

## SCHEDULES

### SCHEDULE 7

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Criminal Procedure (Scotland) Act 1975 (c.21)*

- 25 In section 19(1) (prisoners before examination to have access to solicitor), the existing words after " arrest" shall be paragraph (a) of the subsection and after that paragraph there shall be inserted the following paragraph—
- “(b) to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.”.
- 26 At the end of section 28 (admission or refusal of bail after committal), there shall be added the following subsection—
- “(3) For the avoidance of doubt, the provisions of section 26 of this Act and the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.”.
- 27 In section 71 (manner of service of indictment, etc.), for the words from " macer " to the end there shall be substituted the words " officer of law ".
- 28 In section 81 (examination by prosecutor of witnesses not included in lists lodged), at the beginning there shall be inserted the words " Without prejudice to section 82A of this Act, ".
- 29 In section 98 (jurors to be cited by registered letter or recorded delivery), after the word " delivery " there shall be inserted the words " or to be served on him by an officer of law ".
- 30 In section 100(2) (rules of court in relation to jurors) for the words from " The rules of court" to " to this Act." there shall be substituted the words " The provisions of Schedule 3 to this Act shall have effect as if they were rules of court made under this subsection. ".
- 31 After section 111 there shall be inserted the following section—
- “111A Computation of period.**
- Where the last day of any period mentioned in section 75, 76, 76A or 80 of this Act falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.”.
- 32 In the proviso to section 113(4) (judges in High Court), after the word "importance" there shall be inserted the words " in Edinburgh or on circuit " and after the word " preside " there shall be inserted the words " for the whole or any part of the trial. ".

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- 33 In section 141(1) (accused and spouse competent witnesses for defence), for the words " competent witnesses" there shall be substituted the words " a competent witness ".
- 34 In section 168 (power of court, in respect of certain offences against a child, to refer child to reporter), for the words from " committed " to " reporter " there shall be substituted the words—
- “committed any offence—
- (a) under section 21 of the Children and Young Persons (Scotland) Act 1937 ;
- (b) mentioned in Schedule 1 to this Act; or
- (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,
- may refer—
- (i) the child in respect of whom the offence mentioned in paragraph (a) or (b) above has been committed ; or
- (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,
- to the reporter”.
- 35 In section 173(3) (reference and remit of children's cases by courts to children's hearings), for the words " shall request" there shall be substituted the words—
- “dealing with the case if it is—
- (a) the High Court, may ; and
- (b) the sheriff court, shall,
- request”.
- 36 In section 179 (power of court, in solemn proceedings, to adjourn a case before sentence)—
- (a) in subsection (1) there shall be inserted before the proviso the words " or ordain him to appear at the adjourned diet "; and
- (b) in subsection (2), for paragraph (a) there shall be substituted the following paragraph—
- “(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet;”.
- 37 In section 193A (fines on conviction on indictment to be without limit), after the word " summarily " there shall be inserted the words—
- “other than by virtue of section 8 of the Criminal Justice (Scotland) Act 1980”.
- 38 In section 212 (recall to young offenders institution on reconviction), in subsection (1)—
- (i) for the words " young offenders institution " there shall be substituted the words " under section 207 of this Act "; and
- (ii) for the words from " instead" to the end there shall be substituted the words " , except where the person convicted is subject to a licence granted under

section 60 (1) or section 61 of the Criminal Justice Act 1967, make an order for his recall. "

39 For section 215 (legal custody) there shall be substituted the following section—

**“215 Legal custody.**

Any person required or authorised by or under this Act or Part I of the Criminal Justice (Scotland) Act 1980 to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.”.

40 In section 218 (consideration of time spent in custody), the words "in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952" shall cease to have effect.

41 In section 241 (notice to authorities, etc. of date of hearing), for the words " Prison Commissioners for Scotland " in both places where they occur there shall be substituted the words " Secretary of State ".

42 In section 242 (notice to Prison Commissioners of attendance of appellant at hearing), for the words "Prison Commissioners for Scotland" and " said Commissioners" there shall in each case be substituted the words " Secretary of State ".

43 In section 243 (warders to attend court), for the words " Prison Commissioners for Scotland " there shall be substituted the words " Secretary of State " and for the word " warders" there shall be substituted the words " prison officers ".

44 In section 251(5) (appeal against refusal of application), for the words " Prison Commissioners for Scotland " there shall be substituted the words " Secretary of State ".

45 In section 261 (notice of determination of appeal), for the words " Prison Commissioners for Scotland" there shall be substituted the words " Secretary of State ".

46 In section 268(4) (reckoning of time spent pending appeal) for the words " Borstal institution " there shall be substituted the words " young offenders institution ".

47 In section 282 (Acts of Adjournal), the existing words shall be subsection (1) and at the end of that subsection there shall be added the following subsection—

“(2) The High Court may by Act of Adjournal modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.”.

48 In section 283(1) (application of Part II of this Act)—

(a) in paragraph (b) for the word " statute " there shall be substituted the words " enactment or rule of law "; and

(b) at the end of that paragraph there shall be inserted the words " as well as, in accordance with section 196(1) of this Act, to the enforcement of a fine imposed in solemn proceedings ".

