

2010 No. 413 (C. 28)

CRIMINAL LAW

**The Criminal Justice and Licensing (Scotland) Act 2010
(Commencement No. 6, Transitional and Savings Provisions)
Order 2010**

Made - - - - *19th November 2010*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 201(1) and (2) and 206(1) of the Criminal Justice and Licensing (Scotland) Act 2010(a).

Citation and interpretation

1.—(1) This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2010.

(2) In this Order—

“premises licence application” means an application made under section 20(1) of the 2005 Act;

“the Act” means the Criminal Justice and Licensing (Scotland) Act 2010;

“the 1988 Act” means the Criminal Justice Act 1988(b);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(c);

“the 2005 Act” means the Licensing (Scotland) Act 2005(d).

(3) For the purposes of this Order, where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it is to be taken to have been committed on the first of those days.

Commencement dates

2.—(1) The provisions of the Act specified in column 1 of the Schedule to this Order (the subject matter of which is specified in column 2 of the Schedule) come into force on the corresponding date specified in column 3 of the Schedule.

(2) Where a purpose is specified in column 4 of the Schedule, the corresponding provision specified in column 1 of the Schedule only comes into force for that purpose.

(a) 2010 asp 13.
(b) 1988 c.33.
(c) 1995 c.46.
(d) 2005 asp 16.

Savings provision— section 14 and schedule 2 (community payback orders)

3.—(1) The commencement of section 14 of, and schedule 2 to, the Act is of no effect in relation to an offence committed before 1st February 2011 or in relation to any probation order, supervised attendance order or community service order made under the 1995 Act.

(2) The commencement of section 20 of the Act is of no effect in relation to an offence committed before 1st February 2011.

Savings provision – section 40 (certain sexual offences by non-natural persons)

4. Notwithstanding the commencement of section 40 of the Act where an offence, under any of the provisions specified in that section, is committed before 13th December 2010—

- (a) by a non-natural person, the penalty which may be imposed is only one which may be imposed as if that section had not been commenced; or
- (b) by a natural person, the penalty which may be imposed cannot exceed the maximum penalty applicable at the time the offence was committed.

Savings provision and transitional provision - section 60 (prosecution on indictment: Scottish Law Officers)

5.—(1) Subject to paragraph (2), notwithstanding the commencement of section 60 of the Act, indictments raised in the name of the Lord Advocate or, as the case may be, in the name of the Solicitor General prior to 13th December 2010 in respect of proceedings which have not concluded as at that date shall proceed as if that section has not been commenced.

(2) The amendments made to section 287 of the 1995 Act by section 60(4)(a)(iii) and (d)(i) of the Act shall apply to indictments in respect of which paragraph (1) makes provision.

(3) Section 287(2B)(a) of the 1995 Act applies in respect of indictments raised in the name of the Solicitor General prior to 13th December 2010 in proceedings which have not concluded as at that date in the same way as it applies to indictments raised at the instance of the Solicitor General after that date.

(4) The reference to section 287(2B) in section 287(4)(a)(b) of the 1995 Act must in cases, in respect of which paragraph (3) applies, be construed accordingly.

Transitional provision – section 99 (closure of premises associated with human exploitation etc.)

6. The amendments made to the Antisocial Behaviour etc. (Scotland) Act 2004(c) by virtue of section 99 of the Act, insofar as they relate to cases involving exploitation offences, have effect only in respect of those cases in which a senior police officer(d) has reasonable grounds for believing, or as the case may be a sheriff is satisfied, that—

- (a) an exploitation offence is being committed, or has been committed in the premises; or
- (b) the premises are being used, or have been used for, or in connection with, the commission of such an offence,

on or after 13th December 2010.

(a) Section 287(2B) was inserted by section 60(4)(c) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the Act”).

(b) Section 287(4)(a) was amended by section 60(4)(d)(ii) of the Act.

(c) 2004 asp 8.

(d) “Senior police officer” is defined in section 19(1) of the Antisocial Behaviour etc. (Scotland) Act 2004.

Transitional provision – section 113 (compensation for miscarriages of justice)

7.—(1) Paragraphs (2) and (3) apply in the case of compensation under section 133(1) of the 1988 Act to a person in respect of whom—

- (a) a conviction has been reversed or pardoned before 13th December 2010; and
- (b) no application for compensation has been made to the Scottish Ministers under section 133(2) of the 1988 Act in respect of that conviction before that date.

