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STATUTORY INSTRUMENTS

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**1997 No. 2323 (C.89) (S.155)**

**CRIMINAL LAW, SCOTLAND**

**LEGAL AID AND ADVICE, SCOTLAND**

**PRISONS**

The Crime and Punishment (Scotland) Act  
1997 (Commencement No.2 and Transitional  
and Consequential Provisions) Order 1997

Made - - - - 24th September 1997

The Secretary of State, in exercise of the powers conferred upon him by section 65(2), (3) and (4) of the Crime and Punishment (Scotland) Act 1997(1) and of all other powers enabling him in that behalf, hereby makes the following Order:

**Citation**

1. This Order may be cited as the Crime and Punishment (Scotland) Act 1997 (Commencement No.2 and Transitional and Consequential Provisions) Order 1997.

**Interpretation**

2. In this Order—

“the Act” means the Crime and Punishment (Scotland) Act 1997; and

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2).

**Commencement of provisions of Parts I, II, III and VI**

3. The provisions of Parts I, II and VI of the Act specified in column 1 of Schedule 1 to this Order and whose subject matter is specified in column 2 of that Schedule shall, in so far as they are not then in force, come into force on 20th October 1997, but, where a particular purpose is specified in relation to any provision in column 3 of that Schedule, that provision shall come into force on that day only for that purpose.

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(1) 1997 c. 48.  
(2) 1995 c. 46.

4. Subject to article 7 below, the provisions of Parts I, II, III and VI of the Act specified in column 1 of Schedule 2 to this Order and whose subject matter is specified in column 2 of that Schedule shall, in so far as they are not then in force, come into force on 1st January 1998 but, where a particular purpose is specified in relation to any provision in column 3 of that Schedule, that provision shall come into force on that day only for that purpose.

5.—(1) Sections 5 and 24 of the Act shall, in so far as they are not then in force, come into force on 1st July 1998.

(2) Section 62 of the Act shall come into force on 1st July 1998 for the purpose of bringing into force the amendments made to the 1995 Act by paragraphs 21(27) and (28) of Schedule 1 to the Act.

#### **Commencement of Parts V and VI and consequential provisions**

6.—(1) The provisions of Part V of the Act specified in column 1 of Schedule 3 to this Order shall, in so far as they are not then in force, come into force on the date specified in column 2 of that Schedule so as to enable the provisions of the 1986 Act which are specified in column 3 to the Schedule to come into force on that date for the purpose specified in column 4 of that Schedule.

(2) Section 62(1) of the Act shall come into force on 1st October 1997 for the purpose of bringing into force the amendments to the 1986 Act which are made by paragraphs 12(2) to (4) and (8) to (10) of Schedule 1 to the Act.

(3) Section 63(1)(b) of the Act shall come into force on 1st October 1997.

(4) Where the name of a solicitor and any firm with which he is connected is not entered on the Register on 1st October 1998, the solicitor shall, in accordance with arrangements approved by the Board, forthwith and without waiting for the resolution of any appeal under section 25A(13)(3) of the 1986 Act, 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 registered solicitor.

(5) For the purposes of this article and Schedule 3 to this Order—

“the 1986 Act” means the Legal Aid (Scotland) Act(4);

“the Board” means the Scottish Legal Aid Board;

“criminal legal assistance” means criminal legal aid and advice and assistance in relation to criminal matters;

“document” includes information recorded in any form;

“firm” includes an incorporated practice, a sole solicitor and a law centre;

“the Register” means the Register established and maintained under section 25A of the 1986 Act;

“registered firm” means a firm whose name appears on the Register; and

“registered solicitor” means a solicitor whose name appears on the Register.

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(3) Section 25A was inserted by section 49 of the Act.

(4) 1986 c. 47.

### **Transitional Provisions**

7. Sections 248A and 248B of the 1995 Act as inserted by section 15 of the Act shall not apply in relation to any offence committed before 1st January 1998.

