



# Police, Public Order and Criminal Justice (Scotland) Act 2006

2006 asp 10

## PART 3

### CRIMINAL JUSTICE

#### *Powers in relation to suspects and witnesses*

#### **81 Power to require giving of certain information in addition to name and address**

- (1) Section 13 of the Criminal Procedure (Scotland) Act 1995 (c. 46) (“the 1995 Act”) (which gives police constables certain powers in relation to suspects and witnesses) is amended in accordance with subsections (2) to (5).
- (2) In subsection (1), in each of paragraphs (a) and (b), for “his name and address” there is substituted “the information mentioned in subsection (1A) below”.
- (3) After subsection (1), there is inserted—
  - “(1A) That information is—
    - (a) the person’s name;
    - (b) the person’s address;
    - (c) the person’s date of birth;
    - (d) the person’s place of birth (in such detail as the constable considers necessary or expedient for the purpose of establishing the person’s identity); and
    - (e) the person’s nationality.”.
- (4) In subsection (2)(a), for “name and address” there is substituted “information mentioned in subsection (1A) above”.
- (5) In subsection (6), in each of paragraphs (a)(i) and (b), for “his name and address” there is substituted “the information mentioned in subsection (1A) above”.
- (6) Section 14 of the 1995 Act (detention and questioning at a police station) is amended as follows—

- (a) in subsection (9), for “his name and address” there is substituted “the information mentioned in subsection (10) below”; and
- (b) after that subsection, there is inserted—
  - “(10) That information is—
    - (a) the person’s name;
    - (b) the person’s address;
    - (c) the person’s date of birth;
    - (d) the person’s place of birth (in such detail as a constable considers necessary or expedient for the purpose of establishing the person’s identity); and
    - (e) the person’s nationality.”.

## **82 Power to take fingerprints to establish identity of suspect**

- (1) Section 13 of the 1995 Act (which gives police constables certain powers in relation to suspects and witnesses) is amended as follows.
- (2) After subsection (1A) (as inserted by section 81) there is inserted—
  - “(1B) The constable may, if the person mentioned in paragraph (a) of subsection (1) gives a name and address, require the person to provide—
    - (a) the person’s fingerprints; or
    - (b) a record, created by a device approved by the Scottish Ministers, of the skin on the person’s fingers.
  - (1C) Fingerprints or a record provided by a person under a requirement under subsection (1B) above may be used only for the following purposes—
    - (a) verifying the name and address given by the person;
    - (b) establishing whether the person may be a person who is suspected of having committed any other offence,
 and all record of such fingerprints or record shall be destroyed as soon as possible after they have fulfilled those purposes.”.
- (3) In subsection (2)—
  - (a) for “(either or both)” there is substituted “(any or all)”; and
  - (b) after paragraph (a) there is inserted—
    - “(aa) subject to subsection (3A) below, establishes whether the person may be a person who is suspected of having committed any other offence;”.
- (4) After subsection (3), there is inserted—
  - “(3A) The constable shall exercise the power under paragraph (aa) of subsection (2) above only where—
    - (a) the person mentioned in paragraph (a) of subsection (1) above has given a name and address; and
    - (b) it appears to the constable that establishing the matter mentioned in paragraph (aa) of subsection (2) can be achieved quickly.”.
- (5) In subsection (5)—
  - (a) after paragraph (b) there is inserted—

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- “(ba) subsection (1B) above, of the existence of the power to make the requirement and why he proposes to exercise it in the person’s case;”;
  - (b) in paragraph (d), for “either” there is substituted “any”.
- (6) In subsection (6)—
- (a) the word “or” immediately after paragraph (a)(i) is repealed;
  - (b) after paragraph (a)(ii) there is inserted “; or
    - (iii) under subsection (1B) above to provide the person’s fingerprints or a record such as is mentioned in that subsection,”.
- (7) After subsection (7) there is inserted—
- “(8) The Scottish Ministers by order made by statutory instrument may approve a device for the purpose of creating records of the sort mentioned in subsection (1B)(b) above.”.

*Retention of samples etc.: prosecutions for sexual and violent offences*

**83 Retention of samples etc.: prosecutions for sexual and violent offences**

- (1) In section 18(3) of the 1995 Act (prints, samples etc. in criminal investigations), after “below” where it first occurs there is inserted “and section 18A of this Act”.
- (2) After section 18 of that Act there is inserted—

**“18A Retention of samples etc.: prosecutions for sexual and violent offences**

- (1) This section applies to any sample, or any information derived from a sample, taken under subsection (6) or (6A) of section 18 of this Act, where the condition in subsection (2) below is satisfied.
- (2) That condition is that criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act.
- (3) Subject to subsections (9) and (10) below, the sample or information shall be destroyed no later than the destruction date.
- (4) The destruction date is—
  - (a) the date of expiry of the period of 3 years following the conclusion of the proceedings; or
  - (b) such later date as an order under subsection (5) below may specify.
- (5) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- (6) An application under subsection (5) above may be made to any sheriff—

