



# Criminal Justice (Scotland) Act 1995

## 1995 CHAPTER 20

### PART I

#### THE COURSE OF JUSTICE

##### *Evidence*

#### 16 Uncontroversial evidence

- (1) This section applies where, in any criminal proceedings, a party (in this section referred to as “the first party”) considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.
- (2) Where this section applies, the first party may prepare and sign a statement—
  - (a) specifying the facts concerned; or
  - (b) referring to such facts as set out in a document annexed to the statement,and shall, not less than 14 days before the trial diet, serve a copy of the statement and any such document on every other party.
- (3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.
- (4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.
- (5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.
- (6) Notwithstanding subsections (3) and (4) above, the court—

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- (a) may, on the application of any party, where it is satisfied that there are special circumstances; and
  - (b) shall, on the joint application of all the parties,
- direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.
- (7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.
- (8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to sections 149 and 350 of the 1975 Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of that Act has not been given.
- (9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

## **17 Exceptions to the rule that hearsay evidence is inadmissible**

- (1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—
- (a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;
  - (b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;
  - (c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and
  - (d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—
    - (i) it is contained in a document; or
    - (ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.
- (2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—
- (a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;
  - (b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;

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- (c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;
- (d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or
- (e) is called as a witness and either—
  - (i) refuses to take the oath or affirmation; or
  - (ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

- (3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

- (a) the person in support of whose case the evidence would be given; or
- (b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

- (4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—

- (a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

- (5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, before the trial diet, give notice in writing of—

- (a) that fact;
- (b) the witnesses and productions to be adduced in connection with such evidence; and

- (c) such other matters as may be prescribed by Act of Adjournal, to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of the 1975 Act has not been given.
- (6) A party shall not be required to give notice as mentioned in subsection (5) above where—
- (a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or
  - (b) he satisfies the judge that there was good reason for not giving such notice.
- (7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.
- (8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—
- (a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and
  - (b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—
    - (i) from the circumstances in which the statement was made or otherwise came into being; or
    - (ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.
- (9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of the 1975 Act has not been given.
- (10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

## **18 Admissibility of prior statements of witnesses**

- (1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.
- (2) A prior statement shall not be admissible under this section unless—
- (a) the statement is contained in a document;
  - (b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and
  - (c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.

- (3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.
- (4) Subsections (2) and (3) above do not apply to a prior statement—
- (a) contained in a precognition on oath; or
  - (b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,
- and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.

## **19 Statements by accused**

- (1) Subject to the following provisions of this section, nothing in sections 17 and 18 of this Act shall apply to a statement made by the accused.
- (2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 17 at the instance of another accused in the same proceedings as evidence in relation to that other accused.
- (3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—
- (a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 17; and
  - (b) to have been, at the time the statement was made, a competent witness in the proceedings.
- (4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 17; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

## **20 Construction of sections 17, 18 and 19**

- (1) For the purposes of sections 17, 18 and 19 of this Act, a “statement” includes—
- (a) any representation, however made or expressed, of fact or opinion; and
  - (b) any part of a statement,
- but does not include a statement in a precognition other than a precognition on oath.
- (2) For the purposes of the said sections 17, 18 and 19 a statement is contained in a document where the person who makes it—
- (a) makes the statement in the document personally;
  - (b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or
  - (c) approves a document as embodying the statement.
- (3) In the said sections 17, 18 and 19—
- “criminal proceedings” include any hearing by the sheriff under section 42 of the Social Work (Scotland) Act 1968 of an application for a finding as to

whether grounds for the referral of a child's case to a children's hearing are established, in so far as the application relates to the commission of an offence by the child;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

“film” includes a microfilm;

“made” includes allegedly made.

- (4) Nothing in the said sections 17, 18 and 19 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.
- (5) Nothing in the said sections 17, 18 and 19 shall apply to—
  - (a) proceedings commenced; or
  - (b) where the proceedings consist of an application to the sheriff by virtue of section 42(2)(c) of the Social Work (Scotland) Act 1968, an application made, before those sections come into force; and for the purposes of paragraph (a) above, solemn proceedings are commenced when the indictment is served.