St Andrew's House,  
Edinburgh  
24th September 1997

*Henry B McLeish*  
Minister of State, Scottish Office

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## SCHEDULE 1

Article 3

The Provisions of Parts I, II and VI of the Act which come into force on 20th October 1997

Column 1 <i>Provision of Act</i>	Column 2 <i>Subject matter</i>	Column 3 <i>Purpose</i>
Section 2	Minimum sentence for third conviction of certain offences relating to drug trafficking	
Section 3	Meaning of conviction	Only for the purpose of inserting section 205C(1) into the 1995 Act for the purpose of the interpretation of section 205B of the 1995 Act.
Section 5	Restriction of liberty orders	Only for the purposes of enabling the Secretary of State to make regulations, notify courts and make arrangements, including contractual arrangements, under sections 245A, 245B and 245C of the 1995 Act.
Section 15	Driving disqualifications	Only for the purpose of enabling the Secretary of State to make an order under section 248C of the 1995 Act.
Section 16	Designated life prisoners	For all purposes, except for the purpose of substituting into section 2(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 a reference to sentences imposed under section 205A(2) of the 1995 Act.
Section 18	Automatic sentences; jurisdiction and appeals	For all purposes except for the purpose of inserting references to section 205A and 209(1A) into the 1995 Act.
Section 19	Appeal against automatic sentence where earlier conviction quashed	For all purposes except for the purposes of inserting— (a) section 106A(1) into the 1995 Act; and (b) section 106A(3) in so far as it refers to section 205A(2) of the 1995 Act.
Section 62	Amendments and repeals	Only for the purpose of bringing into force the provisions of Schedules 1 and

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Column 1 <i>Provision of Act</i>	Column 2 <i>Subject matter</i>	Column 3 <i>Purpose</i>
		3 specified or referred to in column 1 below.
Section 63(1)(a)(i)	Financial provisions	
In Schedule 1, paragraphs 10(3), 12(5) and (6), 14(1), (2)(b), (3)(a) to (d), (8), (10)(b), (11)(a) and (18) and 21(33)(a)	Amendments	
In Schedule 1, paragraphs 21(23), (25) and (31)	Amendments	For all purposes except for the purpose of inserting references to section 205A into the 1995 Act.
In Schedule 3, the Repeals specified in the Table below	Repeals	

## TABLE

Column 1 <i>Chapter</i>	Column 2 <i>Short Title</i>	Column 3 <i>Extent of Repeals</i>
<a href="#">1984 c. 47</a>	The Repatriation of Prisoners Act 1984	In section 3(9), the words “or section 10” in the second place where they occur.
<a href="#">1993 c. 9</a>	The Prisoners and Criminal Proceedings (Scotland) Act 1993	In section 2(2), the word “and”.

## SCHEDULE 2

Article 4

The provisions of Parts I, II, III and VI of the Act which come into force on 1st January 1998

Column 1 <i>Provision of Act</i>	Column 2 <i>Subject matter</i>	Column 3 <i>Purpose</i>
Section 6	Disposal in cases of mentally disordered offenders	
Section 7	Effect of hospital direction	
Section 8	Remand of persons suffering from mental disorder to private hospital	
Section 9	Power to specify hospital unit	
Section 10	Medical evidence in relation to mentally disordered offenders	
Section 11	Increase in maximum period of interim hospital orders	

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Column 1 <i>Provision of Act</i>	Column 2 <i>Subject matter</i>	Column 3 <i>Purpose</i>
Section 15	Driving disqualifications	
Section 22	Appeal by prosecutor against hospital orders etc	
Section 42	Testing of prisoners for alcohol	
Section 43	Medical services in prisons	
Section 44	Unlawful disclosure of information	
Section 62	Amendments and repeals	Only for the purpose of bringing into force the provisions of Schedules 1 and 3 specified or referred to in column 1 below.
In Schedule 1, paragraphs 9(2), (3)(a), (8), (9), (15) and (16), 13(1), (2) and (4), 15, 21(5) to (8) and (35)	Amendments	
In Schedule 3, the repeals specified in the Table below	Repeals	

TABLE

Column 1 <i>Chapter</i>	Column 2 <i>Short Title</i>	Column 3 <i>Extent of Repeals</i>
<a href="#">1984 c. 36</a>	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)”.
<a href="#">1989 c. 45</a>	The Prisons (Scotland) Act 1989	In section 3(1), the words from “including” to the end.
<a href="#">1995 c. 46</a>	The Criminal Procedure (Scotland) Act 1995	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 252(2), the word “and”, in the third place where it occurs.