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- (a) in whose sheriffdom the person referred to in subsection (2) above resides;
  - (b) in whose sheriffdom that person is believed by the applicant to be; or
  - (c) to whose sheriffdom the person is believed by the applicant to be intending to come.
- (7) An order under subsection (5) above shall not specify a destruction date more than 2 years later than the previous destruction date.
- (8) The decision of the sheriff on an application under subsection (5) above may be appealed to the sheriff principal within 21 days of the decision; and the sheriff principal's decision on any such appeal is final.
- (9) Subsection (3) above does not apply where—
- (a) an application under subsection (5) above has been made but has not been determined;
  - (b) the period within which an appeal may be brought under subsection (8) above against a decision to refuse an application has not elapsed; or
  - (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (10) Where—
- (a) the period within which an appeal referred to in subsection (9)(b) above may be brought has elapsed without such an appeal being brought;
  - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
  - (c) an appeal brought under subsection (8) above against a decision to grant an application is determined in favour of the appellant,
- the sample or information shall be destroyed as soon as possible thereafter.
- (11) In this section—
- “the relevant chief constable” means—
- (a) the chief constable of the police force of which the constable who took or directed the taking of the sample was a member;
  - (b) the chief constable of the police force in the area of which the person referred to in subsection (2) above resides; or
  - (c) a chief constable who believes that that person is or is intending to come to the area of the chief constable's police force; and
- “relevant sexual offence” and “relevant violent offence” have the same meanings as in section 19A(6) of this Act and include any attempt, conspiracy or incitement to commit such an offence.”.

*Arrested persons: drug testing and reference for assessment*

## **84 Testing of arrested persons for Class A drugs**

After section 20 of the 1995 Act there is inserted—

*“Testing for Class A drugs*

**20A Arrested persons: testing for certain Class A drugs**

- (1) Subject to subsection (2) below, where subsection (3) below applies an appropriate officer may—
  - (a) require a person who has been arrested and is in custody in a police station to provide him with a sample of urine; or
  - (b) take from the inside of the mouth of such a person, by means of swabbing, a sample of saliva or other material,which the officer may subject to analysis intended to reveal whether there is any relevant Class A drug in the person’s body.
- (2) The power conferred by subsection (1) above shall not be exercised where the person has previously been required to provide or had taken from him a sample under that subsection in the same period in custody.
- (3) This subsection applies where—
  - (a) the person is of 16 years of age or more;
  - (b) the period in custody in the police station has not exceeded 6 hours;
  - (c) the police station is situated in an area prescribed by order made by statutory instrument by the Scottish Ministers; and
  - (d) either—
    - (i) the person’s arrest was on suspicion of committing or having committed a relevant offence; or
    - (ii) a senior police officer who has appropriate grounds has authorised the making of the requirement to provide or the taking of the sample.
- (4) Before exercising the power conferred by subsection (1) above, an appropriate officer shall—
  - (a) warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence; and
  - (b) in a case within subsection (3)(d)(ii) above, inform the person of the giving of the authorisation and the grounds for the suspicion.
- (5) Where—
  - (a) a person has been required to provide or has had taken a sample under subsection (1) above;
  - (b) any of the following is the case—
    - (i) the sample was not suitable for the means of analysis to be used to reveal whether there was any relevant Class A drug in the person’s body;
    - (ii) though suitable, the sample was insufficient (either in quantity or quality) to enable information to be obtained by that means of analysis; or
    - (iii) the sample was destroyed during analysis and the means of analysis failed to produce reliable information; and

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- (c) the person remains in custody in the police station (whether or not the period of custody has exceeded 6 hours),  
an appropriate officer may require the person to provide or as the case may be take another sample of the same kind by the same method.
- (6) Before exercising the power conferred by subsection (5) above, an appropriate officer shall warn the person in respect of whom it is to be exercised that failure, without reasonable excuse, to comply with the requirement or, as the case may be, allow the sample to be taken constitutes an offence.
- (7) A person who fails without reasonable excuse—
- (a) to comply with a requirement made of him under subsection (1)(a) or (5) above; or
  - (b) to allow a sample to be taken from him under subsection (1)(b) or (5) above,
- shall be guilty of an offence.
- (8) In this section—
- “appropriate grounds” means reasonable grounds for suspecting that the misuse by the person of any relevant Class A drug caused or contributed to the offence on suspicion of which the person was arrested;
- “appropriate officer” means—
- (a) a constable; or
  - (b) a police custody and security officer acting on the direction of a constable;
- “misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);
- “relevant Class A drug” means any of the following substances, preparations and products—
- (a) cocaine or its salts;
  - (b) any preparation or other product containing cocaine or its salts;
  - (c) diamorphine or its salts;
  - (d) any preparation or other product containing diamorphine or its salts;
- “relevant offence” means any of the following offences—
- (a) theft;
  - (b) assault;
  - (c) robbery;
  - (d) fraud;
  - (e) reset;
  - (f) uttering a forged document;
  - (g) embezzlement;
  - (h) an attempt, conspiracy or incitement to commit an offence mentioned in paragraphs (a) to (g);
  - (i) an offence under section 4 of the Misuse of Drugs Act 1971 (c. 38) (restriction on production and supply of controlled drugs) committed in respect of a relevant Class A drug;
  - (j) an offence under section 5(2) of that Act of 1971 (possession of controlled drug) committed in respect of a relevant Class A drug;

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- (k) an offence under section 5(3) of that Act of 1971 (possession of controlled drug with intent to supply) committed in respect of a relevant Class A drug;

“senior police officer” means a police officer of a rank no lower than inspector.