## **21 Evidence of biological material**

- (1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production.
- (2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

## **22 Routine evidence**

- (1) Section 26 of and Schedule 1 to the Criminal Justice (Scotland) Act 1980 (routine evidence) shall be amended as follows.
- (2) After subsection (1) there shall be inserted the following subsections—
  - “(1A) The Secretary of State may by order—
    - (a) amend or repeal the entry in Schedule 1 to this Act in respect of any enactment; or
    - (b) insert in that Schedule an entry in respect of a further enactment.

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- (1B) An order under subsection (1A) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.”.
- (3) In subsection (2), the word “summary” and the words from “In the foregoing” to the end of the subsection shall cease to have effect.
- (4) After that subsection there shall be inserted the following subsection—
- “(2A) A forensic scientist is authorised for the purposes of subsection (2) above if—
- (a) he is authorised for those purposes by the Secretary of State; or
  - (b) he—
    - (i) is a constable or is employed by a police authority under section 9 of the Police (Scotland) Act 1967;
    - (ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and
    - (iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.”.
- (5) In subsection (3)—
- (a) for the words “the prosecution” there shall be substituted “the prosecutor or the accused”;
  - (b) in paragraph (a)—
    - (i) for the words “accused” there shall be substituted “other party”; and
    - (ii) for the word “his” there shall be substituted “the”; and
  - (c) in paragraph (b)—
    - (i) for the word “accused” where it first occurs there shall be substituted “other party”;
    - (ii) for the words from “less” to “trial” in the second place where it occurs there shall be substituted “more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time”; and
    - (iii) for the words “prosecutor that the accused” there shall be substituted “first party that he”.
- (6) In subsection (4), after the word “accused” where it first occurs there shall be inserted “or the prosecutor”.
- (7) After subsection (4) there shall be inserted the following subsection—
- “(4A) Where, following service of a notice under subsection (3)(b) above, evidence is given in relation to a report referred to in subsection (2) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.”.
- (8) In subsection (5), the words “under summary procedure” shall cease to have effect.
- (9) After subsection (7) there shall be inserted the following subsections—
- “(7A) Where, following service of a notice by the accused under subsection (7) above, evidence is given in relation to an autopsy or forensic science report

by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

(7B) An order made under subsection (1A) or (2A)(b)(ii) above shall be made by statutory instrument.

(7C) No order shall be made under subsection (1A) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

(7D) A statutory instrument containing an order under subsection (2A)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.”.

(10) Schedule 1 shall be amended in accordance with Schedule 1 to this Act.

### **23 Proof of custody of productions**

In section 84 of the 1975 Act (proof as to productions)—

- (a) after the word “prove” there shall be inserted “(a)”;
- (b) after the word “police” in the second place where it occurs there shall be inserted—

“; or

- (b) that the production examined by him is that taken possession of by the procurator fiscal or the police,”; and
- (c) at the end there shall be inserted the words “or, as the case may be, that it is that taken possession of as aforesaid”.

### **24 Evidence of criminal record and character of accused**

(1) In section 141 of the 1975 Act (accused competent witness for defence in solemn proceedings)—

- (a) in subsection (1), in paragraph (f)(ii) of the proviso—
  - (i) after the word “character” where it first occurs there shall be inserted “or impugning the character of the complainer”; and
  - (ii) after the word “prosecution” in the second place where it occurs there shall be inserted “or of the complainer”; and
- (b) after that subsection there shall be inserted the following subsections—

“(1A) In a case to which sub-paragraph (ii) of paragraph (f) of the proviso to subsection (1) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that paragraph only if the court, on the application of the prosecutor, permits him to do so.

(1B) An application under subsection (1A) above shall be made in the course of the trial but in the absence of the jury.

(1C) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.

(2) After section 141 of that Act there shall be inserted the following section—



**“141ZA Evidence of criminal record and character of accused**

- (1) This section applies where—
    - (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
    - (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
  - (2) Where this section applies the court may, without prejudice to section 149 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 81 and 82(2) of this Act has not been given.
  - (3) An application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.
  - (4) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.
- (3) In section 160 of that Act (laying of previous convictions before jury), for subsection (2) there shall be substituted the following subsection—
- “(2) Nothing in subsection (1) above shall prevent the prosecutor—
- (a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 141 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so—
    - (i) as evidence in support of a substantive charge; or
    - (ii) under section 141ZA of this Act.”.
- (4) In section 346 of that Act (accused competent witness for defence in summary proceedings)—
- (a) in subsection (1), in paragraph (f)(ii) of the proviso—
    - (i) after the word “character” where it first occurs there shall be inserted “or impugning the character of the complainer”; and
    - (ii) after the word “prosecution” in the second place where it occurs there shall be inserted “or of the complainer”; and
  - (b) after that subsection there shall be inserted the following subsections—

“(1A) In a case to which sub-paragraph (ii) of paragraph (f) of the proviso to subsection (1) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that paragraph only if the court, on the application of the prosecutor, permits him to do so.

