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Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

An Act to make provision as respects Scotland in relation to criminal appeals, the disposal of offenders, criminal procedure, evidence in criminal proceedings, the treatment and early release of prisoners, offences committed by newly released prisoners, criminal legal assistance, the police, confiscation of alcohol from persons under 18, sex offenders and the payment by the Lord Advocate of grants for the provision of forensic medical services; to enable courts in England and Wales and Northern Ireland to remit offenders to courts in Scotland in certain circumstances; to make amendments consequential upon the provisions of this Act to the law in other parts of the United Kingdom; and for connected purposes. [21st March 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Extent Information

E1 Act extends to Scotland only except s. 4(3)(5) which extends to Great Britain, s. 37(4) which extends to the United Kingdom, and coextensive amendments/repeals see s. 65(5)(6)(7).

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PART I

SENTENCING

Automatic sentences

PROSPECTIVE

[F1]1 Imprisonment for life on further conviction for certain offences.

. . . . . .

Textual Amendments

F1 S. 1 repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), **ss. 19(3)**, 89(2); S.S.I. 2003/288, art. 2, Sch.

2 Minimum sentence for third conviction of certain offences relating to drug trafficking.

(1) After section 205 of the 1995 Act there shall be inserted the following section—

"205B Minimum sentence for third conviction of certain offences relating to drug trafficking.

(1) This section applies where—

(a) a person is convicted on indictment in the High Court of a class A drug trafficking offence committed after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;

(b) at the time when that offence was committed, he had attained the age of at least 18 years and had been convicted in any part of the United Kingdom of two other class A drug trafficking offences, irrespective of—

(i) whether either of those offences was committed before or after the commencement of section 2 of the Crime and Punishment (Scotland) Act 1997;

(ii) the court in which any such conviction was obtained; and

(iii) his age at the time of the commission of either of those offences; and

(c) one of the offences mentioned in paragraph (b) above was committed after he had been convicted of the other.

(2) Subject to subsection (3) below, where this section applies the court shall sentence the person—

(a) where he has attained the age of 21 years, to a term of imprisonment of at least seven years; and

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(b) where he has attained the age of 18 years but is under the age of 21 years, to detention in a young offenders institution for a period of at least seven years.

(3) The court shall not impose the sentence otherwise required by subsection (2) above where it is of the opinion that there are specific circumstances which—

(a) relate to any of the offences or to the offender; and

(b) would make that sentence unjust.

(4) For the purposes of section 106(2) of this Act a sentence passed under subsection (2) above in respect of a conviction for a class A drug trafficking offence shall not be regarded as a sentence fixed by law for that offence.

(5) In this section "class A drug trafficking offence" means a drug trafficking offence committed in respect of a class A drug; and for this purpose—

"class A drug" has the same meaning as in the [M1]Misuse of Drugs Act 1971;

"drug trafficking offence" means a drug trafficking offence within the meaning of—

(i) the [M2]Drug Trafficking Act 1994;

(ii) the [M3]Proceeds of Crime (Scotland) Act 1995; or

(iii) the [M4]Proceeds of Crime (Northern Ireland) Order 1996.".

(2) In section 196 of the 1995 Act (sentence following guilty plea)—

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

(b) at the end there shall be added the following subsection—

"(2) Where the court is passing sentence on an offender under section 205B(2) of this Act and that offender has pled guilty to the offence for which he is being so sentenced, the court may, after taking into account the matters mentioned in paragraphs (a) and (b) of subsection (1) above, pass a sentence of less than seven years imprisonment or, as the case may be, detention but any such sentence shall not be of a term of imprisonment or period of detention of less than five years, two hundred and nineteen days.".

Marginal Citations

M1 1971 c.38.

M2 1994 c.37.

M3 1995 c.43

M4 S.I. 1996/1299 (N.I. 9).

3 Meaning of "conviction".

After section 205 of the 1995 Act there shall be inserted the following section—

"205C Meaning of "conviction" for purposes of sections 205A and 205B.

(1) For the purposes of paragraph (b) of subsection (1) of each of sections 205A and 205B of this Act "conviction" includes—

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(a) a finding of guilt in respect of which the offender was admonished under section 181 of the [M5]Criminal Procedure (Scotland) Act 1975 (admonition); and

(b) a conviction for which an order is made placing the offender on probation,

and related expressions shall be construed accordingly.

(2) This subsection applies where a person has at any time been convicted of an offence under—

(a) section 70 of the [M6]Army Act 1955;

(b) section 70 of the [M7]Air Force Act 1955; or

(c) section 42 of the [M8]Naval Discipline Act 1957.

(3) Where subsection (2) above applies and the corresponding civil offence (within the meaning of the Act under which the offence was committed) was—

(a) a relevant offence within the meaning of section 205A of this Act; or

(b) a Class A drug trafficking offence within the meaning of section 205B of this Act,

that section shall have effect as if he had been convicted in England and Wales of the corresponding civil offence.”.

Commencement Information

I1 S. 3 partly in force; s. 3 not in force at Royal Assent see s. 65(2); s. 3 in force for certain purposes at 20.10.1997 by S.I. 19972323, art. 3, Sch. 1

Marginal Citations

M5 1975 c. 21.

M6 1955 c.18.

M7 1955 c.19.

M8 1957 c. 53.

[F2]4 . . . . . .

Textual Amendments

F2 S. 4 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 140, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

Restriction of liberty orders

5 Restriction of liberty orders.

After section 245 of the 1995 Act there shall be inserted the following sections—

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" Restriction of liberty orders

245A Restriction of liberty orders.

(1) Without prejudice to section 245D of this Act, where a person of 16 years of age or more is convicted of an offence (other than an offence the sentence for which is fixed by law) the court, if it is of opinion that it is the most appropriate method of disposal, may make an order under this section (in this Act referred to as a "restriction of liberty order") in respect of him; and in this section and sections 245B to 245I of this Act any reference to an "offender" is a reference to a person in respect of whom an order has been made under this subsection.

(2) A restriction of liberty order may restrict the offender's movements to such extent as the court thinks fit and, without prejudice to the generality of the foregoing, may include provision—

(a) requiring the offender to be in such place as may be specified for such period or periods in each day or week as may be specified;

(b) requiring the offender not to be in such place or places, or such class or classes of place or places, at such time or during such periods, as may be specified,

but the court may not, under paragraph (a) above, require the offender to be in any place or places for a period or periods totalling more than 12 hours in any one day.

(3) A restriction of liberty order may be made for any period up to 12 months.

(4) Before making a restriction of liberty order, the court shall explain to the offender in ordinary language—

(a) the effect of the order, including any requirements which are to be included in the order under section 245C of this Act;

(b) the consequences which may follow any failure by the offender to comply with the requirements of any order; and

(c) that the court has power under section 245E of this Act to review the order on the application either of the offender or of any person responsible for monitoring the order,

and the court shall not make the order unless the offender agrees to comply with its requirements.

(5) The clerk of the court by which a restriction of liberty order is made shall—

(a) cause a copy of the order to be sent to any person who is to be responsible for monitoring the offender's compliance with the order; and

(b) cause a copy of the order to be given to the offender or sent to him by registered post or by the recorded delivery service; and an acknowledgment 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 acknowledgment or certificate.

(6) Before making a restriction of liberty order which will require the offender to remain in a specified place or places the court shall obtain and consider

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information about that place or those places, including information as to the attitude of persons likely to be affected by the enforced presence there of the offender.

(7) A restriction of liberty order shall be taken to be a sentence for the purposes of this Act and of any appeal.

(8) The Secretary of State may by regulations prescribe—
- (a) which courts, or class or classes of courts, may make restriction of liberty orders;
- (b) what method or methods of monitoring compliance with such orders may be specified in any such order by any such court; and
- (c) the class or classes of offenders in respect of which restriction of liberty orders may be made,

and different provision may be made in relation to the matters mentioned in paragraphs (b) and (c) above in relation to different courts or classes of court.

(9) Without prejudice to the generality of subsection (8) above, in relation to district courts, regulations under that subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(10) Regulations under subsection (8) above may make such transitional and consequential provisions, including provision in relation to the continuing effect of any restriction of liberty order in force when new regulations are made, as the Secretary of State considers appropriate.

(11) A court shall not make a restriction of liberty order which requires an offender to be in or, as the case may be, not to be in, a particular place or places unless it is satisfied that his compliance with that requirement can be monitored by the means of monitoring which it intends to specify in the order.

(12) The Secretary of State may by regulations substitute for the period of—
- (a) hours for the time being mentioned in subsection (2) above; or
- (b) months for the time being mentioned in subsection (3) above,

such period of hours or, as the case may be, months as may be prescribed in the regulations.

(13) Regulations under this section shall be made by statutory instrument.

(14) A statutory instrument containing regulations made under subsection (8) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(15) No regulations shall be made under subsection (12) above unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

245B Monitoring of restriction of liberty orders.

(1) Where the Secretary of State, in regulations made under section 245A(8) of this Act, empowers a court or a class of court to make restriction of liberty orders he shall notify the court or each of the courts concerned of the person or class

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or description of persons who may be designated by that court for the purpose of monitoring an offender's compliance with any such order.

(2) A court which makes a restriction of liberty order in respect of an offender shall include provision in the order for making a person notified by the Secretary of State under subsection (1) above, or a class or description of persons so notified, responsible for the monitoring of the offender's compliance with it.

(3) Where the Secretary of State changes the person or class or description of persons notified by him under subsection (1) above, any court which has made a restriction of liberty order shall, if necessary, vary the order accordingly and shall notify the variation to the offender.

245C Remote monitoring.

(1) The Secretary of State may make such arrangements, including contractual arrangements, as he considers appropriate with such persons, whether legal or natural, as he thinks fit for the remote monitoring of the compliance of offenders with restriction of liberty orders, and different arrangements may be made in relation to different areas or different forms of remote monitoring.

(2) A court making a restriction of liberty order which is to be monitored remotely may include in the order a requirement that the offender shall, either continuously or for such periods as may be specified, wear or carry a device for the purpose of enabling the remote monitoring of his compliance with the order to be carried out.

(3) The Secretary of State shall by regulations specify devices which may be used for the purpose of remotely monitoring the compliance of an offender with the requirements of a restriction of liberty order.

(4) Regulations under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

245D Concurrent probation and restriction of liberty orders.

(1) Notwithstanding sections 228(1) and 245A(1) of this Act, where the court—
   (a) intends to make a restriction of liberty order under section 245A(1); and
   (b) considers it expedient—
      (i) having regard to the circumstances, including the nature of the offence and the character of the offender; and
      (ii) having obtained a report as to the circumstances and character of the offender,

   that the offender should also be subject to a probation order made under section 228(1) of this Act,

   it may make both such orders in respect of the offender.

(2) Where the court makes both a restriction of liberty order and a probation order by virtue of subsection (1) above, the clerk of the court shall send a copy of each order to both—
   (a) any person responsible for monitoring the offender's compliance with the restriction of liberty order; and

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(b) the officer of the local authority who is to supervise the probationer.

(3) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (1) above—

(a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the power conferred by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and

(b) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the power conferred by section 232(2)(c) in relation to the probation order.

(4) Where the offender by an act or omission fails to comply with both a requirement contained in a probation order and a requirement contained in a restriction of liberty order to which he is subject by virtue of subsection (1) above, he may, without prejudice to subsection (3) above, be dealt with as respects that act or omission either under section 232(2) of this Act or under section 245F(2) of this Act but he shall not be liable to be otherwise dealt with in respect of that act or omission.

245E Variation of restriction of liberty order.

(1) Where a restriction of liberty order is in force either the offender or any person responsible for monitoring his compliance with the order may apply to the court which made the order for a review of it.

(2) On an application made under subsection (1) above, and after hearing both the offender and any person responsible for monitoring his compliance with the order, the court may by order, if it appears to it to be in the interests of justice to do so—

(a) vary the order by—

(i) amending or deleting any of its requirements;

(ii) inserting further requirements; or

(iii) subject to subsection (3) of section 245A of this Act, increasing the period for which the order has to run; or

(b) revoke the order.

(3) Where the court, on the application of a person other than the offender, proposes to—

(a) exercise the power conferred by paragraph (a) of subsection (2) above to vary (otherwise than by deleting a requirement) a restriction of liberty order, it shall issue a citation requiring the offender to appear before the court and section 245A(4) shall apply to the variation of such an order as it applies to the making of an order; and

(b) exercise the power conferred by subsection (2)(b) above to revoke such an order and deal with the offender under section 245G of this Act, it shall issue a citation requiring him to appear before the court.

(4) If an offender fails to appear before the court after having been cited in accordance with subsection (3) above, the court may issue a warrant for his arrest.

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245F Breach of restriction of liberty order.

(1) If at any time when a restriction of liberty order is in force it appears to the court which made the order that the offender has failed to comply with any of the requirements of the order the court may issue a citation requiring the offender to appear before the court at such time as may be specified in the citation or, if it appears to the court to be appropriate, it may issue a warrant for the arrest of the offender.

(2) If it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with any of the requirements of the order the court may by order—
   (a) without prejudice to the continuance in force of the order, impose a fine not exceeding level 3 on the standard scale;
   (b) vary the restriction of liberty order; or
   (c) revoke that order.

(3) A fine imposed under this section in respect of a failure to comply with the requirements of a restriction of liberty order shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by or in respect of a conviction or a penalty imposed on a person summarily convicted.

(4) Where the court varies a restriction of liberty order under subsection (2) above it may do so in any of the ways mentioned in paragraph (a) of section 245E(2) of this Act.

245G Disposal on revocation of restriction of liberty order.

(1) Where the court revokes a restriction of liberty order under section 245E(2)(b) or 245F(2) of this Act, it may dispose of the offender in any way which would have been competent at the time when the order was made, but in so doing the court shall have regard to the time for which the order has been in operation.

(2) Where the court revokes a restriction of liberty order as mentioned in subsection (1) above, and the offender is, by virtue of section 245D(1) of this Act, subject to a probation order, it shall, before disposing of the offender under subsection (1) above, discharge the probation order.

245H Documentary evidence in proceedings under section 245F.

(1) Evidence of the presence or absence of the offender at a particular place at a particular time may, subject to the provisions of this section, be given by the production of a document or documents bearing to be—
   (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored; and
   (b) a certificate signed by a person nominated for the purpose of this paragraph by the Secretary of State that the statement relates to the whereabouts of the person subject to the order at the dates and times shown in the statement.

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(2) The statement and certificate mentioned in subsection (1) above shall, when produced at a hearing, be sufficient evidence of the facts set out in them.

(3) Neither the statement nor the certificate mentioned in subsection (1) above shall be admissible in evidence unless a copy of both has been served on the offender prior to the hearing and, without prejudice to the foregoing, where it appears to the court that the offender has had insufficient notice of the statement or certificate, it may adjourn a hearing or make any order which it thinks appropriate in the circumstances.

245I Procedure on variation or revocation of restriction of liberty order.

Where a court exercises any power conferred by sections 232(3A), 245E(2) or 245F(2)(b) or (c) of this Act, the clerk of the court shall forthwith give copies of the order varying or revoking the restriction of liberty order to any person responsible for monitoring the offender's compliance with that order and that person shall give a copy of the order to the offender.".

Commencement Information

I2 S. 5 wholly in force at 1.7.1998; s. 5 not in force at Royal Assent see s. 65(2); s. 5 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; s. 5 in force insofar as not already in force at 1.7.1998 by S.I. 1997/2323, **art. 5(1)**

Mentally disordered offenders

6 Disposal in cases of mentally disordered offenders.

(1) After section 59 of the 1995 Act (restriction orders), there shall be inserted the following section—

"**59A Hospital directions.**

(1) Subject to subsection (2) and (3) below, where a person is convicted on indictment in the High Court or in the sheriff court of an offence punishable by imprisonment, the court may, in addition to any sentence of imprisonment which it has the power or the duty to impose, by a direction under this subsection (in this Act referred to as a "hospital direction") authorise his admission to and detention in such hospital as may be specified in the direction.

(2) Subsection (1) above shall not apply where the person convicted is a child.

(3) A hospital direction shall not be made unless—

(a) the court is satisfied on the written or oral evidence of two medical practitioners (complying with section 61 of this Act) that the grounds set out in section 17(1) of the [M9]Mental Health (Scotland) Act 1984 apply in relation to the offender;

(b) the medical practitioners mentioned in paragraph (a) above each describe the person as suffering from the same form of mental

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disorder, being mental illness or mental handicap, whether or not he is also described by either of them as suffering from the other form; and

(c) the court is satisfied that the hospital to be specified in the direction can admit the person in respect of whom it is to be made within 7 days of the direction being made.

(4) A State hospital shall not be specified in a hospital direction in respect of the detention of a person unless the court is satisfied, on the evidence of the medical practitioners which is taken into account under paragraphs (a) and (b) of subsection (3) above, that the person—

(a) on account of his dangerous violent or criminal propensities requires treatment under conditions of special security; and

(b) cannot suitably be cared for in a hospital other than a State hospital.

(5) A hospital direction shall specify the form of mental disorder from which, upon the evidence taken into account under paragraphs (a) and (b) of subsection (3) above, the person in respect of whom it is made is found to be suffering.

(6) The court by which a hospital direction is made may give such additional directions as it thinks fit for the conveyance of the person in respect of whom it is made to a place of safety and for his detention in that place pending his admission to hospital within the period mentioned in paragraph (c) of subsection (3) above.

(7) The court shall not make an additional direction under subsection (6) above directing the conveyance of the person concerned to a place of safety which is a residential establishment unless it is satisfied that the managers of that establishment are willing to receive him in the establishment.”.

(2) In section 60 of the 1995 Act (appeals against disposal related to mental disorder)—

(a) for the words “or a restriction order” there shall be substituted the words “ , a restriction order or a hospital direction ”; and

(b) for the words “order in” there shall be substituted the words “ order or, as the case may be, direction in ”.

(3) In section 204 of the 1995 Act (restrictions on the passing of sentence of imprisonment)—

(a) in subsection (2), the words from “and”, where it first occurs, to the end shall cease to have effect; and

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

“(2A) For the purpose of determining under subsection (2) above whether any other method of dealing with such a person is appropriate, the court shall take into account—

(a) such information as it has been able to obtain from an officer of a local authority or otherwise about his circumstances;

(b) any information before it concerning his character and mental and physical condition;

(c) its power to make a hospital direction in addition to imposing a sentence of imprisonment.”.

(4) In section 207 of the 1995 Act (detention of young offenders), after subsection (4) there shall be inserted the following subsection—

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"(4A) In forming an opinion under subsection (3) above the court shall take into account its power to make a hospital direction in addition to imposing a period of detention.".

(5) In section 307 of the 1995 Act (interpretation), after the definition of "hospital" there shall be inserted the following definition—

""hospital direction" has the meaning assigned to it by section 59A(1) of this Act;".

Marginal Citations

M9 1984 c.36.

[F3]7 Effect of hospital direction.

. . . . . .

Textual Amendments

F3 S. 7 repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **Sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

[F4]8 Remand of persons suffering from mental disorder to private hospital.

. . . . . .

Textual Amendments

F4 S. 8 repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **Sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

[F5]9 Power to specify hospital unit.

. . . . . .

Textual Amendments

F5 S. 9 repealed (30.6.2017) by Mental Health (Scotland) Act 2015 (asp 9), **ss. 49(a)**, 61(2); S.S.I. 2017/197, art. 2, sch. (with art. 24)

10 Medical evidence in relation to mentally disordered offenders.

(1) In section 53 of the 1995 Act (interim hospital orders)—

(a) in subsection (1), the words "subsection (2) below and" shall cease to have effect; and

(b) subsection (2) shall cease to have effect.