### **20B Section 20A: supplementary**

- (1) Section 20A of this Act does not prejudice the generality of section 18 of this Act.
- (2) Each person carrying out a function under section 20A of this Act must have regard to any guidance issued by the Scottish Ministers—
  - (a) about the carrying out of the function; or
  - (b) about matters connected to the carrying out of the function.
- (3) An order under section 20A(3)(c) shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) An authorisation for the purposes of section 20A of this Act may be given orally or in writing but, if given orally, the person giving it shall confirm it in writing as soon as is reasonably practicable.
- (5) If a sample is provided or taken under section 20A of this Act by virtue of an authorisation, the authorisation and the grounds for the suspicion are to be recorded in writing as soon as is reasonably practicable after the sample is provided or taken.
- (6) A person guilty of an offence under section 20A of this Act shall be liable on summary conviction to the following penalties—
  - (a) a fine not exceeding level 4 on the standard scale;
  - (b) imprisonment for a period—
    - (i) where conviction is in the district court, not exceeding 60 days; or
    - (ii) where conviction is in the sheriff court, not exceeding 3 months; or
  - (c) both such fine and imprisonment.
- (7) Subject to subsection (8) below, a sample provided or taken under section 20A of this Act shall be destroyed as soon as possible following its analysis for the purpose for which it was taken.
- (8) Where an analysis of the sample reveals that a relevant Class A drug is present in the person’s body, the sample may be retained so that it can be used, and supplied to others, for the purpose of any proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10); but—
  - (a) the sample may not be used, or supplied, for any other purpose; and
  - (b) the sample shall be destroyed as soon as possible once it is no longer capable of being used for that purpose.

- (9) Information derived from a sample provided by or taken from a person under section 20A of this Act may be used and disclosed only for the following purposes—
- (a) for the purpose of proceedings against the person for an offence under section 88 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10);
  - (b) for the purpose of informing any decision about granting bail in any criminal proceedings to the person;
  - (c) for the purpose of informing any decision of a children’s hearing arranged to consider the person’s case;
  - (d) where the person is convicted of an offence, for the purpose of informing any decision about the appropriate sentence to be passed by a court and any decision about the person’s supervision or release;
  - (e) for the purpose of ensuring that appropriate advice and treatment is made available to the person.
- (10) Subject to subsection (11) below, the Scottish Ministers may by order made by statutory instrument modify section 20A(8) of this Act for either of the following purposes—
- (a) for the purpose of adding an offence to or removing an offence from those for the time being listed in the definition of “relevant offence”;
  - (b) for the purpose of adding a substance, preparation or product to or removing a substance, preparation or product from those for the time being listed in the definition of “relevant Class A drug”.
- (11) An order under subsection (10)(b) may add a substance, preparation or product only if it is a Class A drug (that expression having the same meaning as in the Misuse of Drugs Act 1971 (c. 38)).
- (12) An order under subsection (10) above shall not be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.”.

## **85 Assessment following positive test under section 20A of the 1995 Act**

- (1) This section applies where—
- (a) a sample is provided or taken under section 20A of the 1995 Act by or from a person in custody in a police station; and
  - (b) an analysis of the sample reveals that a relevant Class A drug is present in the person’s body.
- (2) A constable must require the person to attend, and remain for the duration of, a drugs assessment.
- (3) A drugs assessment is an appointment with a suitably qualified person (“a drugs assessor”)—
- (a) for the purpose of establishing whether the person is dependent on, or has a propensity to misuse, any relevant Class A drug;
  - (b) if the drugs assessor thinks that the person has such a dependency or propensity, for the purpose of establishing whether the person might benefit from assistance or treatment (or both) in connection with the dependency or propensity; and

- (c) if the drugs assessor thinks that the person might benefit from such assistance or treatment (or both), for the purpose of drawing up a document which sets out the nature of assistance or treatment (or both) which may be most appropriate for the person in connection with any dependency on, or propensity to misuse, a relevant Class A drug which the drugs assessor thinks the person has.

## **86 Requirements under section 85: supplementary**

- (1) This section applies where by virtue of section 85(2) a person is required by a constable to attend and remain for the duration of a drugs assessment.
- (2) The constable must—
  - (a) inform the person of the place at which the drugs assessment is to take place; and
  - (b) require the person, for the purpose of being given details of the date and time of the assessment, to report at that place on such date, or on one of such dates, as the constable specifies (such date or dates falling within the period of 7 days beginning with the date on which the requirement is made), at such time, or between such times, as the constable specifies;and the constable must explain that these matters will be confirmed in writing.
- (3) The constable must warn the person that the person is liable to prosecution if the person fails without reasonable excuse—
  - (a) to attend and remain for the duration of the drugs assessment; or
  - (b) to comply with the requirement imposed under subsection (2)(b).
- (4) The constable must give the person notice in writing which—
  - (a) confirms the requirement to attend and remain for the duration of a drugs assessment;
  - (b) confirms the information given in pursuance of subsection (2)(a);
  - (c) confirms the requirement imposed under subsection (2)(b); and
  - (d) repeats the warning given in pursuance of subsection (3).
- (5) The duties imposed by subsections (2) to (4) must be carried out before the person is released from custody at the police station.
- (6) As soon as reasonably practicable following the carrying out of those duties, the constable must inform the drugs assessor who is to carry out the drugs assessment—
  - (a) of the making of the requirement to attend and remain for the duration of the assessment; and
  - (b) of the requirement imposed under subsection (2)(b).

