

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Section 22.

#### CERTIFICATES AS TO PROOF OF CERTAIN MATTERS

- 1 Schedule 1 to the Criminal Justice (Scotland) Act 1980 (which makes provision as regards the <sup>M1</sup>sufficiency of evidence by certificate in certain routine matters) shall be amended as follows.

#### Marginal Citations

**M1** 1980 c.62.

- 2 Before the entry relating to the Wireless Telegraphy Act 1949 there shall be inserted—

“THE PARKS  
REGULATION ACTS  
1872 to 1974

An officer authorised to  
do so by the Secretary of  
State.

That, on a date specified  
in the certificate—  
(a) copies of regulations  
made under those Acts,  
prohibiting such activity  
as may be so specified,  
were displayed at a  
location so specified;  
(b) in so far as those  
regulations prohibited  
persons from carrying  
out a specified activity  
in the park without  
written permission, such  
permission had not been  
given to a person so  
specified.”.

- 3 After the entry relating to the Wireless Telegraphy Act 1949 there shall be inserted—

“THE BUILDING  
(SCOTLAND) ACT 1959  
(c. 24)  
Section 6(1) (prohibition  
of construction,  
demolition or change of  
use of building without  
warrant).

An officer of a local  
authority authorised to do  
so by the authority.

In relation to a building  
specified in the  
certificate, that on a date  
so specified, there had not  
been obtained a warrant  
under section 6 of that  
Act for construction,  
demolition or, as the case  
may be, change of use.

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Section 9(5) (offence of occupying or using a building before certificate of completion issued).	An officer of a local authority authorised to do so by the authority.	That, on a date specified in the certificate— (a) a certificate of completion under section 9 of that Act had not been issued in respect of a building so specified; and (b) written permission for occupation or use of the building so specified, had not been granted under subsection (6) of that section by the local authority.”.
4	In the entry relating to the Firearms Act 1968, for the words in column 2 there shall be substituted “ As respects the matters specified in paragraph (a) of column 3, a constable or a person employed by a police authority, if the constable or person is authorised to do so by the chief constable of the police force maintained for the authority’s area; and as respects the matters specified in paragraph (b) of column 3, an officer authorised to do so by the Secretary of State. ”.	
5	After the entry relating to the Social Security Act 1975 there shall be inserted—	
“THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975 (c. 21) Section 338(2) (offence of failure of accused to appear at diet after due notice).	The clerk of court.	That, on a date specified in the certificate, he gave a person so specified, in a manner so specified, notice of the time and place appointed for a diet so specified.”.
6	In the entry relating to the Bail etc. (Scotland) Act 1980, for the words in column 3 there shall be substituted—	
		“In relation to a person specified in the certificate, that— (a) an order granting bail under that Act was made on a date so specified by a court so specified; (b) the order or a condition of it so specified was in force on a date so specified; (c) notice of the time and place appointed for a diet so specified was given to him in a manner so specified;

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(d) as respects a diet so specified, he failed to appear.”.

7 After the entry relating to the Forgery and Counterfeiting Act 1981 there shall be inserted—

“THE WILDLIFE AND COUNTRYSIDE ACT 1981 (c. 69) Sections 1, 5, 6(1) to (3), 7, 8, 9(1), (2), (4) and (5), 11(1) and (2), 13(1) and (2) and 14 (certain offences relating to protection of wild animals or wild plants).	An officer of the appropriate authority (within the meaning of section 16(9) of that Act) authorised to do so by the authority.	In relation to a person specified in the certificate that, on a date so specified, he held, or as the case may be did not hold, a licence under section 16 of that Act and, where he held such a licence— (a) the purpose for which the licence was granted; and (b) the terms and conditions of the licence.”.
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8 After the entry relating to the Video Recordings Act 1984 there shall be inserted the following entries—

“THE ROAD TRAFFIC ACT 1988 (c.52) Section 165(3) (offence of failure to give name and address and to produce vehicle documents when required by constable).	A constable.	In relation to a person specified in the certificate, that he failed, by such date as may be so specified, to produce such documents as may be so specified at a police station so specified.
THE CONTROL OF POLLUTION (AMENDMENT) ACT 1989 (c.14) Section 1 (offence of transporting controlled waste without registering).	An officer of a regulation authority within the meaning of that Act authorised to do so by the authority.	In relation to a person specified in the certificate, that on a date so specified he was not a registered carrier of controlled waste within the meaning of that Act.
THE ENVIRONMENTAL PROTECTION ACT 1990 (c.43) Section 33(1)(a) and (b) (prohibition on harmful depositing, treatment or disposal of waste).	An officer of a waste regulation authority within the meaning of that Act authorised to do so by the authority.	In relation to a person specified in the certificate that, on a date so specified, he held, or as the case may be he did not hold, a waste management licence.
Section 34(1)(c) (duty of care as respects transfer of waste).	An officer of a waste regulation authority within the meaning of that	In relation to a person specified in the certificate, that on a date

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	Act authorised to do so by the authority.	so specified he was not an authorised person within the meaning of section 34(3)(b) or (d) of that Act.”.
9	After the entry relating to the Social Security Administration Act 1992 there shall be inserted—	
	“THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (c. 33) Paragraph 5 of Schedule 6 (offence of making false statements to obtain certification as prisoner custody officer).	An officer authorised to do so by the Secretary of State.
		That— (a) on a date specified in the certificate, an application for a certificate under section 114 of that Act was received from a person so specified; (b) the application contained a statement so specified; (c) a person so specified made, on a date so specified, a statement in writing in terms so specified.”.

## SCHEDULE 2

Section 50.

### SUPERVISION AND TREATMENT ORDERS: SCHEDULE TO BE INSERTED IN THE 1975 ACT

#### “SCHEDULE 5A

#### SUPERVISION AND TREATMENT ORDERS

#### PART I

#### PRELIMINARY

- 1 (1) In this Schedule “supervision and treatment order” means an order requiring the person in respect of whom it is made (“the supervised person”)—
- (a) to be under the supervision of a social worker who is an officer of the local authority for the area where the supervised person resides or is to reside (in this Schedule referred to as “the supervising officer”) for such period, not being more than three years, as is specified in the order;
  - (b) to comply during that period with instructions given to him by the supervising officer regarding his supervision; and
  - (c) to submit during that period to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

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- (2) The Secretary of State may by order amend sub-paragraph (1) above by substituting, for the period for the time being specified in that sub-paragraph, such period as may be specified in the order.
- (3) An order under sub-paragraph (2) above may make any amendment to paragraph 8(2) below which the Secretary of State considers necessary in consequence of the order.
- (4) The power of the Secretary of State to make orders under sub-paragraph (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

## PART II

### MAKING AND EFFECT OF ORDERS

#### *Circumstances in which orders may be made*

- 2 (1) The court shall not make a supervision and treatment order unless it is satisfied—
  - (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the person; and
  - (b) on the written or oral evidence of two or more medical practitioners approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984, that the mental condition of the person—
    - (i) is such as requires and may be susceptible to treatment; but
    - (ii) is not such as to warrant the making of an order under paragraph (a) of subsection (2) of section 174ZC or, as the case may be, 375ZC of this Act (whether with or without an order under paragraph (b) of that subsection) or an order under paragraph (c) of that subsection.
- (2) The court shall not make a supervision and treatment order unless it is also satisfied—
  - (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (b) that arrangements have been made for the treatment intended to be specified in the order.
- (3) Subsection (2) to (4) of section 176, and subsections (2) to (4) of section 377, of this Act shall have effect with respect to proof of a person's mental condition for the purposes of sub-paragraph (1) above in solemn and summary proceedings respectively as they have effect with respect to proof of an offender's mental condition for the purposes of, respectively, sections 175(1)(a) and 376(1)(a) of this Act.

#### *Making of orders and general requirements*

- 3 (1) A supervision and treatment order shall specify the local authority area in which the supervised person resides or will reside.
- (2) Before making such an order, the court shall explain to the supervised person in ordinary language—
  - (a) the effect of the order (including any requirements proposed to be included in the order in accordance with paragraph 5 below); and

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- (b) that the sheriff court for the area in which the supervised person resides or will reside (in this Schedule referred to as “the relevant sheriff court”) has power under paragraphs 6 to 8 below to review the order on the application either of the supervised person or of the supervising officer.
- (3) After making such an order, the court shall forthwith give a copy of the order to—
  - (a) the supervised person;
  - (b) the supervising officer; and
  - (c) the person in charge of any institution in which the supervised person is required by the order to reside.
- (4) After making such an order, the court shall also send to the relevant sheriff court—
  - (a) a copy of the order; and
  - (b) such documents and information relating to the case as it considers likely to be of assistance to that court in the exercise of its functions in relation to the order.
- (5) Where such an order is made, the supervised person shall comply with such instructions as he may from time to time be given by the supervising officer regarding his supervision and shall keep in touch with that officer and notify him of any change of address.

*Obligatory requirements as to medical treatment*

- 4 (1) A supervision and treatment order shall include a requirement that the supervised person shall submit, during the period specified in the order, to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.
- (2) The treatment required by the order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
  - (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
  - (b) treatment by or under the direction of such medical practitioner as may be so specified;
 but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.
- (3) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of a supervision and treatment order is of the opinion that part of the treatment can be better or more conveniently given at an institution or place which—
  - (a) is not specified in the order; and
  - (b) is one at which the treatment of the supervised person will be given by or under the direction of a medical practitioner,
 he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.
- (4) Where any such arrangements as are mentioned in sub-paragraph (3) above are made for the treatment of a supervised person—
  - (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the institution or place at which the treatment is to be carried out; and

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- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision and treatment order.

*Optional requirements as to residence*

- 5 (1) Subject to sub-paragraphs (2) to (4) below, a supervision and treatment order may include requirements as to the residence of the supervised person.
- (2) Such an order may not require the supervised person to reside as a resident patient in a hospital.
- (3) Before making such an order containing any such requirement, the court shall consider the home surroundings of the supervised person.
- (4) Where such an order requires the supervised person to reside in any institution, the period for which he is so required to reside shall be specified in the order.

**PART III**

REVOCATION AND AMENDMENT OF ORDERS

*Revocation of order in interests of health or welfare*

- 6 Where a supervision and treatment order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the relevant sheriff court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

*Amendment of order by reason of change of residence*

- 7 (1) This paragraph applies where, at any time while a supervision and treatment order is in force in respect of any person, the relevant sheriff court is satisfied that—
- (a) the supervised person proposes to change, or has changed, his residence from the area specified in the order to the area of another local authority;
- (b) a social worker who is an officer of the other local authority (“the new supervising officer”) is willing to undertake the supervision; and
- (c) the requirements of the order as respects treatment will continue to be complied with.
- (2) Subject to sub-paragraph (3) below the court may, and on the application of the supervising officer shall, amend the supervision and treatment order by substituting the other area for the area specified in the order and the new supervising officer for the supervising officer specified in the order.
- (3) Where a supervision and treatment order contains requirements which, in the opinion of the court, can be complied with only if the supervised person continues to reside in the area specified in the order, the court shall not amend the order under this paragraph unless it also, in accordance with paragraph 8 below, either—
- (a) cancels those requirements; or

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- (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area.

*Amendment of requirements of order*

- 8 (1) Without prejudice to the provisions of paragraph 7 above, but subject to sub-paragraph (2) below, the relevant sheriff court may, on the application of the supervised person or the supervising officer, by order amend a supervision and treatment order—
- (a) by cancelling any of the requirements of the order; or
  - (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.
- (2) The power of the court under sub-paragraph (1) above shall not include power to amend an order by extending the period specified in it beyond the end of three years from the date of the original order.

*Amendment of requirements in pursuance of medical report*

- 9 (1) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a supervision and treatment order—
- (a) is of the opinion mentioned in sub-paragraph (2) below; or
  - (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,
- he shall make a report in writing to that effect to the supervising officer and that officer shall apply under paragraph 8 above to the relevant sheriff court for the variation or cancellation of the requirement.
- (2) The opinion referred to in sub-paragraph (1) above is—
- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision and treatment order;
  - (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
  - (c) that the supervised person is not susceptible to treatment; or
  - (d) that the supervised person does not require further treatment.

*Supplemental*

- 10 (1) On the making under paragraph 6 above of an order revoking a supervision and treatment order, the sheriff clerk shall forthwith give a copy of the revoking order to the supervising officer.
- (2) On receipt of a copy of the revoking order the supervising officer shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person was required by the order to reside.
- 11 (1) On the making under paragraph 7 or 8 above of an order amending a supervision and treatment order, the sheriff clerk shall forthwith—
- (a) if the order amends the supervision and treatment order otherwise than by substituting a new area or a new place for the one specified in that order, give a copy of the amending order to the supervising officer;

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- (b) if the order amends the supervision and treatment order in the manner excepted by paragraph (a) above, send to the new relevant sheriff court—
- (i) a copy of the amending order; and
  - (ii) such documents and information relating to the case as he considers likely to be of assistance to that court in exercising its functions in relation to the order;
- and in a case falling within paragraph (b) above, the sheriff clerk shall give a copy of the amending order to the supervising officer.
- (2) On receipt of a copy of an amending order the supervising officer shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is or was required by the order to reside.
- 12 On the making, revocation or amendment of a supervision and treatment order the supervising officer shall give a copy of the order or, as the case may be, of the order revoking or amending it, to the Mental Welfare Commission for Scotland.”

### SCHEDULE 3

Section 100.

#### ADMINISTRATORS

##### *Appointment of administrators*

- 1 (1) On the application of the prosecutor the court may as regards property—
- (a) affected by a restraint order or a suspended forfeiture order, appoint a person to manage, or otherwise deal with, the property; or
  - (b) where a suspended forfeiture order or a confiscation order has been made, appoint a person (or empower an appointee under paragraph (a) above) to realise the property,
- in accordance with the court’s directions and may (whether on making the appointment or from time to time) require any person having possession of the property to give possession of it to the appointee (any such appointee being in this Act referred to as an “administrator”).
- (2) A requirement under sub-paragraph (1) above—
- (a) subject to paragraph (b) below, may relate to the property generally or to particular such property and may be subject to such exceptions and conditions as may be specified by the court;
  - (b) shall relate to property mentioned in paragraph (b) of section 72(1) of this Act only if expressly stated so to do and then only in so far as the person in whom such property is vested is named in the requirement as being subject to it.
- (3) On a requirement being imposed under sub-paragraph (1) above—
- (a) the clerk of court shall forthwith notify—
    - (i) the person in respect of whom the restraint order, or as the case may be the suspended forfeiture order or confiscation order, has been made; and

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- (ii) any other person named in the requirement as being subject to it; and
  - (b) any dealing of or with such person in relation to the property shall be of no effect in a question with the administrator unless whoever dealt with the person had, at the time when the dealing occurred, no knowledge of the appointment.
- (4) The court, at the instance of any person having an interest, may at any time—
- (a) vary or withdraw a requirement imposed under sub-paragraph (1) above; or
  - (b) without prejudice to paragraph 4 below or to the powers and duties of an administrator pending a decision under this sub-sub-paragraph, on cause shown, remove the administrator from office.
- (5) On the death or resignation of the administrator, or on his removal from office under sub-paragraph (4)(b) above or paragraph 5 below, the court shall appoint a new administrator.
- (6) Such of the property (if any) as was, by virtue of paragraph 2(3) below, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under sub-paragraph (1) above shall, on the person subject to the requirement being notified in writing of the appointment by the appointee, apply in relation to the appointee instead of in relation to his predecessor.
- (7) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.
- (8) Any appointment under this paragraph shall be on such conditions as to caution as the accountant of court may think fit to impose; but the premium of any bond of caution or other security thereby required of the administrator shall be treated as part of his outlays in his actings as such.
- (9) Without prejudice to paragraph 5 below, section 6 of the <sup>M2</sup>Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

#### Marginal Citations

M2 1889 c. 39.