(2) The period referred to in section 133(2AA)(a) of the 1988 Act is to be the period of 3 years starting with the date of commencement of section 113 of the Act.

(3) The reference in section 133(2AB)(b) of the 1988 Act to “that time limit” is to be the period specified in paragraph (2).

Transitional provision – section 185 (duration of licences)

8. Notwithstanding the commencement of section 185 of the Act, where a provisional premises licence has been issued under section 45 of the 2005 Act before 13th December 2010 and the provisional period has not expired by that date, the provisional period for such a licence under section 45(6) of the 2005 Act is to be treated as being 4 years beginning on the date of issue of the licence.

KENNY MACASKILL

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
19th November 2010

(a) Section 133(2AA) was inserted by section 113(1)(b) of the Act.
(b) Section 133(2AB) was inserted by section 113(1)(b) of the Act.

SCHEDULE

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|---|--|--|
| Section 14(1) (in part) and (2) | Community payback orders | 1st February 2011 | For all purposes apart from inserting section 227ZM into the 1995 Act |
| Section 14(1) (in part) | Community payback orders – annual reports on community payback orders | 1st April 2011 | For the purpose of inserting section 227ZM into the 1995 Act |
| Section 16 | Short periods of detention | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 17 | Presumption against short periods of detention | 1st February 2011 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 20 | Reports about supervised persons | 1st February 2011 | |
| Section 21 | Detention of children convicted on indictment | 1st February 2011 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 23 | Extended sentences for certain sexual offences | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 25 | Offences aggravated by racial or religious prejudice | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 26 | Voluntary intoxication by alcohol: effect in sentencing | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|--|--|--|
| Section 28 | Involvement in serious organised crime | 13th December 2010 | |
| Section 29 | Offences aggravated by connection with serious organised crime | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 30 | Directing serious organised crime | 13th December 2010 | |
| Section 31 | Failure to report serious organised crime | 13th December 2010 | |
| Section 34 | Articles banned in prison | 13th December 2010 | |
| Section 37 | Offensive weapons etc | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 39 | Offence of stalking | 13th December 2010 | |
| Section 40 | Certain sexual offences by non-natural persons | 13th December 2010 | |
| Section 41 | Indecent images of children | 13th December 2010 | |
| Section 45 | Penalties for offences of brothel-keeping and living on the earnings of prostitution | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 56 | Grant of warrants for execution by constables and police members of SCDEA | 13th December 2010 | |
| Section 59 | Bail conditions: remote monitoring requirements | 13th December 2010 | |
| Section 60 | Prosecution on indictment: Scottish Law Officers | 13th December 2010 | |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|---|--|--|
| Section 64 | Remand and committal of children and young persons | 13th December 2010 | |
| Section 71 | Convictions by courts in other EU Member States | 13th December 2010 | |
| Section 80 | Retention of samples etc. from children referred to children's hearings | 13th December 2010 | Section 80 is commenced for the purpose of inserting the following provisions into the 1995 Act:— (a) section 18E(6) (b) section 18E(7) (c) section 18E(10) |
| Section 93 | Lists of jurors | 13th December 2010 | |
| Section 94 | Upper age limit for jurors | 10th January 2011 | |
| Section 95 | Excusal from jury service | 10th January 2011 | |
| Section 96 | Persons excusable from jury service | 10th January 2011 | |
| Section 99 | Closure of premises associated with human exploitation etc. | 13th December 2010 | |
| Section 101 | Foreign travel orders | 13th December 2010 | |
| Section 104 | Risk of sexual harm orders: spent convictions | 13th December 2010 | |
| Section 105 | Obtaining information from outwith United Kingdom | 13th December 2010 | |
| Section 111 | Assistance for victim support | 13th December 2010 | |
| Section 112 | Public defence solicitors | 13th December 2010 | |
| Section 113 | Compensation for miscarriages of justice | 13th December 2010 | |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|--|--|---|
| Section 114 | Financial reporting orders | 13th December 2010 | |
| Section 173 | Licensing: powers of entry and inspection for civilian employees | 13th December 2010 | |
| Section 178 | Applications for licenses | 28th February 2011 | In so far as not already in force, for all purposes in respect of applications for the grant or renewal of licences under paragraph 1 of Schedule 1, or paragraph 6 of Schedule 2 to the Civic Government (Scotland) Act 1982 made on or after the date specified in column 3 |
| Section 180 | Premises licence applications: notification requirements | 13th December 2010 | For all purposes in respect of premises licence applications made to a Licensing Board on or after the date specified in column 3 |
| Section 181 | Premises licence applications : modification of layout plans | 13th December 2010 | For all purposes in respect of premises licence applications made to a Licensing Board on or after the date specified in column 3 |