## **87 Date, time and place of assessment**

- (1) Subsection (2) applies where, in accordance with a requirement imposed by virtue of section 86(2), a person reports at the place where the person's drugs assessment is to take place.
- (2) The drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf must give the person a notice in writing which—
  - (a) informs the person of the date and time of the drugs assessment;

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- (b) confirms the place of the drugs assessment; and
  - (c) warns the person that the person is liable to prosecution if the person fails without good cause to attend and remain for the duration of the drugs assessment.
- (3) Where a person is given a notice in pursuance of subsection (2), the drugs assessor who is to carry out the drugs assessment or a person acting on the drugs assessor's behalf may change the date, time or place of the assessment by serving on the person a further notice in writing which—
  - (a) informs the person of the change; and
  - (b) repeats the warning mentioned in subsection (2)(c).
- (4) For the purpose of subsection (3), a notice is served on a person if—
  - (a) given to the person; or
  - (b) sent to the person by registered post or a recorded delivery service.
- (5) A certificate of posting of a notice sent under subsection (4)(b) issued by the postal operator concerned is sufficient evidence of the sending of the notice on the day specified in the certificate.
- (6) In subsection (5), “postal operator” has the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).

## **88 Failure to comply with requirements under sections 85 and 86**

- (1) The drugs assessor must inform a constable if a person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment—
  - (a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
  - (b) fails to attend the assessment on the specified date and at the specified time and place; or
  - (c) attends the assessment on the specified date and at the specified time and place but fails to remain for its duration.
- (2) A person who, by virtue of section 85(2), is required to attend and remain for the duration of a drugs assessment commits an offence if without reasonable excuse the person—
  - (a) fails to comply with the requirement imposed by virtue of section 86(2)(b);
  - (b) fails to attend the assessment on the specified date and at the specified time and place; or
  - (c) attends the assessment on the specified date and at the specified time or place but fails to remain for its duration.
- (3) A person who commits an offence under subsection (2) is liable on summary conviction to—
  - (a) imprisonment for a period not exceeding 3 months;
  - (b) a fine not exceeding level 4 on the standard scale; or
  - (c) both.
- (4) In this section—
  - (a) the specified date, in relation to a drugs assessment, is the date specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a

different date has been given to the person in pursuance of subsection (3) of that section, the date specified in that notice;

- (b) the specified time, in relation to a drugs assessment, is the time specified in the notice given to the person who is required to attend the assessment in pursuance of subsection (2) of section 87 or, if a further notice specifying a different time has been given to the person in pursuance of subsection (3) of that section, the time specified in that notice; and
- (c) the specified place, in relation to a drugs assessment, is the place specified in the notice given to the person who is required to attend the assessment in pursuance of section 86(2) or, if a further notice specifying a different place has been given to the person in pursuance of section 87(3), the place specified in that notice.

## **89 Guidance for the purposes of sections 85 to 88**

In carrying out a function under any of sections 85 to 88, a constable or a drugs assessor must have regard to any guidance issued by the Scottish Ministers—

- (a) about the carrying out of the function; or
- (b) about matters connected to the carrying out of the function.

## **90 Interpretation of sections 85 to 88**

In sections 85 to 88—

“misuse” has the same meaning as in the Misuse of Drugs Act 1971 (c. 38);

“drugs assessment” and “drugs assessor” must be construed in accordance with section 85(3);

“relevant Class A drug” has the meaning given by section 20A(8) of the 1995 Act;

“suitably qualified person” means a person who has such qualifications or experience as are prescribed by regulations made by the Scottish Ministers.

### *Offenders assisting investigations and prosecutions*

## **91 Assistance by offender: reduction in sentence**

- (1) This section applies if a person (the “offender”)—
  - (a) is, following a plea of guilty, convicted on indictment of an offence; and
  - (b) has, pursuant to a written agreement made with a prosecutor (an “assistance agreement”), assisted or offered to assist the prosecutor of that or any other offence in relation to its investigation or prosecution.
- (2) In determining what sentence to pass on the offender, the court must take into account the extent and nature of the assistance given or offered by the offender.
- (3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—
  - (a) that it has, for that reason, passed that lesser sentence; and
  - (b) what the greater sentence would have been.
- (4) If the court passes a sentence which is not less than it would have passed but for the assistance given or offered, it must state in open court its reasons for doing so.

- (5) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has, for the reason referred to in that subsection, been discounted; but in such a case the court must give written notice of the matters specified in paragraphs (a) and (b) of that subsection to the prosecutor and the offender.
- (6) Subsection (4) does not apply if the court thinks that it would not be in the public interest to disclose that the case was one in which the court had a duty under subsection (2); but in such a case the court must give written notice of its reasons for not passing a discounted sentence to the prosecutor and the offender.
- (7) Nothing in any enactment which—
- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or because of the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances); or
  - (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances),
- prevents, or restricts, the court, in fulfilment of its duty under subsection (2), from passing on the offender the sentence it considers appropriate.
- (8) Subsection (2) does not prevent the court, in determining what sentence to pass on the offender, from also taking into account any other matter which, by virtue of any other enactment or rule of law it may take into account for the purpose of determining—
- (a) the sentence;
  - (b) in the case of a life sentence for murder or for any other offence for which that sentence is the sentence fixed by law, the punishment part (construed in accordance with section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9)); and
  - (c) in the case of any other sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.
- (9) In this section—
- (a) the reference, in subsection (1), to a written agreement includes a reference to an agreement made by, or partly by, electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient;
  - (b) the reference, in subsection (5), to written notice includes a reference to a notice given by such a communication;
  - (c) a reference to a sentence—
    - (i) includes, in the case of a sentence of a kind referred to in paragraph (b) or (c) of subsection (8), a reference to the punishment part (construed as mentioned in that subsection) or, as the case may be, the minimum period an offender is required to serve (and a reference to a lesser sentence is to be construed accordingly);
    - (ii) includes a reference to a community disposal and a fine;
    - (iii) does not include an order for committal in default of payment of any sum of money or for contempt of court;

- (d) the reference, in subsection (7)(b), to imprisonment includes a reference to detention imposed under section 205(2), and detention in a young offenders institution imposed under section 205(3), 205A(2)(b) or 207 of the 1995 Act;
- (e) the reference, in subsection (8)(c), to imprisonment includes a reference to detention in a young offenders institution imposed under section 207 of the 1995 Act.