#### *Functions of administrators*

- 2 (1) Subject to paragraph 5 below, an administrator—
- (a) shall be entitled to take possession of, and if appointed (or empowered) under paragraph 1(1)(b) above where a confiscation order has been made shall as soon as practicable take possession of, the property as regards which he has been appointed and of any document which both—
    - (i) is in the possession or control of the person (in this paragraph referred to as “A”) in whom the property is vested (or would be vested but for an order made under sub-paragraph (3) below); and
    - (ii) relates to the property or to A’s assets, business or financial affairs;

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- (b) shall be entitled to have access to, and to copy, any document relating to the property or to A's assets, business or financial affairs and not in such possession or control as is mentioned in paragraph (a) above;
- (c) may bring, defend or continue any legal proceedings relating to the property;
- (d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;
- (e) may, if the administrator considers that to do so would be beneficial for the management or realisation of the property—
  - (i) carry on any business of A;
  - (ii) exercise any right of A as holder of securities in a company;
  - (iii) grant a lease of the property or take on lease any other property; or
  - (iv) enter into any contract, or execute any deed, as regards the property or as regards A's business;
- (f) may, where any right, option or other power forms part of A's estate, make payments or incur liabilities with a view to—
  - (i) obtaining property which is the subject of; or
  - (ii) maintaining,the right, option or power;
- (g) may effect or maintain insurance policies as regards the property on A's business;
- (h) where he has been appointed under paragraph 1(1)(b) above may, where A has an uncompleted title to any heritable estate, complete title thereto;

Provided that completion of title in A's name shall not validate by accretion any unperfected right in favour of any person other than the administrator;

- (j) may sell, purchase or exchange property or discharge any security for an obligation due to A:

Provided that it shall be incompetent for the administrator or an associate of his (within the meaning of section 74 of the <sup>M3</sup>Bankruptcy (Scotland) Act 1985) to purchase any of A's property in pursuance of this paragraph;

- (k) may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor;
- (l) may discharge any of his functions through agents or employees;

Provided that the administrator shall be personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of paragraph 6(1) and (3) below;

- (m) may take such professional advice as he may consider requisite for the proper discharge of his functions;
- (n) may at any time apply to the court for directions as regards the discharge of his functions;
- (o) may exercise any power specifically conferred on him by the court, whether such conferral was at the time of his appointment or on his subsequent application to the court in that regard; and
- (p) may do anything incidental to the above powers and duties.

- (2) Subject to the proviso to sub-paragraph (1)(j) above—

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- (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that subsection; and
  - (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.
- (3) The exercise of a power mentioned in any of sub-paragraphs (1)(c) to (k) above shall be in A's name except where and in so far as an order made by the court under this sub-paragraph (either on its own motion or on the application of the administrator) has vested the property in the administrator (or in his predecessor in that office).

**Marginal Citations**

**M3** 1985 c. 66.

*Money received by administrator*

- 3
- (1) Subject to sub-paragraph (2) below, all money received by an administrator in the exercise of his functions shall be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 2(3) above) of the holder of the property realised, in an appropriate bank or institution.
  - (2) The administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Secretary of State by regulations made by statutory instrument.
  - (3) In sub-paragraph (1) above, “appropriate bank or institution” means a bank or institution mentioned in section 2(1) of the <sup>M4</sup>Banking Act 1979 or for the time being specified in Schedule 1 to that Act.

**Marginal Citations**

**M4** 1979 c. 37.

*Application of proceeds of realisation and other sums*

- 4
- (1) This paragraph applies only to an administrator appointed to realise property where a confiscation order has been made.
  - (2) Subject to sub-paragraph (3) below, sums in the hands of an administrator which are—
    - (a) proceeds of a realisation of property under paragraph 1 above, and
    - (b) other property held by the person in respect of whom the confiscation order was made,
 shall first be applied in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act and then shall, after such payments (if any) as the court may direct have been made out of those proceeds and sums, be applied on the person's behalf towards the satisfaction of the confiscation order.

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- (3) If, after the amount payable under the confiscation order has been fully paid, any such proceeds and sums remain in the hands of the administrator, he shall distribute them—
- (a) among such of those who held property which has been realised under this Act, and
  - (b) in such proportions,
- as the court may, after giving such persons an opportunity to be heard as regards the matter, direct.
- (4) The receipt of any sum by a sheriff clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sheriff clerk shall apply the money—
- (a) first, in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act but which were not paid to him under sub-paragraph (2) above;
  - (b) next, in payment of the administrator's remuneration and expenses;
  - (c) next, in reimbursement of any sums paid by the Lord Advocate under paragraph 8(2) below;
  - (d) next, in accordance with any direction given by the court under section 74(4) or 79(7) of this Act,
- and the balance shall be payable and recoverable (or as the case may be disposed of) under section 203 or 412 of the 1975 Act (destination of fines) as applied by section 80 of this Act.

#### *Supervision of administrators*

- 5 (1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by Part II of this Act; and in particular an administrator proposing to exercise functions conferred by any of paragraphs 2(1)(c) to (p) above shall first obtain the consent of the accountant of court to such exercise.
- (2) If it appears to the accountant of court that an administrator has, without reasonable cause, failed to perform a duty imposed on him by any provision of section 82 of this Act or of this Schedule, he shall report the matter to the court which, after giving the administrator an opportunity to be heard as regards the matter, may remove the administrator from office, censure him or make such other order as the circumstances of the case may appear to the court to require.

#### *Accounts and remuneration of administrator*

- 6 (1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the court may require and shall lodge these accounts with the accountant of court at such times as may be fixed by the court in that regard; and the accountant of court shall audit the accounts and issue a determination as to the amount of outlays and, on the basis mentioned in sub-paragraph (3) below, remuneration payable to the administrator in respect of those intromissions.
- (2) Not later than two weeks after the issuing of a determination under sub-paragraph (1) above, the administrator or the Lord Advocate may appeal against it to the court.

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

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- (3) The basis for determining the amount of remuneration payable to the administrator shall be the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.
- (4) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

*Effect of appointment of administrator on diligence*

- 7 Without prejudice to sections 98 and 99 of this Act—
- (a) no arrestment or poinding of property executed on or after an appointment as regards the property under paragraph 1 above shall be effectual to create a preference for the arrester or poinder and any such property so arrested or poinded, or the proceeds of sale thereof, shall be handed over to the administrator;
  - (b) no poinding of the ground in respect of property on or after such appointment shall be effectual in a question with the administrator except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for one year immediately before the commencement of that term;
  - (c) it shall be incompetent on or after such appointment for any other person to raise or insist in an adjudication against the property or to be confirmed as executor-creditor on that property; and
  - (d) no inhibition on property which takes effect on or after such appointment shall be effectual to create a preference for the inhibitor in a question with the administrator.

*Further provision as to administrators*

- 8 (1) Where an administrator takes any action—
- (a) in relation to property as regards which he has not been appointed, being action which he would be entitled to take if he had been so appointed,
  - (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,
- he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.
- (2) Any amount due in respect of the remuneration and expenses of an administrator appointed under this Schedule shall, unless in a case where a confiscation order has been made there are sums available to be applied in payment of it under paragraph 4(4)(b) above, be paid by the Lord Advocate.
  - (3) Any disposal of property under paragraph 1 above to a person taking in good faith shall vest the ownership of the property in that person.

*Discharge of administrator*

- 9 After an administrator has lodged his final accounts under paragraph 6(1) above, he may apply to the accountant of court to be discharged from office; and such discharge, if granted, shall have the effect of freeing him from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising the functions conferred on him by this Act.

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

### *Compensation*

- 10 (1) Where the court, on an application made to it by a person other than the accused or the recipient of a gift caught by Chapter I of Part II of this Act, is satisfied on the balance of probabilities that in relation to any property realised under paragraph 1 above he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.
- (2) An application under this paragraph shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.
- (3) Subsection (6) of section 95 of this Act shall apply for the purpose of determining for the purposes of this paragraph whether proceedings are concluded as it applies for the purposes of that section.

### *Rules of court as regards accountant of court's supervision etc of administrators*

- 11 Without prejudice to section 5 of the <sup>M5</sup>Court of Session Act 1988 (power to regulate procedure etc. by Act of Sederunt), provision may be made by rules of court as regards (or as regards any matter incidental to) the accountant of court's powers and duties under Part II of this Act in relation to the functions of administrators.

#### **Marginal Citations**

**M5** 1988 c. 36.

### *Power to facilitate realisation*

- 12 (1) Without prejudice to any enactment or rule of law in respect of the recording of deeds relating to heritable property or the registration of interests therein, the court, to facilitate realisation under paragraph 1 above, may—
- (a) order any person (in this paragraph referred to as “A”) holding an interest in property, not being such person (in this paragraph referred to as “B”) as is mentioned in paragraph (a) or (b) of section 72(1) or section 87 of this Act, to make such payment to an administrator appointed to realise estate comprising an interest of B in that property as the court may direct and may, subject to such payment being made—
- (i) authorise the administrator to transfer B's interest to A or to discharge it in favour of A; or
- (ii) itself by order transfer or discharge B's interest; or
- (b) by order—
- (i) transfer A's interest to B; or
- (ii) discharge it in favour of B,
- on the administrator making such payment to A out of that estate in respect of A's interest as the court may direct.
- (2) The court may make such incidental provision in relation to any exercise of powers conferred on it by sub-paragraph (1) above as it considers appropriate; but it shall not

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

exercise those powers without giving such persons as hold an interest in the property reasonable opportunity to make representations to it in that regard.

## SCHEDULE 4

Section 110.

### SEQUESTRATION ETC. OF PERSONS HOLDING REALISABLE OR FORFEITABLE PROPERTY

#### *Sequestration of person holding realisable or forfeitable property*

- 1 (1) Where the estate of a person who holds realisable or forfeitable property is sequestrated—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration; and
  - (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph,
- is excluded from the debtor's estate for the purposes of that Act.
- (2) Where an award of sequestration has been made, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to—
- (a) property comprised in the whole estate of the debtor (within the meaning of section 31(8) of the 1985 Act); or
  - (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act, vests in the permanent trustee,
- and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.
- (3) Nothing in the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the interim trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (5) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by Chapter I of Part II of this Act—
- (a) no decree shall, at any time when proceedings as regards an offence to which Chapter I of Part II of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be granted under section 34 or 36

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

- of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
- (b) any decree granted under either of the said sections 34 and 36 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.
- (6) In any case in which, notwithstanding the coming into force of the 1985 Act, the <sup>M6</sup>Bankruptcy (Scotland) Act 1913 applies to a sequestration, sub-paragraph (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
- (b) any income of the bankrupt which has been ordered, under subsection (2) of section 98 of that Act, to be paid to the trustee or any estate which, under subsection (1) of that section, vests in the trustee,”

and sub-paragraph (3) above shall have effect as if, for the reference in it to the 1985 Act, there were substituted a reference to the said Act of 1913.

#### Marginal Citations

M6 1913 c. 20.

#### *Bankruptcy in England and Wales of person holding realisable or forfeitable property*

- 2 (1) Where a person who holds realisable or forfeitable property is adjudged bankrupt—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph,
- is excluded from the bankrupt’s estate for the purposes of Part IX of the <sup>M7</sup>Insolvency Act 1986.
- (2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to—
- (a) property for the time being comprised in the bankrupt’s estate for the purposes of the said Part IX;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the Insolvency Act 1986 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the Insolvency Act 1986.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the Insolvency Act 1986 and any property of the debtor is subject to a restraint order the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.
- (5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by Chapter I of Part II of this Act—
- (a) no order shall, at any time when proceedings for an offence to which Part VI of the <sup>M8</sup>Criminal Justice Act 1988 applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 339 or 423 of the Insolvency Act 1986 (avoidance of certain transactions) in respect of the making of the gift, and
  - (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.
- (6) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the date on which the <sup>M9</sup>Insolvency Act 1986 came into force, sub-paragraphs (2) to (5) above have effect with the following modifications—
- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the <sup>M10</sup>Bankruptcy Act 1914;
  - (b) for references to the said Act of 1986 and to sections 280(2)(c), 286, 339, and 423 of that Act there are respectively substituted references to the said Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
  - (c) the references in subsection (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the said Act of 1914, and
  - (d) subsection (2)(b) is omitted.

#### **Marginal Citations**

**M7** 1986 c. 45.

**M8** 1988 c. 33.

**M9** 1986 c. 45.

**M10** 1914 c.59.

#### *Winding up of company holding realisable or forfeitable property*

- 3 (1) Where realisable or forfeitable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by

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- the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—
- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time; and
  - (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph.
- (2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to any realisable or forfeitable property held by the company in relation to which the functions of the liquidator are exercisable—
- (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.
- (3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) For the purposes of the application of Parts IV and V of the <sup>M11</sup>Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the court has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order (whether under this Act or under and within the meaning of section 2 of the Drug Trafficking Act 1994 or section 1 of the 1987 Act or any corresponding provision in Northern Ireland).
- (5) Where an order for the winding up of a company has been made or a resolution has been passed by a company for its voluntary winding up and before the relevant time the company has directly or indirectly made a gift caught by Chapter I of Part II of this Act—
- (a) no order or, as the case may be, decree shall, at any time when proceedings as regards an offence to which that Chapter applies have been instituted against the company and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 238 or 239 of the <sup>M12</sup>Insolvency Act 1986 (transactions at an undervalue and preferences) or granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
  - (b) any order made under either of the said sections 242 and 243 or decree granted under either of the said sections 242 or 243 after the conclusion of the proceedings shall take into account any realisation under Part II of this Act of property held by the person to whom the gift was made.
- (6) In this paragraph—

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“company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

- (7) In any case in which a winding up of a company commenced, or is treated as having commenced, before the date on which the <sup>M13</sup>Insolvency Act 1986 came into force, sub-paragraphs (2) to (6) above have effect with the substitution for references to that Act of references to the Companies Act 1985.

#### **Marginal Citations**

**M11** 1994 c. 37.

**M12** 1986 c. 45.

**M13** 1985 c. 6.

#### *Property subject to floating charge*

- 4 (1) Where any property held subject to a floating charge by a company is realisable or forfeitable property and a receiver has been appointed by, or on the application of, the holder of the charge, the powers of the receiver in relation to the property so held shall not be exercisable in relation to—
- (a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the such appointment; and
  - (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph.
- (2) Where, in the case of a company, such an appointment has been made, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to any realisable property held by the company in relation to which the powers of the receiver are exercisable—
- (a) so as to inhibit the receiver from exercising his powers for the purpose of distributing any property held by the company to the company’s creditors; or
  - (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of the receiver’s powers in respect of the property.

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- (3) Nothing in the <sup>M14</sup>Insolvency Act 1986, shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.
- (4) In this paragraph—  
“company” has the same meaning as in paragraph 3 above; and  
“floating charge” includes a floating charge within the meaning given by section 462 of the <sup>M15</sup>Companies Act 1985 (power of incorporated company to create floating charge).
- (5) In any case in which a receiver was appointed as is mentioned in sub-paragraph (1) above before the date on which the Insolvency Act 1986 came into force, sub-paragraphs (2) to (4) above have effect with the substitution for references to that Act of references to the Companies Act 1985.

**Marginal Citations**

**M14** 1986 c. 45.

**M15** 1985 c. 6.

*Insolvency practitioners dealing with property subject to restraint order*

- 5 (1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in the 1985 Act, where—
- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are, because that property is for the time being subject to a restraint order, not exercisable; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of that property,
- he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the insolvency practitioner’s negligence; and the insolvency practitioner shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, sequestration or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.
- (2) Any person who, acting as an insolvency practitioner, incurs expenses—
- (a) in respect of such realisable property as is mentioned in sub-paragraph (1) (a) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such realisable property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,
- shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under sub-paragraph (1) above) to payment of those expenses under paragraph 4(2) or (4)(a) of Schedule 3 to this Act.