| Section 182 | Reviews of premises licences: notification of determinations | 28th February 2011 | For all purposes in respect of premises licence review proposals made by a Licensing Board under section 37(1) of the 2005 Act and all premises licence applications made to a Licensing Board on or after the date specified in column 3 |
| Section 183 | Premises licence | 13th December 2010 | For all purposes in |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|--|---|--|---|
| | applications: antisocial behaviour reports | | respect of premises licence applications made to a Licensing Board on or after the date specified in column 3 |
| Section 184(1) and (2) | Premises licences: connected persons and interested parties | 13th December 2010 | Section 184(2) is commenced for the purposes of inserting the following provisions into the 2005 Act:— (a) section 40A(1), but not sub-paragraph (b) (b) section 40A(2), but not the words “or an interested party” (c) section 40A(3) to (5) |
| Section 184(3)(a)(i) Section 184(3)(a)(ii) Section 184(3)(b) | | | Section 184(3)(a)(ii) is commenced for the purpose of inserting into the 2005 Act section 48(1)(c)(i) only |
| Section 185 | Provisional premises licences: duration | 13th December 2010 | |
| Section 187 | Provision of copies of licences to chief constable | 13th December 2010 | For all purposes in respect of premises licence applications or an application under section 47(2) of the 2005 Act made to a Licensing Board on or after the date specified in column 3 |
| Section 188(1) and (3) | Sale of alcohol to trade | 13th December 2010 | Section 188(3) is commenced for all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 192 | Personal licences | 13th December 2010 | Sections 192(1) and (2) are commenced for all purposes in respect of applications for a |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|--------------------------------------|--|---|
| | | | personal licence under section 72(1) of the 2005 Act made to a Licensing Board on or after the date specified in column 3 |
| | | | Section 192(3) is commenced for all purposes in respect of all personal licences granted following an application that was made to a Licensing Board on or after the date specified in column 3 |
| | | | Section 192(4) is commenced for all purposes in respect of applications for a replacement personal licence received by a Licensing Board on or after the date specified in column 3 |
| Section 193 | Emergency closure orders | 13th December 2010 | |
| Section 194 | Appeals | 13th December 2010 | For all purposes in respect of decisions that may be appealed under section 131(1) of, and Schedule 5 to, the 2005 Act made by a Licensing Board on or after the date specified in column 3 |
| Section 195 | Liability for offences | 13th December 2010 | Section 195(2) is commenced for all purposes in respect of offences committed on or after the date specified in column 3 Section 195(3) is commenced for the purposes of inserting the following provisions into the |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|---|---|--|
| | | | 2005 Act in respect of offences committed on or after the date specified in column 3:— |
| | | | (a) section 141A (b) section 141B(1)(a) (c) section 141B(2) except the words “or, as the case may be, the interested party” (d) section 141B(3) except the words “or an interested party” and “as the case may be, the interested party” (e) section 141B(4) except the words “or the interested party” (f) section 141B(5) |
| Section 196 | False statements in applications: offence | 13th December 2010 | For all purposes in respect of offences committed on or after the date specified in column 3 |
| Section 198 | Further modifications of the 2005 Act | 13th December 2010 | |
| Section 199 | Annual report on Criminal Justice (Terrorism and Conspiracy) Act 1998 | 13th December 2010 | |
| Schedule 2 | Community payback orders: consequential modifications | 1st February 2011 | For all purposes apart from bringing into force paragraph 38 |
| Schedule 2 | Community payback orders – amendment to the Jobseekers Act 1995 | The day that section 25(2) of the Welfare Reform Act 2009 (c.24) (jobseekers allowance: sanctions for violent conduct etc. in connection with claim) comes into force | For the purpose of bringing into force paragraph 38 |
| Schedule 4 | Convictions by courts in other EU Member | 13th December 2010 | For all purposes in respect of offences |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|--|--|--|
| | States: modifications of enactments | | committed on or after the date specified in column 3, apart from bringing into force paragraph 12 |
| The following paragraphs of schedule 6:— | Further modifications of the 2005 Act | 13th December 2010 | |
| 1 | | | |
| 3 to 6 | | | Paragraphs 5 and 6(3) are commenced for all purposes in respect of applications for a premises licence under section 20 of the 2005 Act made to a Licensing Board on or after the date specified in column 3. |
| 7 | | | Paragraph 7 (is commenced for all purposes in respect of applications for the transfer of a premises licence made to a Licensing Board on or after the date specified in column 3 |
| 8 | | | Paragraph 8 is commenced for all purposes in respect of any notice of conviction given by a Licensing Board to the appropriate chief constable under section 44(2) of the 2005 Act on or after the date specified in column 3 |
| 11 to 16 | | | Paragraph 11 is commenced for all purposes in respect of any notice given by a Licensing Board to the appropriate chief constable under |