## **92 Assistance by offender: review of sentence**

- (1) This section applies where—
  - (a) a court has passed sentence on a person convicted on indictment of an offence (the “offender”); and
  - (b) the offender falls within subsection (2).
- (2) An offender falls within this subsection if the offender—
  - (a) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of any offence in relation to its investigation or prosecution but knowingly fails to any extent to give assistance in accordance with the agreement;
  - (b) receives a discounted sentence in consequence of having offered, in pursuance of an assistance agreement, to give assistance to the prosecutor of an offence in relation to its investigation or prosecution and, having given such assistance in accordance with the agreement, in pursuance of another assistance agreement, gives or offers to give further assistance; or
  - (c) receives a sentence which is not discounted in consequence of the considerations referred to in paragraphs (a) and (b) but, in pursuance of an assistance agreement, subsequently gives or offers to give assistance to the prosecutor of an offence in relation to its investigation or prosecution.
- (3) An offender who was sentenced for an offence for which the sentence is fixed by law and did not plead guilty to the offence does not, however, fall within subsection (2).
- (4) Any prosecutor may, at any time, for the purposes of this section, refer a case in which sentence has been passed back to the court which passed it or, where sentence has been passed on appeal, back to the court of first instance, if—
  - (a) the offender is still serving the sentence; and
  - (b) the prosecutor thinks that it is in the interests of justice to do so.
- (5) For the purposes of subsection (4)(a), an offender sentenced to a term of imprisonment who is released (whether on licence or unconditionally) under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) before the date on which the offender would (but for the release) have served the sentence in full is to be treated as still serving the sentence until that date.
- (6) A case so referred is, if possible, to be considered by the judge who passed the sentence or, where sentence has been passed on appeal, the judge who presided at first instance.
- (7) In the case of an offender falling within subsection (2)(a), the court may, on such a referral, substitute for the sentence passed on the offender such greater sentence (not exceeding that which it would have passed but for the assistance agreement) as it thinks appropriate.

- (8) A court of first instance shall, for the purposes of subsection (7), regard the sentence which the appeal court would have passed but for the agreement as the sentence which it would have passed but for the agreement.
- (9) In the case of an offender falling within subsection (2)(b) or (c), the court may, on such a referral and taking into account the extent and nature of the assistance given or offered, substitute for the sentence passed on the offender such lesser sentence as it thinks appropriate.
- (10) Any part of the sentence to which a referral relates and which the offender has already served is to be taken into account in determining when a greater sentence imposed under subsection (7) or a lesser one imposed under subsection (9) has been served.
- (11) The offender (with the leave of a judge of the High Court of Justiciary) or a prosecutor may appeal to that court against a decision of a court under subsection (7) or (9).
- (12) Where, under subsection (9) or on an appeal under subsection (11), the court substitutes a lesser sentence for the sentence which has been passed, it must state in open court that it has done so in consequence of the further assistance or, as the case may be, the assistance given or offered.
- (13) Subsection (12) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case the court must give written notice (construed as in section 91) of the fact that the sentence has been discounted for the reason referred to in subsection (12) to the prosecutor and the offender in respect of whom the referral was made.
- (14) Subsections (7) to (9) of section 91 apply for the purposes of this section as they apply for the purposes of that section, the references in those subsections to subsection (2) of that section being construed as references to subsection (9) of this section.
- (15) In the application of this section in relation to a sentence consisting of a fine—
- (a) an offender is to be taken as still serving the sentence if the fine has not been paid in full; and
  - (b) references to part of a sentence having been served are to be read as references to the fine having been partly paid.

### **93 Proceedings under section 92: exclusion of public**

- (1) This section applies to—
- (a) proceedings relating to a referral made under section 92(4); and
  - (b) any other proceedings arising in consequence of those proceedings.
- (2) The court in which those proceedings will be or are taking place may make such order as it thinks appropriate—
- (a) to exclude from the proceedings any person—
    - (i) who does not fall within subsection (4); or
    - (ii) who does not, in the opinion of the court, have a sufficiently direct interest in the proceedings to justify that person's presence during them;
  - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the referral has been made).
- (3) Such an order is to be made only to the extent that the court thinks—

- (a) that it is necessary to protect the safety of any person; and
  - (b) that it is in the interests of justice.
- (4) The following persons fall within this subsection—
- (a) the judge;
  - (b) an officer of the court;
  - (c) the prosecutor;
  - (d) the other party to the proceedings;
  - (e) counsel or a solicitor for the other party.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment—
- (a) to exclude any person from proceedings; or
  - (b) to prohibit or restrict the publication of any matter to which the proceedings relate;
- or any rule of law or enactment consisting of such an exclusion, prohibition or restriction.

#### **94 Section 92: further provision**

- (1) The Scottish Ministers may, by order, provide further as to the procedure to be followed under section 92 or otherwise so as to give full effect to that section.
- (2) An order under subsection (1) may, in particular—
- (a) apply, with modifications, provisions of Part VIII of the 1995 Act (appeals from solemn proceedings);
  - (b) modify that Part of that Act.
- (3) The Scottish Ministers may, by order, make provision as to how—
- (a) any period in custody served under a sentence for which another sentence is substituted under section 92(7), (9) or (11);
  - (b) any period during which a person was on release on licence or unconditionally under Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) in respect of such a sentence before the date on which the person would (but for the release) have served the sentence in full,
- is to be taken into account, for the purposes of the later sentence, in the calculation of periods of time under Part 1 of that Act.
- (4) An order under subsection (3) may, in particular, modify that Act.

