



Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

1990 CHAPTER 40

PART IV

MISCELLANEOUS REFORMS

Evidence by children in criminal trials

56 Evidence of children through television link in criminal proceedings

- (1) Subject to subsections (2) and (3) below, where a child has been cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by the child by means of a live television link.
- (2) The court may grant an application under subsection (1) above only on cause shown having regard in particular to—
 - (a) the possible effect on the child if required to give evidence, no such application having been granted; and
 - (b) whether it is likely that the child would be better able to give evidence if such application were granted.
- (3) In considering whether to grant an application under subsection (1) above, the court may take into account, where appropriate, any of the following—
 - (a) the age and maturity of the child;
 - (b) the nature of the alleged offence;
 - (c) the nature of the evidence which the child is likely to be called on to give; and
 - (d) the relationship, if any, between the child and the accused.

57 Transfer of cases in which child's evidence is to be given through television link

- (1) Where a sheriff to whom an application has been made under section 56 of this Act would have granted the application but for the lack of accommodation or equipment

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necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.

- (2) The sheriff court to which a case is transferred under this section shall be deemed to have granted an application under that section in relation to the case.

58 Identification of accused by child

Where a court has, or is deemed to have, granted an application made under section 56 of this Act in relation to a child cited to give evidence in a trial, and the child gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the child prior to the trial shall be admissible as evidence as to such identification.

59 Interpretation of sections 56, 57 and 58

In sections 56, 57 and 58 of this Act, unless the contrary intention appears—
 “child” means a person under the age of 16 years;
 “court” means the High Court of Justiciary or the sheriff court; and
 “trial” means a trial under solemn or under summary procedure.

Sheriff court jurisdiction

60 Criminal jurisdiction of sheriff court

The following subsection shall be inserted at the end of each of sections 3 and 288 of the Criminal Procedure (Scotland) Act 1975 to form subsection (4) and subsection (5) respectively of these sections—

- “() Where an offence is alleged to have been committed in one district in a sheriffdom, it shall be competent to try that offence in a sheriff court in any other district in that sheriffdom.”

Treatment of offenders

61 Probation and community service orders and supervision and care of persons on probation or released from prison etc

- (1) Sections 183 and 384 of the Criminal Procedure (Scotland) Act 1975 (probation) shall be amended as follows—

- (a) at the beginning of subsection (1) of each section there shall be inserted “Subject to subsection (1A) below,”;
 (b) after subsection (1) of each section there shall be inserted the following subsection—

“(1A) A court shall not make a probation order under subsection (1) above unless it is satisfied that suitable arrangements for the supervision of the offender can be made by the local authority in whose area he resides or is to reside.”; and

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- (c) in subsection (4) of each section—
 - (i) for the words “necessary for” there shall be substituted “conducive to”; and
 - (ii) for the word “for” in the second place where it occurs there shall be substituted “to”.
- (2) In subsection (1) of each of sections 186 and 387 of that Act (failure to comply with probation order)—
 - (a) after the word “from” there shall be inserted “(a)”; and
 - (b) after the word “probationer” where it first occurs there shall be inserted—
 - “(b) the director of social work of the local authority whose officer is supervising the probationer; or
 - (c) an officer appointed by the director of social work to act on his behalf for the purposes of this subsection.”.
- (3) In section 1(1) of the Community Service by Offenders (Scotland) Act 1978 (community service orders), for the words “dealing with him in any other way” there shall be substituted “imposing on him a sentence of, or including, imprisonment or any other form of detention”.
- (4) In section 27 of the Social Work (Scotland) Act 1968 (supervision and care of persons on probation or released from prison etc)—
 - (a) at the end of subsection (1) there shall be added—
 - “; and
 - (c) the provision of advice, guidance and assistance for persons in their area who, within 12 months of their release from prison or any other form of detention, request such advice, guidance or assistance.”; and
 - (b) after paragraph (a) of subsection (3) there shall be inserted the following paragraph—
 - “(aa) the matters to be included in such a report.”.
- (5) In section 27A of that Act (grants in respect of community service facilities)—
 - (a) at the beginning there shall be inserted “(1)”; and
 - (b) for the words from “for the purposes” to the end there shall be substituted—
 - “(a) for the purposes mentioned in section 27(1) of this Act; and
 - (b) for such other similar purposes as the Secretary of State may prescribe.
 - (2) Before exercising his power under subsection (1)(b) above the Secretary of State shall consult local authorities and such other bodies as he considers appropriate.”.
- (6) In section 27B of that Act (grants in respect of hostel accommodation for certain persons)—
 - (a) at the beginning there shall be inserted “(1)”; and
 - (b) for the words from “sub-paragraphs (i) and (ii)” to the end there shall be substituted—
 - “subsection (2) below.