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

- (3) In the foregoing provisions of this paragraph, the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in a sequestration and subsection (5) of that section shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

### *Interpretation*

- 6 (1) In this Schedule “the 1985 Act” means the <sup>M16</sup>Bankruptcy (Scotland) Act 1985.
- (2) References in this Schedule to the conclusion of proceedings, except for the purposes of paragraph 2(5) above, shall be construed—
- (a) as regards property subject to a restraint order under section 94(1)(a) of this Act, in accordance with section 95(6) of this Act; and
  - (b) as regards property subject to a restraint order under section 94(1)(b) of this Act, in accordance with section 96(5) of this Act.
- (3) References in this Schedule to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidation.

#### **Marginal Citations**

**M16** 1985 c. 66.

## SCHEDULE 5

Section 113(3).

### AMENDMENTS TO THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987 RELATING TO PART II

- 1 The <sup>M17</sup>Criminal Justice (Scotland) Act 1987 shall be amended as follows.

#### **Marginal Citations**

**M17** 1987 c. 41.

- 2 In section 1 (confiscation orders)—
- (a) in subsection (1)—
    - (i) for the words from “High Court” to “pronounced)” there shall be substituted the words “ High Court or sheriff court (in this section and sections 2 to 7A of this Act referred to as “the court”) of an offence to which this section relates the court, on the application of the prosecutor, may ”, and in the remainder of that subsection for the word “Court” where it appears there shall be substituted the word “ court ”; and

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- (ii) in paragraph (b), for the word “property” where it first appears there shall be substituted the word “ amount ” and for the words “the value of that property” there shall be substituted the words “ that amount ”;
- (b) in subsection (2), after the word “following” there shall be inserted the words “ offences when prosecuted either on indictment or on summary complaint before the sheriff if the offence is punishable by a fine in excess of level 5 or by imprisonment for a period of more than 3 months or by both such fine and imprisonment ”;
- (c) after subsection (2) there shall be inserted the following subsections—
  - “(2A) Any application under this section shall be made—
    - (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the offender is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
    - (b) in summary proceedings following the conviction of the accused.
  - (2B) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the offender.
  - (2C) If the court decides to make a confiscation order, it shall determine the amount to be payable thereunder before making any decision as to—
    - (a) imposing a fine on the person;
    - (b) making any order involving any other payment by him.
  - (2D) Where a court makes a confiscation order against an accused in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—
    - (a) imposing any fine on him;
    - (b) making any order involving any other payment by him,but subject to that, the court shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the accused.
  - (2E) Where a court makes both a confiscation order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same person in the same proceedings in relation to the same offence and the offence involves the misappropriation of property, it shall direct that the compensation shall be paid first out of any sums applied towards the satisfaction of the confiscation order.”;
- (d) subsection (3) shall cease to have effect; and
- (e) in subsection (5) for the words “High Court” and “Court” where they occur there shall be substituted the word “ court ”.

3 For section 2 (postponed confiscation orders) there shall be substituted the following section—

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- “2 (1) If the court considers that it has some, but not sufficient, relevant information for the purpose of enabling it to come to a decision as to whether to make a confiscation order or that it does not have sufficient relevant information to enable it to come to a decision as to the amount to be payable under the confiscation order, it may, subject as the case may be to subsection (6) or (10) below, postpone that decision for a period not exceeding 6 months after the date of conviction for the purpose of enabling further information to be obtained.
- (2) Without prejudice to sections 179 and 219 (or as the case may be sections 380 and 432) of the 1975 Act, the court may notwithstanding postponement under subsection (1) above and subject to subsection (3) below, proceed, on the prosecutor’s motion therefor, to sentence or to otherwise deal with the accused in respect of the conviction.
- (3) Where the court proceeds as mentioned in subsection (2) above—
- (a) no fine shall be imposed on the accused; and
  - (b) no order shall be made involving any other payment by him,
- in relation to the conviction before the decision whether to make a confiscation order is taken.
- (4) Where in the case of conviction on indictment a decision has been postponed under subsection (1) above for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of the 1975 Act not within 2 weeks of the final determination of the proceedings but within 2 weeks of—
- (a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;
  - (b) in any other case, the day on which such sentence is passed in open court.
- (5) Notwithstanding any appeal of which intimation has been given by virtue of subsection (4) above, a person may appeal under section 228 of the 1975 Act against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (6) If during the period of postponement intimation is given by virtue of subsection (4) above by the person, the High Court may, on the application of the prosecutor, extend that period to a date up to 3 months after the date of disposal of the appeal.
- (7) This subsection applies where in the case of summary conviction a decision has been postponed under subsection (1) above for a period.
- (8) Where subsection (7) above applies and the offender appeals under section 442 of the 1975 Act against conviction or against both conviction and any sentence passed during the period of postponement—
- (a) his application for a stated case shall be made not within one week of the final determination of the proceedings but within one week of the day mentioned in paragraph (a) or (b) of subsection (4) above;

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- (b) his draft stated case shall be prepared and issued not within 3 weeks of the final determination of the proceedings but within 3 weeks of the said day.
- (9) Where subsection (7) above applies, then, notwithstanding any appeal against conviction or sentence or both the offender may appeal under section 442(1)(a)(ii), and the prosecutor may appeal under section 442(1)(b)(ii), of the 1975 Act against any confiscation order or against any other sentence passed, after the period of postponement, in respect of the conviction.
- (10) Where subsection (7) above applies, then, if during the period of postponement the offender applies for a stated case or lodges a note of appeal, the High Court may, on the application of the prosecutor, extend the period of postponement to a date up to 3 months after the date of disposal of the appeal.”.
- 4 In section 3 (assessing the proceeds of drug trafficking)—
- (a) in each of subsections (2) and (4) for the word “Court” where it appears there shall be substituted the word “ court ”;
- (b) at the end of paragraph (a)(ii) of subsection (2) there shall be added the words “ or being served with the complaint (as the case may be) ”; and
- (c) subsection (5) shall cease to have effect.
- 5 In section 4 (statements relating to drug trafficking)—
- (a) in each of subsections (1), (2) and (4) for the word “Court” where it appears there shall be substituted the word “ court ”;
- (b) in each of subsections (1) and (4) after the words “section 150” there shall be inserted the words “ or, as the case may be, section 354 ”;
- (c) at the end there shall be added the following subsections—
- “(6) Without prejudice to section 2(1) of this Act, where—
- (a) any allegation in the statement lodged under subsection (1) above is challenged by the accused; or
- (b) the basis of the non-acceptance by the accused of any such allegation is challenged by the prosecutor,
- the court shall consider the matters being challenged at a hearing.
- (7) Where the judge presiding at a hearing held under subsection (6) above is not the trial judge he may, on the application of either party, if he considers that it would be in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.”.
- 6 In section 5 (realisable property)—
- (a) for subsections (1) to (3) there shall be substituted the following—
- “(1) In this Part of this Act “realisable property” means, subject to subsection (2) below—
- (a) the whole estate wherever situated of a person—
- (i) against whom proceedings have been instituted for an offence to which section 1 of this Act relates; or
- (ii) in respect of whom a restraint order has been made by virtue of section 8(4) of this Act;

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- (b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made an implicative gift;
  - (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
  - (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.
- (2) Property is not realisable if—
- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
  - (b) a suspended forfeiture order is in force in respect of the property; or
  - (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.
- (3) For the purposes of this section proceedings for an offence are instituted against a person—
- (a) on his arrest without warrant;
  - (b) when he is charged with the offence without being arrested;
  - (c) when a warrant to arrest him is granted;
  - (d) when a warrant to cite him is granted;
  - (e) in summary proceedings, on the first calling of the case; or
  - (f) when a petition is intimated to him or an indictment or a complaint is served on him,
- and, where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.”;
- (b) in subsection (4)—
- (i) for the words “realisable property owned” there shall be substituted the words “ his realisable property ”; and
  - (ii) for the words from “except that” to the end there shall be substituted “, less any amount due by him at that time in respect of any compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 made before the confiscation order. ”;
- (c) in subsection (5)—
- (i) for the words “High Court” there shall be substituted the word “ court ”;
  - (ii) after the words “regard to the” there shall be inserted the word “ likely ”;
  - (iii) after paragraph (a) there shall be inserted the following paragraph—
    - “(aa) of realisable property held by a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to,

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as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act;”;

- (iv) paragraph (b) shall cease to have effect; and
- (v) at the end there shall be added the words “ and in this subsection, “money” includes cheques, banknotes, postal orders, money orders and foreign currency ”;
- (d) subsection (6) shall cease to have effect;
- (e) in subsection (7)—
  - (i) for the word “Court” there shall be substituted the word “ court ”; and
  - (ii) the words “notwithstanding subsections (5)(b) and (6) above” shall cease to have effect;
- (f) after subsection (7) there shall be inserted the following subsections—
  - “(7A) Where the court is satisfied, on the application of a person in receipt of an implicative gift made before or after a confiscation order has been made—
    - (a) that the person received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the giver was in any way concerned in drug trafficking; and
    - (b) that he is not, and has never been, associated with the giver in drug trafficking; and
    - (c) that he would suffer hardship if the application were not granted,it may make an order declaring that the gift or a part of the gift shall not be an implicative gift and that the property or part of the property of the recipient of the gift shall not be, or shall cease to be, realisable for the purposes of this Part of this Act and, if a confiscation order has already been made, varying that order accordingly, where necessary.
  - (7B) An appeal shall lie to the High Court at the instance of—
    - (a) the applicant against the refusal;
    - (b) the prosecutor against the granting,of an application under subsection (7A) above.
  - (7C) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.”; and
- (g) subsection (8) shall cease to have effect.

7 In section 6 (implicative gifts)—

- (a) in subsection (1), in paragraph (a) for the words “the warrant to arrest and commit was granted” there shall be substituted the words “ the proceedings were commenced within the meaning of section 5(3) of this Act ”;
- (b) for subsections (2) and (3) there shall be substituted the following—
  - “(2) In assessing the value of an implicative gift, the court shall, subject to subsections (3) and (3A) below, take it to be the greater of—

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- (a) the value of the gift when received adjusted to take account of subsequent changes in the value of money; or
- (b) both of the following—
  - (i) the likely market value, on the date on which the confiscation order is to be made, of—
    - (A) the gift, if retained; or
    - (B) where the recipient of the gift retains only part of it, the retained part, and any property or part of any property which, directly or indirectly, represents the gift; or
    - (C) where the recipient of the gift retains no part of it, any property or part of any property which, directly or indirectly, represents the gift; and
  - (ii) the value of any other property and any other economic advantage which by reason of the making of the gift the recipient of the gift has obtained, directly or indirectly, prior to the date on which the confiscation order is to be made, adjusted to take account of subsequent changes in the value of money.

(3) The circumstances in which the accused is to be treated as making a gift include those where he transfers an interest in property to another person directly or indirectly for a consideration the value of which is significantly less than the value of that interest at the time of transfer; and in those circumstances the value of the gift shall be the difference between the value of that consideration and the value of that interest at the time of transfer adjusted to take account of subsequent changes in the value of money.

(3A) Where an implicative gift was in the form of money and the recipient of the gift shows that, on the balance of probabilities, the money or any of it has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or such part of it as has not been so used shall be taken to be the face value of the money or, as the case may be, unused amount of the money.

(3B) In subsection (3A) above, “money” includes cheques, banknotes, postal orders, money orders and foreign currency.”; and

(c) subsections (4) and (5) shall cease to have effect.

8 After section 6 (implicative gifts) there shall be inserted the following sections—

**“6A Increase in value of proceeds of drug trafficking or realisable property.**

(1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the value of the proceeds of the person’s drug trafficking, or the amount that might be realised, is greater than—

- (a) the value of the proceeds of the person’s drug trafficking; or, as the case may be,

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- (b) the amount that might be realised,  
which was taken into account when the order was made.
- (2) The considerations by reference to which to court may be satisfied as mentioned in subsection (1) above shall include—
- (a) the value of the proceeds of the person's drug trafficking was greater than was taken into account when the confiscation order was made or has increased since the order was made; or
  - (b) further proceeds of drug trafficking have been obtained since the confiscation order was made; or
  - (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or
  - (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
  - (e) the amount, or part of the amount, of a gift which was disregarded under section 5(7) of this Act could now be realised.
- (3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) Where this section applies—
- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the value of the proceeds of drug trafficking or the amount that might be realised; and
  - (b) if the earlier confiscation order has not been satisfied, then the court, in making the new confiscation order, shall recall the earlier order and may take into account the amount unpaid (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the earlier order.
- (5) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (6) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.

#### **6B Confiscation orders where proceeds of crime discovered at later date.**

- (1) This section applies where no confiscation order has been made in relation to an offence under section 1 or 2 of this Act.
- (2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—
- (a) that a person convicted of an offence to which this Part of this Act relates was in receipt of the proceeds of drug trafficking in respect of that offence;

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- (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 1 of this Act was or could have been made was not available to the prosecutor, it may make a confiscation order in relation to that person.
- (3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.
- (4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—
- (a) any order involving any payment by the offender;
  - (b) any order under section 87 of the Criminal Justice (Scotland) Act 1995 or an order for forfeiture under any other enactment made in respect of the offender,
- which forms part of the sentence already imposed for the offence concerned.
- (5) In determining such sum the court may take into account any payment or other reward received by the offender on or after the date of conviction, but only if the prosecutor satisfies the court that it was received by the offender in connection with drug trafficking carried on by the offender or another on or before that date.
- (6) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.
- (7) Section 1(2B), (2C), (2D) and (2E) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.
- (8) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.
- (9) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender, the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.
- (10) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 1 of this Act.”.

9 In section 7 (application of provisions relating to fines to enforcement of confiscation orders)—

- (a) in subsection (1)—
  - (i) after “203” there shall be inserted the words “ or, as the case may be, 402 and 412 ”;
  - (ii) for the words from “as applied” to “below shall” there shall be substituted the words “ the provisions of that Act specified in

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subsection (2) below (or those provisions as applied by section 194 of that Act) shall ”;

- (b) in subsection (2)—
  - (i) in the entry relating to section 398, at the end there shall be inserted the words “but as if subsection (1)—
    - (a) gave the prosecutor an opportunity to be heard at any enquiry thereunder; and
    - (b) applied whether the offender was in prison or not;”;
  - (ii) in the entry relating to section 411, the words “except the proviso to subsection (3)” shall cease to have effect;
- (c) after subsection (2) there shall be inserted the following subsection—

“(2A) Where a court, by virtue of subsection (1) above, orders the sum due under a confiscation order to be recovered by civil diligence under section 411 of the Criminal Procedure (Scotland) Act 1975, any arrestment executed by a prosecutor under subsection (2) of section 11A of this Act shall be deemed to have been executed by the court as if that subsection authorised such execution.”.

- 10 After section 7 (application of provisions relating to fines to enforcement of confiscation orders) there shall be inserted the following section—

**“7A Disposal of family home.**

Section 111 of the Criminal Justice (Scotland) Act 1995 shall apply in respect of a person’s family home if a confiscation order has been made in relation to that person as it applies in respect of a person’s family home if a confiscation order has been made in relation to that person under section 70(1) of that Act but as if for subsection (1) there were substituted the following subsection—

- (1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired by means of the proceeds of drug trafficking.”.

- 11 For sections 8 (cases in which restraint orders may be made) and 9 (restraint orders) there shall be substituted the following sections—

**“8 Restraint orders.**

- (1) The court may, on the application of the prosecutor, make an order (in this Part of this Act referred to as a “restraint order”) in the circumstances mentioned in either subsection (3) or (4) below interdicting—
  - (a) any person named in the order from dealing with his realisable property; or
  - (b) that person and any person named in the order as appearing to the court to have received from him an implicative gift from dealing with their own, or the other’s, realisable property,(whenever that property was acquired and whether it is described in the order or not).