#### **95 Sentencing: consideration of undisclosed information**

- (1) This section applies where a person (the “offender”)—
- (a) has been convicted and is to be sentenced for an offence; and
  - (b) has, otherwise than in pursuance of an assistance agreement, assisted in relation to the investigation or prosecution of any other offence.
- (2) Where this section applies, the court may, in passing sentence and if it considers it to be in the interests of justice to do so, take into account any information which is in a report in writing by a relevant officer about that assistance and which is, with the agreement of the offender, made available—

- (a) only to the offender and the court; or
  - (b) only to the offender, the offender’s counsel or solicitor and the court,
- by the prosecutor.
- (3) Where, under subsection (2) a court takes information about assistance into account, it must not disclose the information, the existence of the report containing it or whether the sentence it passes is less than the sentence it would have passed but for the assistance given.
- (4) Subsection (3) does not prevent disclosure by the court or the clerk of court to the High Court or the Clerk of Justiciary in connection with proceedings to which section 96 applies.
- (5) In subsection (2), a “relevant officer” is a constable or any other officer of an organisation having functions which are conferred by or under an enactment or rule of law and which consist of or include the investigation of offences.
- (6) The reference in subsection (2) to a report in writing includes a reference to a report made by means of an electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the maker of the report and those to whom it was made available.

## **96 Appeals etc.: undisclosed information**

- (1) This section applies to any proceedings in the High Court in relation to—
- (a) an appeal under section 106(1), 108, 108A or 175(2) to (4) of the 1995 Act;
  - (b) an appeal by way of bill of suspension or advocation;
  - (c) a reference by the Lord Advocate under section 123 of that Act;
  - (d) a reference by the Scottish Criminal Cases Review Commission under section 194B of that Act; or
  - (e) a petition to the nobile officium.
- (2) In subsection (1) the reference to proceedings in the High Court includes consideration by a judge of the High Court whether to grant leave to appeal under section 107, 180 or 187 of the 1995 Act.
- (3) If, under subsection (2) of section 95, the lower court in passing sentence on the offender took into account information contained in a report mentioned in that subsection, the High Court and the Clerk of Justiciary—
- (a) must not disclose the information or the existence of the report to any person other than the prosecutor, the offender and, with the offender’s agreement, the offender’s counsel or solicitor; and
  - (b) must not disclose to any person whether the sentence passed by the lower court is less than it would have passed but for the assistance given by the offender.
- (4) If, in a case not falling within subsection (3), the High Court or the Clerk of Justiciary becomes aware of information contained in a report mentioned in subsection (2) of section 95 or that a court in passing sentence has, under that subsection, taken that information into account, the High Court or the Clerk of Justiciary must not disclose to any person the information, the existence of the report or whether the sentence passed by the lower court on the person to whom the report relates is less than the sentence it would have passed but for the assistance given by that person.

- (5) Sections 107(10), 113(2), 179(8), 180(10), 186(4)(b), 187(9) and 298(2) of the 1995 Act do not apply in a case falling within subsection (3) or (4) to the extent that they require a disclosure which, if made by the High Court or the Clerk of Justiciary, would contravene the subsection in question.
- (6) Subsection (5) does not, however, operate so as to prevent any disclosure to the Crown Agent or the Scottish Criminal Cases Review Commission; but subsection (3) or, as the case may be, subsection (4) applies to the Crown Agent and the Commission in relation to any such disclosure as it applies to the High Court and the Clerk of Justiciary in relation to a case falling within that subsection (but not so as to prevent disclosure by the Crown Agent or the Commission to the High Court).
- (7) Subsections (2) to (5) of section 93 apply to proceedings referred to in subsection (1) of this section as they apply to proceedings referred to in subsection (1) of that section.
- (8) The Scottish Ministers may, by order, make further provision for the purpose of giving full effect to the preceding provisions of this section, including provision modifying the 1995 Act.

#### *Conditional immunity from prosecution*

### **97 Investigation and prosecution of crime: conditional immunity from prosecution**

- (1) A prosecutor, if of the opinion that for the purposes of the investigation or prosecution of any offence it is appropriate to give any person immunity from prosecution, may, in accordance with subsection (11), give the person a written notice under this section (a “conditional immunity notice”).
- (2) Subject to subsection (3), no proceedings for—
  - (a) the offence; or
  - (b) any offence of a description,specified in a conditional immunity notice may be brought against the person to whom the notice is given and any such proceedings continuing when the notice is given must be discontinued.
- (3) A conditional immunity notice—
  - (a) must specify the conditions to which its application is subject; and
  - (b) may specify the circumstances to which it applies or the circumstances to which it does not apply,and has effect and ceases to have effect accordingly.
- (4) Where a conditional immunity notice has ceased to have effect, a prosecutor must, in accordance with subsection (12), give to the person to whom the notice was given a further written notice stating when and the reason why the notice ceased to have effect (a “cessation notice”).
- (5) Where—
  - (a) a person accused of an offence is given a conditional immunity notice relating to the offence after the person’s first appearance on petition in respect of the offence; and
  - (b) a cessation notice is given to the person in respect of the conditional immunity notice,

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the person is, for the purposes of section 65(1) of the 1995 Act (time limit for commencement of trial on indictment), to be regarded as not having first appeared on petition; accordingly, the time limit specified in that provision begins with the first appearance of the accused person on petition after the giving of the cessation notice.