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(2) In section 61 of the 1995 Act (requirements as to medical evidence)—

(a) in subsection (1), for the words from "under" to "this Act" there shall be substituted the words " in making a finding under section 54(1)(a) of this Act or under any of the relevant provisions ";

(b) after subsection (1) there shall be inserted the following subsection—

"(1A) Of the medical practitioners whose evidence is taken into account under section 53(1), 54(1)(c), 58(1)(a)(i) or 59A(3)(a) and (b) of this Act, at least one shall be employed at the hospital which is to be specified in the order or, as the case may be, direction.";

(c) in subsection (2), for the words "the said section 58(1)(a)" there shall be substituted the words " any of the relevant provisions ";

(d) in subsection (3), for the words "the said sections 54(1) and 58(1)(a)" there shall be substituted the words " making a finding under section 54(1)(a) of this Act or of any of the relevant provisions "; and

(e) after subsection (5) there shall be added the following subsection—

"(6) In this section the "relevant provisions" means sections 53(1), 54(1)(c), 58(1)(a) and 59A(3)(a) and (b) of this Act.".

11 Increase in maximum period of interim hospital orders.

In section 53 of the 1995 Act (interim hospital orders), in subsection (6), for the words "six months" there shall be substituted the words " twelve months ".

12 Sentence calculation where remand spent in hospital.

In section 210 of the 1995 Act (consideration of time spent in custody), in subsection (1)—

(a) at the end of paragraph (a) there shall be inserted the words " , or spent in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act "; and

(b) in paragraph (c), after subparagraph (ii) there shall be inserted the following words—

"; or

(iii) has spent a period of time in hospital awaiting trial or sentence by virtue of an order made under section 52, 53 or 200 of this Act,".

Increases in sentencing powers and penalties

13 Increase in sentences available to sheriff and district courts.

(1) In section 3 of the 1995 Act (jurisdiction and powers of solemn courts)—

(a) in subsection (3), for the words "three years" there shall be substituted the words " five years ";

(b) in subsection (4), for the words "three years" there shall be substituted " five years ";

(c) after subsection (4) there shall be inserted the following subsection—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(4A) Subject to subsection (5) below, where under any enactment passed or made after 1st January 1988 but before the commencement of section 13 of the Crime and Punishment (Scotland) Act 1997 (increase in sentencing powers of sheriff courts) an offence is punishable on conviction on indictment for a term exceeding three years but the enactment either expressly or impliedly restricts the power of the sheriff to impose a sentence of imprisonment for a term exceeding three years, it shall be competent for the sheriff to impose a sentence of imprisonment for a term exceeding three but not exceeding five years."; and

(d) in subsection (5), for the words "subsection (4)" there shall substituted the words " subsections (4) and (4A) ".

[F6](2) . . . . . .

(3) In section 195(2) of the 1995 Act (remit to High Court for sentence where sheriff's power limited by statute) for the words "three years", in both places where they occur, there shall be substituted the words " five years ".

(4) In paragraph 12 of Schedule 3 to the [M10]Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (construction of references to penal servitude and hard labour), in sub-paragraph (3), for the words "two years" there shall be substituted the words " five years ".

Textual Amendments

F6 S. 13(2) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 7 para. 67**; S.S.I. 2011/178, art. 2, Sch.

Commencement Information

I3 S. 13(1)(3)(4) in force at 1.5.2004 by S.S.I. 2004/176, **art. 2** (with art. 3)

Marginal Citations

M10 1995 c.40.

14 Increase in maximum penalty for certain sexual offences.

(1) In section 5 of the [M11]Criminal Law (Consolidation) (Scotland) Act 1995 (unlawful intercourse with girls under the age of 16 years)—

(a) in subsection (2), for the words "two years" there shall be substituted the words " ten years "; and

(b) in subsection (3), for the words "two years" there shall be substituted the words " ten years ".

(2) In section 6 of that Act (indecent behaviour towards a girl aged between 12 and 16 years), for the words "two years" there shall be substituted the words " ten years ".

Marginal Citations

M11 1995 c.39.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Powers of court to disqualify from driving

15 Driving disqualifications.

(1) After section 248 of the 1995 Act there shall be inserted the following sections—

"**248A General power to disqualify offenders.**

(1) Subject to subsection (2) below, the court by or before which a person is convicted of an offence may, in addition to or instead of dealing with him in any other way, order him to be disqualified from holding or obtaining a licence to drive a motor vehicle granted under Part III of the [M12]Road Traffic Act 1988 for such period as it thinks fit.

(2) Where the person is convicted of an offence for which the sentence is fixed by law, subsection (1) above shall have effect as if the words "or instead of" were omitted.

(3) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

248B Power to disqualify fine defaulters.

(1) This section applies where the court has power to impose a period of imprisonment in default of payment of a fine, or any part or instalment of a fine.

(2) Where this section applies, the court may, instead of imposing such a period of imprisonment as is mentioned in subsection (1) above, order that where the offender is in default he shall be disqualified from holding a licence to drive a motor vehicle granted under Part III of the Road Traffic Act 1988 for such period not exceeding twelve months as the court thinks fit.

(3) Where an order has been made under subsection (2) above in default of payment of any fine, or any part or instalment of a fine—
   (a) on payment of the fine to any person authorised to receive it, the order shall cease to have effect; and
   (b) on payment of any part of that fine to any such person, the period of disqualification to which the order relates shall be reduced (or, as the case may be, further reduced) by a number of days bearing as nearly as possible the same proportion to such period as the sum so paid bears to the amount of the fine outstanding at the commencement of that period.

(4) Subsections (2) and (4) of section 248 of this Act shall apply for the purposes of this section as they apply for the purposes of that section.

(5) Section 19 of the [M13]Road Traffic Offenders Act 1988 (proof of disqualification in Scottish proceedings) shall apply to an order under subsection (2) above as it applies to a conviction or extract conviction.

(6) The Secretary of State may by order made by statutory instrument vary the period specified in subsection (2) above; but no such order shall be made

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

248C Application of sections 248A and 248B.

(1) The Secretary of State may by order prescribe which courts, or class or classes of courts, may make orders under section 248A or 248B of this Act and, without prejudice to that generality, in relation to district courts an order under this subsection may make provision as respects such courts by reference to whether the court is constituted by a stipendiary magistrate or by one or more justices.

(2) An order made under subsection (1) above shall be made by statutory instrument and any such instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) Where an order has been made under subsection (1) above, section 248(1) of this Act shall not apply as respects any court, or class or classes of court prescribed by the order.”.

(2) In section 252(2) of the 1995 Act (application of fines provisions to compensation orders)—

(a) the word “and” in the third place where it occurs shall cease to have effect; and

(b) after the word “specified)” there shall be inserted the words “; and

section 248B (driving disqualification for fine defaulters) so far as it relates to the power conferred by section 219(1)(b).”.

[F7](3) . . . . . .

Textual Amendments

F7 S. 15(3) repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 33(a), **Sch. 12**; S.S.I. 2003/210, art. 2(1)(b)(2), Sch. (with art. 7)

Commencement Information

I4 S. 15 wholly in force at 1.1.1998; s. 15 not in force at Royal Assent see s. 65(2); s. 15 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; s. 15 in force insofar as not already in force at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2** (with art. 7)

Marginal Citations

M12 1988 c.52.

M13 1988 c.53.

Miscellaneous

16 Designated life prisoners.

(1) In section 2 of the 1993 Act (duty to release discretionary life prisoners)—

(a) for subsection (1) there shall be substituted the following subsection—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(1) In this Part of this Act "designated life prisoner", subject to subsection (9)(a) below and except where the context otherwise requires, means a person—

(a) sentenced to life imprisonment for an offence for which, subject to paragraph (b) below, such a sentence is not the sentence fixed by law;

(b) whose sentence was imposed under section 205A(2) of the 1995 Act (imprisonment for life on further conviction for certain offences); or

(c) whose sentence was imposed in respect of a murder committed by him before he attained the age of 18 years,

and in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below."; and

(b) in subsection (2)—

(i) the word "and" shall cease to have effect; and

(ii) after paragraph (b), there shall be inserted the words—

"; and

(c) where appropriate, the matters mentioned in paragraphs (a) and (b) of section 196(1) of the 1995 Act.".

(2) **[**[F8]Except in a case to which subsection (3A) or (3B) below applies,**]**this subsection applies where, in the case of a person sentenced, prior to the coming into force of this section, in respect of a murder committed by him before he attained the age of 18 years, the Lord Justice General, whom failing the Lord Justice Clerk, after consultation with the trial judge, if available, certifies his opinion that, if section 2 of the 1993 Act, as amended by this Act, had been in force at the time when the prisoner was sentenced, the court by which he was sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.

(3) In a case to which subsection (2) above applies, Part I of the 1993 Act, except **[**[F9]section 2(9)**]**, shall apply as if—

(a) the life prisoner concerned were a [F10]. . . life prisoner within the meaning of section 2 of that Act; and

(b) the **[**[F11]punishment**]** part of his sentence within the meaning of that section were the part specified in the certificate.

[[F12](3A) This subsection applies in a case where a person—

(a) was sentenced, prior to 20 October 1997, in respect of a murder committed by him before he attained the age of 18 years; and

(b) has been released on licence, other than under section 3 of the 1993 Act, whether before or on that date.

[F12](3B) This subsection applies in a case where a person—

(a) was sentenced, prior to 20 October 1997, in respect of a murder committed by him before he attained the age of 18 years; and

(b) has been released on licence, other than under section 3 of the 1993 Act, after that date without his case having been considered under subsection (2) above.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[F12](3C) In a case to which subsection (3A) or (3B) applies, Part I of the 1993 Act shall apply as if the person were a designated life prisoner, within the meaning of section 2 of that Act, whose licence had been granted under subsection (4) of that section on his having served the designated part of his sentence.]

[F13](4) . . . . . .

Textual Amendments

F8 Words in s. 16(2) inserted (*retrospective* to 20.10.1997) by 1998 c. 37, **s. 109(1)(2)**

F9 Words in s. 16(3) substituted (8.10.2001) by 2001 asp 7, **s. 1(8)(a)(i)**; S.S.I. 2001/274, **art. 3(3)**

F10 Words in s. 16(3)(a)(4)(a) repealed (8.10.2001) by 2001 asp 7, **s. 1(8)(a)(ii)(b)(i)**; S.S.I. 2001/274, **art. 3(3)**

F11 Words in s. 16(3)(b)(4)(b) substituted (8.10.2001) by 2001 asp 7, **s. 1(8)(a)(iii)(b)(ii)**; S.S.I. 2001/274, **art. 3(3)**

F12 S. 16(3A)-(3C) inserted (*retrospective* to 20.10.1997) by 1998 c. 37, **s. 109(1)(3)**

F13 S. 16(4) repealed (27.6.2003) by Criminal Justice (Scotland) Act 2003 (asp 7), s. 89(2), **Sch. 5**; S.S.I. 2003/288, art. 2, Sch.

Commencement Information

I5 S. 16 partly in force; s. 16 not in force at Royal Assent see s. 65(2); s. 16 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

PART II

CRIMINAL PROCEDURE

Appeals

17 Right of appeal.

(1) In section 106 of the 1995 Act (right of appeal in solemn proceedings), for subsection (3) there shall be substituted the following subsections—

"(3) By an appeal under subsection (1) above a person may bring under review of the High Court any alleged miscarriage of justice, which may include such a miscarriage based on—

(a) subject to subsections (3A) to (3D) below, the existence and significance of evidence which was not heard at the original proceedings; and

(b) the jury's having returned a verdict which no reasonable jury, properly directed, could have returned.

(3A) Evidence such as is mentioned in subsection (3)(a) above may found an appeal only where there is a reasonable explanation of why it was not so heard.

(3B) Where the explanation referred to in subsection (3A) above or, as the case may be, (3C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(3C) Without prejudice to subsection (3A) above, where evidence such as is mentioned in paragraph (a) of subsection (3) above is evidence—

(a) which is—

(i) from a person; or

(ii) of a statement (within the meaning of section 259(1) of this Act) by a person,

who gave evidence at the original proceedings; and

(b) which is different from, or additional to, the evidence so given,

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.

(3D) For the purposes of subsection (3C) above, "independent evidence" means evidence which—

(a) was not heard at the original proceedings;

(b) is from a source independent of the person referred to in subsection (3C) above; and

(c) is accepted by the court as being credible and reliable.".

(2) In section 175 of the 1995 Act (right of appeal in summary proceedings), for subsection (5) there shall be substituted the following subsections—

"(5) By an appeal under subsection (2) above, an appellant may bring under review of the High Court any alleged miscarriage of justice which may include such a miscarriage based, subject to subsections (5A) to (5D) below, on the existence and significance of evidence which was not heard at the original proceedings.

(5A) Evidence which was not heard at the original proceedings may found an appeal only where there is a reasonable explanation of why it was not so heard.

(5B) Where the explanation referred to in subsection (5A) above or, as the case may be, (5C) below is that the evidence was not admissible at the time of the original proceedings, but is admissible at the time of the appeal, the court may admit that evidence if it appears to the court that it would be in the interests of justice to do so.

(5C) Without prejudice to subsection (5A) above, where evidence such as is mentioned in paragraph (a) of subsection (5) above is evidence—

(a) which is—

(i) from a person; or

(ii) of a statement (within the meaning of section 259(1) of this Act) by a person,

who gave evidence at the original proceedings; and

(b) which is different from, or additional to, the evidence so given,

it may not found an appeal unless there is a reasonable explanation as to why the evidence now sought to be adduced was not given by that person at those proceedings, which explanation is itself supported by independent evidence.

(5D) For the purposes of subsection (5C) above, "independent evidence" means evidence which—

(a) was not heard at the original proceedings;

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) is from a source independent of the person referred to in subsection (5C) above; and

(c) is accepted by the court as being credible and reliable.

(5E) By an appeal against acquittal under subsection (3) above a prosecutor may bring under review of the High Court any alleged miscarriage of justice.”.

18 Automatic sentences: jurisdiction and appeals.

(1) In section 106(1) of the 1995 Act (right of appeal), after paragraph (b) there shall be inserted the following paragraph—

“(bb) against any decision not to exercise the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act;”.

(2) After section 108 of the 1995 Act, there shall be inserted the following section—

“**108A Lord Advocate’s appeal against decision not to impose automatic sentence in certain cases.**

Where the court has exercised the power conferred by section 205A(3), 205B(3) or 209(1A) of this Act, the Lord Advocate may appeal against that decision.”

(3) In section 112(1) of the 1995 Act (bail for appellants), in paragraph (b) after the words “section 108” there shall be inserted the words “ or 108A ”.

(4) In section 116(2) of the 1995 Act (abandonment of part of appeal)—

(a) after the word “against”, in the second place where it occurs, there shall be inserted the words “ both conviction and a decision such as is mentioned in section 106(1)(bb) or ”; and

(b) for the words “or disposal” there shall be substituted the words “ or, as the case may be, decision, disposal ”.

(5) In section 118 of the 1995 Act (disposal of appeals)—

(a) in subsection (4), for the words “section 106(1)(c)” there shall be substituted the words “ section 106(1)(bb) ”; and

(b) after subsection (4) there shall be inserted the following subsection—

“(4A) On an appeal under section 108A of this Act, the High Court may dispose of the appeal—

(a) by affirming the decision and any sentence or order passed;

(b) where it is of the opinion mentioned in section 205A(3) or, as the case may be, 205B(3) of this Act but it considers that a different sentence or order should have been passed, by affirming the decision but quashing any sentence or order passed and passing another sentence or order whether more or less severe in substitution therefor; or

(c) in any other case, by setting aside the decision appealed against and any sentence or order passed by the trial court and where the decision appealed against was taken under—

(i) subsection (3) of section 205A of this Act, by passing the sentence mentioned in subsection (2) of that section;

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(ii) subsection (3) of section 205B of this Act, by passing a sentence of imprisonment of at least the length mentioned in subsection (2) of that section; or

(iii) subsection (1A) of section 209 of this Act, by making a supervised release order as required by paragraph (a) of subsection (1) of that section.”.

(6) In section 121 of the 1995 Act (suspension of disqualification)—

(a) in paragraph (b) of subsection (1), for the words “or 108” there shall be substituted the words “ , 108 or 108A ”;

(b) in paragraph (b) of subsection (2), for the words “or 108” there shall be substituted the words “ , 108 or 108A ”;

(c) in subsection (4), for the words “or 108” there shall be substituted the words “ , 108 or 108A ”.

(7) In section 125 of the 1995 Act (reckoning of time spent pending appeal)—

(a) in paragraph (b) of subsection (1), after the words “section 108” there shall be inserted the words “ or 108A ”; and

(b) in subsection (2), after the words “section 108” there shall be inserted the words “ or 108A ”.

(8) In section 126 of the 1995 Act (extract convictions), in paragraph (b) for the words “or 108” there shall be substituted the words “ , 108 or 108A ”.

Commencement Information

I6 S. 18 partly in force; s. 18 not in force at Royal Assent see s. 65(2); s. 18 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

19 Appeal against automatic sentence where earlier conviction quashed.

(1) After section 106 of the 1995 Act (appeals), there shall be inserted the following section—

“106A Appeal against automatic sentences where earlier conviction quashed.

(1) This subsection applies where—

(a) a person has been sentenced under section 205A(2) of this Act;

(b) he had, at the time at which the offence for which he was so sentenced was committed, only one previous conviction for a qualifying offence or a relevant offence within the meaning of that section; and

(c) after he has been so sentenced, the conviction mentioned in paragraph (b) above has been quashed.

(2) This subsection applies where—

(a) a person has been sentenced under section 205B(2) of this Act;

(b) he had, at the time at which the offence for which he was so sentenced was committed, only two previous convictions for class A drug trafficking offences within the meaning of that section; and

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(c) after he has been so sentenced, one of the convictions mentioned in paragraph (b) above has been quashed.

(3) Where subsection (1) or (2) above applies, the person may appeal under section 106(1)(b) of this Act against the sentence imposed on him under section 205A(2) or, as the case may be, 205B(2) of this Act.

(4) An appeal under section 106(1)(b) of this Act by virtue of subsection (3) above—

(a) may be made notwithstanding that the person has previously appealed under that section; and

(b) shall be lodged within two weeks of the quashing of the conviction as mentioned in subsection (1)(c) or, as the case may be, (2)(c) above.

(5) Where an appeal is made under section 106(1)(b) by virtue of this section, the following provisions of this Act shall not apply in relation to such an appeal, namely—

(a) section 121; and

(b) section 126.".

(2) In section 110(1) of the 1995 Act (notes of appeal), in paragraph (a), for the words from "passing" to "sentence)" there shall be substituted the words " appropriate date (being, as the case may be, the date on which sentence was passed, the order disposing of the case was made, sentence was deferred or the previous conviction was quashed as mentioned in section 106A(1)(c) or (2)(c) of this Act) ".

Commencement Information

I7 S. 19 partly in force; s. 19 not in force at Royal Assent see s. 65(2); s. 19 in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

[F14]20 Transfer of rights of appeal of deceased person.

After section 303 of the 1995 Act there shall be inserted—

" Transfer of rights of appeal of deceased person

303A Transfer of rights of appeal of deceased person.

(1) Where a person convicted of an offence has died, any person may, subject to the provisions of this section, apply to the High Court for an order authorising him to institute or continue any appeal which could have been or has been instituted by the deceased.

(2) An application for an order under this section may be lodged with the Clerk of Justiciary within three months of the deceased's death or at such later time as the Court may, on cause shown, allow.

(3) Where the Commission makes a reference to the High Court under section 194B of this Act in respect of a person who is deceased, any application under this section must be made within one month of the reference.

(4) Where an application is made for an order under this section and the applicant—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) is an executor of the deceased; or

(b) otherwise appears to the Court to have a legitimate interest,

the Court shall make an order authorising the applicant to institute or continue any appeal which could have been instituted or continued by the deceased; and, subject to the provisions of this section, any such order may include such ancillary or supplementary provision as the Court thinks fit.

(5) The person in whose favour an order under this section is made shall from the date of the order be afforded the same rights to carry on the appeal as the deceased enjoyed at the time of his death and, in particular, where any time limit had begun to run against the deceased the person in whose favour an order has been made shall have the benefit of only that portion of the time limit which remained unexpired at the time of the death.

