

*Status:* This version of this schedule contains provisions that are prospective.

**Changes to legislation:** Crime and Punishment (Scotland) Act 1997, SCHEDULE 1 is up to date with all changes known to be in force on or before 18 September 2023. 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) View outstanding changes

## SCHEDULES

### SCHEDULE 1 **U.K.**

Section 62(1).

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### Extent Information

**E1** Sch. 1: amendments/repeals are coextensive with the enactments they affect see s. 65(7).

#### *The Public Records Act 1958 (c.51)<sup>F1</sup>*

##### Textual Amendments

**F1** Sch. 1 para. 1 repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), Sch. 10; S.I. 1998/2327, art. 2(1)(aa)(2)(pp)(3)(y)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 <sup>M1</sup>Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “ section 135(3) and (4) of the <sup>M2</sup>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 <sup>M3</sup>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**

- M1** [1975 c.21.](#)  
**M2** [1995 c.46.](#)  
**M3** [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 <sup>M4</sup>Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 be regarded as a repealed enactment within the meaning of that Act.

**Marginal Citations**

- M4** [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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“(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 <sup>M5</sup>Criminal Procedure (Scotland) Act 1995 ”.

**Marginal Citations**

**M5** 1995 c. 46.

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

**Commencement Information**

**I1** 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

<sup>F2</sup>9

**Textual Amendments**

**F2** 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**

**I2** 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)—

<sup>F3</sup>(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 <sup>M6</sup>Criminal Procedure (Scotland) Act 1995;”.

<sup>F4</sup>(3) .....

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#### Textual Amendments

- F3** 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)**
- F4** 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

- M6** 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 <sup>M7</sup>Children and Young Persons (Scotland) Act 1937” to the end there shall be substituted the words “ section 55 of the <sup>M8</sup>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

- M7** 1937 c.37.  
**M8** 1995 c.36.

#### *The Legal Aid (Scotland) Act 1986 (c.47)*

#### Commencement Information

- I3** 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;”;
- (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**

**I4** 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.

<sup>F5</sup>(2) .....

<sup>F6</sup>(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**

**F5** 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)

**F6** 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)

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

**Commencement Information**

**I5** 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)—

<sup>F7</sup>(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

<sup>F7</sup>(e) .....

<sup>F7</sup>(4) .....

<sup>F7</sup>(5) .....

<sup>F7</sup>(6) .....

<sup>F7</sup>(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 <sup>M9</sup>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 <sup>M10</sup>Crime (Sentences) Act 1997”.

<sup>F7</sup>(9) .....

(10) In section 12(3) (insertion, variation and cancellation of conditions in licences)—

<sup>F7</sup>(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 <sup>M11</sup>Crime (Sentences) Act 1997 in an unrestricted transfer within the meaning of that Schedule”; and

<sup>F7</sup>(b) .....

<sup>F7</sup>(12) .....

<sup>F7</sup>(13) .....

<sup>F7</sup>(14) .....

<sup>F7</sup>(15) .....

[<sup>F8</sup>(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

**F7** 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)**

**F8** 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

**M9** 1997 c.43.

**M10** 1997 c. 43.

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**M11** 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 <sup>M12</sup>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**

**M12** 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**

**I6** 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 <sup>M13</sup>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 ”.

<sup>F9</sup>(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 ”.

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(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

**F9** 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

**M13** 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.

<sup>F10</sup>(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

**F10** 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: This version of this schedule contains provisions that are prospective.*

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*The Proceeds of Crime (Scotland) Act 1995 (c.43)*

<sup>F11</sup>20 .....

**Textual Amendments**

**F11** 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**

**I7** 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 ”.

<sup>F12</sup>(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 <sup>M14</sup>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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- (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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- (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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- (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.”.
- <sup>F13</sup>(27) .....
- <sup>F13</sup>(28) .....
- <sup>F13</sup>(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 ”.

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- (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—
    - “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

- F12** 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)**
- F13** 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

- M14** 1984 c.36.



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**Changes and effects yet to be applied to :**

- Sch. 1 para. 21(29) words substituted by [2003 asp 7 sch. 4 para. 4](#)