(6) Where—

- (a) a person who may have committed an offence is given a conditional immunity notice relating to the offence within any other time limit stipulated by any enactment for the commencement of proceedings in respect of the offence; and
- (b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of that enactment, to be regarded as having contravened or, in the case of a continuing offence, having last contravened the provision creating the offence on the date of the giving of the cessation notice.

(7) Where—

- (a) proceedings against a person for an offence, having been timeously commenced, are discontinued under subsection (2); and
- (b) a cessation notice is given to the person in respect of the conditional immunity notice,

the person is, for the purposes of any time limit stipulated by an enactment for the commencement of proceedings in respect of the offence, to be regarded as having committed the offence or, in the case of a continuing offence, having last committed the offence on the date of the giving of the cessation notice.

(8) Where—

- (a) a conditional immunity notice has ceased to have effect; and
- (b) proceedings are brought against the person to whom the notice was given in respect of any offence specified in the notice,

the fact that, before the notice ceased to have effect, communications took place between the prosecutor or anyone else and the person to whom the notice was given which would not or might not have taken place but for the notice is not a ground for the court to determine that the proceedings should not have been brought, or should not be continued, against that person.

(9) Where a person to whom a conditional immunity notice has been given notifies the specified prosecutor in writing that the person's address for the purposes of giving a cessation notice is changed to an address set out in the notification, then that address is to be treated as the address specified for those purposes in the conditional immunity notice.

(10) In subsection (9), the "specified prosecutor" is the prosecutor specified in a conditional immunity notice for the purposes of receiving notification under that subsection.

(11) A conditional immunity notice is given in accordance with this subsection if—

- (a) it is given so as to be received personally by the person to whom it relates;
- (b) it is sent—
  - (i) by first class recorded delivery post to the person's house or place of business; or

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- (ii) in the case of a person who is on bail, by first class recorded delivery post to his proper domicile of citation (within the meaning of section 25 of the 1995 Act (bail conditions)); or
- (c) it is—
  - (i) given, so as to be received personally; or
  - (ii) sent by first class recorded delivery post, to a solicitor who has, under section 72F of that Act, notified the prosecutor that the solicitor is engaged by the person and who has not, under that section, informed the prosecutor that the solicitor has been dismissed or has withdrawn,

and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom it relates has agreed to its being so given and has notified the prosecutor of the appropriate number or address of the kind used for receiving electronic communications.

- (12) A cessation notice is given in accordance with this subsection if—
- (a) it is given so as to be received personally by the person to whom the conditional immunity notice relates; or
  - (b) it is sent to the person by first class recorded delivery post at the address specified in the conditional immunity notice for the purposes of the giving of a cessation notice,

and, where by virtue of subsection (13) the notice is given by way of an electronic communication, the person to whom the conditional immunity notice relates has agreed to the cessation notice's being so given and has notified the prosecutor (whether under subsection (9) or otherwise) of the appropriate number or address of the kind used for receiving electronic communications.

- (13) The references in subsections (11) and (12) to the giving or sending of notice in a specified way include references to its being given by electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)) the contents of which are kept or recorded so that they can be conveniently consulted later by the sender and the recipient.

#### *Enforcement of Sea Fisheries (Shellfish) Act 1967*

### **98 Enforcement of Sea Fisheries (Shellfish) Act 1967**

- (1) After section 4 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) there is inserted—

#### **“4A Powers of sea-fishery officers in relation to fishing boats to enforce regulated fishery**

- (1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (7) in relation to—
  - (a) a Scottish fishing boat wherever it may be;
  - (b) any other fishing boat in the Scottish zone.
- (2) The officer may go on board the boat, with or without persons assigned to assist in the duties of that officer, and may, for that purpose or for the purpose

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of disembarking from the boat, require the boat to stop, and anything else to be done which will facilitate the boarding of, or as the case may be, disembarking from, the boat.

- (3) The officer may require the attendance of the master and any other person on board the boat and may make any examination and inquiry which appears to the officer to be necessary for the purpose of enforcing such restrictions or regulations.
- (4) In particular under subsection (3) the officer may—
- (a) search the boat for shellfish or fishing gear;
  - (b) examine any shellfish on the boat and the equipment (including the fishing gear) of the boat, and require persons on board the boat to do any thing which appears to the officer to be necessary for facilitating the examination;
  - (c) require any person on the boat to produce any relevant document in the person's custody or possession;
  - (d) for the purpose of ascertaining whether an offence under section 3(3) has been committed, search the boat for any relevant document and may require any person on board the boat to do anything which appears to the officer to be necessary for facilitating the search;
  - (e) inspect, take copies of and retain possession of, while any search, examination or inspection provided for under this subsection is being carried out, any relevant document produced to the officer or found on board;
  - (f) require the master or any person for the time being in charge of the boat to render any relevant document on a computer system into visible and legible form and to produce it in a form in which it may be taken away; and
  - (g) where the boat is one in relation to which the officer has reason to suspect that an offence under section 3(3) has been committed, seize and detain any relevant document produced to the officer or found on board, for the purpose of enabling the document to be used as evidence in proceedings for the offence.
- (5) But subsection (4)(g) does not permit any document required by law to be carried on a boat to be seized and detained except while the boat is detained in a port.
- (6) In subsection (4), “relevant document” means a document relating to—
- (a) the boat; or
  - (b) the catching, landing, transportation, transshipment, sale or disposal of shellfish.
- (7) Where it appears to a British sea-fishery officer that an offence under section 3(3) has at any time been committed the officer—
- (a) may take, or require the master of any boat in relation to which the offence took place to take, the boat and its crew to the port which appears to the officer to be the nearest convenient port; and
  - (b) may detain, or require the master to detain, the boat in the port.
- (8) Where a British sea-fishery officer detains or requires the detention of a boat under subsection (7)(b), the officer must serve notice in writing on the master

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stating that the boat is or, as the case may be, is required to, be detained until the time mentioned in subsection (9).