(6) In this section "appeal" includes any sort of application, whether at common law or under statute, for the review of any conviction, penalty or other order made in respect of the deceased in any criminal proceedings whatsoever.".

Textual Amendments

F14 S. 20 wholly in force at 1.4.1999; s. 20 not in force at Royal Assent see s. 65(2); s. 20 in force for certain purposes at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); s. 20 in force insofar as not already in force at 1.4.1999 by S.I. 1999/652, art. 2, **Sch.** (with art. 3)

21 Increased rights of appeal of prosecutor.

(1) For section 108 of the 1995 Act there shall be substituted the following section—

"108 Lord Advocate's right of appeal against disposal.

(1) Where a person has been convicted on indictment, the Lord Advocate may, in accordance with subsection (2) below, appeal against any of the following disposals, namely—

(a) a sentence passed on conviction;

(b) a decision under section 209(1)(b) of this Act not to make a supervised release order;

(c) a decision under section 234A(2) of this Act not to make a non-harassment order;

(d) a probation order;

(e) a community service order;

(f) a decision to remit to the Principal Reporter made under section 49(1)(a) of this Act;

(g) an order deferring sentence;

(h) an admonition; or

(i) an absolute discharge.

(2) An appeal under subsection (1) above may be made—

(a) on a point of law;

(b) where it appears to the Lord Advocate, in relation to an appeal under—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;

(ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;

(iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;

(iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;

(v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.

(2) For subsection (4) of section 175 of the 1995 Act there shall be substituted the following subsections—

“(4) The prosecutor in summary proceedings, in any class of case specified by order made by the Secretary of State, may, in accordance with subsection (4A) below, appeal to the High Court against any of the following disposals, namely—

(a) a sentence passed on conviction;

(b) a decision under section 209(1)(b) of this Act not to make a supervised release order;

(c) a decision under section 234A(2) of this Act not to make a non-harassment order;

(d) a probation order;

(e) a community service order;

(f) a decision to remit to the Principal Reporter made under section 49(1)(a) or (7)(b) of this Act;

(g) an order deferring sentence;

(h) an admonition; or

(i) an absolute discharge.

(4A) An appeal under subsection (4) above may be made—

(a) on a point of law;

(b) where it appears to the Lord Advocate, in relation to an appeal under—

(i) paragraph (a), (h) or (i) of that subsection, that the disposal was unduly lenient;

(ii) paragraph (b) or (c) of that subsection, that the decision not to make the order in question was inappropriate;

(iii) paragraph (d) or (e) of that subsection, that the making of the order concerned was unduly lenient or was on unduly lenient terms;

(iv) under paragraph (f) of that subsection, that the decision to remit was inappropriate;

(v) under paragraph (g) of that subsection, that the deferment of sentence was inappropriate or was on unduly lenient conditions.”.

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22 Appeal by prosecutor against hospital orders etc.

After section 60 of the 1995 Act there shall be inserted the following section—

"**60A Appeal by prosecutor against hospital orders etc.**

(1) This section applies where the court, in respect of a person charged or brought before it, has made—

(a) an order under any of paragraphs (a) to (d) of subsection (2) of section 57 of this Act or such a decision as is mentioned in paragraph (e) of that subsection; or

(b) a hospital order, guardianship order, restriction order or a hospital direction.

(2) Where this section applies, the prosecutor may appeal against any such order, decision or direction as is mentioned in subsection (1) above—

(a) if it appears to him that the order, decision or direction was inappropriate; or

(b) on a point of law,

and an appeal under this section shall be treated in the same manner as an appeal against sentence under section 108 of this Act.".

23 Appeals against orders under section 49 of the 1995 Act.

It shall be competent for a convicted person or a prosecutor to appeal against a decision made under section 49 of the 1995 Act (reference or remit to children's hearing) to remit a case to the Principal Reporter and, accordingly—

(a) in section 49(4) of that Act, at the beginning there shall be inserted the words " Subject to any appeal against any decision to remit made under subsection (1)(a) above or (7)(b) below, ";

(b) in section 106(1) of that Act (right of appeal in solemn proceedings), after paragraph (d) there shall be inserted the following paragraph—

"(da) against any decision to remit made under section 49(1)(a) of this Act;"; and

(c) in subsection (2) of section 175 of that Act (right of appeal in summary proceedings), after paragraph (c) there shall be inserted the following paragraph—

"(ca) against any decision to remit made under section 49(1)(a) or (7)(b) of this Act;".

24 Suspension of certain sentences pending determination of appeal.

(1) After section 121 of the 1995 Act, there shall be inserted the following section—

"**121A Suspension of certain sentences pending determination of appeal.**

(1) Where an intimation of intention to appeal or, in the case of an appeal under section 106(1)(b) to (e), 108 or 108A of this Act, a note of appeal is lodged, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.

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(2) Where the court has directed the suspension of the whole or any remaining part of a person's relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—
- (a) if he is the appellant—
  - (i) decline to consider the appeal; and
  - (ii) dismiss it summarily; or
- (b) whether or not he is the appellant—
  - (i) consider and determine the appeal; or
  - (ii) make such other order as the court thinks fit.

(4) In this section "relevant sentence" means any one or more of the following—
- (a) a probation order;
- (b) a supervised attendance order made under section 236(6) of this Act;
- (c) a community service order;
- (d) a restriction of liberty order.".

(2) After section 193 of the 1995 Act, there shall be inserted the following section—

"**193A Suspension of certain sentences pending determination of appeal.**

(1) Where a convicted person or the prosecutor appeals to the High Court under section 175 of this Act, the court may on the application of the appellant direct that the whole, or any remaining part, of a relevant sentence shall be suspended until the appeal, if it is proceeded with, is determined.

(2) Where the court has directed the suspension of the whole or any remaining part of a person's relevant sentence, the person shall, unless the High Court otherwise directs, appear personally in court on the day or days fixed for the hearing of the appeal.

(3) Where a person fails to appear personally in court as mentioned in subsection (2) above, the court may—
- (a) if he is the appellant—
  - (i) decline to consider the appeal; and
  - (ii) dismiss it summarily; or
- (b) whether or not he is the appellant—
  - (i) consider and determine the appeal; or
  - (ii) make such other order as the court thinks fit.

(4) In this section "relevant sentence" means any one or more of the following—
- (a) a probation order;
- (b) a supervised attendance order made under section 236(6) of this Act;
- (c) a community service order;
- (d) a restriction of liberty order.".

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Commencement Information

I8 S. 24 wholly in force at 1.7.1998; s. 24 not in force at Royal Assent see s. 65(2); s. 24 in force for certain purpose at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); s. 24 in force insofar as not already in force at 1.7.1998 by S.I. 1997/2323, **art. 5(1)**

The Scottish Criminal Cases Review Commission

25 Scottish Criminal Cases Review Commission.

(1) After Part X of the 1995 Act there shall be inserted the following new Part—

"**PART XA**

SCOTTISH CRIMINAL CASES REVIEW COMMISSION

The Scottish Criminal Cases Review Commission

194A **Scottish Criminal Cases Review Commission.**

(1) There shall be established a body corporate to be known as the Scottish Criminal Cases Review Commission (in this Act referred to as "the Commission").

(2) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Commission's property shall not be regarded as property of, or held on behalf of, the Crown.

(3) The Commission shall consist of not fewer than three members.

(4) The members of the Commission shall be appointed by Her Majesty on the recommendation of the Secretary of State.

(5) At least one third of the members of the Commission shall be persons who are legally qualified; and for this purpose a person is legally qualified if he is an advocate or solicitor of at least ten years' standing.

(6) At least two thirds of the members of the Commission shall be persons who appear to the Secretary of State to have knowledge or experience of any aspect of the criminal justice system; and for the purposes of this subsection the criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.

(7) Schedule 9A to this Act, which makes further provision as to the Commission, shall have effect.

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References to High Court

194B **Cases dealt with on indictment.**

(1) The Commission on the consideration of any conviction of a person or of the sentence (other than sentence of death) passed on a person who has been convicted on indictment may, if they think fit, at any time, and whether or not an appeal against such conviction or sentence has previously been heard and determined by the High Court, refer the whole case to the High Court and the case shall be heard and determined, subject to any directions the High Court may make, as if it were an appeal under Part VIII of this Act.

(2) The power of the Commission under this section to refer to the High Court the case of a person convicted shall be exercisable whether or not that person has petitioned for the exercise of Her Majesty's prerogative of mercy.

(3) This section shall apply in relation to a finding under section 55(2) and an order under section 57(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.

(4) For the purposes of this section "person" includes a person who is deceased.

194C **Grounds for reference.**

The grounds upon which the Commission may refer a case to the High Court are that they believe—

(a) that a miscarriage of justice may have occurred; and

(b) that it is in the interests of justice that a reference should be made.

194D **Further provision as to references.**

(1) A reference of a conviction, sentence or finding may be made under section 194B of this Act whether or not an application has been made by or on behalf of the person to whom it relates.

(2) In considering whether to make a reference the Commission shall have regard to—

(a) any application or representations made to the Commission by or on behalf of the person to whom it relates;

(b) any other representations made to the Commission in relation to it: and

(c) any other matters which appear to the Commission to be relevant.

(3) In considering whether to make a reference the Commission may at any time refer to the High Court for the Court's opinion any point on which they desire the Court's assistance; and on a reference under this subsection the High Court shall consider the point referred and furnish the Commission with their opinion on the point.

(4) Where the Commission make a reference to the High Court under section 194B of this Act they shall—

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(a) give to the Court a statement of their reasons for making the reference; and

(b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings on the appeal arising from the reference.

(5) In every case in which—

(a) an application has been made to the Commission by or on behalf of any person for the reference by them of any conviction, sentence or finding; but

(b) the Commission decide not to make a reference of the conviction, sentence or finding,

they shall give a statement of the reasons for their decision to the person who made the application.

194E **Extension of Commission's remit to summary cases.**

(1) The Secretary of State may by order provide for this Part of this Act to apply in relation to convictions, sentences and findings made in summary proceedings as they apply in relation to convictions, sentences and findings made in solemn proceedings, and may for that purpose make in such an order such amendments to the provisions of this Part as appear to him to be necessary or expedient.

(2) An order under this section shall be made by statutory instrument, and shall not have effect unless a draft of it has been laid before and approved by a resolution of each House of Parliament.

194F **Further powers.**

The Commission may take any steps which they consider appropriate for assisting them in the exercise of any of their functions and may, in particular—

(a) themselves undertake inquiries and obtain statements, opinions or reports; or

(b) request the Lord Advocate or any other person to undertake such inquiries or obtain such statements, opinions and reports.

194G **Supplementary provision.**

(1) The Secretary of State may by order make such incidental, consequential, transitional or supplementary provisions as may appear to him to be necessary or expedient for the purpose of bringing this Part of this Act into operation, and, without prejudice to the generality of the foregoing, of dealing with any cases being considered by him under section 124 of this Act at the time when this Part comes into force, and an order under this section may make different provision in relation to different cases or classes of case.

(2) An order under this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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Powers of investigation of Commission

194H **Power to request precognition on oath.**

(1) Where it appears to the Commission that a person may have information which they require for the purposes of carrying out their functions, and the person refuses to make any statement to them, they may apply to the sheriff under this section.

(2) On an application made by the Commission under this section, the sheriff may, if he is satisfied that it is reasonable in the circumstances, grant warrant to cite the person concerned to appear before the sheriff in chambers at such time or place as shall be specified in the citation, for precognition on oath by a member of the Commission or a person appointed by them to act in that regard.

(3) Any person who, having been duly cited to attend for precognition under subsection (2) above and having been given at least 48 hours notice, fails without reasonable excuse to attend shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days; and the court may issue a warrant for the apprehension of the person concerned ordering him to be brought before a sheriff for precognition on oath.

(4) Any person who, having been duly cited to attend for precognition under subsection (2) above, attends but—

(a) refuses to give information within his knowledge or to produce evidence in his possession; or

(b) prevaricates in his evidence,

shall be guilty of an offence and shall be liable to be summarily subjected to a fine not exceeding level 3 on the standard scale or to imprisonment for a period not exceeding 21 days.

194I **Power to obtain documents etc.**

(1) Where the Commission believe that a person or a public body has possession or control of a document or other material which may assist them in the exercise of any of their functions, they may apply to the High Court for an order requiring that person or body—

(a) to produce the document or other material to the Commission or to give the Commission access to it; and

(b) to allow the Commission to take away the document or other material or to make and take away a copy of it in such form as they think appropriate,

and such an order may direct that the document or other material must not be destroyed, damaged or altered before the direction is withdrawn by the Court.

(2) The duty to comply with an order under this section is not affected by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of any enactment) which would otherwise prevent the production of the document or other material to the Commission or the giving of access to it to the Commission.

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(3) The documents and other material covered by this section include, in particular, any document or other material obtained or created during any investigation or proceedings relating to—

(a) the case in relation to which the Commission's function is being or may be exercised; or

(b) any other case which may be in any way connected with that case (whether or not any function of the Commission could be exercised in relation to that other case).

(4) In this section—

"Minister" means a Minister of the Crown as defined by section 8 of the Ministers of the [M14]Crown Act 1975;

"police force" means any police force maintained for a local government area under section 1(1) of the [M15]Police (Scotland) Act 1967 and references to a chief constable are references to the chief constable of such a force within the meaning of that Act; and

"public body" means

(a) any police force;

(b) any government department, local authority or other body constituted for the purposes of the public service, local government or the administration of justice; or

(c) any other body whose members are appointed by Her Majesty, any Minister or any government department or whose revenues consist wholly or mainly of money provided by Parliament.

Disclosure of information

194J **Offence of disclosure.**

(1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 194K of this Act.

(2) A member of the Commission shall not authorise the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions unless the authorisation of the disclosure of the information is excepted from this section by section 194K of this Act.

(3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

194K **Exceptions from obligations of non-disclosure.**

(1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed—

(a) for the purposes of any criminal, disciplinary or civil proceedings;

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(b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice;

(c) by a person who is a member or an employee of the Commission to another person who is a member or an employee of the Commission;

(d) in any statement or report required by this Act;

(e) in or in connection with the exercise of any function under this Act; or

(f) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.

(2) The disclosure of information is also excepted from section 194J of this Act by this section if the information is disclosed by an employee of the Commission who is authorised to disclose the information by a member of the Commission.

(3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 194J of this Act by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of—

(a) the investigation of an offence; or

(b) deciding whether to prosecute a person for an offence,

unless the disclosure is or would be prevented by an obligation or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(4) Where the disclosure of information is excepted from section 194J of this Act by subsection (1) or (2) above, the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by, under or by virtue of any enactment) arising otherwise than under that section.

(5) The power to make an order under subsection (1)(f) above is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

194L **Consent to disclosure.**

(1) Where a person or body is required by an order under section 194I of this Act to produce or allow access to a document or other material to the Commission and notifies them that any information contained in the document or other material to which the order relates is not to be disclosed by the Commission without his or its prior consent, the Commission shall not disclose the information without such consent.

(2) Such consent may not be withheld unless—

(a) (apart from section 194I of this Act) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information without such consent; and

(b) it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.

(3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be

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taken for the purposes of subsection (2)(a) above to prevent the disclosure by the person of information to the Commission unless—

(a) reasonable steps have been taken to obtain the authorisation of the other person; or

(b) such authorisation could not reasonably be expected to be obtained.”.

(2) After Schedule 9 to the 1995 Act there shall be inserted the following Schedule—

“SCHEDULE 9A

THE COMMISSION: FURTHER PROVISIONS

Membership

1 Her Majesty shall, on the recommendation of the Secretary of State, appoint one of the members of the Commission to be the chairman of the Commission.

2 (1) Subject to the following provisions of this paragraph, a person shall hold and vacate office as a member of the Commission, or as chairman of the Commission, in accordance with the terms of his appointment.

(2) An appointment as a member of the Commission may be full-time or part-time.

(3) The appointment of a person as a member of the Commission, or as chairman of the Commission, shall be for a fixed period of not longer than five years.

(4) Subject to sub-paragraph (5) below, a person whose term of appointment as a member of the Commission, or as chairman of the Commission, expires shall be eligible for re-appointment.

(5) No person may hold office as a member of the Commission for a continuous period which is longer than ten years.

(6) A person may at any time resign his office as a member of the Commission, or as chairman of the Commission, by notice in writing addressed to Her Majesty.

(7) Her Majesty may at any time remove a person from office as a member of the Commission if satisfied—

(a) that he has without reasonable excuse failed to discharge his functions as a member for a continuous period of three months beginning not earlier than six months before that time;

(b) that he has been convicted of a criminal offence;

(c) that a bankruptcy order has been made against him, or his estate has been sequestrated, or he has made a composition or arrangement with, or granted a trust deed for, his creditors; or

(d) that he is unable or unfit to discharge his functions as a member.

(8) If the chairman of the Commission ceases to be a member of the Commission he shall also cease to be chairman.

Members and employees

3 (1) The Commission shall—

(a) pay to members of the Commission such remuneration;

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(b) pay to or in respect of members of the Commission any such allowances, fees, expenses and gratuities; and

(c) pay towards the provisions of pensions to or in respect of members of the Commission any such sums,

as the Commission are required to pay by or in accordance with directions given by the Secretary of State.

(2) Where a member of the Commission was, immediately before becoming a member, a participant in a scheme under section 1 of the [M16]Superannuation Act 1972, the Minister for the Civil Service may determine that his term of office as a member shall be treated for the purposes of the scheme as if it were service in the employment or office by reference to which he was a participant in the scheme; and his rights under the scheme shall not be affected by sub-paragraph (1)(c) above.

(3) Where—

(a) a person ceases to hold office as a member of the Commission otherwise than on the expiry of his term of appointment; and

(b) it appears to the Secretary of State that there are special circumstances which make it right for him to receive compensation,

the Secretary of State may direct the Commission to make to him a payment of such amount as the Secretary of State may determine.

4 (1) The Commission may appoint a chief executive and such other employees as the Commission think fit, subject to the consent of the Secretary of State as to their number and terms and conditions of service.

(2) The Commission shall—

(a) pay to employees of the Commission such remuneration; and

(b) pay to or in respect of employees of the Commission any such allowances, fees, expenses and gratuities,

as the Commission may, with the consent of the Secretary of State, determine.

(3) Employment by the Commission shall be included among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 may apply.

5 The Commission shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to paragraph 3(2) or 4(3) above in the sums payable out of money provided by Parliament under the [M17]Superannuation Act 1972.

Procedure

6 (1) The arrangements for the procedure of the Commission (including the quorum for meetings) shall be such as the Commission may determine.

(2) The arrangements may provide for the discharge, under the general direction of the Commission, of any function of the Commission—

(a) in the case of the function specified in sub-paragraph (3) below, by a committee consisting of not fewer than three members of the Commission; and

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(b) in any other case, by any committee of, or by one or more of the members or employees of, the Commission.

(3) The function referred to in sub-paragraph (2)(a) above is making a reference to the High Court under section 194B of this Act.

(4) The validity of any proceedings of the Commission (or of any committee of the Commission) shall not be affected by—

(a) any vacancy among the members of the Commission or in the office of chairman of the Commission; or

(b) any defect in the appointment of any person as a member of the Commission or as chairman of the Commission.

(5) Where—

(a) a document or other material has been produced to the Commission under section 194I of this Act, or they have been given access to a document or other material under that section, and the Commission have taken away the document or other material (or a copy of it); and

(b) the person who produced the document or other material to the Commission, or gave them access to it, has notified the Commission that he considers that its disclosure to others may be contrary to the interests of national security,

the Commission shall, after consulting that person, deal with the document or material (or copy) in a manner appropriate for safeguarding the interests of national security.

Evidence

7 A document purporting to be—

(a) duly executed under the seal of the Commission; or

(b) signed on behalf of the Commission,

shall be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Annual reports and accounts

8 (1) As soon as possible after the end of each financial year of the Commission, the Commission shall send to the Secretary of State a report on the discharge of their functions during that year.