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- (2) A restraint order may contain conditions and exceptions to which the interdict shall be subject and in particular—
- (a) may make provision for the release to the person named in the order of such reasonable living expenses as the court thinks fit; and
  - (b) shall provide for the release of property in so far as it is required to meet reasonable legal expenses payable or likely to be payable in relation to proceedings—
    - (i) as regards the offence by virtue of which the restraint order has been made; or
    - (ii) as regards a confiscation order made on conviction of the offence.
- (3) For the purposes of this subsection, the circumstances are—
- (a) proceedings have been instituted against an accused in Scotland for an offence to which section 1 of this Act relates;
  - (b) the proceedings have not been concluded; and
  - (c) either a confiscation order has been made or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings.
- (4) For the purposes of this subsection, the circumstances are that the court is satisfied that—
- (a) it is proposed to institute proceedings within 28 days against a person suspected of such an offence and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings; or
  - (b) the prosecutor has made, or proposes within 28 days to make, an application under section 6A or, as the case may be, section 6B of this Act in relation to that person in respect of the offence and it appears to the court that there are reasonable grounds for thinking that the application may be granted.
- (5) Where the court has made a restraint order in the circumstances mentioned in subsection (4)(a) or (b) above and no proceedings have been instituted or application made within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.
- (6) When proceedings for the offence or, as the case may be, proceedings on an application under section 6A or 6B of this Act are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.
- (7) A restraint order shall—
- (a) be made on an ex parte application which shall be heard in chambers; and
  - (b) without prejudice to the time when it becomes effective, be intimated to each person affected by it.

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- (8) For the purposes of this Part of this Act, dealing with property includes (without prejudice to the generality of the expression)—
- (a) making a payment to any person in reduction of the amount of a debt;
  - (b) removing the property from the jurisdiction of the court; and
  - (c) transferring or disposing of the property.
- (9) In this section and sections 9 to 12 of this Act, “the court” means where, as regards the criminal proceedings in question, a trial diet or a diet fixed for the purposes of section 102 of the 1975 Act is intended to be held, is being or has been held—
- (a) in the High Court of Justiciary, the Court of Session;
  - (b) in the sheriff court, a sheriff of that court exercising his civil jurisdiction.
- (10) For the purposes of this section, proceedings on an application under section 6A or 6B of this Act are concluded—
- (a) when the application is refused; or
  - (b) where the application is granted, when a confiscation order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the accused serving imprisonment in default).
- (11) References in this section to the institution of proceedings for an offence against a person shall be construed in accordance with section 5(3) of this Act.

## **9 Variation and recall of restraint orders.**

- (1) Subject to subsections (2) and (3) below, the court may, at the instance of—
- (a) the prosecutor, at any time vary or recall a restraint order in relation to any person or to any property;
  - (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.
- (2) On an application made under subsection (1)(b) above of a person named in a restraint order as having received an implicative gift, the court may recall the order in relation to that person if it is satisfied on the balance of probabilities—
- (a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
  - (b) that he was not associated with the giver in the commission of the offence; and
  - (c) that he would suffer hardship if the order were not recalled.
- (3) Where an application has been made under subsection (1) above for the variation or recall of a restraint order, any property in relation to which the restraint order was made shall not be realised during the period beginning with the making of the application and ending with the determination of the application by the court.

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- (4) The court may, where it has recalled a restraint order as mentioned in subsection (1)(b) or (2) above, order that property of the person at whose instance it was recalled shall cease to be realisable.
- (5) The prosecutor or any person having an interest may reclaim or appeal to the Court of Session against an interlocutor refusing, varying or recalling or refusing to vary or recall a restraint order, within such period as may be prescribed by act of sederunt.
- (6) Where, in relation to a restraint order which is recalled, interdict has been granted under section 12(1) of this Act, the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.”.
- 12 In section 11 (inhibition and arrestment of property affected by restraint order or by interdict under section 12)—
- (a) in subsection (1), in paragraph (ii), the words “where granted under subsection (1)(a) above,” shall cease to have effect;
- (b) in subsection (2), for the words “(1)(a)” there shall be substituted “ (1) ”;
- (c) in subsections (4) and (5), the words “or arrestment”, in each place where they occur, shall cease to have effect; and
- (d) subsection (6) shall cease to have effect.
- 13 After section 11 there shall be inserted the following section—
- “11A Arrestment of property affected by restraint order.**
- (1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Part of this Act in respect of that property.
- (4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”.
- 14 In section 12 (interdict of person not subject to a restraint order)—
- (a) in subsection (1)—
- (i) for the words “Court of Session” there shall be substituted the word “ court ”; and
- (ii) the words from “and the clerk of court” to the end shall cease to have effect;

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- (b) for subsection (2) there shall be substituted the following subsection—
- “(2) Subsections (2)(a) and (7)(a) of section 8 of this Act shall apply in relation to an interdict under subsection (1) above as they apply in relation to a restraint order; and subsections (1), (2), (4) and (5) of section 9 thereof shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of the said section 9.”; and
- (c) for subsection (3) there shall be substituted the following—
- “(3) Without prejudice to the time when it becomes effective, an interdict under subsection (1) above shall be intimated to every person affected by it.”.
- 15 In section 13 (administrators)—
- (a) for the words “Lord Advocate” there shall be substituted the word “prosecutor”;
- (b) for the words “Court of Session” where they appear there shall be substituted the word “court”;
- (c) for the word “Court” where it appears other than as mentioned in paragraph (b) above there shall be substituted the word “court”.
- 16 In section 14 (functions of administrators)—
- (a) in subsection (1)—
- (i) in paragraph (c) the words from “and, without” to the end of the paragraph shall cease to have effect;
- (ii) in the proviso to paragraph (j) after the words “of his” there shall be inserted the words “(within the meaning of section 74 of the 1985 Act)”; and
- (iii) in paragraphs (n) and (o) for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”;
- (b) in subsection (3), for the words “Court of Session” there shall be substituted the word “court”.
- 17 In section 16 (application of proceeds of realisation and other sums)—
- (a) in subsections (1) and (2) for the words “Court of Session” where they occur there shall be substituted the word “court”;
- (b) in subsection (1) for the words “such expenses as are payable” there shall be substituted the words “any expenses to the payment of which a person is entitled”; and
- (c) in subsection (3)—
- (i) after paragraph (c) there shall be inserted the following paragraph—
- “(d) next, in accordance with any direction given by the court under section 1(2E) or 6B(9) of this Act,”;
- (ii) for the words “of the 1975 Act (fines payable to H.M. Exchequer)” there shall be substituted the words “or 412 of the 1975 Act (destination of fines)”.
- 18 In section 17 (supervision of administrators), in subsection (2), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.

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- 19 In section 18 (accounts and remuneration of administrator), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.
- 20 In section 19 (effect of appointment under section 13 of that Act on diligence) for the words “section 11” there shall be substituted “sections 11 and 11A”.
- 21 In section 20 (further provision as to administrators), at the end there shall be added the following subsection—
- “(3) Any disposal of property under section 13 of this Act to a person taking in good faith shall vest the ownership of the property in that person.”
- 22 In section 23 (exercise of powers by Court of Session or administrator)—
- (a) for the words “Court of Session” where they appear there shall be substituted the word “court”;
  - (b) in subsection (1) for the words “11(1) to (5)” there shall be substituted “9, 11, 11A”;
  - (c) in subsection (3) for the words from “, so far as” to the end there shall be substituted “be exercised with a view to realising no more than the value of the gift as assessed in pursuance of section 6(2), (3) or (3A) of this Act”;
  - (d) in subsection (6) the words from “and without” to “family” and the words “(other than an obligation having priority, within the meaning of section 5(8) of this Act)” shall cease to have effect; and
  - (e) in subsection (7) for the words from “and” to “11(6)” there shall be substituted “28, 28A and 28B”.
- 23 In section 24 (power to facilitate realisation), for the words “Court of Session” there shall be substituted the word “court” and thereafter for the word “Court” where it appears there shall be substituted the word “court”.
- 24 For section 25 (variation of confiscation order), there shall be substituted the following section—

**“25 Realisable property inadequate to meet payments under confiscation order.**

- (1) This section applies where the court which made a confiscation order is satisfied on the balance of probabilities, on an application made to it by the offender or the prosecutor, that the value of the realisable property is inadequate to meet any outstanding amount payable (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the confiscation order.
- (2) When considering whether the value of the realisable property is inadequate the court—
  - (a) shall, unless already taken into account under section 5(5)(aa) of this Act, take into account the extent to which property held by a person whose estate has been sequestrated or who has been adjudged bankrupt is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act; and
  - (b) may disregard any inadequacy which appears to it to be attributable, wholly or partly, to anything done by the offender for the purpose of protecting the realisable property from realisation.

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- (3) Where this section applies, the court shall recall the confiscation order and make a new confiscation order for the payment of such sum of a lesser amount than that for which the original order was made which appears to the court to be appropriate having regard to—
- (a) the value of the realisable property as determined under subsection (1) above; and
  - (b) any amount paid in pursuance of the original order.
- (4) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.”.

25 In section 26 (compensation)—

- (a) in subsection (1)—
  - (i) for paragraph (b) there shall be substituted the following paragraph—
    - “(b) where he is convicted of one or more such offences—
      - (i) the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted); or
      - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned.”;
    - (ii) for the words “Court of Session” there shall be substituted the word “ court ”; and
    - (iii) for the words from “; but this subsection” to the end there shall be substituted the words “ if, having regard to all the circumstances, it considers it appropriate to do so. ”;
- (b) after subsection (1) there shall be inserted the following—
  - “(1A) Subsection (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of subsection (2) below.”;
- (c) in subsections (2) and (3) for the words “Court of Session” where they occur there shall be substituted the word “ court ”;
- (d) in subsection (2)(b)—
  - (i) the word “substantial” shall cease to have effect; and
  - (ii) for the word “11” there shall be substituted “ 9, 11, 11A ”;
- (e) in subsection (4)—
  - (i) for the words “this section” there shall be substituted the words “ subsection (1) above ”;
  - (ii) after paragraph (c) the word “and” shall cease to have effect; and
  - (iii) at the end there shall be added “; and
    - (e) an officer of the Commissioners of Inland Revenue, by those Commissioners.”; and
- (f) after subsection (4) there shall be added the following subsections—

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- “(5) Where the court, on an application made to it by a person other than the accused or the recipient of an implicative gift is satisfied on the balance of probabilities that in relation to any property realised under section 13 of this Act he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.
- (6) An application for compensation under this section shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.”.

26 After section 28 (provisions supplementary to section 27), there shall be inserted the following sections—

**“28A Inhibition of Scottish property affected by order registered under section 27.**

- (1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—
- (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
  - (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.
- (2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons.
- (3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.
- (4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver’s powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (5) No inhibition executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

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- (a) apply for the recall, or as the case may be restriction, of the inhibition; and
  - (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.
- (6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.

### **28B Arrestment of Scottish property affected by order registered under section 27.**

- (1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.
- (3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.
- (4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the Court of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.
- (5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.”.

- 27 In section 30 (enforcement of other external orders)—
- (a) in subsection (1), paragraph (b)(i) and paragraph (c) and the word “and” immediately preceding paragraph (c) shall cease to have effect; and
  - (b) in subsection (2), in the definition of “external confiscation order” after the word “rewards” there shall be inserted the words “ or property or other economic advantage ”.
- 28 In section 32 (Orders in Council as regards taking action in designated country)—
- (a) in subsection (2), for the words “(9)(a), (10), (11) and (12)” there shall be substituted the words “ (1)(b)(ii) and (iii), (3) and (5) ”; and

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- (b) after subsection (2) there shall be inserted the following subsection—
- “(3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.”.
- 29 In section 33 (sequestration of person holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
- “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration;”;
- (b) in subsection (2)—
- (i) for the words “Court of Session” there shall be substituted the word “ court ”; and
- (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “ sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B ”.
- 30 In section 34 (bankruptcy in England and Wales of person holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
- “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made;”;
- (b) in subsection (2)—
- (i) for the words “Court of Session” there shall be substituted the word “ court ”; and
- (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “ sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B ”.
- 31 In section 35 (winding up company holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following—
- “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time;”;
- (b) in subsection (2)—

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- (i) for the words “Court of Session” there shall be substituted the word “ court ”; and
  - (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “ sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B ”; and
  - (c) after subsection (4) there shall be inserted the following subsection—
    - “(4A) Where an order for the winding up of a company has been made or a resolution has been passed by a company for its voluntary winding up and before the relevant time the company has directly or indirectly made an implicative gift—
      - (a) no order or, as the case may be, decree shall, at any time when proceedings as regards an offence to which section 1 of this Act relates have been instituted against the company and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 238 or 239 of the Insolvency Act 1986 (transactions at an undervalue and preferences) or granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
      - (b) any order made under either of the said sections 238 or 239 or decree granted under either of the said sections 242 and 243 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.”.
- 32 In section 36 (property subject to floating charge)—
- (a) in subsection (1) for paragraph (a) there shall be substituted the following paragraph—
    - “(a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the such appointment;”;
  - (b) in subsection (2) for the words for the words from “Court of Session” to “16 and 24” there shall be substituted the words “ court by sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B ”.
- 33 After section 37 (insolvency practitioners dealing with property subject to restraint order), there shall be inserted the following section—

*“ Forfeiture of property where accused has died*

**37A Forfeiture of property where accused has died.**

- (1) Section 112 of the Criminal Justice (Scotland) Act 1995 shall, subject to any necessary modifications, apply in respect of an offence to which Part I of

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this Act relates as it applies to an offence to which Chapter I of Part II of that Act applies.

(2) Without prejudice to subsection (1) above, in the application of subsection (2) of that section, in paragraph (b)(i) for the words “in connection with the commission of the offence” there shall be substituted the words “in connection with drug trafficking”.

34 In section 41(2) (disclosure of information held by government departments)—

- (a) in paragraph (a), for the words “paragraph (a) thereof” there shall be substituted “subsection (3) of that section”;
- (b) in paragraph (b), for the words “paragraph (b) of subsection (1)” there shall be substituted “subsection (4)”;
- (c) the words from the end of paragraph (b) to the end of the subsection shall cease to have effect.

35 In section 44(1) (offences relating to controlled drugs: fines), for the words “the proviso to subsection (1)” there shall be substituted “subsection (3)(a)”.

36 In section 47 (interpretation of Part I)—

- (a) in subsection (1)—
  - (i) the definition of “associate” shall cease to have effect;
  - (ii) for the definition of “confiscation order” there shall be substituted the following definition—
 

““confiscation order” means an order under section 1(1), 6A, 6B or 25 of this Act;”;
  - (iii) after the definition of “confiscation order” there shall be inserted the following definition—
 

““the court” means—

    - (a) for the purpose of sections 1 to 7A, the High Court of Justiciary or sheriff court;
    - (b) for the purposes of sections 8 to 26 and 33 to 37, the Court of Session or the sheriff court;”;
- (b) in subsection (5), in each of paragraphs (c) and (d) after the words “High Court” there shall be inserted the words “or, as the case may be, the sheriff”; and
- (c) at the end there shall be added the following subsection—
 

“(6) Any reference in this Part of this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.”.

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## SCHEDULE 6

Section 117.

### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

##### AMENDMENTS RELATING TO PART I

*The Criminal Procedure (Scotland) Act 1887 (c. 35)*

- 1 Section 3 of and Schedules D (form of execution of citation of witnesses), E (form of execution of citation of jurors), N (form of notice of further diet) and O (form of notice of postponed second diet) to the Criminal Procedure (Scotland) Act 1887 shall cease to have effect.

