



Crime and Punishment (Scotland) Act 1997

1997 CHAPTER 48

PART II

CRIMINAL PROCEDURE

Evidential provisions

26 Evidence concerning certain orders

- (1) After section 233(5) of the 1995 Act (probation orders: commission of further offence) there shall be inserted the following subsection—

“(6) The fact that the offence mentioned in subsection (3)(b) above was committed in the circumstances mentioned in subsection (4) above 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, by preliminary objection before his plea is recorded,

be held as admitted.”.

- (2) After section 241(3) of the 1995 Act (requirements as to proceedings in respect of commission of offence during currency of community service order) there shall be inserted the following subsection—

“(4) The fact that the offence mentioned in subsection (1)(b) above was committed in the circumstances mentioned in subsection (2) above shall, unless challenged—

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- (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, by preliminary objection before his plea is recorded,
- be held as admitted.”.

27 Proof of age

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

“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.

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- (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.
- (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.

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- (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—
- (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 Mental Health (Scotland) Act 1984, section 1(2) of the Mental Health Act 1983, or Article 3(1) of the 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

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

30 Routine evidence

(1) Schedule 9 to the 1995 Act (routine evidence) shall be amended in accordance with subsections (2) and (3) below.

(2) In the entry relating to the Control of Pollution Act 1974—

(a) in the first column, for the words from “Section 31(1)” to “such waters etc)” there shall be substituted the words “Section 30F (pollution offences)”;

(b) in the second column, for the words “a river purification authority (within the meaning of that Act)” there shall be substituted the words “the Scottish Environment Protection Agency”.

(3) In the entry relating to the 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

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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 Video Recordings Act 1993 shall cease to have effect.
- (5) In Schedule 22 of the Environment Act 1995 (minor and consequential amendments), paragraph 35 shall cease to have effect.

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