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- (2) The persons referred to in subsection (1) above are—
 - (a) persons mentioned in section 27(1)(b)(i) and (ii) of this Act;
 - (b) persons who have been charged with an offence and are on bail;
 - (c) persons who have been released from prison or any other form of detention but do not fall within section 27(1)(b)(ii) of this Act; and
 - (d) such other classes of persons as the Secretary of State may prescribe.
- (3) Before exercising his power under subsection (2)(d) above the Secretary of State shall consult local authorities and such other persons as he considers appropriate.”.
- (7) In section 94(1) of that Act (interpretation), in paragraph (c) of the definition of “prescribed”, after the word “sections” there shall be inserted “27A, 27B,”.

62 Supervised attendance orders as alternative to imprisonment on fine default

- (1) A court may make a supervised attendance order in the circumstances specified in subsection (3) below.
- (2) A supervised attendance order is an order made by a court with the consent of an offender requiring him—
 - (a) to attend a place of supervision for such time, being 10, 20, 30, 40, 50 or 60 hours, as is specified in the order; and
 - (b) during that time, to carry out such instructions as may be given to him by the supervising officer.
- (3) The circumstances are where—
 - (a) the offender is of or over 16 years of age; and
 - (b) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and either of the following sub-paragraphs applies—
 - (i) the court, prior to the commencement of this section, has imposed on him a period of imprisonment under paragraph (a) of subsection (1) of section 407 of the Criminal Procedure (Scotland) Act 1975 (power of court, when imposing a fine, to impose also imprisonment on default) but he has not served any of that period of imprisonment;
 - (ii) the court, but for this section, would also have imposed on him a period of imprisonment under that paragraph or paragraph (b) of that subsection (power of court to impose imprisonment when a person fails to pay a fine or any part or instalment thereof); and
 - (c) the court considers a supervised attendance order more appropriate than the serving of or, as the case may be, imposition of such a period of imprisonment.
- (4) Where, in respect of an offender, a court makes a supervised attendance order in circumstances where sub-paragraph (i) of paragraph (b) of subsection (3) above applies, the making of that order shall have the effect of discharging the sentence of imprisonment imposed on the offender.

(5) Schedule 6 to this Act has effect for the purpose of making further and qualifying provision as to supervised attendance orders.

(6) In this section—

“local authority” means a regional or islands council;

“place of supervision” means such place as may be determined for the purposes of a supervised attendance order by the supervising officer; and

“supervising officer”, in relation to a supervised attendance order, means a person appointed or assigned under Schedule 6 to this Act by the local authority whose area includes the locality in which the offender resides or will be residing when the order comes into force.

Drug trafficking confiscation orders

63 Registration and enforcement of external confiscation orders

The following sections shall be substituted for section 30 of the Criminal Justice (Scotland) Act 1987—

“30 Enforcement of other external orders

(1) Her Majesty may by Order in Council—

(a) direct in relation to a country or territory outside the United Kingdom designated by the order (“a designated country”) that, subject to such modifications as may be specified, this Part of this Act shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) make—

(i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order; and

(ii) such provision as to evidence or proof of any matter for the purposes of this section and section 30A of this Act; and

(iii) such incidental, consequential and transitional provision,

as appears to Her Majesty to be expedient; and

(c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Part of this Act—

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and

“modifications” includes additions, alterations and omissions.

(3) An Order in Council under this section may make different provision for different cases or classes of case.