(2) Such a report may include an account of the working of the provisions of Part XA of this Act and recommendations relating to any of those provisions.

(3) The Secretary of State shall lay before each House of Parliament, and cause to be published, a copy of every report sent to him under sub-paragraph (1).

9 (1) The Commission shall—

(a) keep proper accounts and proper records in relation to the accounts; and

(b) prepare a statement of accounts in respect of each financial year of the Commission.

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(2) The statement of accounts shall contain such information and shall be in such form as the Secretary of State may, with the consent of the Treasury, direct.

(3) The Commission shall send a copy of the statement of accounts to the Secretary of State and to the Comptroller and Auditor General within such period after the end of the financial year to which the statement relates as the Secretary of State may direct.

(4) The Comptroller and Auditor General shall—

(a) examine, certify and report on the statement of accounts; and

(b) lay a copy of the statement of accounts and of his report before each House of Parliament.

10 For the purposes of this Schedule the Commission's financial year shall be the period of twelve months ending with 31st March; but the first financial year of the Commission shall be the period beginning with the date of establishment of the Commission and ending with the first 31st March which falls at least six months after that date.

Expenses

11 The Secretary of State shall defray the expenses of the Commission up to such amount as may be approved by him.".

Commencement Information

I9 S. 25 wholly in force at 1.4.1999; s. 25 not in force at Royal Assent see s. 65(2); s. 25 in force for certain purposes at 1.1.1998 by S.I. 1997/3004, art. 2, **Sch.**; s. 25 in force insofar as not already in force at 1.4.1999 by S.I. 1999/652, art. 2, **Sch.** (with art. 3)

Marginal Citations

M14 1975 c.26.
M15 1967 c.77.
M16 1972 c. 11.
M17 1972 c. 11.

Evidential provisions

[F15]26 Evidence concerning certain orders.

. . . . . .

Textual Amendments

F15 S. 26 repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 2 para. 41(a)**; S.S.I. 2010/413, art. 2, Sch. (with art. 3(1))

27 Proof of age.

After section 255 of the 1995 Act there shall be inserted the following section—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

" Proof of age

255A Proof of age.

Where the age of any person is specified in an indictment or a complaint, it shall, unless challenged—

(a) in the case of proceedings on indictment by giving notice of a preliminary objection under paragraph (b) of section 72(1) of this Act or under that paragraph as applied by section 71(2) of this Act; or

(b) in summary proceedings—

(i) by preliminary objection before the plea of the accused is recorded; or

(ii) by objection at such later time as the court may in special circumstances allow,

be held as admitted.".

28 Evidence from certain official documents.

(1) Section 154 of the 1995 Act shall cease to have effect.

(2) After section 279 of the 1995 Act there shall be inserted the following section—

" Evidence from certain official documents

279A Evidence from certain official documents.

(1) Any letter, minute or other official document issuing from the office of or in the custody of any of the departments of state or government in the United Kingdom which—

(a) is required to be produced in evidence in any prosecution; and

(b) according to the rules and regulations applicable to such departments may competently be so produced,

shall when so produced be*prima facie* evidence of the matters contained in it without being produced or sworn to by any witness.

(2) A copy of any such document as is mentioned in subsection (1) above bearing to be certified by any person having authority to certify it shall be treated as equivalent to the original of that document and no proof of the signature of the person certifying the copy or of his authority to certify it shall be necessary.

(3) Any order by any of the departments of state or government or any local authority or public body made under powers conferred by any statute or a print or a copy of such an order, shall when produced in a prosecution be received as evidence of the due making, confirmation, and existence of the order without being sworn to by any witness and without any further or other proof.

(4) Subsection (3) above is without prejudice to any right competent to the accused to challenge any order such as is mentioned in that subsection as being*ultra vires* of the authority making it or on any other competent ground.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) Where an order such as is mentioned in subsection (3) above is referred to in the indictment or, as the case may be, the complaint, it shall not be necessary to enter it in the record of the proceedings as a documentary production.

(6) The provisions of this section are in addition to, and not in derogation of, any powers of proving documents conferred by statute or existing at common law.”.

29 Evidence of vulnerable persons: special provisions.

For section 271 of the 1995 Act there shall be substituted the following section—

“**271 Evidence of vulnerable persons: special provisions.**

(1) Subject to subsections (7) and (8) below, where a vulnerable person has been or could be cited to give evidence in a trial the court may appoint a commissioner to take the evidence of that person if—
   (a) in solemn proceedings, at any time before the oath is administered to the jury;
   (b) in summary proceedings, at any time before the first witness is sworn;
   (c) in exceptional circumstances in either solemn or summary proceedings, during the course of the trial,

   application is made in that regard; but to be so appointed a person must be, and for a period of five years have been, a member of the Faculty of Advocates or a solicitor.

(2) Proceedings before a commissioner appointed under subsection (1) above shall be recorded by video recorder.

(3) An accused shall not, except by leave of the commissioner, be present in the room where such proceedings are taking place but shall be entitled by such means as seem suitable to the commissioner to watch and hear the proceedings.

(4) Subsections (2) to (6), (8) and (9) of section 272 of this Act shall apply 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.

(5) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on an application being made to it, authorise the giving of evidence by that person by means of a live television link.

(6) Subject to subsections (7) and (8) below, where a vulnerable person has been or is likely to be cited to give evidence in a trial, the court may, on application being made to it, authorise the use of a screen to conceal the accused from the sight of that person while that person is present to give evidence; but arrangements shall be made to ensure that the accused is able to watch and hear as the evidence is given by the vulnerable person.

(7) The court may grant an application under subsection (1), (5) or (6) above only on cause shown having regard in particular to—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) the possible effect on the vulnerable person if required to give evidence, no such application having been granted;
(b) whether it is likely that the vulnerable person would be better able to give evidence if such an application were granted; and
(c) the views of the vulnerable person.

(8) In considering whether to grant an application under subsection (1), (5) or (6) above the court may take into account, where appropriate, any of the following—
(a) the nature of the alleged offence;
(b) the nature of the evidence which the vulnerable person is likely to be called upon to give;
(c) the relationship, if any, between the person and the accused; and
(d) where the person is a child, his age and maturity.

(9) Where a sheriff to whom an application has been made under subsection (1), (5) or (6) above would have granted the application but for the lack of accommodation or equipment necessary to achieve the purpose of the application, he may by order transfer the case to any sheriff court which has such accommodation and equipment available, being a sheriff court in the same sheriffdom.

(10) The sheriff court to which a case has been transferred under subsection (9) above shall be deemed to have granted an application under, as the case may be, subsection (1), (5) or (6) above in relation to the case.

(11) Where a court has or is deemed to have granted an application under subsection (1), (5) or (6) above in relation to a vulnerable person, and the vulnerable person gives evidence that he recalls having identified, prior to the trial, a person alleged to have committed an offence, the evidence of a third party as to the identification of that person by the vulnerable person prior to the trial shall be admissible as evidence as to such identification.

(12) In this section—
"child" means a person under the age of 16 years;
"court" means the High Court or the sheriff court;
"trial" means a trial under solemn or under summary procedure; and
"vulnerable person" means—
(a) any child; and
(b) any person of or over the age of 16 years—
(i) who is subject to an order made in consequence of a finding of a court in any part of the United Kingdom that he is suffering from mental disorder within the meaning of section 1(2) of the [M18]Mental Health (Scotland) Act 1984, section 1(2) of the [M19]Mental Health Act 1983, or Article 3(1) of the [M20]Mental Health (Northern Ireland) Order 1986 (application of enactment); or
(ii) who is subject to a transfer direction under section 71(1) of the 1984 Act, section 47 of the 1983 Act, or Article 53 of the 1986 Order (transfer directions); or

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(iii) who otherwise appears to the court to suffer from significant impairment of intelligence and social functioning.”.

Marginal Citations

M18 1984 c.36.
M19 1983 c.20.
M20 S.I. 1986/595 (N.I.4).

30 Routine evidence.

(1) Schedule 9 to the 1995 Act (routine evidence) shall be amended in accordance with **[**[F16]subsection (3)**]** below.

[F17](2) . . . . . .

(3) In the entry relating to the [M21]Video Recordings Act 1984, for the words in the second and third columns there shall be substituted the words in, respectively, the left and right hand columns below—

“A person authorised to do so by the Secretary of State, being a person who has examined the record maintained in pursuance of arrangements made by the designated authority and in the case of a certificate in terms of— (a) sub-paragraph (a) in column 3, the video work mentioned in that sub-paragraph; (b) sub-paragraph (b) in that column, both video works mentioned in that sub-paragraph.	That the record shows any of the following— (a) in respect of a video work (or part of a video work) contained in a video recording identified by the certificate, that by a date specified no classification certificate had been issued; (b) in respect of a video work which is the subject of a certificate under sub-paragraph (a) above, that the video work differs in a specified way from another video work contained in a video recording identified in the certificate under this sub-paragraph and that, on a date specified, a classification certificate was issued in respect of that other video work; (c) that, by a date specified, no classification certificate had been issued in respect of a video work having a particular title; (d) that, on a date specified, a classification certificate was issued in respect of a video work having a particular title and that a document which is identified in the certificate under this sub-paragraph is a copy of the classification certificate so issued; expressions used in column 2, or in this column, of this entry being construed in accordance with that Act; and in each of sub-paragraphs (a) to (d) above “specified” means specified in the certificate under that sub-paragraph.”.

(4) Section 5 of the [M22]Video Recordings Act 1993 shall cease to have effect.

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(5) In Schedule 22 of the [M23]Environment Act 1995 (minor and consequential amendments), paragraph 35 shall cease to have effect.

Textual Amendments

F16 Words in s. 30(1) substituted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 34(a)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

F17 S. 30(2) repealed (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **Sch. 3 para. 34(b)**; S.S.I. 2014/160, art. 2(1)(2), Sch.

Marginal Citations

M21 1984 c. 39.

M22 1993 c. 24.

M23 1995 c.25.

31 Previous convictions in solemn proceedings.

In section 101 of the 1995 Act (previous convictions in solemn proceedings), subsection (5) shall cease to have effect.

32 Supervision and care of persons diverted from prosecution or subject to supervision requirement.

In section 27(1) of the [M24]Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prisons etc.)—

(a) after paragraph (a) there shall be inserted the following paragraph—

"(aa) making available to any children's hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence as the hearing may require for the disposal of a case;";

(b) after paragraph (a) there shall be inserted the following paragraph—

"(ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;";

(c) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—

"(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order under section 57(2)(d) of the [M25]Criminal Procedure (Scotland) Act 1995;";

(d) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—

"(vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person;"; and

(e) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraph—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and".

Marginal Citations

M24 1968 c.49.

M25 1995 c.46.

PART III

PRISONERS

[F18]CHAPTER I

EARLY RELEASE

Textual Amendments

F18 Pt. III Ch. 1 (ss. 33-41) repealed (30.9.1998) by 1998 c. 37, ss. 108, 120(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(w)(aa)(3)(y)**

CHAPTER II

TREATMENT OF PRISONERS

42 Testing of prisoners for alcohol.

After section 41B of the 1989 Act there shall be inserted the following section—

"**41C Testing of prisoners for alcohol.**

(1) If an authorisation is in force for the prison, any officer of the prison may, at the prison, in accordance with rules under section 39 of this Act, require any prisoner who is confined in the prison, and whom he reasonably believes to have taken alcohol, to provide a sample of breath for the purpose of ascertaining whether he has any alcohol in his body.

(2) If the authorisation so provides, the power conferred by subsection (1) above shall include the power to require a prisoner to provide a sample of any other description specified in the authorisation, not being an intimate sample, whether instead of or in addition to a sample of breath.

(3) In this section—

"authorisation" means an authorisation by the governor; and

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"intimate sample" means a sample of blood, semen or other tissue fluid, saliva or pubic hair, or a swab taken from a person's body orifice.".

43 Medical services in prisons.

(1) In section 3(1) of the 1989 Act (general superintendence of prisons) the words from "including" to the end shall cease to have effect.

(2) After section 3 of the 1989 Act there shall be inserted the following section—

"**3A Medical services in prisons.**

(1) Without prejudice to section 11(2) of this Act, the Secretary of State shall secure the provision of appropriate medical services within prisons.

(2) The Secretary of State may perform the duty imposed by subsection (1) above by—
   (a) appointing for a prison one or more medical officers, each of whom shall be a registered medical practitioner;
   (b) entering into an arrangement with any person for the provision of appropriate medical services in relation to any prison or prisons; or
   (c) both making any such appointment as is mentioned in paragraph (a) above and by entering such an arrangement as is mentioned in paragraph (b) above.

(3) In this section "appropriate medical services" means such services in relation to—
   (a) routine and emergency health care for prisoners; and
   (b) the provision of advice to the governor on matters related to the medical treatment and health of prisoners generally,

   as the Secretary of State considers appropriate for the prison in which they are to be provided; and such services shall be provided by or under the supervision of a registered medical practitioner.

(4) Any medical officer appointed under subsection (2)(a) above shall, for the purposes of this Act, be an officer of the prison.

(5) A registered medical practitioner providing, or supervising the provision of, appropriate medical services in accordance with an arrangement made under subsection (2)(b) above shall be deemed to be a medical officer for the prison for the purposes of—
   (a) section 27(5) of this Act (so far as that section continues to have effect by virtue of Schedule 6 to the [M26]Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)); and
   (b) any rules or directions made or issued under section 39 of this Act;

   unless such rules or directions otherwise provide or the context otherwise requires.

(6) Subject to subsection (7) below, rules under section 39 of this Act may make provision for the governor to authorise the carrying out by officers of the

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prison of a search of any person who is in or is seeking to enter the prison for the purpose of providing appropriate medical services in accordance with an arrangement made under subsection (2)(b) above.

(7) Nothing contained in rules made by virtue of subsection (6) above shall permit the governor to authorise an officer of a prison to require a person to remove any of his clothing other than an outer coat, jacket, headgear, gloves and footwear.".

[F19](3) . . . . . .

(4) For section 107(6) of the [M27]Criminal Justice and Public Order Act 1994 (medical officers in contracted out prisons), there shall be substituted the following subsections—

"(6) Without prejudice to section 11(2) of the 1989 Act (direction by Secretary of State for prisoner to be taken hospital for treatment), the contractor shall secure the provision of appropriate medical services within the prison by—

(a) appointing one or more registered medical practitioners to the prison;

(b) entering into an arrangement with any person for the provision of such services in relation to the prison; or

(c) both making any such appointment as is mentioned in paragraph (a) above and entering into such an arrangement as is mentioned in paragraph (b) above.

(7) In subsection (6) above "appropriate medical services" means such services in relation to—

(a) routine and emergency health care for prisoners; and

(b) the provision of advice to the director on matters related to the medical treatment and health of prisoners generally,

as the Secretary of State may direct or, in the absence of such a direction, as the contractor considers appropriate for the prison in which they are to be provided; and such services shall be provided by or under the supervision of a registered medical practitioner.

(8) In subsections (6) and (7) above "contractor", where the contract provides for the running of prison by a sub-contractor, means that sub-contractor.".

(5) In section 110 of that Act (application of enactments)—

(a) in subsection (3), after the word "sections" there shall be inserted the words " 3A(6) (power to authorise searches of persons providing medical services), ";

(b) in subsection (4), after the word "sections" there shall be inserted the words " 3A(6) (power to carry out searches of persons providing medical services), ";

(c) after subsection (4) there shall be inserted the following subsection—

"(4A) A registered medical practitioner appointed to a contracted out prison or providing, or supervising the provision of, appropriate medical services in accordance with an arrangement made under section 107(6)(b) of this Act shall be deemed to be a medical officer for the prison for the purposes of—

(a) section 111(3)(c) of this Act;

(b) section 27(5) of the 1989 Act (so far as that section continues to have effect by virtue of Schedule 6 to the [M28]Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing

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provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)); and

(c) any rules or directions made or issued under section 39 of the 1989 Act,

unless such rules or directions otherwise provide or the context otherwise requires.”; and

(d) in subsection (6), after the word “Sections” there shall be inserted the words “ 3A(1) to (5)(medical services), ”.

(6) In section 112(4) of that Act (contracted out functions at directly managed prisons)—

(a) before paragraph (a) there shall be inserted the following paragraph—

“(aa) section 3A(6) and (7) of the 1989 Act (searches of persons providing medical services);”; and

(b) in paragraph (a) for the words “the 1989” there shall be substituted the word “ that ”.

Textual Amendments

F19 S. 43(3) repealed (31.8.2015) by The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39), art. 1, **Sch. para. 6(a)**

Marginal Citations

M26 1993 c.9.
M27 1994 c.33.
M28 1993 c.9.

44 Unlawful disclosure of information.

(1) After section 41B of the 1989 Act there shall be inserted the following section—

“41D Unlawful disclosure of information by medical officer.

(1) This section applies to—

(a) a registered medical practitioner appointed under paragraph (a) of section 107(6) of the [M29]Criminal Justice and Public Order Act 1994 (medical services in contracted out prisons);

(b) a registered medical practitioner providing appropriate medical services under an arrangement entered into under section 3A(2)(b) of this Act or paragraph (b) of the said section 107(6); and

(c) any person acting under the supervision of such a practitioner.

(2) Any person to whom this section applies who discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information relating to a particular prisoner which he has acquired in the course of carrying out his duties shall be guilty of an offence.

(3) A person guilty of an offence under subsection (2) above shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.”.

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Marginal Citations

M29 1994 c.33.

PART IV

POLICE

Police funding and organisation

[F20]45 Police grant.

. . . . . .

Textual Amendments

F20 S. 46 repealed (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

[F20]46 Common police services.

. . . . . .

Textual Amendments

F20 S. 46 repealed (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Collection and use of records

47 Record of evidence taken from external parts of body.

(1) In section 18 of the 1995 Act (prints and samples in criminal investigations)—

(a) in subsection (2)—

(i) for the words from "fingerprints" to "body" there shall be substituted the words " , or require the person to provide him with, such relevant physical data "; and

(ii) at the end there shall be inserted the words " from him or require him to provide, and the person so required shall comply with that requirement ";

(b) in subsection (3), for the words from "prints or impressions taken", there shall be substituted the words " relevant physical data taken from or provided by a person ";

(c) subsection (7) shall cease to have effect; and

(d) after subsection (7) there shall be inserted the following subsections—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(7A) For the purposes of this section and sections 19 to 20 of this Act "relevant physical data" means any—

(a) fingerprint;

(b) palm print;

(c) print or impression other than those mentioned in paragraph (a) and (b) above, of an external part of the body;

(d) record of a person's skin on an external part of the body created by a device approved by the Secretary of State.

(7B) The Secretary of State by order made by statutory instrument may approve a device for the purpose of creating such records as are mentioned in paragraph (d) of subsection (7A) above.".

(2) In section 19 of the 1995 Act (taking of prints etc from convicted persons)—

(a) in subsection (1)—

(i) in paragraph (a), for the words "a sample, print or impression" there shall be substituted the words " taken from him, or been required to provide, any relevant physical data or had any impression or sample "; and

(ii) in paragraph (b), for the words from "(whether" to "taken", in the second place where it occurs, there shall be substituted the words "at any time had—

(i) taken from him or been required (whether under paragraph (a) above or under section 18 or 19A of this Act or otherwise) to provide any relevant physical data; or

(ii) any impression or sample taken from him,

which was not suitable for the means of analysis for which the data were taken or required or the impression or sample was taken ";

(b) for paragraph (a) of subsection (2), there shall be substituted the following paragraph—

"(a) take from or require the convicted person to provide him with such relevant physical data as he reasonably considers it appropriate to take or, as the case may be, require the provision of;"; and

(c) in subsection (4)(b)—

(i) after the words "intimation that" there shall be inserted the words " the relevant physical data were or "; and

(ii) the words ", print or impression" shall cease to have effect.

(3) In section 20 of the 1995 Act (use of prints etc.)—

(a) for the word "prints", in the place where it first occurs, there shall be substituted the words " relevant physical data "; and

(b) for the word "prints", in the place where it second occurs, there shall be substituted the word " data ".