| <i>Column 1 (provisions of the Act)</i> | <i>Column 2 (subject matter)</i> | <i>Column 3 (date of commencement)</i> | <i>Column 4 (purpose)</i> |
|---|--------------------------------------|--|---|
| | | | section 69(1) of the 2005 Act on or after the date specified in column 3 |
| | | | Paragraph 12 is commenced for all purposes in respect of any notice given by a Licensing Board to the appropriate chief constable under section 73(1) of the 2005 Act in respect of an application for a personal licence made on or after the date specified in column 3 |
| | | | Paragraphs 13 to 15 are commenced for all purposes in respect of applications for a personal licence under section 72 of the 2005 Act made on or after the date specified in column 3 |
| 18 | | | Paragraph 18 is commenced for all purposes in respect of applications for occasional licences made to a Licensing Board on or after the date specified in column 3 |
| The following paragraphs of schedule 7:— | Modifications of enactments | | |
| 4 | | 13th December 2010 | |
| 5 | | 13th December 2010 | |
| 13 | | 13th December 2010 | |
| 48 | | 10th January 2011 | |
| 49 | | 13th December 2010 | |
| 86 | | 13th December 2010 | |

EXPLANATORY NOTE

(This note is not part of the Order)

The Criminal Justice and Licensing (Scotland) Act (“the 2010 Act”) received Royal Assent on 6th August 2010. Sections 201, 202, 204, 205 and 206 of the 2010 Act came into force on Royal Assent.

This Order brings into force certain other provisions of the 2010 Act. The Schedule to this Order specifies the date certain provisions of the 2010 Act come into force.

Article 2 of this Order provides that the provisions contained in column 1 of the Schedule come into force on the date specified in column 3. If a purpose is specified in column 4, the provision only comes into force for that purpose.

The following provisions of the 2010 Act come into force for all purposes on 13th December 2010:—

- Section 16 (short periods of detention);
- Section 23 (extended sentences for certain sexual offences);
- Section 25 (offences aggravated by racial or religious prejudice);
- Section 26 (voluntary intoxication by alcohol: effect in sentencing);
- Section 28 (involvement in serious organised crime);
- Section 29 (offences aggravated by connection with serious organised crime);
- Section 30 (directing serious organised crime);
- Section 31 (failure to report organised crime);
- Section 34 (articles banned in prison);
- Section 37 (offensive weapons etc.);
- Section 39 (offence of stalking);
- Section 40 (certain sexual offences by non-natural persons);
- Section 41 (indecent images of children);
- Section 45 (penalties for offences of brothel-keeping and living on the earnings of prostitution);
- Section 56 (grant of warrants for execution by constables and police members of SCDEA);
- Section 59 (bail conditions: remote monitoring requirements);
- Section 60 (prosecution on indictment: Scottish Law Officers);
- Section 64 (remand and committal of children and young persons);
- Section 71 (convictions by courts in other EU Member States);
- Section 93 (lists of jurors);
- Section 99: (closure of premises associated with human exploitation etc.);
- Section 101 (foreign travel orders);
- Section 104 (risk of sexual harm orders: spent convictions);
- Section 105 (obtaining information from outwith United Kingdom);
- Section 111 (assistance for victim support);