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- (4) The power to make an Order in Council under this section includes power to modify this Part of this Act in such a way as to confer power on a person to exercise a discretion.
- (5) An Order in Council under this section shall not be made unless a draft of the Order has been laid before Parliament and approved by a resolution of each House of Parliament.

30A Registration of external confiscation orders

- (1) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external confiscation order made there if—
 - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (c) it is of the opinion that enforcing the order in Scotland would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
 - (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (3) The Court of Session shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.”

Matrimonial interdicts

64 Matrimonial interdicts

In section 15 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (powers of arrest attached to matrimonial interdicts)—

- (a) in subsection (2), after the words “such interdict” there shall be inserted “together with the attached power of arrest”; and
- (b) in subsection (4)—
 - (i) after the word “interdict” in the second place where it occurs there shall be inserted “together with the attached power of arrest”; and
 - (ii) at the end there shall be added “and, where the application to attach the power of arrest to the interdict was made after the interdict was granted, a copy of that application and of the interlocutor granting it and a certificate of service of the interdict together with the attached power of arrest”.

Homelessness

65 Homelessness

- (1) Section 24 of the Housing (Scotland) Act 1987 (definition of homelessness and persons threatened with homelessness) shall be amended as follows.
- (2) After subsection (2) there shall be inserted the following subsections—
 - “(2A) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
 - (2B) Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.”
- (3) In subsection (3), after paragraph (b) there shall be inserted—
 - “(bb) it is probable that occupation of it will lead to—
 - (i) violence; or
 - (ii) threats of violence which are likely to be carried out, from some other person who previously resided with that person, whether in that accommodation or elsewhere, or”.

Arbitration

66 UNCITRAL Model Law on International Commercial Arbitration

- (1) In this section, “the Model Law” means the UNCITRAL Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on 21st June 1985.
- (2) The Model Law shall have the force of law in Scotland in the form set out in Schedule 7 to this Act (which contains the Model Law with certain modifications to adapt it for application in Scotland).
- (3) The documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the Model Law may be considered in ascertaining the meaning or effect of any provision of the Model Law as set out in Schedule 7 to this Act.
- (4) The parties to an arbitration agreement may, notwithstanding that the arbitration would not be an international commercial arbitration within the meaning of article 1 of the Model Law as set out in Schedule 7 to this Act, agree that the Model Law as set out in that Schedule shall apply, and in such a case the Model Law as so set out shall apply to that arbitration.
- (5) Subsection (4) above is without prejudice to any other enactment or rule of law relating to arbitration.
- (6) Subject to subsections (7) and (8) below, this section shall apply in relation to an arbitration agreement whether entered into before or after the date when this section comes into force.

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- (7) Notwithstanding subsection (6) above, this section shall not apply with respect to any arbitration which has commenced but has not been concluded on the date when this section comes into force.
- (8) The parties to an arbitration agreement entered into before the date when this section comes into force may agree that the foregoing provisions of this section shall not apply to that arbitration agreement.

Judicial factors

67 Further provision as to discharge of judicial factors

After section 34 (discharge of factors, tutors and curators) of the Judicial Factors Act 1849 there shall be inserted the following section—

“34A Further provision as to discharge of factors, tutors and curators

The Court may by act of sederunt make provision for the discharge of factors, tutors and curators by means other than the presentation of a petition under section 34 of this Act where the factory, tutory or curatory is terminated by reason of the recovery, death or coming of age of the ward, or by reason of the exhaustion of the estate.”.

Avoidance of civil liability by non-contractual notice

68 Amendment of Unfair Contract Terms Act 1977

- (1) The Unfair Contract Terms Act 1977 shall be amended in accordance with this section.
- (2) In section 15(1) (scope of Part II), the words “applies only to contracts,” shall cease to have effect.
- (3) In section 16 (liability for breach of duty)—
 - (a) in subsection (1)—
 - (i) at the beginning there shall be inserted the words “Subject to subsection (1A) below,”;
 - (ii) after the word “contract” in the first place where it occurs there shall be inserted “, or a provision of a notice given to persons generally or to particular persons,”;
 - (iii) after the word “term” in the second place where it occurs there shall be inserted “or provision”; and
 - (iv) at the end of paragraph (b) there shall be inserted the words “or, as the case may be, if it is not fair and reasonable to allow reliance on the provision”;
 - (b) after subsection (1) there shall be inserted the following subsection—