*The Criminal Justice (Scotland) Act 1949 (c. 94)*

- 2 Schedule 7 to the Criminal Justice (Scotland) Act 1949 (forms of notices to accused in proceedings on indictment) shall cease to have effect.

*The Summary Jurisdiction (Scotland) Act 1954 (c. 48)*

- 3 Parts I and III to VI of Schedule 2 (forms of procedure) and Schedule 3 (table of fees) to the Summary Jurisdiction (Scotland) Act 1954 shall cease to have effect.

*The Backing of Warrants (Republic of Ireland) Act 1965 (c.45)*

- 4 In section 8(1)(b) of the Backing of Warrants (Republic of Ireland) Act 1965 (rules of court), for the words “457(a)” there shall be substituted “ 457ZA ”.

*The Criminal Justice Act 1967 (c. 80)*

- 5 In section 69(2) of the Criminal Justice Act 1967 (extension of enactments relating to persons sentenced to imprisonment or detention to young offenders), the words “, section 40 of the Prisons (Scotland) Act 1989” shall cease to have effect.

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

- 6 The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.
- 7 In section 6(3) (jurisdiction and procedure in respect of certain indictable offences committed abroad)—
- (a) after the word “section” there shall be inserted “ —(a) ”; and
  - (b) for the words “as if” there shall be substituted—

“; or

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(b) in such sheriff court district as the Lord Advocate may determine,

as if”.

8 Sections 14(3) and 323(3) (warrant to search for or remove any person accused of an offence in respect of a child) shall cease to have effect.

9 After section 15 there shall be inserted the following section—

**“15A Warrants for search and apprehension to be signed by judge.**

Any warrant for search or apprehension granted under this Part of this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.”.

10 In section 18(3) (penalty for breach of undertaking to appear), for the words “£200” there shall be substituted “ level 3 on the standard scale ”.

11 In section 19(1)(a) (intimation to a solicitor), for the words from “of” to the end there shall be substituted—

- “(i) of the place where the person is being detained;
- (ii) whether the person is to be liberated; and
- (iii) if the person is not to be liberated, the date on which he is to be taken to court and the court to which he is to be taken;”.

12 Section 20(2) (record where accused does not emit declaration) shall cease to have effect.

13 In section 20B(9) (service of transcript of record of proceedings at examination)—

- (a) for the words from “may”, where it first occurs, to “service”, where it first occurs, there shall be substituted “ shall be served in such manner as may be prescribed by Act of Adjournal ”; and
- (b) for the words from “a post” to “letter” there shall be substituted “ the relevant post office receipt ”.

14 In each of sections 23 and 329 (remand and committal of persons under 21)—

- (a) in paragraph (a) of subsection (1), for the words from “commit” to the end there shall be substituted “, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained

—

- (i) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and

- (ii) in any other case, in a suitable place of safety chosen by the authority;”;

- (b) in subsection (4), for the words from “and” in the second place where it occurs to the end there shall be substituted “to be detained—

- (a) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and

- (b) in any other case, in a suitable place of safety chosen by the authority.”.

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- 15 In section 26 (bail before committal)—
- (a) in subsection (2), for the words from “immediately” to “or” there shall be substituted “, on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply”; and
  - (b) in subsection (3), the words “or justice” shall cease to have effect.
- 16 In section 31 (appeal in respect of bail), after subsection (4) there shall be inserted the following subsection—
- “(4A) Where an applicant in an appeal under this section is under 21 years of age, section 23 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant’s age for trial or sentence.”.
- 17 In section 33 (liberation of applicant when appeal by public prosecutor)—
- (a) in subsection (1), the words from “, or where” to “ninety-six hours,”; and
  - (b) in subsection (2), the words “by telegraph”,
- shall cease to have effect.
- 18 For section 42 (procedure on resignation, death or removal of Lord Advocate) there shall be substituted the following section—

**“42 Resignation, death or demission of office of Lord Advocate.**

- (1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.
- (2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in the name of the Solicitor General then in office.
- (3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.
- (4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—
  - (a) by virtue of subsection (1) above, remains effective; or
  - (b) by virtue of subsection (2) above, is in the name of the Solicitor General.
- (5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.
- (6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before any Secretary of State or any Lord Commissioner of Justiciary.”.

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19 After section 48 there shall be inserted the following sections—

**“48A Common law and statutory offences in same indictment.**

It shall be competent to include in one indictment both common law and statutory charges.

**48B Description of offence in words of statute or order.**

In an indictment the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient.”.

20 In section 50 (latitude as to time and place), after subsection (3) there shall be inserted the following subsection—

“(4) Notwithstanding subsection (3) above, nothing in any rule of law shall prohibit the amendment of an indictment to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused.”.

21 In section 54 (“money” to include coin, bank notes and post office orders), for the words from “all” to the end there shall be substituted “cheques, banknotes, postal orders, money orders and foreign currency”.

22 In subsection (2) of section 58 (authentication of deletion or correction on service copy of indictment etc.), for the word “or” in the fourth place where it occurs there shall be substituted—

“shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.

(3) Any deletion or correction made”.

23 After section 60 there shall be inserted the following section—

**“60A Proceedings under the Merchant Shipping Acts.**

In any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the indictment shall, in the absence of evidence to the contrary, be presumed.”.

24 Sections 62 and 313 (mode of charging certain offences committed against two or more children under 17) shall cease to have effect.

25 In section 68 (notice of previous convictions), in each of subsections (2) and (4), the words “of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form” shall cease to have effect.

26 In section 69 (warrants for citation)—

(a) the existing provision shall become subsection (1);

(b) in that subsection—

(i) after the words “accused persons” there shall be inserted “, witnesses or jurors”;

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- (ii) the words from “and” in the third place where it occurs to “Act” in the fourth place where it occurs shall cease to have effect; and
    - (iii) the words from “The executions” to the end shall cease to have effect; and
  - (c) after that subsection there shall be inserted—
    - “(2) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.”.
- 27 In section 72 (citation of jurors and witnesses)—
  - (a) the existing provision shall become subsection (1);
  - (b) in that subsection, after the word “shall” in the second place where it occurs there shall be inserted “, subject to subsection (2) below, ”; and
  - (c) after that subsection there shall be inserted the following subsection—
    - “(2) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.”.
- 28 In section 73(1) (execution of citation of indictment), the words from “, unless” to the end shall cease to have effect.
- 29 In section 77 (alteration of trial diet), for paragraphs (a) and (b) there shall be substituted the words “ two months ”.
- 30 In section 78(1) (lodging of record copy of indictment and list of witnesses), for the words from “record” to the end there shall be substituted “ prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions. ”.
- 31 In section 79(1) (description of witnesses), for the words from “, with” to the end there shall be substituted “ together with an address at which they can be contacted for the purposes of precognition. ”.
- 32 In section 80(1) (objection to witnesses), after the word “accused” there shall be inserted “, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, ”.
- 33 In section 81 (examination by prosecutor of witnesses, etc. not included in lists lodged) after the word “address” there shall be inserted “ as mentioned in section 79(1) above, ”.
- 34 In section 82 (notice of special defence, incrimination etc.)—
  - (a) in subsection (1)—
    - (i) in paragraph (a), after the word “lodged” there shall be inserted “, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, ”; and
    - (ii) for paragraph (b) there shall be substituted—
      - “(b) the court, on cause shown, otherwise directs.”; and

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- (b) in subsection (2), for the words from “written notice” to “the court” there shall be substituted—
- “(a) written notice of the names and addresses of such witnesses and of such productions shall have been given—
- (i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and
- (ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or
- (b) the court, on cause shown, otherwise directs, in which case it”.

35 For section 85 (45 jurors to be returned for trials), there shall be substituted the following section—

**“85 Number of jurors to be returned for trial.**

For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.”.

36 In section 93 (names of jurors to be inserted in one roll), for the word “designations” there shall be substituted “ addresses ”.

37 In section 100 (no exemptions by sex or marriage from liability to serve as juror), in subsection (1) the words from “but” to the end of the subsection, and subsections (2) and (3), shall cease to have effect.

38 In section 103(1) (pleas of guilty), after the word “he” where it first occurs there shall be inserted “ shall do so in open court and ”.

39 In section 108 (certain objections competent only at preliminary diet)—

- (a) in subsection (1), after the word “section” there shall be inserted “ 75A(2) or ”; and
- (b) in subsection (2), after the word “section” in the second place where it occurs there shall be inserted “ 75A(2) or ”.

40 Section 110 (where sentence delayed, original warrant of commitment stands) shall cease to have effect.

41 After section 114 there shall be inserted the following section—

**“114A Transfer of sheriff court solemn proceedings.**

- (1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to transfer the case to a sheriff court in any other district in that sheriffdom.
- (2) On an application under subsection (1) above the sheriff may—
- (a) after giving the accused or his counsel or solicitor an opportunity to be heard; or
- (b) on the joint application of the parties,

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make an order for the transfer of the case.”.

42 In section 124 (plea of guilty at trial diet), the proviso shall cease to have effect.

43 For section 125 (on plea of not guilty, jury to be balloted and sworn) there shall be substituted the following section—

**“125 On plea of not guilty, plea to be recorded and jury balloted.**

Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.”.

44 In section 127 (procedure where trial does not take place)—

- (a) in subsection (1), for the words “date of such trial diet” there shall be substituted “last day of the sitting in which the trial diet was to be held”;
- (b) after subsection (1) there shall be inserted the following subsection—

“(1ZA) Without prejudice to subsection (1) above, where a trial diet has been deserted pro loco et tempore and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.”;

- (c) in subsection (2), the words “Schedule N to the Criminal Procedure (Scotland) Act 1887 or in” shall cease to have effect; and
- (d) after subsection (4) there shall be inserted the following subsection—

“(5) The warrant issued under section 69 of this Act shall be sufficient warrant for the citation of the accused and witnesses to any further diet appointed under this section.”.

45 In section 129 (procedure for selection of jurors), for the words from “which” to the end there shall be substituted “in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings.”.

46 Section 132(2) (procedure in High Court trials where jurors chosen for one trial may continue to serve) shall cease to have effect.

47 In section 134 (provision for death or illness of jurors)—

- (a) for the words “any juror is, through illness or for any other reason, unfit” there shall be substituted “it is for any reason inappropriate for any juror”; and
- (b) for the words “or on behalf of the Lord Advocate” there shall be substituted “the prosecutor”.

48 In section 135 (clerk to state charge and swear jury)—

- (a) the existing provision shall become subsection (1);
- (b) in subsection (1), for the words from “it”, where it first occurs, to the end there shall be substituted “copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions”; and
- (c) at the end of subsection (1) there shall be inserted the following subsections—

“(2) Subject to subsection (3) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with subsection (1) above, of the charge against

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the accused, and before administering the oath, read to the jury the plea of special defence.

(3) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (2) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.

(4) Copies of a plea of special defence shall be provided for each member of the jury.”.

49 In section 140A(1)(b) (no case to answer), the words “were the offence charged the only offence so charged” shall cease to have effect.

50 For section 142 (evidence of the accused) there shall be substituted the following section—

“**142** Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.”.

51 Section 144 (notice of spouse as witness) shall cease to have effect.

52 Section 145(4) (interruption of trial) shall cease to have effect.

53 Section 146 (sheriff’s notes of evidence) shall cease to have effect.

54 In each of sections 148 and 340 (examination of witnesses)—

(a) the existing provision shall become subsection (1); and

(b) after that subsection there shall be inserted the following subsections—

“(2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.

(3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.”.

55 In section 150 (admissions and agreements as to evidence in solemn proceedings)—

(a) in subsection (1), the words “, where the accused is legally represented,” shall cease to have effect; and

(b) in subsection (2), for paragraphs (a) and (b) there shall be substituted the following paragraphs—

“(a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, his counsel or solicitor; and

(b) in the case of an agreement, by the prosecutor and by the accused or, if he is legally represented, his counsel or solicitor”.

56 In section 151(2) (application to have all or part of record of proceedings at judicial examination withheld from jury)—

(a) after the words “competent for” there shall be inserted “ the prosecutor or ”; and

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- (b) for the words “the defence and for the prosecutor” there shall be substituted “either party”.
- 57 In section 153 (seclusion of jury, etc, after retiral)—  
(a) subsection (1) shall cease to have effect; and  
(b) in subsection (3)(b)(ii), the words from “(as” to the end shall cease to have effect.
- 58 In section 156 (interruption of trial to give direction to jury in preceding trial)—  
(a) in subsection (1)(b), the words from “, as” to the end; and  
(b) subsections (4) and (5),  
shall cease to have effect.
- 59 In section 157 (interruption of trial for plea or sentence in another cause)—  
(a) in subsection (1), the words “through his counsel”, “in which the panel has pleaded guilty under section 102 of this Act” and “(other than a trial for murder)”; and  
(b) subsection (2),  
shall cease to have effect.
- 60 Section 159(1) (previous convictions libelled as aggravations) and (3) (passing of sentence on second or subsequent conviction) and section 356(1) and (3) (equivalent provisions in relation to summary procedure) shall cease to have effect.
- 61 Section 160(3) (verdict as to whether previous convictions proved) shall cease to have effect.
- 62 In section 162(3) (proof of convictions), for the words “An official” there shall be substituted “A prison officer”.
- 63 Section 163 (extract conviction to be issued by clerk having record copy of indictment) shall cease to have effect.
- 64 In each of sections 166 and 362 (power to clear court while child giving evidence), in subsection (1), for the words from “members” to the end there shall be substituted—  
“(a) members or officers of the court;  
(b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;  
(c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or  
(d) such other persons as the court may specially authorise to be present,  
shall be excluded from the court during the taking of the evidence of that witness.”.
- 65 In section 174 (insanity in bar of trial or as ground of acquittal)—  
(a) in subsection (2)—  
(i) for the words “as aforesaid” in the first place where they occur there shall be substituted “on indictment with the commission of the offence”; and  
(ii) after the word “and” in the second place where it occurs there shall be inserted “, if so,”; and

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- (b) subsections (3) and (4) shall cease to have effect.
- 66 In section 176 (requirements as to medical evidence)—
- (a) in subsection (1), after the word “sections” there shall be inserted “ 174(1), ”;
- (b) in subsection (2), for the word “section” where it first occurs there shall be substituted “ sections 174(1) and ”; and
- (c) in subsection (4), after the word “hospital” there shall be inserted “ or, as respects a report for the purposes of section 174(1), remanded in custody ”.
- 67 In section 178(3) (restriction orders), for the words “section 60(4)” there shall be substituted “ section 60(3) ”.
- 68 In each of sections 179(1) and 380(1) (power of court to adjourn case before sentence)—
- (a) for the words “so adjourns the case” there shall be substituted “ adjourns the case solely for that purpose ”; and
- (b) after the words “shall not” there shall be inserted “ solely ”.
- 69 After section 182 there shall be inserted the following—

*“ Caution*

**182A Caution.**

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.”.

- 70 In subsection (7) of each of sections 183 and 384 (notification of probation order)—
- (a) after the word “shall” there shall be inserted “ (a) ”;
- (b) the words “, to the probationer,” shall cease to have effect; and
- (c) at the end there shall be inserted—
- “; and
- (b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.”.
- 71 In each of sections 186(1) and 387(1) (failure to comply with requirement of probation order), the words “on oath” shall cease to have effect.
- 72 Sections 190 and 391 (supplementary provisions as to probation: security for good behaviour) shall cease to have effect.
- 73 In section 191(4) (effect of probation and absolute discharge) the words “placed on probation or” and “probation order or” shall cease to have effect.