49 In section 283A(1) (offences which are to become triable only summarily), at the beginning there shall be inserted the words—

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“Subject to section 8 of the Criminal Justice (Scotland) Act 1980, but otherwise”.

- 50 In section 289D (power to alter sums specified in certain provisions)—
- (a) in subsection (2), after the word " (3) " there shall be inserted the words " or (3A) "; and
  - (b) after subsection (3) there shall be inserted the following subsection—

“(3A) This subsection applies to a sum mentioned in—

- (a) section 186(2)(a) of this Act in relation to the penalty for a breach of a probation order;
- (b) section 284(b) of this Act in relation to the power of the district court to impose a fine on conviction of a common law offence ;
- (c) section 284(c) of this Act in relation to the power of the district court to ordain the accused to find caution on conviction of a common law offence ;
- (d) section 285(b)(iii) of this Act in relation to the jurisdiction of the district court to try certain common law offences ;
- (e) section 312(z) of this Act in relation to stating the value of property in a charge ;
- (f) section 344(1) of this Act in relation to the penalty for certain contempts of court;
- (g) section 387(2)(a) of this Act in relation to the penalty for breach of a probation order;
- (h) section 407(1A) of this Act in relation to imprisonment for non-payment of a fine or for failure to find caution ;
- (i) section 435(e) of this Act in relation to the award of expenses against an accused ;
- (j) section 453(3) of this Act in relation to the award of expenses to an appellant;
- (k) section 7(1) of the Criminal Justice (Scotland) Act 1980 in relation to the jurisdiction of the district court to try certain statutory offences ;
- (l) section 9(2) of the said Act of 1980 in relation to the penalty for failure to attend for precognition on oath;
- (m) section 9(3) of the said Act of 1980 in relation to the penalty for refusal to give evidence, or for prevarication, during precognition on oath; or
- (n) section 59(3)(b) of the said Act of 1980 in relation to the power of the district court to make a compensation order.”.

- 51 At the end of section 298 (all offences to be bailable), there shall be added the following subsection—

“(3) For the avoidance of doubt, the foregoing provisions of this section apply whether or not the person is in custody at such time as he appears for the disposal of his application.”.

- 52 In section 305 (intimation to solicitor)—

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- (a) for the word " apprehended " and for the word " apprehension " there shall be substituted respectively the word " arrested " and the words " such arrest " ;
  - (b) the existing words after " entitled " shall be paragraph (a) of the section ; and
  - (c) after that paragraph there shall be inserted the following paragraph—
    - “(b) to be told what his rights under paragraph (a) above are.”.
- 53 In section 310 (incidental applications), after the words "prior to" there shall be inserted the words " or after " ; and the word " subsequent " where it first occurs shall cease to have effect.
- 54 In section 334 (procedure at first diet, etc.)—
- (a) in subsection (1) for the words from " objections " where it first occurs to " stated " there shall be substituted the words " an objection to the competency or relevancy of the complaint or the proceedings or issue a denial that he is the person charged by the police with the offence ; and no such objection or denial shall be allowed to be stated or issued " ;
  - (b) for subsection (2) there shall be substituted the following subsection—
    - “(2) In the absence of the accused, an objection to the competency or relevancy of a summary complaint or the proceedings thereon may be stated, or a denial that the accused is the person charged by the police with the offence may be issued, by counsel or by a solicitor on his behalf; and where such an objection is stated or denial is issued, the provisions of this Part of this Act shall apply in like manner as if the accused had appeared and stated the objection or issued the denial.”.
- 55 In section 344(4)(a) (failure of witness to attend for precognition) for the words " 24 " there shall be substituted the words " 48 " .
- 56 In section 346(1) (accused and spouse competent witnesses for defence), for the words " competent witnesses " there shall be substituted the words " a competent witness " .
- 57 In section 364 (power of court, in respect of certain offences against a child, to refer child to reporter), for the words from " committed " to " reporter " there shall be substituted the words—
- “committed any offence—
  - (a) under section 21 of the Children and Young Persons (Scotland) Act 1937 ;
  - (b) mentioned in Schedule 1 to this Act; or
  - (c) in respect of a female person aged 17 years or over which constitutes the crime of incest,
- may refer—
- (i) the child in respect of whom the offence referred to in paragraph (a) or (b) above has been committed; or
  - (ii) any child who is, or who is likely to become, a member of the same household as the person who has committed the offence mentioned in paragraph (b) or (c) above,
- to the reporter”.