“(1A) Nothing in paragraph (b)

of subsection (1) above shall be taken as implying that a provision of a notice has effect in circumstances where, apart from that paragraph, it would not have effect.”; and

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- (c) in subsection (3)—
 - (i) after the word “contract” there shall be inserted “or a provision of a notice”; and
 - (ii) after the word “term” in the second place where it occurs there shall be inserted “or provision”.
- (4) In section 24 (the “reasonableness” test)—
 - (a) after subsection (2) there shall be inserted the following subsection—

“(2A) In determining for the purposes of this Part of this Act whether it is fair and reasonable to allow reliance on a provision of a notice (not being a notice having contractual effect), regard shall be had to all the circumstances obtaining when the liability arose or (but for the provision) would have arisen.”;
 - (b) in subsection (3)—
 - (i) after the word “contract” in the first place where it occurs there shall be inserted “or a provision of a notice”;
 - (ii) after the word “contract” in the second place where it occurs there shall be inserted “or whether it is fair and reasonable to allow reliance on the provision”;
 - (iii) after the word “above” there shall be inserted “in the case of a term in a contract”; and
 - (iv) in paragraph (a), after the word “term” there shall be inserted “or provision”; and
 - (c) in subsection (4), after the word “contract” there shall be inserted “or that it is fair and reasonable to allow reliance on a provision of a notice”.
- (5) In section 25 (interpretation of Part II)—
 - (a) in subsection (1), after the definition of “hire-purchase agreement” there shall be inserted—

““notice” includes an announcement, whether or not in writing, and any other communication or pretended communication;”;

and
 - (b) subsections (3)(d) and (4) shall cease to have effect.
- (6) This section shall have effect only in relation to liability for any loss or damage which is suffered on or after the date appointed for its coming into force.

Liability in respect of services to injured persons

69 Future services to injured person

- (1) For subsection (2) of section 8 of the Administration of Justice Act 1982 (services rendered to injured person) there shall be substituted the following subsections—
 - “(2) The injured person shall be under an obligation to account to the relative for any damages recovered from the responsible person under subsection (1) above.
 - (3) Where, at the date of an award of damages in favour of the injured person, it is likely that necessary services will, after that date, be rendered to him by a relative in consequence of the injuries in question, then, unless the relative has expressly agreed that no payment shall be made in respect of those services,

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the responsible person shall be liable to pay to the injured person by way of damages such sum as represents—

- (a) reasonable remuneration for those services; and
- (b) reasonable expenses which are likely to be incurred in connection therewith.

(4) The relative shall have no direct right of action in delict against the responsible person in respect of any services or expenses referred to in this section.”

- (2) Without prejudice to Parts II and III of the Prescription and Limitation (Scotland) Act 1973, this section shall apply to rights accruing both before and after the date appointed for its coming into force, but shall not affect any proceedings commenced before that date.

Blood and other samples in civil proceedings

70 Blood and other samples in civil proceedings

- (1) In any civil proceedings to which this section applies, the court may (whether or not on application made to it) request a party to the proceedings—
- (a) to provide a sample of blood or other body fluid or of body tissue for the purpose of laboratory analysis;
 - (b) to consent to the taking of such a sample from a child in relation to whom the party has power to give such consent.
- (2) Where a party to whom a request under subsection (1) above has been made refuses or fails—
- (a) to provide or, as the case may be, to consent to the taking of, a sample as requested by the court, or
 - (b) to take any step necessary for the provision or taking of such a sample,
- the court may draw from the refusal or failure such adverse inference, if any, in relation to the subject matter of the proceedings as seems to it to be appropriate.
- (3) In section 6 of the Law Reform (Parent and Child) (Scotland) Act 1986 (determination of parentage by blood sample)—
- (a) in subsection (1), for the words “blood sample” there shall be substituted “sample of blood or other body fluid or of body tissue”; and
 - (b) in each of subsections (2), (3) and (4), for the words “a blood” there shall be substituted “such a”.
- (4) This section applies to any civil proceedings brought in the Court of Session or the sheriff court—
- (a) on or after the date of the commencement of this section; or
 - (b) before the said date in a case where the proof has not by that date begun.