Section 112 (public defence solicitors);
Section 113 (compensation for miscarriages of justice);
Section 114 (financial reporting orders);
Section 173 (licensing: powers of entry and inspection for civilian employees);
Section 180 (premises licence applications: notification requirements);
Section 181 (premises licence applications: modifications of layout plans);
Section 183 (premises licence applications: antisocial behaviour reports);
Section 185 (provisional premises licences: duration);
Section 187 (provision of copies of licences to chief constable);
Section 188 (sale of alcohol to trade);
Section 192 (personal licences);
Section 193 (emergency closure orders);
Section 194 (appeals);
Section 196 (false statements in applications: offence);
Section 198 (further modifications of 2005 Act);
Section 199 (annual report on Criminal Justice (Terrorism and Conspiracy) Act 1998);
Schedule 4 (convictions by courts in other EU Member States: modifications of enactments);
Schedule 6 (further modifications of the 2005 Act) apart from paragraphs 9 and 10;
Schedule 7 (modification of enactments) paragraphs 4, 5, 13, 49 and 86 only.

The following provisions come into force for limited purposes on 13th December 2010:—

Section 80 (retention of samples etc. from children referred to children's hearings) is commenced for the purposes of inserting sections 18E(6), 18E(7) and 18E(10) into the 1995 Act;

Section 184 (premises licences: connected persons and interested parties) is commenced in respect of connected persons only;

Section 195 (liability for offences) – 195(3) is commenced for the purposes of inserting sections 141A and 141B into the Licensing (Scotland) Act 2005. Section 141B is commenced in respect of premises licence holders only.

The following provisions come into force for all purposes on 10th January 2011:—

Section 94 (upper age limit for jurors);

Section 95 (excusal from jury service);

Section 96 (persons excusable from jury service);

Schedule 7 (modification of enactments) paragraph 48 only.

The following provisions come into force for all purposes on 1st February 2011:—

Section 14 (community payback orders), apart from section 227ZM as inserted into the 1995 Act by that section;

Section 17 (presumption against short periods of imprisonment);
 Section 20 (reports about supervised persons);
 Section 21 (detention of children convicted on indictment);
 Schedule 2 (community payback orders: consequential modifications) apart from paragraph 38.

The following provisions come into force for all purposes on 28th February 2011:—

Section 178 (applications for licences) in so far as not already brought into force by S.S.I. 2010/297;

Section 182 (reviews of premises licences: notification of determinations).

Other sections:

Section 14 (community payback orders) comes into force on 1st April 2011 for the purpose of inserting section 227ZM into the 1995 Act;

Paragraph 38 of Schedule 2 to the Act comes into force on the same day that section 25(2) of the Welfare Reform Act 2009 (c.24) (jobseekers allowance: sanctions for violent conduct etc. in connection with claim) comes into force.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The first commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 1) Order 2010 (S.S.I. 2010/297) was made on 12th August 2010. The second commencement order, the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 2) Order 2010 (S.S.I. 2010/339) was made on 22nd September 2010. The third commencement order, the Protection of Vulnerable Groups (Scotland) Act 2007 (Commencement No. 4) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 3) Order 2010 (S.S.I. 2010/344) was made on 23rd September 2010. The Sexual Offences (Scotland) Act 2009 (Commencement No. 1) and the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 4) Order 2010 (S.S.I. 2010/357) was made on 7th October 2010. The Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 5) Order 2010 (S.S.I. 2010/385) was made on 4th November 2010.

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.S.I. No.</i> |
|--|-----------------------------|-------------------|
| Section 178(3)(e) (partially) | 16th August 2010 | 2010/297 |
| Sections 38 and 97 | 6th October 2010 | 2010/339 |
| Sections 108(1) and 108(4) (partially) | 12th October 2010 | 2010/344 |
| Sections 43, 44 and 63 | 1st December 2010 | 2010/357 |
| Section 83 | 5th November 2010 | 2010/385 |

© Crown Copyright 2010

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.

2010 No. 413 (C. 28)

CRIMINAL LAW

The Criminal Justice and Licensing (Scotland) Act 2010
(Commencement No. 6, Transitional and Savings Provisions)
Order 2010