(4) In section 284 of the 1995 Act (evidence in relation to fingerprints)—

(a) in subsection (1)—

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(i) for the words "two constables" there shall be substituted the words " a person authorised in that behalf by a chief constable "; and

(ii) for the words from "the fingerprints" to "from" there shall be substituted the words " relevant physical data (within the meaning of section 18(7A) of this Act) was taken from or provided by ";

(b) for subsection (2) there shall be substituted the following subsections—

"(2) A party proposing to rely on subsection (1) above ("the first party") shall, not less than 14 days before the trial diet, serve on any other party to the proceedings a copy of the certificate, and such other party shall not be entitled to challenge the sufficiency of the evidence contained within the certificate.

(2A) Where the first party does not serve a copy of the certificate on any other party as mentioned in subsection (2) above, he shall not be entitled to rely on subsection (1) above as respects that party.".

(5) In section 285 of the 1995 Act (proof of previous convictions), after subsection (9) there shall be inserted the following subsection—

"(10) In this section "fingerprint" includes any record of the skin of a person's finger created by a device approved by the Secretary of State under section 18(7B) of this Act.".

Commencement Information

I10 S. 47 wholly in force at 17.11.1997; s. 47 not in force at Royal Assent see s. 65(2); s. 47(1)(a)(b)(d)(2)-(5) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); s. 47 in force insofar as not already in force at 17.11.1997 by S.I. 1997/2694, **art. 2(1)(2)(a)**

48 Samples etc. from persons convicted of sexual and violent offences.

(1) In section 19 of the 1995 Act (taking of prints and samples after conviction) in subsection (1) for the word "This" there shall be substituted the words " Without prejudice to any power exercisable under section 19A of this Act, this ".

(2) After section 19 of the 1995 Act there shall be inserted the following sections—

"19A Samples etc. from persons convicted of sexual and violent offences.

(1) This section applies where a person—

(a) is convicted on or after the relevant date of a relevant offence and is sentenced to imprisonment;

(b) was convicted before the relevant date of a relevant offence, was sentenced to imprisonment and is serving that sentence on or after the relevant date;

(c) was convicted before the relevant date of a specified relevant offence, was sentenced to imprisonment, is not serving that sentence on that date or at any time after that date but was serving it at any time during the period of five years ending with the day before that date.

(2) Subject to subsections (3) and (4) below, where this section applies a constable may—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) take from the person or require the person to provide him with such relevant physical data as the constable reasonably considers appropriate; and

(b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (6) of section 18 of this Act by the means specified in that paragraph in relation to that sample.

(3) The power conferred by subsection (2) above shall not be exercised where the person has previously had taken from him or been required to provide relevant physical data or any sample under section 19(1)(a) of this Act or under this section unless the data so taken or required have been or, as the case may be, the sample so taken or required has been lost or destroyed.

(4) Where this section applies by virtue of—

(a) paragraph (a) or (b) of subsection (1) above, the powers conferred by subsection (2) above may be exercised at any time when the person is serving his sentence; and

(b) paragraph (c) of the said subsection (1), those powers may only be exercised within a period of three months beginning on the relevant date.

(5) Where a person in respect of whom the power conferred by subsection (2) above may be exercised—

(a) is no longer serving his sentence of imprisonment, subsections (3)(a), (5) and (6);

(b) is serving his sentence of imprisonment, subsection (3)(b),

of section 19 of this Act shall apply for the purposes of subsection (2) above as they apply for the purposes of subsection (2) of that section.

(6) In this section—

"conviction" includes—

(a) an acquittal, by virtue of section 54(6) or 55(3) of this Act, on the ground of the person's insanity at the time at which he committed the act constituting the relevant offence;

(b) a finding under section 55(2) of this Act,

and "convicted" shall be construed accordingly;

"relevant date" means the date on which section 48 of the [M30]Crime and Punishment (Scotland) Act 1997 is commenced;

"relevant offence" means any relevant sexual offence or any relevant violent offence;

"relevant sexual offence" means any of the following offences—

(a) rape;

(b) clandestine injury to women;

(c) abduction of a woman with intent to rape;

(d) assault with intent to rape or ravish;

(e) indecent assault;

(f) lewd, indecent or libidinous behaviour or practices;

(g) shameless indecency;

(h) sodomy; and

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(i) any offence which consists of a contravention of any of the following statutory provisions—
  (i) section 52 of the [M31]Civic Government (Scotland) Act 1982 (taking and distribution of indecent images of children);
  (ii) section 52A of that Act (possession of indecent images of children);
  (iii) section 106 of the [M32]Mental Health (Scotland) Act 1984 (protection of mentally handicapped females);
  (iv) section 107 of that Act (protection of patients);
  (v) section 1 of the [M33]Criminal Law (Consolidation) (Scotland) Act 1995 (incest);
  (vi) section 2 of that Act (intercourse with step-child);
  (vii) section 3 of that Act (intercourse with child under 16 years by person in position of trust);
  (viii) section 5(1) or (2) of that Act (unlawful intercourse with girl under 13 years);
  (ix) section 5(3) of that Act (unlawful intercourse with girl aged between 13 and 16 years);
  (x) section 6 of that Act (indecent behaviour towards girl between 12 and 16 years);
  (xi) section 7 of that Act (procuring);
  (xii) section 8 of that Act (abduction and unlawful detention of women and girls);
  (xiii) section 9 of that Act (permitting use of premises for unlawful sexual intercourse);
  (xiv) section 10 of that Act (liability of parents etc in respect of offences against girls under 16 years);
  (xv) section 11(1)(b) of that Act (soliciting for immoral purpose);
  (xvi) section 13(5)(b) and (c) of that Act (homosexual offences);

"relevant violent offence" means any of the following offences—

(a) murder or culpable homicide;
(b) uttering a threat to the life of another person;
(c) perverting the course of justice in connection with an offence of murder;
(d) fire raising;
(e) assault;
(f) reckless conduct causing actual injury;
(g) abduction; and
(h) any offence which consists of a contravention of any of the following statutory provisions—
  (i) sections 2 (causing explosion likely to endanger life) or 3 (attempting to cause such an explosion) of the [M34]Explosive Substances Act 1883;
  (ii) section 12 of the [M35]Children and Young Persons (Scotland) Act 1937 (cruelty to children);

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(iii) sections 16 (possession of firearm with intent to endanger life or cause serious injury), 17 (use of firearm to resist arrest) or 18 (having a firearm for purpose of committing an offence listed in Schedule 2) of the [M36]Firearms Act 1968;

(iv) section 6 of the [M37]Child Abduction Act 1984 (taking or sending child out of the United Kingdom); and

"sentence of imprisonment" means the sentence imposed in respect of the relevant offence and includes—

(a) a hospital order, a restriction order, a hospital direction and any order under section 57(2)(a) or (b) of this Act; and

(b) a sentence of detention imposed under section 207 or 208 of this Act,

and "sentenced to imprisonment" shall be construed accordingly; and any reference to a person serving his sentence shall be construed as a reference to the person being detained in a prison, hospital or other place in pursuance of a sentence of imprisonment; and

"specified relevant offence" means—

(a) any relevant sexual offence mentioned in paragraphs (a), (b), (f) and (i)(viii) of the definition of that expression and any such offence as is mentioned in paragraph (h) of that definition where the person against whom the offence was committed did not consent; and

(b) any relevant violent offence mentioned in paragraph (a) or (g) of the definition of that expression and any such offence as is mentioned in paragraph (e) of that definition where the assault is to the victim's severe injury,

but, notwithstanding subsection (7) below, does not include—

(i) conspiracy or incitement to commit; and

(ii) aiding and abetting, counselling or procuring the commission of,

any of those offences.

(7) In this section—

(a) any reference to a relevant offence includes a reference to any attempt, conspiracy or incitement to commit such an offence; and

(b) any reference to—

(i) a relevant sexual offence mentioned in paragraph (i); or

(ii) a relevant violent offence mentioned in paragraph (h),

of the definition of those expressions in subsection (6) above includes a reference to aiding and abetting, counselling or procuring the commission of such an offence.

19B Power of constable in obtaining relevant physical data etc.

A constable may use reasonable force in—

(a) taking any relevant physical data from a person or securing a person's compliance with a requirement made under section 18(2), 19(2)(a) or 19A(2)(a) of this Act;

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) exercising any power conferred by section 18(6), 19(2)(b) or 19A(2)(b) of this Act.”.

Marginal Citations

M30 1997 c.48.
M31 1982 c.45.
M32 1984 c.36.
M33 1995 c.39.4
M34 1883 c.3.
M35 1937 c.37.
M36 1968 c.27.
M37 1984 c.37.

PART V

CRIMINAL LEGAL ASSISTANCE

49 Criminal legal assistance.

After Part IV of the 1986 Act there shall be inserted the following Part—

“PART IVA

CRIMINAL LEGAL ASSISTANCE

Registration

25A Criminal Legal Assistance Register.

(1) The Board shall, in accordance with the provisions of this section, establish and maintain a Criminal Legal Assistance Register (“the Register”) of—
  (a) solicitors who are eligible to provide criminal legal assistance; and
  (b) subject to subsection (4) below, the firms with which the solicitors mentioned in paragraph (a) above are connected.

(2) A sole solicitor who wishes to provide criminal legal assistance shall require to be registered both as a solicitor and as a firm.

(3) Only those solicitors whose names appear on the Register may provide criminal legal assistance; and, subject to subsection (4) below, a solicitor may provide criminal legal assistance only when working in the course of a connection with a registered firm.

(4) A solicitor employed by the Board under section 28A of this Act shall require to be registered, and the entry relating to his name on the Register shall include a note that he is so employed; but the Board shall not be regarded as a firm for the purposes of this section, and shall not itself require to be registered.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) An application for entry on the Register shall be made in such form as the Board may determine, and shall be accompanied by such documents as the Board may specify, which shall include, in the case of a solicitor, a copy of his practising certificate.

(6) Before making any decisions as to the matters mentioned in subsection (5) above the Board shall—

(a) send to the Law Society and to such other persons and bodies as it considers appropriate a draft of its proposals in that regard, inviting their comments on those proposals within such period, being not less than 8 weeks from the date on which the draft is sent, as it may specify; and

(b) consider any such comments timeously received by it,

but, where it amends those proposals in the light of any such comments, it shall not be required to re-intimate the amended proposals to any of those who were invited to comment.

(7) Subject to subsection (15) below, where a solicitor is connected with a firm the Board shall not consider his application unless the firm—

(a) is already registered; or

(b) has also applied for registration.

(8) On receipt of an application the Board shall make such enquiries as it thinks appropriate for the purpose of determining whether the applicant complies with the relevant provisions of the code; and it may for that purpose use the powers conferred on it by section 35A of this Act.

(9) Subject to subsection (10) below, where the Board is satisfied that an applicant complies with the code and, in the case of a solicitor, is not otherwise disqualified from providing criminal legal assistance, it shall make the appropriate entry on the Register.

(10) Subject to subsection (15) below, where a solicitor is connected with a firm, the Board shall not enter his name on the Register unless the firm's name is already entered on the Register.

(11) Where a solicitor is connected with a firm or firms, the name or names of which appear on the Register, the entry relating to that solicitor shall include the name of that firm or those firms.

(12) Where the Board decides to refuse an application it shall forthwith intimate that decision to the applicant, and shall as soon as practicable thereafter send him or them, by recorded delivery, a written note of its reasons.

(13) An applicant aggrieved by a decision of the Board to refuse registration may, within 21 days of the receipt of the notification of the Board's reasons under subsection (12) above, appeal to the Court of Session against that decision.

(14) An appeal under subsection (13) above may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit.

(15) Where a solicitor who is seeking registration, or is registered, is connected with more than one firm the requirements of subsections (7) and (10) above shall be

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satisfied if one of those firms has applied for registration or, as the case may be, is registered.

Code of practice

25B **Code of practice in relation to criminal legal assistance.**

(1) The Board shall prepare a draft code of practice in relation to the carrying out by solicitors of their functions with regard to the provision of criminal legal assistance and, without prejudice to the generality of the foregoing, the code may include provision as to—

(a) the conditions to be complied with in order to qualify for registration, including—

(i) the attendance by the solicitor at a sufficient number of specified courses relevant to the provision of criminal legal assistance, including courses in criminal law, evidence and pleading and professional ethics;

(ii) the keeping of records in a particular format;

(b) the standards of conduct expected of a solicitor providing or proposing to provide criminal legal assistance;

(c) the manner in which a solicitor should conduct a case and represent his client, including—

(i) the passage of timeous and accurate information to the client in relation to his case;

(ii) the frequency of meetings with the client;

(iii) the giving of advice to the client as to the consequences of any decision made by the client in relation to his defence;

(iv) the taking of such precognitions as may be necessary;

(v) the conduct of relations with the prosecution;

(d) the manner in which applications for criminal legal assistance are to be presented;

(e) the monitoring of a solicitor's performance with a view to a decision by the Board as to whether he should continue to be registered, including—

(i) periodic review of his handling of particular cases by other solicitors or by the Board;

(ii) the extent to which he attends courses relevant to the provision of criminal legal assistance, including courses in criminal law, evidence and pleading and professional ethics;

(f) the manner in which records are kept, including—

(i) maintaining books of account, and presentation of accounts to the Board, in a specified format;

(ii) office procedures;

(iii) time recording systems;

(iv) instructions given to the staff,

and any other matter relating to the organisation of or accounting for criminal legal assistance which appears to the Board to be relevant.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The code may make different provision in relation to firms and solicitors including, in relation to solicitors employed by the Board by virtue of section 28A of this Act, different provision to reflect the fact that they are so employed.

(3) The Board shall—

(a) send a copy of the draft code prepared by it under subsection (1) above to the Law Society and to such other persons and bodies as it considers appropriate, inviting their comments on the draft within such period, being not less than 8 weeks from the date on which the draft is sent, as it may specify; and

(b) consider any such comments timeously received by it,

but, where it amends the draft code in the light of any such comments, it shall not be required to re-intimate the amended code to any of those who were invited to comment.

(4) After carrying out the consultation mentioned in subsection (3) above the Board shall submit the draft code to the Secretary of State for his approval.

(5) The Secretary of State may approve the draft code, with or without modifications.

(6) When the Secretary of State has approved the draft code under subsection (5) above he shall—

(a) return the draft to the Board; and

(b) specify the date upon which it is to come into force and how the Board is to publish it.

(7) The Board—

(a) shall make and publish the code by the date and in the manner specified by the Secretary of State under subsection (6) above; and

(b) may make a copy of the code available to any person requesting one, on payment of such sum, if any, towards the cost of preparation, publication and, where relevant, postage, as it considers appropriate.

(8) The Board shall keep under review the code prepared under this section and may from time to time revise it, and the provisions of this section shall apply in relation to any revision of the code as they apply in relation to the version originally prepared.

25C **Supervision of registered solicitors and firms.**

(1) Solicitors and firms whose names appear on the Register ("registered solicitors" and "registered firms") shall comply with the requirements of the code.

(2) The Board shall monitor the carrying out by registered solicitors and firms of their duty under subsection (1) above.

(3) For the purpose of carrying out its duty under subsection (2) above the Board may use the powers conferred on it by sections 35A and 35B of this Act.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Removal of name from Register

25D **Removal of name from Register following failure to comply with code.**

(1) Where it appears to the Board (whether or not following a complaint made to it) that a registered firm or solicitor may not be complying with the code, it shall investigate the matter in such manner as it thinks fit, and shall give the firm or solicitor concerned an opportunity to make representations.

(2) For the purpose of carrying out its duty under subsection (1) above the Board may use the powers conferred on it by sections 35A and 35B of this Act.

(3) Following an investigation under subsection (1) above, the Board may give the firm or solicitor concerned an opportunity, within such time as it may specify, to remedy any defect in their or his compliance with the code.

(4) Where, after carrying out the procedures mentioned in subsection (1) above and, where a time limit has been set under subsection (3) above, after the expiry of that time limit, the Board is satisfied that—

(a) the firm are not complying with the code, it shall remove the names of the firm and, subject to subsection (5) below, of any registered solicitors connected with the firm from the Register;

(b) the solicitor is not complying with the code, it shall remove his name from the Register.

(5) Where a registered solicitor mentioned in subsection (4)(a) above is also connected with another registered firm, the Board shall not remove his name from the Register, but shall alter the entry against his name in the Register so as to remove therefrom the name of the firm whose name has been removed from the Register.

(6) Where the Board removes the name of a solicitor from the Register the solicitor shall—

(a) in accordance with arrangements approved by the Board, forthwith, and without waiting for the resolution of any appeal, transfer—

(i) any work currently being undertaken by him for any client by way of criminal legal assistance; and

(ii) notwithstanding any lien to which he might otherwise be entitled, any documents connected with any such work,

to a registered solicitor; and

(b) in accordance with section 25A(3) of this Act, stop providing criminal legal assistance.

(7) Where the Board removes the name of a firm or solicitor from the Register it shall forthwith intimate that removal to the firm or solicitor concerned, and shall as soon as practicable thereafter send them or him, by recorded delivery, a written note of its reasons for its decision.

(8) A firm or solicitor aggrieved by a decision of the Board under subsection (4) above may, within 21 days of the receipt of the notification under subsection (7) above, appeal to the Court of Session against that decision.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) An appeal under subsection (8) above may be on questions of both fact and law and the court, after hearing such evidence and representations as it considers appropriate, may make such order as it thinks fit; but the making of such an appeal shall not have the effect of restoring the firm's or solicitor's name to the Register.

25E **Further provision as to removal of name from Register.**

(1) Where the Board is satisfied, whether on being so informed by the solicitor concerned or not, that a registered solicitor—
   (a) has become connected with an unregistered firm; and
   (b) is no longer connected with a registered firm,
   it shall remove his name from the Register.

(2) Subsections (6) to (9) of section 25D of this Act apply in relation to a solicitor whose name is removed from the Register under subsection (1) above as they apply in relation to a solicitor whose name is removed from the Register under subsection (4) of that section.

25F **Publication of Register.**

(1) The Board shall make available for inspection, without charge—
   (a) the Register;
   (b) any decision refusing an application for entry on the Register; and
   (c) any decision removing the name of a firm or solicitor from the Register,
   and the publication of a decision such as is mentioned in paragraphs (b) or (c) above shall be accompanied by a statement of the reasons for the decision.

(2) The Board shall, as soon as is practicable after 1st December in each year, send a copy of the current Register to the Secretary of the Law Society.

(3) When any change is made to the Register in the course of a year, the Board shall, as soon as is practicable, send written notice of that change to the Secretary of the Law Society.".

Commencement Information

I11 S. 49 wholly in force at 1.10.1998; s. 49 not in force at Royal Assent see s. 65(2); s. 49 in force for certain purposes at 1.10.1997, for certain further purposes at 1.4.1998 and for all purposes at 1.10.1998 by S.I. 1997/2323, art. 6(1), **Sch. 3**

Employment of solicitors

50 Employment of solicitors in relation to criminal legal assistance.

After section 28 of the 1986 Act there shall be inserted the following section—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"28A Power of Board to employ solicitors to provide criminal assistance.

(1) The Secretary of State may, in accordance with the provisions of this section, provide for the carrying out of a study into the feasibility of providing criminal legal assistance by means of solicitors employed directly by the Board and, accordingly, may by regulations made under this section empower the Board to employ solicitors for the purpose of providing criminal legal assistance.

(2) The Board shall not, by virtue of this section, employ more solicitors than are necessary to enable it to maintain at all times a working staff of such number of full-time or part-time solicitors as will equal six full-time solicitors; and any solicitor employed by the Board on a casual or temporary basis to fill a vacancy left by the absence on leave or because of illness of a permanent appointee shall require to be a registered solicitor.

(3) The Secretary of State may authorise the Board to make such preparations for the feasibility study as will enable it to begin the study as soon as regulations under subsection (1) above come into force; and such preparations may relate to the purchase and equipping of heritable and moveable property and the employment of staff including, but only for the purposes of training, solicitors.