(1B) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.

(5) After section 346 of that Act there shall be inserted the following section—

**“346ZA Evidence of criminal record and character of accused**

- (1) This section applies where—
- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
  - (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.
- (2) Where this section applies the court may, without prejudice to section 350 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character.
- (3) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.
- (6) In section 357 of that Act (laying of previous convictions before court), in subsection (5), for the words from “evidence” where it first occurs to the end there shall be substituted “the prosecutor—
- (a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 346 of this Act; or
  - (b) leading evidence of previous convictions where it is competent to do so—
    - (i) as evidence in support of a substantive charge; or
    - (ii) under section 346ZA of this Act.”.

**25 Evidence as to controlled drugs and medicinal products**

- (1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—
- (a) a particular controlled drug or medicinal product; or
  - (b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,
- shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.
- (2) Those conditions are—
- (a) that the substance is in a sealed container bearing a label identifying the contents of the container; or
  - (b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer’s mark.

- (3) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”)—
- (a) a notice to that effect; and
  - (b) where the evidence is contained in a report, a copy of the report,
- and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.
- (4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (5) In this section—
- “controlled drug” has the same meaning as in the Misuse of Drugs Act 1971; and
  - “medicinal product” has the same meaning as in the Medicines Act 1968.

## **26 Evidence as to time and place of video surveillance recordings**

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—
- (a) the location of the camera;
  - (b) the nature and extent of the person’s responsibility for the system; and
  - (c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,
- shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.
- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.
- (4) In this section, “video surveillance system” means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

**27 Evidence in relation to fingerprints**

- (1) For the purposes of any criminal proceedings, a certificate purporting to be signed by two constables and certifying that the fingerprints produced thereon were taken from a person designated in the certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.
- (2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.
- (3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

**28 Evidence in relation to sexual offences**

- (1) In section 141A(2) of the 1975 Act (sexual offences in relation to which restrictions on admissible evidence apply)—
  - (a) after paragraph (b) there shall be inserted the following paragraph—
    - “(ba) clandestine injury to women;”;
  - (b) after sub-paragraph (i) of paragraph (g) there shall be inserted the following sub-paragraphs—
    - “(ia) section 2A (incest);
    - (ib) section 2B (unlawful sexual intercourse with stepchild);
    - (ic) section 2C (unlawful sexual intercourse of person in position of trust with child under 16);”;
  - (c) after sub-paragraph (iv) of that paragraph there shall be inserted the following sub-paragraph—
    - “(iva) section 7 (gross indecency between males)”.
- (2) In section 346A(2) of that Act (corresponding provision in relation to summary proceedings)—
  - (a) after paragraph (b) there shall be inserted the following paragraph—
    - “(ba) clandestine injury to women;”;
  - (b) after sub-paragraph (i) of paragraph (f) there shall be inserted the following sub-paragraphs—
    - “(ia) section 2A (incest);
    - (ib) section 2B (unlawful sexual intercourse with stepchild);
    - (ic) section 2C (unlawful sexual intercourse of person in position of trust with child under 16);”;
  - (c) after sub-paragraph (iv) of that paragraph there shall be inserted the following sub-paragraph—

“(iva) section 7 (gross indecency between males)”.

## **29 Proof of previous convictions**

(1) In section 162 of the 1975 Act (admissibility and proof of extract convictions in solemn proceedings), after subsection (3) there shall be inserted the following subsections—

“(4) Without prejudice to subsections (1) to (3) above, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

- (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and
- (b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(5) A copy of a conviction or extract conviction served under subsection (4) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.”.

(2) In section 357 of that Act (previous convictions in summary proceedings), after subsection (5) there shall be inserted the following subsections—

“(6) Without prejudice to subsections (1) to (3) above, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

- (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and
- (b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(7) A copy of a conviction or extract conviction served under subsection (6) above shall be served on the accused in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.”.