## SCHEDULE 3

Article 6

## COMMENCEMENT OF PART V OF THE ACT

Column 1 <i>Provision of Act</i>	Column 2 <i>Date in Force</i>	Column 3 <i>Provision of 1986 Act</i>	Column 4 <i>Purpose for which provision of 1986 Act comes into force on date</i>
Section 49	1 October 1997	Section 25A(5) and (6) (Criminal Legal Assistance Register)	Only for the purpose of enabling the Board to determine the form of the application for entry on the Register and to specify the documents which are to accompany the application.
Section 49	1 October 1997	Section 25B (Code of Practice in relation to Criminal legal assistance)	For all purposes.
Section 49	1 April 1998	Section 25A(1) and (5) to (15) (Criminal Legal Assistance Register)	For all purposes.
Section 49	1 April 1998	Section 25F(1) (Publication of Register)	For all purposes.
Section 49	1 October 1998	Section 25A(2) to (4) (Criminal Legal Assistance Register)	For all purposes.
Section 49	1 October 1998	Sections 25C to E (Supervision of registered solicitors and firms, removal of name from Register following failure to comply with code and further provisions as to removal of name from Register)	For all purposes.
Section 49	1 October 1998	Section 25F(2) and (3) (Publication of Register)	For all purposes.
Section 50	1 October 1997	Section 28A (Employment of solicitors in relation	For all purposes.

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Column 1 <i>Provision of Act</i>	Column 2 <i>Date in Force</i>	Column 3 <i>Provision of 1986 Act</i>	Column 4 <i>Purpose for which provision of 1986 Act comes into force on date</i>
		to criminal legal assistance)	
Section 51	1 October 1997	Section 33(3A) and (3B) (Fixed payments)	For all purposes.
Section 52	1 October 1997	Section 33A (Contracts for the provision of criminal legal assistance)	For all purposes.
Section 53	1 October 1997	Section 35A to C (Power of Board to require information, to enter premises and investigate and suspend payments to a solicitor)	For all purposes.
Section 54	1 October 1997	Section 41A (Regulations in relation to criminal legal assistance)	For all purposes.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order—

- (a) appoints 20th October 1997 for the coming into force of the provisions of the Crime and Punishment (Scotland) Act 1997 (“the Act”) which are specified in Schedule 1 to the Order (article 3);
- (b) appoints 1st January 1998 as the date for the coming into force of the provisions of the Act which are specified in Schedule 2 to the Order (article 4) subject to the transitional provision relevant to section 15 of the Act (article 7); and
- (c) appoints 1st July 1998 as the date when the provisions in the Act dealing with restriction of liberty orders shall in so far as they are not then in force come into force (article 4).

The Order also makes provision for the commencement of Part V of the Act which amends the Legal Aid Act 1986 so as to make provision for criminal legal assistance, the employment of solicitors in relation to criminal legal assistance, fixed payments for criminal legal assistance and the powers of investigation of the Scottish Legal Aid Board (article 6). The dates on which and the purposes for which these amendments will be commenced are set out in Schedule 3 to the Order. In particular, 1st



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October 1998 is appointed as the date when the provisions relating to the Criminal Legal Assistance Register will come into force for all purposes. On and after that date, only solicitors who are entered on the Register and whose firms are also entered on the Register will be able to provide criminal legal assistance. Article 6(4) of the Order makes consequential provision for the transfer after 1st October 1998 to a registered solicitor of criminal legal assistance work being undertaken by an unregistered solicitor.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Act have been brought into force by a commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I.No.</i>
Sections 12, 14, 17, 20 (partially), 21, 23, 24 (partially), 26 to 32, 47 (partially), 55 to 61, 62 (partially), 63 (partially), 64, 65 (partially) and Schedules 1 (partially) and 3 (partially)	1st August 1997	<a href="#">1997/1712</a>