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- 74 In each of sections 192 and 393 (probation reports), the words from “(other than” to “Act)” and the proviso shall cease to have effect.
- 75 In each of sections 196(1) and 402 (fines, etc. may be enforced in another district), the proviso shall cease to have effect.
- 76 Sections 225 (interlocutors to be signed by clerk), 226 (record copies to be inserted in books of adjournal of High Court) and 227 (indictment to be inserted in record book in sheriff court) shall cease to have effect.
- 77 In section 235 (applications in connection with appeals may be made orally or in writing), the words from “but in regard” to the end shall cease to have effect.
- 78 In section 236A(3) (judge’s report), for the words “and the parties” there shall be substituted “, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed”.
- 79 Section 236C (signing of appeal documents) shall cease to have effect.
- 80 Section 237 (note of proceedings) shall cease to have effect.
- 81 In section 238 (bail pending appeal), in subsection (2), the words “or of any application for leave to appeal” and, in paragraphs (a)(i) and (b)(i), the words “or application” shall cease to have effect.
- 82 In section 239 (clerk to give notice of date of hearing)—  
(a) in subsection (1), the words from “and” in the second place where it occurs to the end; and  
(b) subsection (2),  
shall cease to have effect.
- 83 In section 240 (appellant may be present at hearing), the words from “except” where it first occurs to the end shall cease to have effect.
- 84 Section 246 (sittings of the High Court to be arranged by Lord Justice General) shall cease to have effect.
- 85 In section 254 (disposal of appeals)—  
(a) in subsection (4)(b), for the words “and ordering” to the end there shall be substituted “and—  
(i) making, in respect of the appellant, any order mentioned in section 174ZC(2)(a) to (d) of this Act; or  
(ii) making no order.”; and  
(b) for subsection (5) there shall be substituted the following subsection—  
“(5) Subsections (3) and (4) of section 174ZC of this Act shall apply to an order made under subsection (4)(b)(i) above as they apply to an order made under subsection (2) of that section.”.
- 86 After section 254A there shall be inserted the following section—

**“254B Convictions not to be quashed on certain grounds.**

No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—

- (a) shall be quashed for want of form; or

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- (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—
- (i) the relevancy of the indictment, or the want of specification therein; or
- (ii) the competency or admission or rejection of evidence at the trial in the inferior court,
- unless such objections were timeously stated.”.
- 87 Section 256 (summary dismissal of frivolous or vexatious appeals) shall cease to have effect.
- 88 In section 257 (failure to appear at hearing), for the words from the beginning to “where” in the second place where it occurs there shall be substituted—
- “Where—
- (a) intimation of the diet appointed for the hearing of an appeal has been made to the appellant;
- (b) no appearance is made by or on behalf of the appellant at the diet; and
- (c)”.
- 89 Section 259 (continuation of hearing) shall cease to have effect.
- 90 In section 263 (prerogative of mercy), after subsection (2) there shall be inserted the following subsection—
- “(3) This section shall apply in relation to a finding under section 174ZA(2) and an order under section 174ZC(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.”.
- 91 In section 263A (power of Lord Advocate to refer point of law for opinion of High Court)—
- (a) in subsection (1), after the word “acquitted” there shall be inserted “ or convicted ”; and
- (b) in subsection (5), after the word “acquittal” there shall be inserted “ or, as the case may be, conviction ”.
- 92 In section 264 (disqualification, forfeiture etc.)—
- (a) in each of subsections (1) and (2), after the words “section 228(1)(b)” there shall be inserted “ , (bb), (bc) or (bd) ”; and
- (b) after subsection (3) there shall be inserted the following subsection—
- “(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b), (bb), (bc) or (bd) or 228A of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined,—
- (a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and

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- (b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under section 60(1) of the Act of 1980.”.
- 93 In section 265 (fines and caution)—
- (a) in subsection (1), for the word “thereto” there shall be substituted “ to the conviction or sentence ”; and
- (b) subsections (3) and (5) shall cease to have effect.
- 94 In section 268 (reckoning of time spent on bail pending appeal), in subsection (4)—
- (a) after the word “safety” in the first place where it occurs there shall be inserted “ or, as respects a child sentenced to be detained under section 206 of this Act, the place directed by the Secretary of State ”; and
- (b) after the word “safety” in the second place where it occurs there shall be inserted “ or, as respects such a child, place directed by the Secretary of State ”.
- 95 In section 269 (extract convictions), after the words “section 228(1)(b)” there shall be inserted “ , (bb), (bc), or (bd) ”.
- 96 In section 270 (release of documents, productions etc. after trial), the following provisions shall cease to have effect—
- (a) in subsection (2), the words from “(or any” to “note of appeal)” where first occurring and from “(or in the case” to “note of appeal)” where second occurring;
- (b) in subsection (3), the words from “(or in the case” to “note of appeal)”;
- (c) in subsection (4), the words from “(or in the case” to “note of appeal)”.
- 97 Sections 272 (note to be kept of appeal) and 273 (register of appeals) shall cease to have effect.
- 98 In section 274(5)(e) (record of proceedings at trial), for the words “summing up by the judge” there shall be substituted “ judge’s charge to the jury ”.
- 99 Section 276 (declaration administered to shorthand writer) shall cease to have effect.
- 100 In section 277(2) (non-compliance with certain provisions may be waived), the words “section 236C”, “section 237”, “section 246”, “section 259”, “section 272” and “section 273” shall cease to have effect.
- 101 Section 282 (power to make Acts of Adjournal: solemn procedure) shall cease to have effect.
- 102 For subsection (1) of section 283 (application of Part II of that Act) there shall be substituted the following subsections—
- “(1) This Part of this Act applies to summary proceedings in respect of any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after this Act, be tried summarily.
- (1A) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—
- (a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in

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- accordance with section 196 of this Act, to the enforcement of a fine imposed in solemn proceedings; and
- (b) any order ad factum praestandum, or other order of court or warrant competent to a court of summary jurisdiction.”.
- 103 Section 289D(1A)(d) (power to alter sums specified in section 435(e) of that Act) shall cease to have effect.
- 104 In section 296 (police liberation or detention of children arrested), in subsections (1) and (2), the words “sitting summarily” in each place where they occur shall cease to have effect.
- 105 In section 300 (appeal in respect of bail)—
- (a) after subsection (3) there shall be inserted the following subsection—
- “(3A) Where an applicant in an appeal under this section is under 21 years of age, section 329 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant’s age for trial or sentence.”;
- and
- (b) in subsection (4)—
- (i) the words from “, or where” to “96 hours” shall cease to have effect; and
- (ii) for the word “periods” there shall be substituted “period”.
- 106 For section 305 (intimation to a solicitor) there shall be substituted the following section—

**“305 Right of accused to have access to solicitor.**

- (1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest—
- (a) to have intimation sent to a solicitor that his professional assistance is required by such a person and informing him—
- (i) of the place where the person is being detained;
- (ii) whether the person is to be liberated; and
- (iii) if the person is not to be liberated, the date on which he is to be taken to court and the court to which he is to be taken;
- (b) to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.
- (2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.
- (3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person’s arrest, in order to allow time for the attendance of such solicitor.”.
- 107 In section 309(1) (forms of procedure in summary proceedings), the words “Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.
- 108 In section 310 (incidental applications)—

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- (a) the words “Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect; and
- (b) after the word “open” there shall be inserted “ shut and ”.
- 109 In section 311 (complaint)—
- (a) in subsection (1), the words from “in” where it first occurs to the end shall cease to have effect; and
- (b) subsections (4) and (5) shall cease to have effect.
- 110 In section 312 (form of charge in complaint)—
- (a) in paragraph (f), at the end there shall be inserted the words “ provided also that nothing in the foregoing provisions of this paragraph or in any rule of law shall prohibit the amendment of a complaint to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused; ”; and
- (b) in paragraph (j), for the words from “all” to the end there shall be substituted “ cheques, banknotes, postal orders, money orders and foreign currency; ”.
- 111 In section 314 (orders of court on complaint)—
- (a) in subsection (1)(d), the words “or interim order” shall cease to have effect; and
- (b) after subsection (4) there shall be inserted the following subsection—
- “(4A) Where all the parties join in an application under subsection (4) above, the court may proceed under that subsection without hearing the parties.”.
- 112 In section 315(2) (citation), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.
- 113 In section 316(3) (manner of citation of accused)—
- (a) after the word “accused” in the first place where it occurs there shall be inserted “ or a witness ”;
- (b) after the words “prosecutor and” there shall be inserted—
- “(a) in the case of the accused;”;
- (c) after the word “service” there shall be inserted—
- “; and
- (b) in the case of a witness, sent by ordinary post;”;
- (d) after the word “accused” in the second place where it occurs there shall be inserted “ or witness ”.
- 114 In section 318(2) (citation of offender), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in” shall cease to have effect.
- 115 In section 319(1) (citation by post), the words “other than a witness” shall cease to have effect.
- 116 In section 320 (apprehension of witness), after the word “may” where it first occurs there shall be inserted “ , if it is satisfied that he received the citation or that its contents came to his knowledge, ”.
- 117 In section 321 (warrants of apprehension and search)—

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- (a) in subsection (1), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect;
- (b) in subsection (3), the words “either by way of trial or by way of remit to another court” shall cease to have effect;
- (c) in subsection (5), for the words from “the date” to the end there shall be substituted—
  - “(a) the date fixed for the hearing of the case; or
  - (b) the date when security to the amount fixed under subsection (6) below is found,

whichever is the earlier.” ; and

- (d) after subsection (5), there shall be inserted the following subsection—

“(6) A witness apprehended under a warrant under section 320 of this Act shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.”.

- 118 In section 335(1) (amendment of complaint), the words “penalty or” shall cease to have effect.
- 119 Section 336 (record of plea of guilty) shall cease to have effect.
- 120 In section 338(1) (failure of accused to appear), after the word “cited” where it first occurs there shall be inserted “ (other than a diet which, by virtue of section 337A(3) of this Act, he is not required to attend) ”.
- 121 In section 339 (alibi), for the words “prior to the examination of the first witness for the prosecution” there shall be substituted “ at any time before the first witness is sworn ”.
- 122 In section 344(1) (punishment of witness for contempt), the words “or to produce documents in his possession when required by the court,” shall cease to have effect.
- 123 Section 345 (administration of oath to same witness in case at same diet) shall cease to have effect.
- 124 For section 347 (evidence of the accused) there shall be substituted the following section—

**“347 Evidence of the accused.**

Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.”.

- 125 In section 352(2) (application to have all or part of record of proceedings at judicial examination not admitted as evidence)—
  - (a) after the words “competent for” there shall be inserted “ the prosecutor or ”; and
  - (b) for the words “the defence and for the prosecutor” there shall be substituted “ either party ”.
- 126 In section 354(1) (admissions and agreements as to evidence in summary proceedings), the proviso shall cease to have effect.

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- 127 In section 357 (proof of convictions)—
- (a) in subsection (1)(a), the words “Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of” shall cease to have effect;
  - (b) in subsection (2)—
    - (i) for the words “An official” there shall be substituted “ A prison officer ”; and
    - (ii) for the word “official” in the second place where it occurs there shall be substituted “ prison officer ”; and
  - (c) subsection (4) shall cease to have effect.
- 128 In section 359 (record of summary proceedings), after the words “than the complaint” there shall be inserted “ , or a copy of the complaint certified as true by a procurator fiscal ”.
- 129 Section 360 (proceedings written or printed) shall cease to have effect.
- 130 In section 360A (interruption of summary proceedings for verdict in earlier trial)—
- (a) in subsection (1)(b), the words from “as” to the end of the paragraph; and
  - (b) subsection (2),
- shall cease to have effect.
- 131 In section 366 (procedure where sheriff sits summarily in respect of offence by child)—
- (a) in subsection (1)(c), for the words “newspapers or news agencies” there shall be substituted “ news gathering or reporting organisations present for the purpose of contemporaneous reports of the proceedings ”; and
  - (b) subsection (2) shall cease to have effect.
- 132 In section 375(3) (insanity in bar of trial), for the word “called” there shall be substituted “ sworn ”.
- 133 In section 376 (power of court to order hospital admission or guardianship)—
- (a) subsection (2) shall cease to have effect; and
  - (b) in subsection (3), for the words “as aforesaid” there shall be substituted “ summarily in the sheriff court with an act or omission constituting an offence ”.
- 134 In section 377 (requirements as to medical evidence)—
- (a) in subsection (1), after the word “sections” there shall be inserted “ 375(2), ”;
  - (b) in subsection (2), for the word “section” in the first place where it occurs there shall be substituted “ sections 375(2) and ”; and
  - (c) in subsection (4), after the word “hospital” there shall be inserted “ or, as respects a report for the purposes of section 375(2), remanded in custody ”.
- 135 In section 379(3) (restriction orders), for the words “section 62(1)” there shall be substituted “ section 60(3) ”.
- 136 In section 392 (effects of probation and absolute discharge on right to appeal)—
- (a) in subsection (4), the words “placed on probation or” shall cease to have effect; and
  - (b) in subsection (5), the words “placed on probation or” and “probation order or” shall cease to have effect.

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- 137 In section 396(7) (time for payment of fine), the words “, subject to any rules under this Part of this Act” shall cease to have effect.
- 138 In section 398(1) (restriction on imprisonment after fine or caution)—
- (a) after the word “fine” in the second place where it occurs there shall be inserted “ or, as the case may be, to find caution ”; and
  - (b) after the word “paid” there shall be inserted “ or, as the case may be, caution has not been found ”.
- 139 In section 406 (substitution of custody for imprisonment where a child defaults on fine), the words “damages or expenses,” shall cease to have effect.
- 140 In section 408 (discharge from imprisonment to be specified), for the words “for payment of a fine or for finding of” there shall be substituted “ in default of payment of a fine or on failure to find ”.
- 141 In section 413(1) (detention of children in residential care)—
- (a) after the word “authority” in the first place where it occurs there shall be inserted “ for such period not exceeding one year as may be specified in the order ”; and
  - (b) the words from “and shall” to the end shall cease to have effect.
- 142 In section 430 (consecutive sentences)—
- (a) in subsection (1), the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect; and
  - (b) for subsection (4) there shall be substituted the following subsection—
    - “(4) A court of summary jurisdiction may frame—
      - (a) a sentence following on conviction; or
      - (b) an order for committal in default of payment of any sum of money or for contempt of court,    - so as to take effect on the expiry of any previous sentence or order which, at the date of the later conviction or order, the accused is undergoing.”.
- 143 In section 432(1) (deferred sentence), the words from “and”, where it second occurs, to the end shall cease to have effect.
- 144 Section 435 (expenses) shall cease to have effect.
- 145 In section 440 (extract sufficient warrant for imprisonment), the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.
- 146 In section 441 (provision for court comprising more than one judge), the words from “, although” to “place,” shall cease to have effect.
- 147 In section 443A (disqualification, forfeiture etc.), after subsection (2) there shall be inserted the following subsection—
- “(3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980—

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- (a) the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and
  - (b) any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under section 60(1) of the Act of 1980,  
pending the determination of any appeal against conviction or sentence (or disposal or order).”.
- 148 In section 444(1)(b) (contents of application for stated case), for the words “a statement of that fact” there shall be substituted “ the ground of appeal against that sentence or disposal or order ”.
- 149 In section 446 (procedure in relation to appeal by stated case where appellant in custody)—
  - (a) in subsection (4), at the end there shall be inserted the words “ or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against ”;
  - (b) in subsection (5)—
    - (i) after the words “person is” there shall be inserted “ in custody or ”; and
    - (ii) for the words “the term” there shall be substituted “ any term ”; and
  - (c) after subsection (5) there shall be inserted the following subsection—

“(6) The court shall not make an order under subsection (5) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.”.
- 150 In section 451(3) (computation of time) after the words “442(1)(a)(i)” there shall be inserted “ or (in so far as it is against conviction) (iii) ”.
- 151 (1) Section 453 (prosecutor’s consent to or application for setting aside of conviction) shall be amended as follows.
  - (2) In subsection (1)—
    - (a) at the beginning there shall be inserted “ Without prejudice to section 442(1) (b) or (c) of this Act, ”;
    - (b) in paragraph (a)—
      - (i) for the words “442(1)(a)(i) or (iii)” there shall be substituted “ 442(1)(a) ”; and
      - (ii) after the word “conviction” there shall be inserted “ or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order) ”; and
    - (c) in paragraph (b)—
      - (i) after the word “founded” there shall be inserted “ or the sentence imposed following such conviction ”; and
      - (ii) after the word “conviction” in the second place where it occurs there shall be inserted “ or sentence or, as the case may be, conviction and sentence ”.

