This section, which is without prejudice to section 8 of the Electronic Communications Act 2000 (c. 7) (power to modify legislation), applies to warrants to search granted under section 134(1) of the 1995 Act (that is to say, where incidental to proceedings by complaint or although no subsequent proceedings by complaint may follow).
- (2) Subject to subsections (1) and (4), the Scottish Ministers may, in relation to warrants to which this section applies, by order modify—
 - (a) any rule of law; or
 - (b) the practice and procedure in relation to criminal proceedings,
 in such manner as they think fit so as to authorise or facilitate the use of electronic communications or electronic storage (instead of other forms of communication or storage) for any purpose mentioned in subsection (3).
- (3) Those purposes are (in relation to the rule of law or the practice and procedure) the purposes mentioned (in relation to the provisions which may be modified under subsection (1) of section 8 of that Act of 2000) in any of paragraphs (a) to (f) of subsection (2) of that section.
- (4) The Scottish Ministers are not to make an order under subsection (2) authorising the use of electronic communications or electronic storage for any purpose unless they consider that the authorisation is such that the extent (if any) to which records of things

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done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases.

- (5) Subsections (4) to (6) and (8) of section 8 and (5) and (6) of section 9 of that Act of 2000 apply in relation to an order made under subsection (2) as they apply in relation to an order made under subsection (1) of the said section 8.
- (6) Expressions used in this section and in that Act of 2000 have the same meanings in this section as in that Act.

83

F5

Textual Amendments

F5 S. 83 repealed (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(2), 145(2), [Sch. 5](#); S.S.I. 2004/420, [art. 3](#), Sch. 1

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