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- 58 In section 370 (child charged jointly with person who is not a child) for the words " , 367 and 374 " there shall be substituted the words " and 367 ".
- 59 In section 380 (power of court, in summary proceedings, to adjourn a case before sentence)—
- (a) in subsection (1) there shall be inserted before the proviso the words " or ordain him to appear at the adjourned diet "; and
  - (b) in subsection (2), for paragraph (a) there shall be substituted the following paragraph—
    - “(a) review the order appealed against and either grant bail on such conditions as it thinks fit or ordain the accused to appear at the adjourned diet;”.
- 60 In section 395(2) (provisions as to fines), for the words " detention centre " there shall be substituted the words " young offenders institution ".
- 61 In section 398(1) (restriction on imprisonment after fine or caution), for the words " his means in his presence " there shall be substituted the words " in his presence the reason why the fine has not been paid ".
- 62 In section 399 (payment of fine by instalments)—
- (a) in subsection (1), the words from " and it" to the end shall cease to have effect; and
  - (b) for subsection (2) there shall be substituted the following subsections—
    - “(2) Where the court has ordered payment of a fine by instalments it may—
      - (a) allow further time for payment of any instalment thereof ;
      - (b) order payment thereof by instalments of lesser amounts, or at longer intervals, than those originally fixed.
    - (3) The powers conferred by subsection (2) above shall be exercisable without requiring the attendance of the accused.”.
- 63 At the end of section 401 (supplementary provisions as to payment of fine) there shall be added the following subsection—
- “(3) Where a warrant has been issued for the apprehension of an offender for non-payment of a fine, the offender may, notwithstanding section 412 of this Act, pay such fine in full to a constable ; and the warrant shall not then be enforced and the constable shall remit the fine to the clerk of court.”.
- 64 In section 407(3) (period of imprisonment for non-payment of fine) for the words " subsection (1)" there shall be substituted the words " subsection (1A) ".
- 65 In section 409(1) (payment of fine in part by prisoner), for the words from " by a number " to the end there shall be substituted the words " (or as the case may be further reduced) by a number of days bearing as nearly as possible the same proportion to such term as the sum so paid bears to the amount of the fine outstanding at the commencement of the imprisonment:
- Provided that the day on which any sum is paid shall not be regarded as a day served by the prisoner as part of the said term of imprisonment."
- 66 In section 411(1) (recovery by civil diligence), for die words " poiding the sale ", " ten free " and " small debt court " there shall be substituted, respectively, the words " poiding and sale " , " 14 " and " in a summary cause ".

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- 67 In section 421(1) (recall to young offenders institution on reconviction)—
- (a) for the words " young offenders institution " there shall be substituted the words " under section 415 of this Act "; and
  - (b) for the words from " instead" to the end there shall be substituted the words " , except where the person convicted is subject to a licence granted under section 60(1) or section 61 of the Criminal Justice Act 1967, make an order for his recall. ".

68 In section 424 (detention in precincts of court), after the word " imprisonment" there shall be inserted the words " or detention ".

69 For section 426 (legal custody) there shall be substituted the following section—

**“426 Legal custody.**

Any person required or authorised by or under this Act or Part I of the Criminal Justice (Scotland) Act 1980 to be taken to any place, or to be detained or kept in custody shall, while being so taken or detained or kept, be deemed to be in legal custody.”.

70 In section 431 (consideration of time spent in custody), the words "in a young offenders institution as defined in section 31(1)(d) of the Prisons (Scotland) Act 1952 " shall cease to have effect.

71 For section 436 (forfeiture of implements) there shall be substituted the same provisions as constitute section 223 (forfeiture of property).

72 In section 457 (Acts of Adjournal), at the end there shall be added the following paragraph—

- “(d) to modify, amend or repeal any enactment, including an enactment contained in this Part of this Act, in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under this section.”.

73 In section 458 (construction of enactments referring to sentence of detention) for the words " in a young offenders institution " there shall be substituted the words " under section 207 or 415 of this Act ".

74 In section 459 (construction of enactments referring to detention) for the words " in a young offenders institution " there shall be substituted the words " under section 207 or 415 of this Act ".

75 In section 460 (transitional provisions and savings) subsection (6), which is superseded by the provisions inserted by paragraphs 47 and 72 above, shall cease to have effect.

76 In section 462(1) (interpretation)—

- (a) at the appropriate place there shall be inserted the definition " ' diet ' includes any continuation of a diet; " ;
- (b) in the definition of " impose detention " and " impose imprisonment ", for the words " failing to do or abstain from doing anything required to be done or left undone " there shall be substituted the words " contempt of court "; and
- (c) for the definition of " sentence " there shall be substituted the definition " ' sentence', whether of detention or of imprisonment, means a sentence passed in respect of a crime or offence and does not include an order for

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committal in default of payment of any sum of money or for contempt of court. "

77 In section 463 (extent) after subsection (1) there shall be added the following subsection—

“(1A) Sections 169 and 374 of this Act shall extend to Northern Ireland.”.

78 In Schedule 3 (composition of juries)—

(a) in paragraph 2—

(i) for the words from " be made " to " by him)." there shall be substituted the words " be lodged, at least 15 clear days before the trial diet, with the clerk of the court before which that diet is to be. "; and

(ii) for the words " the presiding sheriff " there shall be substituted the words " a judge of that court; and that judge shall deal with the application in chambers. The accused, if represented by counsel or by a solicitor, shall not be entitled to attend. " ; and

(b) for paragraphs 3 and 4 there shall be substituted the following paragraph—

“3 The judge's decision under the foregoing rule shall be recorded on the record copy of the indictment and shall be final.”.