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- (3) In subsection (4)—
- (a) in paragraph (a)—
- (i) after the word “conviction” where it first occurs, there shall be inserted “ or the sentence, or both, ”;
- (ii) the word “and” at the end of sub-paragraph (i) shall cease to have effect;
- (iii) at the end of sub-paragraph (ii) there shall be inserted—
- “; and
- (iii) where the sentence is set aside, pass another (but not more severe) sentence;”;
- and
- (b) in paragraph (b), after the word “conviction” there shall be inserted “ or sentence, or, as the case may be conviction and sentence, ”.
- 152 In section 453B (appeals against sentence only), after subsection (4) there shall be inserted the following subsection—
- “(4A) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.”.
- 153 In section 453D (disposal of appeal where appellant insane)—
- (a) in subsection (1)(b), for the words “and ordering” to the end there shall be substituted “and—
- (i) making, in respect of the appellant, any order mentioned in section 375ZC(2)(a) to (d) of this Act; or
- (ii) making no order.”; and
- (b) for subsection (2) there shall be substituted the following subsection—
- “(2) Subsection (3) of section 375ZC of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.”.
- 154 In section 454(1) (convictions not to be quashed on certain grounds), the words “at the trial by the solicitor of the accused” shall cease to have effect.
- 155 Section 457 (power to make Acts of Adjournal: summary procedure) shall cease to have effect.
- 156 Before section 457A there shall be inserted the following section—

**“457ZA Acts of Adjournal.**

- (1) The High Court may by Act of Adjournal—
- (a) regulate the practice and procedure in relation to criminal procedure; and
- (b) make such rules and regulations as may be necessary or expedient to carry out the purposes and accomplish the objects of any enactment (including an enactment in this Act) in so far as it relates to criminal procedure,

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provided that no rule, regulation or provision which affects the governor or any other officer of a prison shall be made by any such Act of Adjournal except with the consent of the Secretary of State.

(2) The High Court may by Act of Adjournal modify, amend or repeal any enactment (including an enactment in 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.”.

157 (1) Section 462 (interpretation) shall be amended as follows.

(2) In subsection (1)—

(a) at the appropriate places, there shall be inserted the following definitions—  
““examination of facts” means an examination of facts held under section 174ZA or 375ZA of this Act;”;

““governor” means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, the director of the prison;”;

““prison officer” and “officer of a prison” means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;”;

(b) in the definition of “officer of law”, after paragraph (ii) there shall be inserted the following paragraph—

“(ia) any person who is employed under section 9 of the Police (Scotland) Act 1967 for the assistance of the constables of a police force and who is authorised by the chief constable of that police force in relation to service and execution as mentioned above;”;

(c) in the definition of “prosecutor”, the words “private prosecutor,” in the second place where they occur shall cease to have effect.

(3) In subsection (6), for the words “Great Britain” there shall be substituted “ the United Kingdom ”.

(4) Subsection (10) shall cease to have effect.

158 In Schedule 5 (discharge and amendment of probation orders), in paragraph 4—

(a) after the word “practitioner” where it first occurs there shall be inserted “ or chartered psychologist ”;

(b) after the word “practitioner” where it second occurs there shall be inserted “ or psychologist ”.

*The Sexual Offences (Scotland) Act 1976 (c. 67)*

159 In section 4 of the Sexual Offences (Scotland) Act 1976 (unlawful sexual intercourse with girl between 13 and 16)—

(a) in the proviso to subsection (1), the words “on indictment” shall cease to have effect; and

(b) after subsection (2) there shall be inserted the following subsection—

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“(3) For the purposes of the proviso to subsection (1) above, a prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.”.

*The Community Service by Offenders (Scotland) Act 1978 (c. 49)*

160 The Community Service by Offenders (Scotland) Act 1978 shall be amended as follows.

161 In section 2 (offender to be provided with copy order)—

- (a) in subsection (3)(a), after the word “give” there shall be inserted “, or send by registered post or the recorded delivery service, ”; and
- (b) after subsection (3) there shall be inserted the following subsection—

“(4) Where a copy of a community service order has, under subsection (3)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.”.

162 In section 4(1) (failure to comply with requirements of community service orders), for the words “evidence on oath” there shall be substituted “ information ”.

*The Criminal Justice (Scotland) Act 1980 (c. 62)*

163 In section 26(4) of the Criminal Justice (Scotland) Act 1980 (service of certificates, reports etc.)—

- (a) for the words “either of those subsections” there shall be substituted “ that subsection ”;
- (b) for the words from “may”, where it second occurs, to “service”, where it first occurs, there shall be substituted “ shall be served in such manner as may be prescribed by Act of Adjournal ”; and
- (c) for the words from “a post” to “letter” there shall be substituted “ the relevant post office receipt ”.

*The Mental Health (Scotland) Act 1984 (c. 36)*

164 The Mental Health (Scotland) Act 1984 shall be amended as follows.

165 In section 67(1) (application of sections 63 to 66 to certain persons treated as restricted patients)—

- (a) paragraph (a)(ii) and the preceding “or”; and
- (b) the words from “or the order” to the end,

shall cease to have effect.

166 In section 69(3) (persons ordered to be kept in custody during Her Majesty’s pleasure), for the words from “an order” to the end there shall be substituted “ a hospital order together with a restriction order ”.

167 In section 71(7)(a) (removal to hospital of persons serving sentences of imprisonment etc.), for the words “or 255” there shall be substituted “ , 174ZC, 254, 375, 375ZC or 453D ”.

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- 168 In section 73(1) (transfer order to cease to have effect where proceedings dropped or case disposed of)—
- (a) after the word “section” in the third place where it occurs there shall be inserted “ 174ZC ”; and
  - (b) after “178,” there shall be inserted “ 375ZC, ”.
- 169 In section 125(4) interpretation)—
- (a) after “174,” there shall be inserted “ 174ZC, ”; and
  - (b) after “375,” there shall be inserted “ 375ZC, ”.

*The Criminal Justice (Scotland) Act 1987 (c. 41)*

- 170 In section 60(3) of the Criminal Justice (Scotland) Act 1987 (service of documents relating to police interview)—
- (a) for the words from “may” to “service”, where it first occurs, there shall be substituted “ shall be served in such manner as may be prescribed by Act of Adjournal ”; and
  - (b) for the words from “a post” to “letter” there shall be substituted “ the relevant post office receipt ”.

*The Road Traffic Offenders Act 1988 (c. 53)*

- 171 In section 19 of the Road Traffic Offenders Act 1988 (evidence of disqualification in Scotland)—
- (a) the existing provision shall become subsection (1);
  - (b) in that subsection for the words “less than six days before his trial” there shall be substituted “ more than seven days after the date of service of the copy ”; and
  - (c) after that subsection there shall be inserted—
    - “(2) A copy of a conviction or extract conviction served on the accused under subsection (1) 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 such copy conviction or extract conviction together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.”.
- 172 In section 20 of that Act (admissibility of certain evidence regarding speeding offences etc.), after subsection (8) there shall be inserted the following subsection—
- “(8A) As respects proceedings in Scotland, a copy of a document served on a person under subsection (8) 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 such copy document together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.”.

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- 173 In sections 31(2) (court may take account of particulars endorsed on licence) and 32(6) (court may take account of extract from licensing records) of that Act—
- (a) for the words “sections 311(5) and” there shall be substituted “ section ”; and
  - (b) the words “penalties and” shall cease to have effect.

*The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)*

- 174 The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 shall be amended as follows.
- 175 In section 56 (evidence of children through television link in criminal trials)—
- (a) in subsection (1), after the word “been” there shall be inserted “ or is likely to be ”; and
  - (b) in subsection (2)—
    - (i) the word “and” immediately following paragraph (a) shall cease to have effect; and
    - (ii) after paragraph (b) there shall be inserted “; and
    - (c) the views of the child.”.
- 176 In section 58 (prior identification of accused by child witness), the words “cited to give evidence in a trial” shall cease to have effect.

- 177 In Schedule 6 (supervised attendance orders)—
- (a) in paragraph 2—
    - (i) in sub-paragraph (3)(a), after the word “give” there shall be inserted “ , or send by registered post or by the recorded delivery service, ”; and
    - (ii) after sub-paragraph (3) there shall be inserted the following sub-paragraph—
      - “(4) Where a copy of a supervised attendance order has, under sub-paragraph (3)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.”; and
  - (b) in paragraph 4(1) (failure to comply with supervised attendance orders), for the words “evidence on oath” there shall be substituted “ information ”.

*The Criminal Justice Act 1991 (c. 53)*

- 178 In Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders), in paragraph 6(5)(a)(i), for the words “evidence on oath” there shall be substituted “ information ”.

*The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)*

- 179 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 shall be amended as follows.

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- (2) In section 11(3)(b) (duration of licence), for the words from “the” in the second place where it occurs to the end there shall be substituted—

“there has elapsed—

- (i) a period (reckoned from the date on which he was ordered to be returned to prison under or by virtue of subsection (2) (a) of that section) equal in length to the period between the date on which the new offence was committed and the date on which he would (but for his release) have served the original sentence in full; or
- (ii) subject to subsection (4) below, a total period equal in length to the period for which he was so ordered to be returned to prison together with, so far as not concurrent with that period, any term of imprisonment to which he was sentenced in respect of the new offence,

whichever results in the later date.

- (4) In subsection (3)(b) above, “the original sentence” and “the new offence” have the same meanings as in section 16 of this Act.”.

- (3) For section 16(7) (application of early release provisions where further offence committed by released prisoner) there shall be substituted the following subsection—

“(7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence—

- (a) the making of the order shall have the effect of revoking the licence; and
- (b) if the sentence comprising—
  - (i) the period for which the person is ordered to be returned to prison; and
  - (ii) so far as not concurrent with that period, any term of imprisonment to which he is sentenced in respect of the new offence,

is six months or more but less than four years, section 1(1) of this Act shall apply in respect of that sentence as if for the word “unconditionally” there were substituted the words “on licence”.”.

- (4) In section 18(1) (breach of supervised release order), for the words from the beginning to “by” where it second occurs, there shall be substituted “ Where it appears to the court which imposed a supervised release order on a person, on information from ”.

- (5) In section 28(3) (destruction of prints and impressions), the words “or 384(1) (probation)” shall cease to have effect.

- (6) In section 33 (evidence of children on commission)—

- (a) in subsection (1), the words from the beginning to “and” where it first occurs shall cease to have effect; and
- (b) after subsection (3) there shall be inserted the following subsection—

“(4) Subsections (2) to (4), (5A) and (6) of section 32 of the 1980 Act (evidence by letter of request or on commission) shall apply

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to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.”.

- (7) In section 34 (concealment by screen of accused from child giving evidence), after the word “been” there shall be inserted “ or is likely to be ”.
- (8) In Schedule 3 (documentary evidence in criminal proceedings), in paragraph 6(4), for the words “after the close of that party’s evidence and” there shall be substituted “ at any time ”.

## PART II

### AMENDMENTS RELATING TO PART II

#### *The Trade Marks Act 1938 (c.22)*

- 180 In section 58B of the Trade Marks Act 1938 (delivery up of offending goods and material), in subsection (6) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “ Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 ”.

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

- 181 (1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.
- (2) Sections 223 and 436 (forfeiture of property) shall cease to have effect.
  - (3) In section 231 (intimation of intention of appeal)—
    - (a) in subsection (1) after “1987” there shall be inserted the words “ and section 76(4) of the Criminal Justice (Scotland) Act 1995 ”; and
    - (b) in subsection (5) after “1987” there shall be inserted the words “ and subsection (4) of section 76 of the said Act of 1995 ” and for the words “that section” there shall be substituted the words “ the said section 2 or 76 ”.
  - (4) In section 444 (manner and time of appeal), in subsection (1) at the beginning there shall be inserted the words “ Subject to section 76(8) of the Criminal Justice (Scotland) Act 1995, ”.

#### *The Community Service by Offenders (Scotland) Act 1978 (c.49)*

- 182 In section 1(7) of the Community Service by Offenders (Scotland) Act 1978 (making of community service orders not to restrict making of certain other orders), at the end there shall be added the following paragraph—
- “(d) making a suspended forfeiture order under section 87 of the Criminal Justice (Scotland) Act 1995 in respect of the offence.”.

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*The Civil Jurisdiction and Judgments Act 1982 (c.27)*

- 183 In subsection (4A) of section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of U.K. judgments in other parts of U.K.)—
- (a) after the words “Court of Session” there shall be inserted the words “ or by the sheriff ”; and
  - (b) at the end there shall be added “ or Part II of the Criminal Justice (Scotland) Act 1995 ”.

*The Telecommunications Act 1984 (c.12)*

- 184 In Schedule 3 to the Telecommunications Act 1984 (penalties and mode of trial under the Wireless Telegraphy Act 1949), in paragraph 3(b) for the words “sections 223 and 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “ Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 ”.

*The Bankruptcy (Scotland) Act 1985 (c. 66)*

- 185 (1) The Bankruptcy (Scotland) Act 1985 shall be amended as follows.
- (2) In section 5(4) (meaning of qualified creditor), for the words “or by section 2(9) of the Drug Trafficking Act 1994” there shall be substituted the words “ by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995 ”.
  - (3) In section 7(1) (meaning of apparent insolvency), in the definition of “confiscation order”, for the words “or by section 2(9) of the said Act of 1994” there shall be substituted the words “ by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995 ”.

*The Criminal Justice Act 1988 (c.33)*

- 186 (1) The Criminal Justice Act 1988 shall be amended as follows.
- (2) In section 74(2)(c) (meaning of realisable property) after the word “property” there shall be inserted the words “ or Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders) ”.
  - (3) In section 77 (restraint orders)—
    - (a) in subsection (10) for the words “the High Court has made a restraint order” there shall be substituted the words “ a restraint order has been made ” and at the end of that subsection there shall be added the words—

“In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part II of the Criminal Justice (Scotland) Act 1995 and, in relation to such an order, “realisable property” has the same meaning as in that Part”;

and

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- (b) in subsection (11), for the words “court’s directions” there shall be substituted the words “ directions of the court which made the order ”.
- (4) In section 89(2)(b) (compensation), for the words “an order under this Part of this Act” there shall be substituted the following paragraphs—
- “(i) an order under this Part of this Act; or  
(ii) an order of the Court of Session under section 101, 102, 103 or 104 of the Criminal Justice (Scotland) Act 1995.”
- (5) Sections 90 (recognition and enforcement of orders in Scotland), 91 (supplementary provision to section 90), 92 (inhibition and arrestment of property in Scotland), 93 (proof in Scotland of High Court orders) and 95 (enforcement of Northern Ireland order in Scotland) shall cease to have effect.
- (6) In section 93E (applications of provisions relating to money laundering and other offences to Scotland), after the word “summarily)” there shall be inserted the words “ or an offence punishable on summary conviction by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period exceeding 3 months or by both such fine and imprisonment ”.

*The Copyright, Designs and Patents Act 1988 (c.48)*

- 187 (1) The Copyright, Designs and Patents Act 1988 shall be amended as follows.
- (2) In section 108(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “ Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 ”.
- (3) In section 199(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “ Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 ”.