Powers of attorney

71 Effect of mental incapacity on powers of attorney etc

- (1) Any rule of law by which a factory and commission or power of attorney ceases to have effect in the event of the mental incapacity of the granter shall not apply to a

factory and commission or power of attorney granted on or after the date on which this section comes into force.

- (2) In subsection (1) above, “mental incapacity” means, in relation to a person, that he is incapable of managing his property and affairs by reason of mental disorder within the meaning of section 1 of the Mental Health (Scotland) Act 1984.

Execution of documents by companies

72 Execution of documents by companies

- (1) For section 36B of the Companies Act 1985 (execution of documents: Scotland) there shall be substituted the following section—

“36B Execution of documents: Scotland

- (1) This section has effect in relation to the execution of any document by a company under the law of Scotland on or after 31 July 1990.
- (2) For any purpose other than those mentioned in subsection (3) below, a document is validly executed by a company if it is signed on behalf of the company by a director or the secretary of the company or by a person authorised to sign the document on its behalf.
- (3) For the purposes of any enactment or rule of law relating to the authentication of documents under the law of Scotland, a document is validly executed by a company if it is subscribed on behalf of the company by—
- (a) two of the directors of the company;
 - (b) a director and the secretary of the company; or
 - (c) two persons authorised to subscribe the document on behalf of the company,
- notwithstanding that such subscription is not attested by witnesses and the document is not sealed with the company’s common seal.
- (4) A document which bears to be executed by a company in accordance with subsection (3) above is, in relation to such execution, a probative document.
- (5) Notwithstanding the provisions of any enactment (including an enactment contained in this section) a company need not have a common seal.
- (6) For the purposes of any enactment providing for a document to be executed by a company by affixing its common seal or referring (in whatever terms) to a document so executed, a document signed or subscribed on behalf of the company by—
- (a) two directors of the company;
 - (b) a director and the secretary of the company; or
 - (c) two persons authorised to sign or subscribe the document on behalf of the company,
- shall have effect as if executed under the common seal of the company.
- (7) In this section “enactment” includes an enactment contained in a statutory instrument.

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- (8) Subsections (2) and (3) above are—
- (a) without prejudice to any other method of execution of documents by companies permitted by any enactment or rule of law; and
 - (b) subject to any other enactment making express provision, in relation to companies, as to the execution of a particular type of document.”
- (2) Where, on or after 31 July 1990 and prior to the coming into force of this section, a document was signed or subscribed, in accordance with section 36B(2) of the Companies Act 1985 (as inserted by section 130(3) of the Companies Act 1989), by—
- (a) a company; or
 - (b) a body corporate to which section 36B of the 1985 Act (as so inserted) applied by, under or by virtue of any enactment,
- that document shall be deemed to have been validly executed by the company or body corporate in accordance with subsection (2) of section 36B of the 1985 Act as substituted by subsection (1) above.
- (3) Where, on or after 31 July 1990 and prior to the coming into force of this section, the presumption in section 36B(3) of the Companies Act 1985 (as inserted by section 130(3) of the Companies Act 1989) applied in relation to a document, that document shall be deemed to have been validly executed in accordance with subsection (3) of section 36B of the 1985 Act as substituted by subsection (1) above, and subsection (4) of that section as so substituted shall apply to the document as if it bore to be so executed.
- (4) For the avoidance of doubt, in determining, for the purposes of subsection (3) above, whether the presumption in section 36B(3) of the Companies Act 1985 (as inserted by section 130(3) of the Companies Act 1989) applied in relation to a document, the reference in section 36B(2)(b) of the 1985 Act (as so inserted) to the last page shall be construed as a reference to the last page of the document excluding any inventory, appendix, schedule, plan or other document annexed to the document.
- (5) Any reference to section 36B of the Companies Act 1985 (however expressed) in any enactment (including an enactment contained in a statutory instrument) shall be construed as a reference to section 36B of that Act as substituted by subsection (1) above.