(4) The provisions of paragraph 8 of Schedule 1 to this Act shall apply to solicitors employed by the Board by virtue of this section as they apply to employees appointed by the Board under that paragraph.

(5) Regulations made by the Secretary of State under this section may make such provision as appears to him to be appropriate for the purposes of this section and, without prejudice to the generality of the foregoing, may—
   (a) specify in which area or areas employed solicitors are to be used; and
   (b) make different provision in relation to different areas.

(6) Regulations under this section may provide that where the Board has by virtue of this section employed solicitors to provide criminal legal assistance in any area, the Board may, subject to subsection (7) below, require as many of the persons seeking criminal legal assistance in that area as it considers appropriate to instruct the solicitors employed by it.

(7) In requiring persons seeking criminal legal assistance to instruct solicitors employed by the Board, the Board shall, where there is or may be a conflict of interest, make provision for any particular person to be re-allocated to another solicitor or, where registration is in force, to a registered solicitor in the area.

(8) Regulations made under this section may make such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient.

(9) Sections 26, 27 and 28 of this Act shall not apply in relation to solicitors employed by the Board by virtue of this section.

(10) Within three years of the date on which regulations made under subsection (1) above first come into effect, the Secretary of State shall lay before each House of Parliament a report on the results of the feasibility study.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(11) This section, and the provisions of this Act mentioned in subsection (12) below, shall cease to have effect five years after the date on which regulations made under subsection (1) above first come into effect.

(12) The provisions referred to in subsection (11) above are—

(a) in section 4, subsection (2)(aa) and (3)(ab);

(b) in section 11—

(i) in subsection (1) the words "or (3)"; and

(ii) subsections (3) and (4);

(c) in section 12(2), the words "; but does not apply to the salary payable to a solicitor employed by the Board by virtue of section 28A of this Act.";

(d) section 25A(4);

(e) in section 25B(2), the words from "including" to the end; and

(f) in section 31(1A), paragraph (c).

(13) Prior to the date on which this section ceases to have effect the Board shall make arrangements for the transfer to solicitors or, where registration is in force, registered solicitors not employed by it of any work currently being undertaken by way of criminal legal assistance by solicitors employed by it by virtue of this section.

(14) On the date when this section ceases to have effect the Board shall remove from the Register the name of any solicitor employed by it by virtue of this section who is not otherwise entitled to be registered.".

Fixed payments for criminal legal assistance

51 Fixed payments.

In section 33 of the 1986 Act (fees and outlays of counsel and solicitors), after subsection (3) there shall be inserted the following subsections—

"(3A) The Secretary of State may by regulations under this section prescribe fixed payments to be made to a solicitor in respect of—

(a) his professional services in providing criminal legal assistance; and

(b) such outlays as may be so prescribed.

(3B) A solicitor who provides any criminal legal assistance in respect of which a fixed payment has been prescribed in regulations made under subsection (3A) above shall not be entitled to any other payment out of the Fund in respect of the professional services and outlays mentioned in that subsection, but shall be entitled to reimbursement of any other outlays which he has properly incurred.".

52 Contracts for the provision of criminal legal assistance.

After section 33 of the 1986 Act there shall be inserted the following section—

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

" Contracts for the provision of criminal legal assistance

33A Contracts for the provision of criminal legal assistance.

(1) The Secretary of State may by regulations made under this section empower the Board to enter into contracts with registered firms for the provision by registered solicitors connected with those firms of criminal legal assistance.

(2) Regulations under this section may prescribe—
  (a) the procedures to be followed by the Board in awarding any such contract; and
  (b) subject to subsection (3) below, any terms and conditions which are to be included in any such contract.

(3) Regulations under this section shall provide that any contract entered into by virtue of this section shall include a provision that, in the event of the termination of the contract, or a breach of it by the registered firm concerned, the Board may—
  (a) withhold payments under the contract; and
  (b) require the firm to secure the transfer of—
    (i) any work currently being undertaken by any solicitor connected with them for any client by way of criminal legal assistance; and
    (ii) notwithstanding any lien to which any such solicitor might otherwise be entitled, any documents connected with any such work,

  to a registered solicitor.

(4) Regulations under this section may provide that where the Board has by virtue of this section entered into contracts with any registered firms for the provision of criminal legal assistance in any area, then, unless it seems to the Board to be inappropriate in a particular case, any person seeking such assistance in that area shall be required to instruct a registered solicitor connected with one of those firms.

(5) Any money due to a firm under a contract made by virtue of this section shall be paid to the firm—
  (a) firstly, out of any amount payable by the client in accordance with section 11(2) of this Act;
  (b) secondly, in priority to all other debts, out of any expenses which by virtue of an order of a criminal court are payable to that client by any other person in respect of the matter in connection with which the criminal legal assistance was given; and
  (c) thirdly, by the Board out of the Fund.

(6) For the purposes of sections 32 and 33 of this Act, the money paid to a firm, as provided in subsection (5) above, in respect of a contract made by virtue of this section shall be taken to be a payment made in accordance with this Act, and no solicitor connected with such a firm shall be entitled to any other payment out of the Fund in respect of any work done by him by virtue of such a contract.".

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Powers of investigation

53 Power of investigation of Scottish Legal Aid Board.

After section 35 of the 1986 Act there shall be inserted the following sections—

"**35A Power of Board to require information.**

(1) The Board may, for the purpose of determining whether—
  (a) a solicitor or any employee of him or of his firm may be committing a criminal offence in connection with criminal legal assistance; or
  (b) a solicitor may be seeking, in relation to criminal legal assistance, to recover from the Fund money to which he is not entitled, as, for example, by performing unnecessary work; or
  (c) a registered firm or solicitor is or may not be complying with the code,

require any solicitor or firm to produce such information and documents relating wholly or partly to the provision of criminal legal assistance as it may specify, at such time and place as it may specify.

(2) If it appears to the Board that there is good reason to do so, it may authorise any of its officers to require any solicitor or firm to produce forthwith any such information or documents as are mentioned in subsection (1) above.

(3) An officer of the Board acting under subsection (2) above shall, if requested to do so, produce evidence of his authorisation by the Board.

(4) The power under this section to require production of information and documents includes power—
  (a) to require any person, who is a present or past partner or employee of any such solicitor or firm and who appears to the Board or one of its officers to have any information or documents, to produce them;
  (b) if any documents are produced—
    (i) to take copies of them or extracts from them; and
    (ii) to require the person producing them, or any other person who is a present or past partner or employee of the solicitor or firm in question, to provide an explanation of them;
  (c) if any document or information is held other than in legible form, to require the production of a copy of it in legible form; and
  (d) if documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Where any person claims a lien over any documents required to be produced under this section the production is without prejudice to the lien.

(6) Any person who is required under this section to produce information or documents shall, notwithstanding any duty of confidentiality, comply with that requirement; and if he fails to comply he shall be guilty of an offence and liable—
  (a) on conviction on indictment, to a fine; and
  (b) on summary conviction, to a fine not exceeding the statutory maximum.

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(7) Where a person is charged with an offence under subsection (6) above in respect of a requirement to produce documents, it shall be a defence for him to prove that they were not in his possession or under his control and that it was not reasonably practicable for him to comply with the requirement.

(8) No information or documents obtained by the Board by virtue of this section or section 35B of this Act shall be used by it or by any of its employees for any purpose other than the purposes mentioned in subsection (1) above.

(9) Section 34 of this Act applies in relation to a contravention of subsection (8) above as it applies in relation to a contravention of subsection (1) of that section.

Power of entry

35B Power of Board to enter premises and investigate.

(1) Where a sheriff is satisfied, by evidence on oath given on behalf of the Board by a person authorised by the Board for that purpose, that there are reasonable grounds for believing that—
   (a) a solicitor or any employee of him or his firm may be committing a criminal offence in connection with criminal legal assistance; or
   (b) a solicitor may be seeking, in relation to criminal legal assistance, to recover from the Fund money to which he is not entitled, as, for example, by performing unnecessary work; or
   (c) a registered firm or solicitor may not be complying with the code; or
   (d) there are on any premises documents the production of which has been required under section 35A of this Act and which have not been produced in accordance with that requirement,

   he may issue a warrant under this section to a person authorised for that purpose by the Board.

(2) A person holding a warrant under this section may—
   (a) search the premises named in the warrant;
   (b) take possession of any documents which appear to him to relate, wholly or partly, to any criminal legal assistance provided in or from those premises;
   (c) take copies of any such documents;
   (d) take any other steps which appear to him to be necessary for preserving those documents or preventing their destruction or interference with them; and
   (e) require any person named in the warrant to provide an explanation of the documents or to state where they may be found.

(3) The duty to produce documents and to provide explanations applies notwithstanding any duty of confidentiality, but where any person claims a lien over any documents the production is without prejudice to that lien.

(4) A warrant under this section shall continue in force for the period of one month from the date when it is issued.

(5) The Board may retain any documents which it has obtained under this section for—

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(a) a period of not more than 12 months; or
(b) where, within that period, proceedings to which the documents are relevant are commenced by the Board, the Law Society or a prosecutor, until the conclusion of those proceedings.

(6) Any person who intentionally obstructs the execution of a warrant issued under this section or who fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(e) above shall be guilty of an offence, and liable—
(a) on conviction on indictment, to a fine; and
(b) on summary conviction, to a fine not exceeding the statutory maximum.

Suspension of payments to solicitor

35C Suspension of payments to solicitor.

(1) Where it appears to the Board that any solicitor has, in connection with the provision of criminal legal assistance, acted in such a way as to justify action being taken against him by the Law Society or the Scottish Solicitors' Discipline Tribunal it shall refer the matter to either of those bodies so that they can consider whether to take action under section 31(3) of this Act.

(2) Where it appears to the Board that any solicitor may have been guilty of a criminal offence it shall refer the matter to the police or the procurator fiscal, so that they can consider whether any criminal offence may have been committed.

(3) Where the Board refers a matter to any of the bodies mentioned in subsections (1) or (2) above, it may disclose to that body any information or documents which it has obtained from the solicitor concerned under this Act.

(4) Where the Board has referred a matter to any of the bodies mentioned in subsections (1) or (2) above it may—
(a) suspend the solicitor concerned from providing criminal legal assistance; and
(b) withhold payment of any fees due to him in respect of such work,
pending the outcome of the investigation by the body or bodies to which the matter has been referred.

(5) A solicitor who is suspended from providing criminal legal assistance under subsection (4)(a) above shall, in accordance with arrangements approved by the Board, transfer—
(a) any work currently being undertaken by him for any client by way of criminal legal assistance; and
(b) notwithstanding any lien to which he might otherwise be entitled, any documents connected with any such work,
to a solicitor (or, where registration is in force, a registered solicitor).".

54 Regulations in relation to criminal legal assistance.

After section 41 of the 1986 Act there shall be inserted the following section—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"**41A Regulations in relation to criminal legal assistance.**

(1) The Secretary of State may by regulations made under this section provide that any reference in, under or by virtue of this Act to "criminal legal assistance" shall relate, for any of the purposes of this Act, to such class or classes of criminal legal assistance as he thinks appropriate.

(2) Without prejudice to the generality of subsection (1) above, the power conferred by that subsection may be exercised by reference to—

(a) the class or classes of person who are to receive criminal legal assistance;

(b) the class or classes of case in respect of which such assistance is to be given;

(c) the nature of the work;

(d) the place or places where the assistance is to be provided;

(e) the period for which it is to be provided,

or to any combination of the foregoing; and different provision may be made under that subsection for different purposes, or in relation to different areas or different periods.".

PART VI

MISCELLANEOUS AND GENERAL

Miscellaneous

55 Liberation of child by police.

(1) Section 43 of the 1995 Act (arrangements where child arrested) shall be amended in accordance with this section.

(2) In subsection (1), for the words from "shall", in the second place where it occurs, to the end there shall be substituted the words—

"may liberate him—

(a) on a written undertaking being entered into by him or his parent or guardian that he will attend at a court and at a time specified in the undertaking; or

(b) unconditionally.".

(3) In subsection (6)—

(a) for the words from "is" to "diet" there shall be substituted the words " fails to appear at the court and at the time specified in the undertaking entered into by him or on his behalf under subsection (1) above "; and

(b) after the word "conviction" there shall be inserted the words " of any charge made against him at the time he was liberated under that subsection ".

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56 Powers of the court on remand or committal of children and young persons.

(1) Section 51 of the 1995 Act (remand or committal of children and young persons) shall be amended in accordance with this section.

(2) In subsection (1)—

(a) in paragraph (a), for the words "in whose area the court is situated" there shall be substituted the words " which it considers appropriate ";

(b) after paragraph (a) there shall be inserted the following paragraph—

"(aa) if the person is over 16 years of age and subject to a supervision requirement, the court may, instead of committing him to prison, commit him to the local authority which it considers appropriate to be detained as mentioned in sub-paragraphs (i) or (ii) of paragraph (a) above;" and

(c) in paragraph (b), after the "age", where it first occurs, there shall be inserted the words " to whom paragraph (aa) above does not apply ".

[F21](3) . . . . . .

(4) After subsection (4) there shall be inserted the following subsection—

"(4A) The local authority which may be appropriate in relation to a power to commit a person under paragraphs (a) or (aa) of subsection (1) or subsection (4) above may, without prejudice to the generality of those powers, be—

(a) the local authority for the area in which the court is situated;

(b) if the person is usually resident in Scotland, the local authority for the area in which he is usually resident;

(c) if the person is subject to a supervision requirement, the relevant local authority within the meaning of Part II of the [M38]Children (Scotland) Act 1995 in relation to that requirement.".

Textual Amendments

F21 S. 56(3) repealed (28.3.2011) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 7 para. 68**; S.S.I. 2011/178, art. 2, Sch.

Marginal Citations

M38 1995 c.36.

57 Precognitions.

(1) After section 67 of the 1995 Act, there shall be inserted the following section—

"67A Failure of witness to attend for, or give evidence on, precognition.

(1) This section applies where a prosecutor has obtained a warrant to cite a witness for precognition and has served a citation for precognition on the witness.

(2) Where this section applies, a witness who—

(a) fails without reasonable excuse, after receiving at least 48 hours notice, to attend for precognition by a prosecutor at the time and place mentioned in the citation served on him; or

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(b) refuses when so cited to give information within his knowledge regarding any matter relative to the commission of the offence in relation to which such precognition is taken,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a term of imprisonment not exceeding 21 days.”.

(2) In section 140 of the 1995 Act (citation)—

(a) in subsection (1), after the words “for” there shall be inserted the words “—

(a) the citation of witnesses for precognition by the prosecutor, whether or not any person has been charged with the offence in relation to which the precognition is taken; and

(b)”;

and

(b) subsection (3) shall cease to have effect.

58 Information concerning jurors.

(1) Section 85 of the 1995 Act (citation and attendance of jurors) shall be amended as follows.

(2) In subsection (1), the words from “but” to the end shall cease to have effect.

(3) For subsection (2), there shall be substituted the following subsections—

“(2) A list of jurors shall—

(a) contain not less than 30 names;

(b) be prepared under the directions of the clerk of the court before which the trial is to take place;

(c) be kept at the office of the sheriff clerk of the district in which the court of the trial diet is situated; and

(d) be headed “List of Assize for the sitting of the High Court of Justiciary (or the sheriff court of». at».) on the». of».”.

(2A) The clerk of the court before which the trial is take place shall, on an application made to him by or on behalf of an accused, supply the accused, free of charge, on the day on which the trial diet is called, and before the oath has been administered to the jurors for the trial of the accused, with a copy of a list of jurors prepared under subsection (2) above.

(2B) Where an accused has been supplied under subsection (2A) above with a list of jurors—

(a) neither he nor any person acting on his behalf shall make a copy of that list, or any part thereof; and

(b) he or his representative shall return the list to the clerk of the court after the oath has been administered to the jurors for his trial.

(2C) A person who fails to comply with subsection (2B) above shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.”.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

59 Certification of previous convictions in criminal proceedings.

(1) Section 285 of the 1995 Act (proof of previous convictions) shall be amended in accordance with the following provisions of this section.

(2) In subsection (2)—

(a) for the words "or on behalf of the Chief Constable of Strathclyde" there shall be substituted the words " the Secretary of State or by a person authorised by him to sign such a certificate ";

(b) for the words "by the person by or on whose behalf the certificate is signed" there shall be substituted the words " in pursuance of a service provided and maintained by the Secretary of State under or by virtue of section 36 of the [M39]Police (Scotland) Act 1967 or by or on behalf of the Commissioner of Police of the Metropolis ".

(3) In subsection (5)—

(a) for the words "or on behalf of the Chief Constable of Strathclyde" there shall be substituted the words " the Secretary of State or by a person authorised by him to sign such a certificate ";

(b) for the words "or on behalf of the Chief Constable" there shall be substituted the words " the Secretary of State or by a person authorised by him to sign such a certificate or by or on behalf of ".

Marginal Citations

M39 1967 c.77.

60 Grants for forensic medical services.

The Lord Advocate may out of money provided by Parliament make grants of such amount and on such conditions as he considers appropriate to any person for the provision to him by that person of forensic medical services.

61 Confiscation of alcohol from persons under 18.

(1) Where a constable has reasonable grounds for suspecting that a person in a public place—

(a) is under the age of 18; and

(b) is in possession of **[**[F22]alcohol**]**, within the meaning of the [M40]Licensing (Scotland) Act 1976,

he may require that person to surrender **[**[F23]the alcohol**]** to him, and may dispose of it in such manner as he considers appropriate; and he may also require that person to supply him with his name and address.

(2) Where a constable has reasonable grounds for suspecting that a person of or over the age of 18 has **[**[F24]alcohol**]** in his possession in a public place and that that person—

(a) has supplied such **[**[F25]alcohol**]** to a person under the age of 18 for consumption in a public place; or

(b) intends that that **[**[F25]alcohol**]** should be consumed in a public place by a person under the age of 18,

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the constable may require the person in possession of the **[**[F25]alcohol**]** to surrender it to him, and may dispose of it in such manner as he considers appropriate; and he may also require that person to supply him with his name and address.

(3) Subject to subsection (4) below, it shall be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale for a person to fail to comply with a requirement made under subsection (1) or (2) above.

(4) Where a constable makes a requirement such as is mentioned in subsection (1) or (2) above he shall inform the person concerned—

(a) of his suspicion; and

(b) of the fact that failure to comply with a requirement made under either of those provisions is an offence.

(5) A constable may arrest without warrant any person who fails to comply with a requirement made under subsection (1) or (2) above.

(6) In this section "public place" includes—

(a) any place to which the public have access for the time being (whether on payment of a fee or otherwise); and

(b) any place to which the public do not have access but to which the persons mentioned in subsection (1) or (2) have unlawfully gained access,

but does not include licensed premises within the meaning of the Licensing (Scotland) Act **[**[F26]2005 (asp 16)**]**.

[[F27](7) In this section, " alcohol " has the meaning given in section 2 of the Licensing (Scotland) Act 2005 (asp 16). **]**

Textual Amendments

F22 Word in s. 61(1)(b) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(2)(a)** (with s. 143); S.S.I. 2007/472, art. 3

F23 Words in s. 61(1) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(2)(b)** (with s. 143); S.S.I. 2007/472, art. 3

F24 Word in s. 61(2) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(3)(a)** (with s. 143); S.S.I. 2007/472, art. 3

F25 Word in s. 61(2) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(3)(b)** (with s. 143); S.S.I. 2007/472, art. 3

F26 Words in s. 61(6) substituted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(4)** (with s. 143); S.S.I. 2007/472, art. 3

F27 S. 61(7) inserted (1.9.2009 at 5.00 a.m.) by Licensing (Scotland) Act 2005 (asp 16), s. 150(2), **Sch. 6 para. 8(5)** (with s. 143); S.S.I. 2007/472, art. 3

Marginal Citations

M40 1976 c.66.