*The Road Traffic Offenders Act 1988 (c.53)*

- 188 After section 33 of the Road Traffic Offenders Act 1988 (fine and imprisonment), there shall be inserted the following section—

**“33A Forfeiture of vehicles: Scotland.**

- (1) Where a person commits an offence to which this subsection applies by—
- (a) driving, attempting to drive, or being in charge of a vehicle; or  
(b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or  
(c) failing, as the driver of a vehicle, to comply with subsections (2) and (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),

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the court may, on an application under this subsection make an order forfeiting the vehicle concerned; and any vehicle forfeited under this subsection shall be disposed of as the court may direct.

- (2) Subsection (1) above applies—
  - (a) to an offence under the Road Traffic Act 1988 which is punishable with imprisonment; and
  - (b) to an offence of culpable homicide.
- (3) An application under subsection (1) above shall be at the instance of the prosecutor made when he moves for sentence or (if the person has been remitted for sentence under section 104 of the Criminal Procedure (Scotland) Act 1975) made before sentence is pronounced.
- (4) Where—
  - (a) the court is satisfied, on an application under this subsection by the prosecutor—
    - (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence to which subsection (1) above applies allegedly committed in the manner specified in paragraph (a), (b) or (c) of that subsection; and
    - (ii) that there is reasonable cause to believe that a vehicle specified in the application is to be found in a place or in premises so specified; and
  - (b) it appears to the court that there are reasonable grounds for thinking that in the event of the person being convicted of the offence an order under subsection (1) above might be made in relation to the vehicle, the court may grant a warrant authorising a person named therein to enter and search the place or premises and seize the vehicle.
- (5) Where the court has made an order under subsection (1) above for the forfeiture of a vehicle, the court or any justice may, if satisfied on evidence on oath—
  - (a) that there is reasonable cause to believe that the vehicle is to be found in any place or premises; and
  - (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,issue a warrant of search which may be executed according to law.
- (6) In relation to summary proceedings, the reference in subsection (5) above to a justice includes a reference to the sheriff and to a magistrate.
- (7) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 shall not apply in respect of a vehicle in relation to which this section applies.
- (8) This section extends to Scotland only.”.

*The Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4)*

- 189 (1) Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders) shall be amended as follows.

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

- (2) In paragraph 16—
- (a) in sub-paragraph (1), paragraph (b) shall cease to have effect;
  - (b) in sub-paragraph (2)(b), the words “where granted under sub-paragraph (1) (a) above,” shall cease to have effect; and
  - (c) in sub-paragraphs (5) and (6), the words “or arrestment”, in each place where they occur, shall cease to have effect.
- (3) After paragraph 16 there shall be inserted the following paragraph—
- “16A(1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.
- (2) A warrant under sub-paragraph (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.
  - (3) The fact that an arrestment has been executed under sub-paragraph (2) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Part of this Schedule in respect of that property.
  - (4) No arrestment executed under sub-paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”.
- (4) In paragraph 19 (enforcement in Scotland of orders made elsewhere in the British Isles)—
- (a) in sub-paragraph (5), for the words “and 16” there shall be substituted “, 16 and (subject to sub-paragraph (5A) below) 16A ”; and
  - (b) after sub-paragraph (5) there shall be inserted the following sub-paragraph—
- “(5A) In its application by virtue of sub-paragraph (5) above paragraph 16A above shall have effect with the following modifications—
- (a) for the references to the prosecutor there shall be substituted references to the Lord Advocate; and
  - (b) for the references to the court there shall be substituted references to the Court of Session.”.

*The Criminal Justice (International Co-operation) Act 1990 (c.5)*

- 190 (1) In section 9(6) of the Criminal Justice (International Co-operation) Act 1990 (enforcement of overseas forfeiture orders), for the words from “or an” to the end there shall be substituted the words “ an offence to which Part VI of the Criminal Justice Act 1988 applies, an offence to which Chapter I of Part II of the Criminal Justice (Scotland) Act 1995 applies or an offence in respect of which a suspended forfeiture order may be made under section 87 of the said Act of 1995. ”.

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- (2) In section 15(3) of that Act (interest on sums unpaid under confiscation orders), for the words “applicable to an award of damages in” there shall be substituted “payable under a decree of”.
- (3) Section 17 (increase in realisable property: Scotland) of that Act shall cease to have effect.

*The Northern Ireland (Emergency Provisions) Act 1991 (c.24)*

- 191 In section 50(2) of the Northern Ireland (Emergency Provisions) Act 1991 (realisable property, value and gifts), for paragraph (e) there shall be substituted the following paragraph—
- “(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

*The Road Traffic Act 1991 (c.40)*

- 192 Section 37 of the Road Traffic Act 1991 (forfeiture of vehicles: Scotland) shall cease to have effect.

*The Drug Trafficking Act 1994 (c. 37)*

- 193 (1) The Drug Trafficking Act 1994 shall be amended as follows.
- (2) In section 4(7) (assessing the proceeds of drug trafficking), after paragraph (b) there shall be inserted—  
“; or  
(c) Part II of the Criminal Justice (Scotland) Act 1995.”.
  - (3) In section 6(3) (meaning of realisable property), after paragraph (d) there shall be inserted the following paragraph—  
“(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders);”.
  - (4) In section 18(2)(b)(ii) (compensation), for the words from “11” to “28” there shall be substituted “ 27, 28, 28A or 28B ”.
  - (5) In section 26(10) (restraint orders), after the words “1987” there shall be inserted “ or Part II of the Criminal Justice (Scotland) Act 1995 ”.

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

## SCHEDULE 7

Section 117.

### REPEALS

#### PART I

##### REPEALS RELATING TO PART I

#### Commencement Information

- II** Sch. 7 Pt. I wholly in force at 31.3.1996; Sch. 7 Pt. I not in force at Royal Assent see s. 118(2); Sch. 7 Pt. I in force for certain purposes at 26.9.1995 by S.I. 1995/2295, art. 3(2), Sch.; Sch. 7 Pt. I in force at 31.3.1996 insofar as not already in force by S.I. 1996/517, art. 3(2)

Chapter	Short title	Extent of repeal
1887 c.35.	The Criminal Procedure (Scotland) Act 1887.	Section 3.  Schedule D. Schedule E. Schedule N. Schedule O.
1949 c.94.	The Criminal Justice (Scotland) Act 1949.	Schedule 7.
1954 c.48.	The Summary Jurisdiction (Scotland) Act 1954.	In Schedule 2, Parts I and III to VI. Schedule 3.
1967 c.80.	The Criminal Justice Act 1967.	In section 69(2), the words “, section 40 of the Prisons (Scotland) Act 1989”.
1975 c.21.	The Criminal Procedure (Scotland) Act 1975.	Section 14(3).  Section 20(2). In section 26(3), the words “or justice”. In section 33, in subsection (1), the words from “or where” to “application,”; and in subsection (2), the words “by telegraph”. Section 62. In section 68, in each of subsections (2) and (4), the

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**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

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words “of Form No.1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form”.

In section 69, the words from “and” in the third place where it occurs to “Act” in the fourth place where it occurs, and the words from “The executions” to the end.

In section 73(1), the words from “, unless” to the end.

In section 100, in subsection (1), the words from “but” to the end; and subsections (2) and (3).

Section 110.

In section 124, the proviso.

In section 127(2), the words “Schedule N to the Criminal Procedure (Scotland) Act 1887 or in”.

Section 130(1) to (3).

Section 132(2).

In section 140A(1)(b), the words “were the offence charged the only offence so charged”.

Section 141(1)(b).

Section 144.

Section 145(4).

Section 146.

In section 150(1), the words “, where the accused is legally represented,”.

In section 153, subsection (1) and, in subsection (3)(b)(ii), the words from “(as” to the end.

In section 156, in subsection (1)(b), the words from “, as” to the end; and subsections (4) and (5).

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In section 157, in subsection (1), the words “through his counsel”, “in which the panel has pleaded guilty under section 102 of this Act” and “(other than a trial for murder)”; and subsection (2).

Section 159(1) and (3).

Section 160(3).

Section 163.

In section 174, subsections (3) and (4).

In section 178(1), the words “either” and “or during such period as may be specified in the order”.

In section 183, in subsection (5A)(a), the words “has committed an offence punishable by imprisonment and”; and in subsection (7) the words “to the probationer”.

In section 186(1), the words “on oath”.

Section 190.

In section 191(4), the words “placed on probation or” and “probation order or”.

In section 192, the words from “(other than” to “Act)” and the proviso.

In section 196(1), the proviso.

Section 225.

Section 226.

Section 227.

In section 235, the words from “but in regard” to the end.

Section 236C.

Section 237.

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**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

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In section 238, in subsection (2), the words “or of any application for leave to appeal” and, in paragraphs (a) (i) and (b)(i), the words “or application”.

In section 239, in subsection (1), the words from “and” in the second place where it occurs to the end; and subsection (2).

In section 240, the words from “except” where it first occurs to the end.

Section 246.

Section 256.

Section 259.

Section 265(3) and (5).

In section 270, in subsection (2) the words from “(or any” to “note of appeal” where first occurring and from “(or in the case” to “note of appeal” where second occurring; in subsection (3), the words from “(or in the case” to “note of appeal”); and in subsection (4), the words from “(or in the case” to “note of appeal”.

Section 272.

Section 273.

Section 276.

In section 277, in subsection (2), the words “section 236C”, “section 237”, “section 246”, “section 259”, “section 272” and “section 273”.

Section 282.

Section 289D(1A)(d).

In section 296, in subsections (1) and (2), the words “sitting

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**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

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summarily” in each place where they occur.

In section 300(4), the words from “, or where” to “96 hours,”.

In section 309(1), the words “Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.

In section 310, the words “Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.

In section 311, in subsection (1), the words from “in” where it first occurs to the end; and subsections (4) and (5).

Section 313.

In section 314(1)(d), the words “or interim order”.

In section 315(2), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.

In section 318(2), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in”.

In section 319(1), the words “other than a witness”.

In section 321, in subsection (1), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”; and in subsection (3), the words “either by way of trial or by way of remit to another court”.

Section 323(3).

Section 331(2).

In section 335(1), the words “penalty or”.

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*Status: Point in time view as at 31/03/1996.*

**Changes to legislation:** *There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

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Section 336.

In section 337A(1), the word “and” immediately following paragraph (a).

In section 344(1), the words “or to produce documents in his possession when required by the court,”.

Section 345.

Section 346(1)(b).

In section 354(1), the proviso.

Section 356(1) and (3).

In section 357, in subsection (1)(a), the words “Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of”; and subsection (4).

Section 360.

In section 360A, in subsection (1)(b), the words from “as” to the end; and subsection (2).

Section 366(2).

Section 376(2).

In section 379(1), the words “either” and “or during such period as may be specified in the order”.

In section 384, in subsection (1), the words from “and”, where it first occurs, to “offence” in the third place where it occurs; in subsection (5A)(a), the words “has committed an offence punishable by imprisonment and”; in subsection (6), the words “convicted of and”; and in subsection (7) the words “to the probationer”.

In section 387(1), the words “on oath”.

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#### Section 391.

In section 392, in subsection (4), the words “placed on probation or”; and in subsection (5), the words “placed on probation or” and “probation order or”.

In section 393, the words from “(other than” to “Act)” and the proviso.

In section 396(7), the words “, subject to any rules under this Part of this Act”.

In section 402, the proviso.

In section 406, the words “damages or expenses,”.

In section 413(1), the words from “and shall” to the end.

In section 430(1), the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.

In section 432(1), the words from “and”, where it second occurs, to the end.

#### Section 435.

In section 440, the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.

In section 441, the words from “, although” to “place,”.

In section 453(4)(a)(i), the word “and”.

In section 454(1), the words “at the trial by the solicitor of the accused”.

#### Section 457.

In section 462, in subsection (1), in the definition of “prosecutor”, the words “private prosecutor,” in the second place where they occur; and subsection (10).

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		Schedule 3.
1976 c.67.	The Sexual Offences (Scotland) Act 1976.	In section 4(1), in the proviso, the words “on indictment”.
1980 c.62.	The Criminal Justice (Scotland) Act 1980.	In section 26, in subsection (2), the word “summary” and the words from “In the foregoing” to the end; in subsection (4), the words from “or of a conviction” to “(8) below,”; and in subsection (5), the words “under summary procedure”.
		In Schedule 4, paragraph 20.
1984 c.36.	The Mental Health (Scotland) Act 1984.	In section 67(1), paragraph (a)(ii) and the preceding “or”, and the words from “or the order” to the end.
1986 c.36.	The Incest and Related Offences (Scotland) Act 1986.	In Schedule 1, paragraph 2.
1986 c.47.	The Legal Aid (Scotland) Act 1986.	In section 25(2), the words “the Board is satisfied”.
1988 c.53.	The Road Traffic Offenders Act 1988.	In section 31(2), the words “penalties and”.
		In section 32(6), the words “penalties and”.
1990 c.40.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.	In section 56(2), the word “and” immediately following paragraph (a).
		In section 58, the words “cited to give evidence in a trial”.
1993 c.9.	The Prisoners and Criminal Proceedings (Scotland) Act 1993.	In section 28(3), the words “or 384(1) (probation)”.
		In section 33(1), the words from the beginning to “and” where it first occurs.
		In Schedule 5, paragraph 1(25)(a)(ii), (b)(i) and (c)(i), (26) and (28).

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*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995. (See end of Document for details)*

1994 c.33.	The Criminal Justice and Public Order Act 1994.	In Schedule 10, paragraph 47.
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**Modifications etc. (not altering text)**

C1 Repeal in Sch. 7 Pt. I restricted (31.8.1995) by [S.I. 1995/2295](#), [art. 6](#)

**PART II**

REPEALS RELATING TO PART II

Chapter	Short title	Extent of repeal
1975 c.21.	The Criminal Procedure (Scotland) Act 1975.	Section 223.  Section 436.
1987 c.41.	The Criminal Justice (Scotland) Act 1987.	Section 1(3).  Section 3(5).  In section 5, in subsection (5), paragraph (b); subsection (6); in subsection (7) the words “notwithstanding subsections (5)(b) and (6) above”; and subsection (8).  In section 6, subsections (4) and (5).  In section 7(2), in the entry relating to section 411, the words “except the proviso to subsection (3)”.  In section 11, in subsection (1), in paragraph (ii), the words “where granted under subsection (1)(a) above,”; in subsections (4) and (5), the words “or arrestment” in each place where they occur; and subsection (6).  In section 12, in subsection (1), the words from “and the clerk of court” to the end.

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		<p>In section 14(1)(c) the words from “and, without” to the end of the paragraph.</p> <p>In section 23(6) the words from “and without” to “family” and the words “(other than an obligation having priority, within the meaning of section 5(8) of this Act)”.</p> <p>In section 26, in subsection (2)(b), the word “substantial”; and in subsection (4), after paragraph (c) the word “and”.</p> <p>In section 30, in subsection (1), paragraphs (b)(i) and (c) and the word “and” immediately preceding paragraph (c).</p> <p>In section 41(2), the words from the end of paragraph (b) to the end of the subsection.</p> <p>In section 47(1) the definition of “associate”.</p>
1988 c.33.	The Criminal Justice Act 1988.	Sections 90 to 93.  Section 95.
1989 c.4.	The Prevention of Terrorism (Temporary Provisions) Act 1989.	In Schedule 4, in paragraph 16, sub-paragraph (1)(b); in sub-paragraph (2)(b) the words “where granted under sub-paragraph (1) (a) above,”; and in sub-paragraphs (5) and (6), the words “or arrestment”, in each place where they occur.
1990 c.5.	The Criminal Justice (International Co-operation) Act 1990.	Section 17.
1991 c.40.	The Road Traffic Act 1991.	Section 37.

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**Status:**

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**Changes to legislation:**

There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995.