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General

62 Minor and consequential amendments, and repeals.

(1) The enactments mentioned in Schedule 1 to this Act shall have effect subject to the amendments specified therein, being minor amendments and amendments consequential upon the provisions of this Act.

(2) The enactments mentioned in Schedule 3 to this Act are repealed to the extent specified in the third column of that Schedule.

Commencement Information

I12 S. 62 partly in force, s. 62 not in force at Royal Assent see s. 65(2); s. 62 in force for certain purposes at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); s. 62(1) in force for certain further purposes at 1.10.1997 by S.I. 1997/2323, **art. 6(2)**; s. 62 in force for certain further purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; s. 62(2) in force for certain further purposes at 17.11.1997 by S.I. 1997/2694, **art. 2(1)(2)(c)**; s. 62 in force for certain further purposes at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2**; s. 62(1) in force for certain purposes at 1.1.1998 by S.I. 1997/3004, art. 2, **Sch.**; s. 62 in force for certain further purposes at 1.7.1998 by S.I. 1997/2323, **art. 5(2)**; s. 62 in force for certain further purposes at 1.4.1999 by S.I. 1999/652, art. 2, **Sch.** (with art. 3)

63 Financial provisions.

(1) There shall be paid out of money provided by Parliament any expenses incurred—

(a) by the Secretary of State, under—

(i) section 245C(1) of the 1995 Act (remote monitoring of restriction of liberty orders) (as inserted by section 5 of this Act);

(ii) Part XA of the 1995 Act (Scottish Criminal Cases Review Commission) (as inserted by section 25 of this Act);

[F28](iii) . . . . . .

(b) by the Scottish Legal Aid Board under—

(i) section 28A(1) of the 1986 Act (power of Board to employ solicitors for criminal legal assistance) (as inserted by section 50 of this Act); or

(ii) section 33A(1) of the 1986 Act (power of Board to enter into contracts for provision of criminal legal assistance) (as inserted by section 52 of this Act); or

(c) by the Lord Advocate under section 60 of this Act.

(2) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

Textual Amendments

F28 S. 63(1)(a)(iii) repealed (1.4.2013) by Police and Fire Reform (Scotland) Act 2012 (asp 8), s. 129(2), **Sch. 8 Pt. 1**; S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

Commencement Information

I13 S. 63 wholly in force at 1.1.1998; s. 63 not in force at Royal Assent see s. 65(2); s. 63(1)(a)(iii)(c)(2) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); s. 63(1)(b) in force at 1.10.1997 by

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S.I. 1997/2323, **art. 6(3)**; s. 63(1)(a)(i) in force at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; s. 63(1)(a)(ii) in force at 1.1.1998 by S.I. 1997/3004, art. 2, **Sch.**

64 Interpretation.

In this Act, unless the context otherwise requires—

"supervised release order" has the same meaning as in section 209 of the 1995 Act (supervised release orders);

"the 1984 Act" means the [M41]Mental Health (Scotland) Act 1984;

"the 1986 Act" means the [M42]Legal Aid (Scotland) Act 1986;

"the 1989 Act" means the [M43]Prisons (Scotland) Act 1989;

"the 1993 Act" means the [M44]Prisoners and Criminal Proceedings (Scotland) Act 1993;

"the 1995 Act" means the [M45]Criminal Procedure (Scotland) Act 1995.

Marginal Citations

M41 1984 c.36.
M42 1986 c.47.
M43 1989 c.45.
M44 1993 c.9.
M45 1995 c.46.

65 Short title, commencement and extent.

(1) This Act may be cited as the Crime and Punishment (Scotland) Act 1997.

(2) This Act, except sections 45 and 46, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different purposes.

(3) In an order under subsection (2) above made in respect of any provision of sections 49 to 54 of this Act, or of paragraph 12 of Schedule 1 to this Act—

(a) different days may be appointed for different provisions;

(b) different days may be appointed for different areas; and

(c) different provisions may be brought into force in relation to different areas.

(4) An order under subsection (2) above may contain such transitional and consequential provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions brought into force.

(5) Subject to subsections (6) and (7) below, this Act shall extend to Scotland only.

(6) Section 4(3) and (5) of this Act shall extend to England and Wales, and section 37(4) of this Act shall extend to England and Wales and Northern Ireland.

(7) The amendment or repeal of any enactment by Schedules 1 or 3 to this Act shall have the same extent as the enactment so amended or, as the case may be, repealed.

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Subordinate Legislation Made

P1 S. 65(2) power partly exercised (10.7.1997): 1.8.1997 appointed for specified provisions by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5)
S. 65(2) power partly exercised (24.9.1997): different dates appointed for specified provisions by S.I. 1997/2323, arts. 3-6, **Schs. 1-3** (with art. 7)
S. 65(2) power partly exercised (10.11.1997): 17.11.1997 appointed for specified provisions by S.I.1997/2694, **art. 2**
S. 65(2) power partly exercised (12.12.1997): 1.1.1998 appointed for specified provisions by S.I. 1997/3004, art. 2, **Sch.**
S. 65(2) power partly exercised (28.2.1999): 1.4.1999 appointed for specified provisions by S.I. 1999/652, art. 2, **Sch.**

Commencement Information

I14 S. 65 partly in force; s. 65 not in force at Royal Assent see s. 65(2); s. 65(1)(5)(7) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5)

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULES

SCHEDULE 1

Section 62(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

Extent Information

E2 Sch. 1: amendments/repeals are coextensive with the enactments they affect see s. 65(7).

The Public Records Act 1958 (c.51)[F29]

Textual Amendments

F29 Sch. 1 para. 1 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(aa)(2)(pp)(3)(y)**

1 . . . . . .

The Police (Scotland) Act 1967 (c.77)

2 (1) The Police (Scotland) Act 1967 shall be amended in accordance with this paragraph.

(2) Section 6(2) (application of certain provisions to appointments of ranks below assistant chief constable) shall cease to have effect.

(3) In section 17 (general functions and duties of constables)—

(a) in subsection (1), for the words "section 321(1) of the [M46]Criminal Procedure (Scotland) Act 1975" there shall be substituted the words " section 135(3) and (4) of the [M47]Criminal Procedure (Scotland) Act 1995 "; and

(b) in subsection (7)(a) after the word "agreements" there shall be inserted the words " or of section 98 of the [M48]Police Act 1996 (cross-border aid of one police force by another) ".

(4) In section 19(3) (amalgamation schemes) for the words from "reimbursed" to the end there shall be substituted the words " provided for by a grant made to the board under section 32 of this Act ".

(5) In section 41(1)(b)(ii) (penalty for assaults on constables) for the words "section 289B of the Criminal Procedure (Scotland) Act 1975" there shall be substituted the words " section 225(8) of the Criminal Procedure (Scotland) Act 1995 ".

(6) In section 46(1)(b) (rewards) after the word "agreements" there shall be inserted the words " or of section 98 of the Police Act 1996 (cross-border aid of one police force by another) ".

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Marginal Citations

M46 1975 c.21.
M47 1995 c.46.
M48 1996 c.16.

PROSPECTIVE

The Firearms Act 1968 (c.27)

3 In section 51 of the Firearms Act 1968 (penalties for offences), after subsection (2) there shall be inserted the following subsection—

"(2A) Nothing in subsection (2) above or Schedule 6 to this Act shall prejudice the operation of section 205A of the Criminal Procedure (Scotland) Act 1995 (imprisonment for life on further conviction of certain offences).".

The Superannuation Act 1972 (c.11)

4 In Schedule 1 to the Superannuation Act 1972 (kinds of employment to which a scheme under section 1 of that Act may apply), at the end of the list of "Royal Commissions and other Commissions" insert—

"Scottish Criminal Cases Review Commission.".

The House of Commons Disqualification Act 1975 (c.24)

5 In the House of Commons Disqualification Act 1975, in Part II of Schedule 1 (bodies of which all members are disqualified), at the appropriate place insert—

"The Scottish Criminal Cases Review Commission.".

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

6 (1) The Sexual Offences (Scotland) Act 1976 shall cease to have effect.

(2) This paragraph shall be deemed to have come into force on 1st April 1996 and the Sexual Offences (Scotland) Act 1976 shall for the purposes of the [M49]Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 be regarded as a repealed enactment within the meaning of that Act.

Marginal Citations

M49 1995 c.40.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

7 In Part I of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons ineligible for jury service), in Group B, after paragraph (w) insert—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

"(wa) members and employees of the Scottish Criminal Cases Review Commission;".

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

8 In section 3D(1)(b) of the Criminal Justice (Scotland) Act 1980 (interpretation of sections 3A to 3C), for the words "section 3 of this Act" there shall be substituted the words " section 15(6) of the [M50]Criminal Procedure (Scotland) Act 1995 ".

Marginal Citations

M50 1995 c. 46.

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

Commencement Information

I15 Sch. 1 para. 9 partly in force; Sch. 1 para. 9 not in force at Royal Assent see s. 65(2); Sch. 1 para. 9(1)(3)(b)(4)-(6)(10)(14) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts 4, 5); Sch. 1 para. 9(2)(3)(a)(8)(9)(15)(16) in force at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2**

[F30]9 . . . . . .

Textual Amendments

F30 Sch. 1 para. 9 repealed (5.10.2005) by Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), s. 333(2), **Sch. 5 Pt. 1**; S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

The Repatriation of Prisoners Act 1984 (c.47)

Commencement Information

I16 Sch. 1 para. 10 partly in force; Sch. 1 para. 10 not in force at Royal Assent see s. 65(2); Sch. 1 para. 10(1)(2)(b) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); Sch. 1 para. 10(3) in force at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

10 (1) The Repatriation of Prisoners Act 1984 shall be amended in accordance with this paragraph.

(2) In section 2(4)(b) (transfer of prisoners out of the United Kingdom)—

[F31](a) . . . . . .

(b) after sub-paragraph (ii) there shall be inserted the following sub-paragraph—

"(iia) released subject to a supervised release order made under section 209 of the [M51]Criminal Procedure (Scotland) Act 1995;".

[F32](3) . . . . . .

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Textual Amendments

F31 Sch. 1 para. 10(2)(a) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 121(1)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(Y)(aa)(2)(pp)(3)(y)**

F32 Sch. 1 para. 10(3) repealed (18.12.2003) by Criminal Justice Act 2003 (c. 44), s. 336(2), **Sch. 37 Pt. 8**

Marginal Citations

M51 1995 c.46.

The Foster Children (Scotland) Act 1984 (c.56)

11 In section 13 of the Foster Children (Scotland) Act, for the words "section 47 of the [M52]Children and Young Persons (Scotland) Act 1937" to the end there shall be substituted the words " section 55 of the [M53]Children (Scotland) Act 1995 (child assessment orders) as giving the local authority reasonable cause for the suspicion mentioned in subsection (1)(a) of that section ".

Marginal Citations

M52 1937 c.37.

M53 1995 c.36.

The Legal Aid (Scotland) Act 1986 (c.47)

Commencement Information

I17 Sch. 1 para. 12 partly in force; Sch. 1 para. 12 not in force at Royal Assent see s. 65(2); Sch. 1 para. 12(1)(7) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); Sch. 1 para. 12(5)(6) in force at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

12 (1) The Legal Aid (Scotland) Act 1986 shall be amended in accordance with this paragraph.

(2) In section 4 (Scottish Legal Aid Fund)—

(a) in subsection (2)—

(i) in paragraph (a), for the words "by him" there shall be substituted the words " or in respect of payments made in accordance with regulations made under section 33(3A) of this Act ";

(ii) after paragraph (a) there shall be inserted the following paragraphs—

"(aa) any expenses incurred by the Board in connection with the provision of criminal legal assistance by solicitors employed by it by virtue of section 28A of this Act;

(ab) any sums payable by the Board under contracts made by virtue of section 33A of this Act;"; and

(b) in subsection (3), after paragraph (a) there shall be inserted the following paragraphs—

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"(aa) any contribution payable to the Board by any person in pursuance of section 11 of this Act;

(ab) any award of expenses made by a criminal court to a person to whom criminal legal assistance has been provided by a solicitor employed by the Board by virtue of section 28A of this Act;".

(3) In section 11 (clients' contributions)—

(a) in subsection (1), after the words "subsection (2)" there shall be inserted the words " or (3) "; and

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

"(3) Where a client to whom paragraphs (a) and (b) of subsection (2) above apply receives criminal legal assistance from a solicitor employed by the Board by virtue of section 28A of this Act, he shall pay to the Board such contribution in respect of that assistance as the Board may, subject to subsection (4) below, determine.

(4) The amount determined by the Board under subsection (3) above shall not exceed the amount which could have been charged in respect of the assistance in question by a solicitor.".

(4) In section 12 (payment of fees or outlays otherwise than through clients' contributions)—

(a) at the end of subsection (2) there shall be inserted the words—

"; but does not apply to the salary payable to a solicitor employed by the Board by virtue of section 28A of this Act."; and

(b) for the word "contribution", where it appears in subsection (3)(a), there shall be substituted the word " amount ".

(5) In section 21 (scope and nature of criminal legal aid), in subsection (1)(aa), for the word "discretionary" there shall be substituted the word " designated ".

(6) In section 22 (automatic availability of legal aid), at the end of subsection (1) there shall be inserted the words—

"and, in relation to paragraph (dc) above, "accused person" includes a person authorised to institute or continue an appeal under section 303A(4) of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person).".

(7) After section 25 (legal aid in appeals) there shall be inserted the following section—

"**25AA Legal aid in respect of appeals under section 303A of the 1995 Act.**

(1) Subject to the provisions of this section, section 25 of this Act applies to any appeal, within the meaning of section 303A of the Criminal Procedure (Scotland) Act 1995 (transfer of rights of appeal of deceased person), instituted or continued by a person (an "authorised person") authorised under subsection (4) of the said section 303A.

(2) Where an authorised person is continuing an appeal which has been instituted by the deceased person, and criminal legal aid, within the meaning of section 25, has been awarded to the deceased person in connection with

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any proceedings, such legal aid shall continue to be made available to the authorised person in respect of those proceedings.

(3) Where—

(a) the deceased person had applied for criminal legal aid within the meaning of section 25, but the application had not been determined prior to his death; or

(b) the deceased person had not applied for such legal aid,

the authorised person shall be regarded as the applicant and, in a case to which paragraph (b) applies, may apply for such legal aid.

(4) Notwithstanding subsection (3) above—

(a) in section 25(2)(a) of this Act, where the authorised person is the executor of the deceased, any reference to—

(i) the financial circumstances of the applicant shall be construed as a reference to the value of the deceased person's estate; and

(ii) the applicant's dependants shall be construed as a reference to the beneficiaries of the deceased's estate; and

(b) any reference in section 25(2)(c) or (2A) of this Act to whether it is in the interests of justice that the applicant should receive legal aid shall be construed as a reference to whether it would have been in the interests of justice that the deceased should have received legal aid.".

(8) In section 31 (solicitors and counsel)—

(a) in subsection (1), for the words from the beginning to "below" there shall be substituted the words " Subject to subsection (1A) below, ";

(b) after subsection (1) there shall be inserted the following subsection—

"(1A) Subsection (1) above is subject to—

(a) section 25A(3) of this Act;

(b) section 30(2) of this Act;

(c) regulations made under section 28A(6) of this Act;

(d) regulations made under section 33A(4) of this Act; and

(e) regulations made under subsection (9) below.".

(9) In section 33 (fees and outlays of counsel and solicitors), in subsection (1), at the beginning there shall be inserted the words " Subject to subsections (3A) and (3B) below, ".

(10) In section 41 (interpretation)—

(a) after the definition of "civil legal aid" there shall be inserted the following definition—

""the code" means the code of practice in relation to criminal legal assistance for the time being in force under section 25B of this Act;";

(b) after the definition of "criminal legal aid" there shall be inserted the following definitions—

""criminal legal assistance" means criminal legal aid and advice and assistance in relation to criminal matters;

"document" includes information recorded in any form;

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"firm" includes an incorporated practice, a sole solicitor and a law centre;";

(c) after the definition of "incorporated practice" there shall be inserted the following definition—

""law centre" means a body—

(a) established for the purpose of providing legal services to the public generally as well as to individual members of the public; and

(b) which does not distribute any profits made either to its members or otherwise, but reinvests any such profits for the purposes of the law centre;" and

(d) after the definition of "person" there shall be inserted the following definitions—

""the Register" means the Register established and maintained under section 25A of this Act;

"registered firm" means a firm whose name appears on the Register;

"registered solicitor" means a solicitor whose name appears on the Register;

"sole solicitor" means a solicitor practising under his own name or as a single solicitor under a firm name; and

"solicitor connected with a firm" includes a sole solicitor and a solicitor who is a partner, director or employee of a firm, and cognate expressions shall be construed accordingly.".

The Prisons (Scotland) Act 1989 (c.45)

Commencement Information

I18 Sch. 1 para. 13 partly in force; Sch. 1 para. 13 not in force at Royal Assent see s. 65(2); Sch. 1 para. 13(1)(2)(4) in force at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2**

13 (1) The Prisons (Scotland) Act 1989 shall be amended in accordance with this paragraph.

[F33](2) . . . . . .

[F34](3) . . . . . .

(4) In section 27(5) (power of the Secretary of State to discharge prisoners not to affect duties of medical officer) (so far as that subsection continues to have effect by virtue of Schedule 6 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 (existing provisions which continue to have effect in relation to prisoners sentenced before 1st October 1993)) for the word "the", where it occurs for the second time, there shall be substituted the word " any ".

Textual Amendments

F33 Sch. 1 para. 13(2) repealed (31.8.2015) by The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 (S.S.I. 2015/39), art. 1, **Sch. para. 6(b)**

F34 Sch. 1 para. 13(3) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

Commencement Information

I19 Sch. 1 para. 14 partly in force; Sch. 1 para. 14 not in force at Royal Assent see s. 65(2); Sch. 1 para. 14(1)(2)(b)(3)(a)-(d)(8)(10)(b)(11)(a)(18) in force at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**

14 (1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 shall be amended in accordance with this paragraph.

(2) In section 1 (release of prisoners)—

[F35](a) . . . . . .

(b) in subsection (4), for the word "discretionary" there shall be substituted the word " designated ".

(3) In section 2 (duty to release discretionary life prisoners)—

(a) in subsection (2)—

(i) for the words "subsection (1)(b)" there shall be substituted the words " subsection (1) "; and

(ii) before the word "life", in both places where it occurs, there shall be inserted the word " designated ";

(b) in subsection (3), for the words "subsection (1)(a)" there shall be substituted the word " subsection (1) ";

(c) for the word "relevant", where it occurs in subsections (2), (8) and (9), there shall be substituted the word " designated ";

(d) for the word "discretionary" where it occurs in subsections (4), (6), (8) and (9) there shall be substituted the word " designated "; and

[F35](e) . . . . . .

[F35](4) . . . . . .

[F35](5) . . . . . .

[F35](6) . . . . . .

[F35](7) . . . . . .

(8) In section 10 (life prisoners transferred to Scotland)—

(a) for subsection (1) there shall be substituted the following subsection—

"(1) In a case where a transferred life prisoner transferred from England and Wales (whether before or after the commencement of this enactment) is a life prisoner to whom section 28 of the [M54]Crime (Sentences) Act 1997 (duty to release certain life prisoners) applies, this Part of this Act except sections 1(4) and 2(9) shall apply as if—

(a) the prisoner were a designated life prisoner within the meaning of section 2 of this Act; and

(b) the designated part of his sentence within the meaning of that section were the relevant part specified in an order or direction made under the said section 28.";

(b) in subsection (3)(a), for the word "discretionary" there shall be substituted the word " designated ";

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(c) in subsection (3)(b), for the word "relevant" there shall be substituted the word " designated ";

(d) in subsection (5)(a), for the word "discretionary" there shall be substituted the word " designated "; and

(e) in subsection (5)(b), for the words "section 34 of the said Act of 1991" there shall be substituted the words " the said section 28 of the [M55]Crime (Sentences) Act 1997 ".

[F35](9) . . . . . .

(10) In section 12(3) (insertion, variation and cancellation of conditions in licences)—

[F35](a) . . . . . .

(b) for the word "discretionary" there shall be substituted the word " designated ".

(11) In section 14 (supervised release orders)—

(a) in subsection (2)—

(i) the words from the beginning to "209(1) of the 1995 Act" shall cease to have effect; and

(ii) after the words "prison in Scotland" there shall be inserted the words " under Schedule 1 to the [M56]Crime (Sentences) Act 1997 in an unrestricted transfer within the meaning of that Schedule "; and

[F35](b) . . . . . .

[F35](12) . . . . . .

[F35](13) . . . . . .

[F35](14) . . . . . .

[F35](15) . . . . . .

[[F36](16) In section 27(1) (interpretation), in the definition of "supervised release order" the words "(as inserted by section 14 of this Act)" shall cease to have effect.**]**

(17) . . . . . .

(18) In Schedule 6 (transitional provisions and savings)—

(a) for the word "relevant" in each place where it occurs in paragraph 6(2) and (3) and 6A(2) , there shall be substituted the word " designated "; and

(b) for the word "discretionary" in each place where it occurs in paragraphs 6, 6A(2) and 7, there shall be substituted the word " designated ".

Textual Amendments

F35 Sch. 1 para. 14(2)(a)(3)(e)(4)-(7)(9)(10)(a)(11)(b)(12)(13)-(15)(17) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(b), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F36 Sch. 1 para. 14(16) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 141(2)**; S.I. 1998/2327, **art. 2(1)(y)(2)(pp)**

Marginal Citations

M54 1997 c.43.

M55 1997 c. 43.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

M56 1997 c.43.

The Criminal Justice and Public Order Act 1994 (c.33)

15 In section 110 of the Criminal Justice and Public Order Act 1994 (modifications of the [M57]Prisons (Scotland) Act 1989 in its application to contracted out prisons)—

(a) in subsection (3) for the words "and 41B(3) (testing prisoners for drugs)" there shall be substituted the words " , 41B(3) (testing prisoners for drugs) and 41C(3) (testing prisoners for alcohol) "; and

(b) in subsection (4) for the words "and 41B(1)(testing prisoners for drugs)" there shall be substituted the words " , 41B(1) (testing prisoners for drugs) and 41C(1) (testing prisoners for alcohol) ".

Marginal Citations

M57 1989 c.45.

The Criminal Justice (Scotland) Act 1995 (c.20)

16 Section 66 of the Criminal Justice (Scotland) Act 1995 shall cease to have effect.

The Children (Scotland) Act 1995 (c.36)

17 In Schedule 4 to the Children (Scotland) Act 1995, paragraph 35(6) shall cease to have effect.

The Criminal Law (Consolidation)(Scotland) Act 1995 (c.39)

Commencement Information

I20 Sch. 1 para. 18 partly in force; Sch. 1 para. 18 not in force at Royal Assent see s. 65(2); Sch. 1 para. 18(1)(2)(b)(3)-(8) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5)

18 (1) The Criminal Law (Consolidation) (Scotland) Act 1995 shall be amended in accordance with this paragraph.

(2) In section 5 (unlawful sexual intercourse with a girl under the age of 13 years)—

(a) in subsection (1), at the beginning there shall be inserted the words " Subject to section 205A of the [M58]Criminal Procedure (Scotland) Act 1995 (imprisonment for life on further conviction of certain offences), "; and

(b) in subsection (6) (definition of "like offence" for purposes of that section), for the words "section 10(1) of this Act" there shall be substituted the words " section 9(1) of this Act ".

[F37](3) . . . . . .

(4) In section 19(3) (vehicles in relation to which certain offences relating to alcohol at sporting events may be committed), for the word "principle" there shall be substituted the word " principal ".

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(5) In section 21 (police powers in relation to control of alcohol etc. at sporting events), in paragraph (e), after sub-paragraph (ii) there shall be inserted the following sub-paragraph—

"; or

(iii) a controlled article or substance as defined in section 20(8) of this Act.".

(6) In section 23 (interpretation of Part II), after the definition of "keeper" there shall be inserted the following definition—

""motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads;".

(7) In section 26(11) (interpretation of powers of Customs and Excise officers to detain persons in connection with drug smuggling) for the definition of superior officer there shall be substituted the following definition—

""superior officer" means an officer whose title is specified for the purposes of this section by the Treasury in an order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.".

(8) In section 45(1) (aiding and abetting offences under section 44), for the word "principle" there shall be substituted the word " principal ".

Textual Amendments

F37 Sch. 1 para. 18(3) repealed (1.12.2010) by Sexual Offences (Scotland) Act 2009 (asp 9), s. 62(2), **Sch. 6**; S.S.I. 2010/357, art. 2(a)

Marginal Citations

M58 1995 c.46.

The Criminal Procedure (Consequential Provisions)(Scotland) Act 1995 (c.40)

19 (1) The Criminal Procedure (Consequential Provisions)(Scotland) Act 1995 shall be amended in accordance with this paragraph.

[F38](2) . . . . . .

(3) In Schedule 4 (minor and consequential amendments)—

(a) paragraph 6(4)(a) and (d) shall cease to have effect;

(b) paragraph 16 shall cease to have effect;

(c) paragraph 50(7)(b) shall cease to have effect; and

(d) paragraph 53(3) shall cease to have effect.

Textual Amendments

F38 Sch. 1 para. 19(2) repealed (3.11.2006) by The Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 (S.S.I. 2006/536), art. 1, **Sch. 3**

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

The Proceeds of Crime (Scotland) Act 1995 (c.43)

[F39]20 . . . . . .

Textual Amendments

F39 Sch. 1 para. 20 repealed (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), Sch. 11 para. 33(b), **Sch. 12**; S.S.I. 2003/210, art. 2(1)(b)(2), Sch. (with art. 7)

The Criminal Procedure (Scotland) Act 1995 (c.46.)

Commencement Information

I21 Sch. 1 para. 21 partly in force; Sch. 1 para. 21 not in force at Royal Assent see s. 65(2); Sch. 1 para. 21(1)(2)(4)(9)-(15)(17)(19)-(22)(30)(32)(34)(b) in force at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); Sch. 1 para. 21(33)(a) in force at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; Sch. 1 para. 21(23)(25)(31) in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch.**; Sch. 1 para. 21(5)(8)(35) in force at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2**; Sch. 1 para. 21(16)(18)(26)(33)(b)(34)(a) in force at 1.4.1999 by S.I. 1999/652, art. 2, **Sch.** (with art. 3)

21 (1) The 1995 Act shall be amended as follows.

(2) In section 15 (rights of persons arrested or detained), in subsection (6)(b), for the words "actual custody" there shall be substituted the word " care ".

[F40](3) . . . . . .

(4) In section 46 (presumption and determination of age of child)—

(a) in subsection (1), after the word "offence" there shall be inserted the words " , whose age is not specified in the indictment or complaint in relation to that offence, ";

(b) in subsection (3) at the beginning there shall be inserted the words " Without prejudice to section 255A of this Act, ".

(5) In section 53 (power to make interim hospital order)—

(a) in subsection (1), after the word "way" there shall be inserted the words " , including imposing a sentence of imprisonment and making a hospital direction, ";

(b) in subsection (3), for the words "28" there shall be substituted the word " 7 ";

(c) in subsection (4), after the word "not" there shall be inserted the words " at that time ";

(d) in subsection (5), for the words "28" there shall be substituted the word " 7 ";

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

"(5A) Subsections (1) and (4) of section 60 of the [M59]Mental Health (Scotland) Act 1984 shall apply to an interim hospital order as they apply to a hospital order."; and

(f) in subsection (6), after the word "way" there shall be inserted the words " , including imposing a sentence of imprisonment and making a hospital direction ".

(6) In section 58 (hospital orders)—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in subsection (4), for the words "28" there shall be substituted the word " 7 "; and

(b) in subsection (9), for the words "28" there shall be substituted the word " 7 ".

(7) In section 62(6)(b) (disposal in appeals by accused in cases involving insanity), for the words "or order" there shall be substituted the words " , order or other disposal ".

(8) In section 63 (appeals by prosecutor in cases involving insanity)—

(a) in subsection (1), paragraph (d) shall cease to have effect;

(b) in subsection (2)(b)(ii), the words "or (d)" shall cease to have effect; and

(c) in subsection (5)(b)—

(i) for the words "or order", in the first place where they occur, there shall be substituted the words " order or disposal "; and

(ii) for the words "or order", in the second place where they occur, there shall be substituted the words " or acquittal ".

(9) In section 65 (prevention of delay), after subsection (3) there shall be inserted the following subsection—

"(3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court.".

(10) In section 74(4) (disposal of appeals in connection with preliminary diets)—

(a) the word "and" after paragraph (a) shall cease to have effect; and

(b) after paragraph (b) there shall be inserted the following words "; and

(c) may on cause shown extend the period mentioned in section 65(1) of this Act.".

(11) In section 81(6) (list of jurors where trial does not take place)—

(a) the word ", signed" shall cease to have effect; and

(b) for the words "85(1) and (2)" there shall be substituted the words " 85(2) ".

(12) In section 83 (transfer of sheriff court solemn proceedings)—

(a) in subsection (1), for the words "transfer the case to a sheriff court" there shall be substituted the words " adjourn the trial and transfer it to a sitting of a sheriff court, appointed as mentioned in section 66(1) of this Act, ";

(b) in subsection (2)—

(i) before the word "make" there shall be inserted the words " adjourn the trial and "; and

(ii) for the word "case" there shall be substituted the word " trial as mentioned in subsection (1) above "; and

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

"(3) Where a warrant to cite any person to attend a sitting of the sheriff court has been issued by the sheriff clerk under section 66(1) of this Act and the trial has been adjourned and transferred by an order under subsection (2) above, the warrant shall have effect as if the trial diet had originally been fixed for the court, and the date of the sitting of that court, to which the trial is so transferred.".

(13) In section 103 (appeal sittings)—

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) in subsection (3), for the words "subsection (1)" there shall be substituted the words " subsection (2) ";
(b) in subsection (4), for the words "and (2)" there shall be substituted the words " to (3) "; and
(c) in subsection (7), after the words "subsection (5)" there shall be inserted the words " and (6) ".

(14) In subsection (1)(b) of section 104 (power of High Court in appeals) the word "additional" shall cease to have effect.

(15) In section 107(4) (application where leave to appeal refused), for the words "subsection (7)" there shall be substituted the words " subsection (10) ".

(16) In section 113(2)(c) (recipients of copy of judge's report) for the words "section 124(3) of this Act, to the Secretary of State" there shall be substituted the words " Part XA of this Act, to the Commission ".

(17) In section 118 (disposal of appeals)—
(a) in subsection (4)(b), the word "additional" shall cease to have effect; and
(b) after subsection (8) there shall be inserted the following subsection—

"(9) The High Court may give its reasons for the disposal of any appeal in writing without giving those reasons orally.".

(18) In section 124 (finality of proceedings and Secretary of State's reference)—
(a) in subsection (1), after "this Part" there shall be inserted the words " or Part XA ";
(b) in subsection (2), for the words "subsection (3) below" there shall be substituted the words " Part XA of this Act "; and
(c) subsections (3) to (5) shall cease to have effect.

(19) In section 141 (manner of citation)—
(a) in subsection (3)—
(i) the words "signed by the prosecutor and" shall cease to have effect;
(ii) in paragraph (a), after the word "accused," there shall be inserted the words " signed by the prosecutor and "; and
(iii) in paragraph (b), after the word "sent" there shall be inserted the words " by or on behalf of the prosecutor "; and
(b) , after subsection (5) there shall be inserted the following subsection—

"(5A) The citation of a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is sent by the accused's solicitor by ordinary post to the dwelling house or place of business of the witness or, if he has no known dwelling house or place of business, to any other place in which he may be resident at the time.".

(20) In section 179(2) (stated case: adjustment and signature) the word "additional" shall cease to have effect.

(21) In subsection (5)(b) of section 182 (stated case: hearing of appeal) the word "additional" shall cease to have effect.

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Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(22) In subsection (1)(b) of section 189 (disposal of appeal against sentence) the word "additional" shall cease to have effect.

(23) In section 199 (power to mitigate penalties), in subsection (3) after paragraph (b) there shall be inserted the following paragraph—

"; or

(c) to any proceedings in which the court on conviction is under a duty to impose a sentence under section 205A(2) or 205B(2) of this Act.".

(24) In section 202(1) (deferral of sentence) at the beginning there shall be inserted the words " Subject to section 205A of this Act, ".

(25) In section 207(2) (detention of young offenders)—

(a) for the words "section 205(2) and (3)" there shall be substituted the words " sections 205(2) and (3), 205A(2)(b) and 205B(2)(b) "; and

(b) for the word "exceed" there shall be substituted the words " be less than the minimum nor more than ".

(26) In section 209 (supervised release orders), after subsection (7) there shall be inserted the following subsection—

"(7A) Where a person—

(a) is serving a sentence of imprisonment and on his release from that sentence will be subject to a supervised release order; and

(b) is sentenced to a further term of imprisonment, whether that term is to run consecutively or concurrently with the sentence mentioned in paragraph (a) above,

the relevant period for any supervised release order made in relation to him shall begin on the date when he is released from those terms of imprisonment; and where there is more than one such order he shall on his release be subject to whichever of them is for the longer or, as the case may be, the longest period.".

[F41](27) . . . . . .

[F41](28) . . . . . .

[F41](29) . . . . . .

(30) In section 234A (non-harassment orders), subsection (5) shall cease to have effect.

(31) In section 246(1) (admonition), at the beginning, there shall be inserted the words " Subject to sections 205A and 205B of this Act, ".

(32) In section 280 (routine evidence), in subsection (6)(b), for the words "the accused" there shall be substituted the word " he ".

(33) In section 298 (trial judge's report)—

(a) in subsection (1)(a), after the words "108" there shall be inserted the words " , 108A "; and

(b) in subsection (2), for the words "section 124(3) of this Act, the Secretary of State" there shall be substituted the words " Part XA of this Act, the Commission ".

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(34) In section 307(1) (interpretation)—

(a) after the definition of "Clerk of Justiciary" insert—

""the Commission" has the meaning given by section 194A(1) of this Act;"; and

(b) after paragraph (a) of the definition of "hospital", there shall be inserted the following paragraph—

"(aa) any hospital managed by a National Health Service Trust established under section 12A of that Act;".

(35) In Schedule 4 (supervision and treatment orders)—

(a) in paragraph 3(3), after the word "officer;" there shall be inserted the following sub-paragraph—

"(bb) the medical practitioner by whom or under whose supervision the supervised person is to be treated under the order;";

(b) in paragraph 10(1), after the word "officer" there shall be inserted the words " and to the medical practitioner by whom or under whose supervision the supervised person was treated under the supervision and treatment order ";

(c) in paragraph 11(1)(a), after the word "officer" there shall be inserted the words " and to the medical practitioner by whom or under whose supervision the supervised person has been treated under the supervision and treatment order ".

Textual Amendments

F40 Sch. 1 para. 21(3) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F41 Sch. 1 para. 21(27)-(29) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), s. 206(1), **Sch. 2 para. 41(b)**; S.S.I. 2010/413, art. 2, Sch. (with art. 3(1))

Marginal Citations

M59 1984 c.36.

[F42]SCHEDULE 2

Textual Amendments

F42 Sch. 2 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 142, **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

SCHEDULE 3

Section 62(2).

REPEALS

Extent Information

E3 Sch. 3: repeals are coextensive with the enactments they affect see s. 65(7).

Commencement Information

I22 Sch. 3 partly in force; Sch. 3 not in force at Royal Assent see s. 65(2); Sch. 3 in force for certain purposes at 1.8.1997 by S.I. 1997/1712, art. 3, **Sch.** (with arts. 4, 5); Sch. 3 in force for certain further purposes at 20.10.1997 by S.I. 1997/2323, art. 3, **Sch. 1**; Sch. 3 in force for certain further purposes at 17.11.1997 by S.I. 1997/2694, **art. 2(1)(2)(d)**; Sch. 3 in force for certain further purposes at 1.1.1998 by S.I. 1997/2323, art. 4, **Sch. 2**; Sch. 3 in force for certain further purposes at 1.4.1999 by S.I. 1999/652, art. 2, **Sch.** (with art. 3)

Chapter	Short title	Extent of repeal
1967 c.77.	The Police (Scotland) Act 1967.	Section 6(2).
1968 c.49.	The Social Work (Scotland) Act 1968.	In section 27(1)(b), the word "and" where it appears after subparagraph (iv).
1976 c.67.	The Sexual Offences (Scotland) Act 1976.	The whole Act.
1984 c.36.	The Mental Health (Scotland) Act 1984.	In section 65(2), the words after paragraph (b). In section 70(1), the words "(not being a private hospital)".
1984 c.47.	The Repatriation of Prisoners Act 1984.	In section 3(9), the words "or section 10" in the second place where they occur.
1989 c.45.	The Prisons (Scotland) Act 1989.	In section 3(1), the words from "including" to the end. **F43** . . .
1993 c.9.	The Prisoners and Criminal Proceedings (Scotland) Act 1993.	**F44** . . . In section 2(2), the word "and". **F44** . . . **F44** . . .

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
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		F44 . . . **F44** . . . **F44** . . . **F44** . . . In section 14, in subsection (2), the words from the beginning to "209(1) of the 1995 Act" **F45** . . .. **F44** . . . **F44** . . . **F44** . . . **F44** . . . In section 27, in subsection (1), **F46** . . . in the definition of "supervised release order" the words "(as inserted by section 14 of this Act)" **F47** . . ., **F48** . . .. **F44** . . .
1993 c.24.	The Video Recordings Act 1993.	Section 5.
1995 c.20.	The Criminal Justice (Scotland) Act 1995.	Section 66.
1995 c.25.	The Environment Act 1995.	In Schedule 22, paragraph 35.
1995 c.36.	The Children (Scotland) Act 1995.	In Schedule 4, paragraph 35(6).

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

1995 c.40.	The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995.	F49 . . . In Schedule 4, paragraphs 6(4)(a) and (d), 16, 50(7)(b) and 53(3).
1995 c.46.	The Criminal Procedure (Scotland) Act 1995.	In section 18, subsection (7). In section 19(4)(b), the words “, print or impression”. In section 44, in subsection (4), the words “, subject to subsection (6) below,”, subsections (6) to (9) and in subsection (10), the words “or (8)”. In section 53, in subsection (1), the words “subsection (2) below and”, and subsection (2). In section 63, subsection (1)(d) and in subsection (2)(b)(ii) the words “or (d)”. In section 74(4), the word “and” after paragraph (a). In section 81(6), the word “, signed”. In section 85(1), the words from “but” to the end. Section 101(5). In section 104(1)(b), the word “additional”. In section 118(4)(b), the word “additional”. In section 124, subsections (3) to (5). Section 140(3). In section 141(3), the words “signed by the prosecutor and”. Section 154. In section 179(2), the word “additional”.

Status: *Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.*
Changes to legislation: *Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	In section 182(5)(b), the word "additional".
	In section 189(1)(b), the word "additional".
	In section 204(2), the words from "and" to the end.
	In section 234A, subsection (5).
	In section 252(2), the word "and", in the third place where it occurs.

Textual Amendments

F43 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 143(2), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F44 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 143(3)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F45 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 143(3)(b), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F46 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 143(3)(c)(i)**; S.I. 1998/2327, **art. 2(1)(y)(2)(pp)**

F47 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 143(3)(c)(ii), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F48 Words in entry in Sch. 3 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 143(3)(d), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**

F49 The entry relating to the Protection of Animals (Scotland) Act 1912 in Sch. 3 repealed (3.11.2006) by The Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2006 (S.S.I. 2006/536), art. 1, **Sch. 3**

Status:
Point in time view as at 30/06/2017. This version of this Act contains provisions that are prospective.

Changes to legislation:
Crime and Punishment (Scotland) Act 1997 is up to date with all changes known to be in force on or before 30 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.