- (9) That time is when the master is served with a notice in writing signed by a British sea-fishery officer stating that the previous notice ceases to have effect.

#### **4B Powers of sea-fishery officers on land to enforce regulated fishery**

- (1) For the purpose of enforcing restrictions imposed by, or regulations made by, an order under section 1 conferring a right of regulating a fishery, a British sea-fishery officer may exercise the powers conferred by subsections (2) to (11) of this section in relation to—
- (a) any premises (other than a dwelling-house) used for—
    - (i) carrying on any business in connection with the operation of fishing boats;
    - (ii) an activity connected with or ancillary to the operation of fishing boats; or
    - (iii) the treatment, storage or sale of shellfish;
  - (b) any vehicle which the officer has reasonable cause to believe is being used—
    - (i) to dredge, fish for or take shellfish; or
    - (ii) to transport shellfish.
- (2) The officer may enter and inspect, at any reasonable time, the premises or vehicle (and, in the case of a vehicle, for that purpose require the vehicle to stop or require the operator to take the vehicle to a particular place).
- (3) The officer may, in exercising the power conferred by subsection (2), take with the officer such other persons as appear to the officer to be necessary and any equipment or materials.
- (4) The officer may examine any shellfish on the premises or vehicle and require persons on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the examination.
- (5) The officer may on the premises or vehicle carry out such other inspections and tests as may reasonably be necessary.
- (6) The officer may require any person not to remove or cause to be removed any shellfish from the premises or vehicle for such a period as may be reasonably necessary for the purposes of establishing whether an offence under section 3(3) has at any time been committed.
- (7) The officer may require any person on the premises or vehicle to produce any relevant document in the person's custody or possession.
- (8) The officer may, for the purpose of establishing whether an offence under section 3(3) has been committed, search the premises or vehicle for any relevant document, and may require any person on the premises or vehicle to do anything which appears to the officer to be necessary for facilitating the search.
- (9) The officer may inspect and take copies of any relevant document produced or found on the premises or vehicle.

- (10) The officer may require any person to render any relevant document on a computer system into a visible and legible form and to produce it in a form in which it may be taken away.
- (11) If the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed, the officer may seize and detain any relevant document produced or found on the premises or vehicle, for the purpose of enabling the document to be used as evidence in proceedings for the offence.
- (12) A sheriff may, if satisfied by evidence on oath as to the matters mentioned in subsection (13), grant a warrant authorising a British sea-fishery officer to enter premises (if necessary using reasonable force), accompanied by such persons as appear to the officer to be necessary.
- (13) Those matters are—
- (a) that there are reasonable grounds to believe that anything which a British sea-fishery officer has power under this section to examine or inspect is on the premises and that the examination or inspection is likely to disclose evidence of the commission of an offence under section 3(3); and
  - (b) that any of the following is the case—
    - (i) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under subsection (12) has been given to the occupier;
    - (ii) an application for admission, or the giving of such notice, would defeat the object of entry;
    - (iii) the premises are unoccupied or the occupier is temporarily absent and it might defeat the object of entry to await the return of the occupier.
- (14) A warrant under subsection (12) is valid for the period of one month beginning with the date on which it is granted or for such shorter period as the sheriff may specify.
- (15) In this section—
- “premises” includes land; and
  - “relevant document” means a document relating to the catching, landing, transportation, transhipment, sale or disposal of shellfish.

#### **4C Powers of British sea-fishery officers to seize fish and fishing gear**

- (1) A British sea-fishery officer may seize—
- (a) in Scotland or in the Scottish zone; or
  - (b) on a Scottish fishing boat wherever it may be,
- any shellfish and any net or other fishing gear to which subsection (2) applies.
- (2) This subsection applies to—
- (a) any shellfish in respect of which the officer has reasonable grounds to suspect that an offence under section 3(3) has been committed;
  - (b) any net or other fishing gear which the officer has reasonable grounds to suspect has been used in the commission of such an offence.

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- (3) In this section—
- (a) “Scotland” has the meaning given by the Scotland Act 1998 (c. 46); and
  - (b) references to shellfish include any receptacle which contains shellfish.

#### **4D Sections 4A to 4C: supplementary**

- (1) A British sea-fishery officer, or a person assisting such an officer by virtue of section 4A(2) or 4B(3) or (12), is not liable in any civil or criminal proceedings for anything done in the purported exercise of a power conferred by section 4A, 4B or 4C if the court is satisfied—
- (a) that the act was done in good faith;
  - (b) that there were reasonable grounds for doing it; and
  - (c) that it was done with reasonable skill and care.
- (2) A person who—
- (a) fails without reasonable excuse to comply with any requirement imposed on the person by a British sea-fishery officer under a power conferred by section 4A or 4B;
  - (b) without reasonable excuse prevents, or attempts to prevent, any other person from complying with such a requirement; or
  - (c) obstructs such an officer in the exercise of any of those powers or the powers conferred by section 4C,
- shall be guilty of an offence.
- (3) A person who commits an offence under subsection (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.”.
- (2) In section 22 of the Sea Fisheries (Shellfish) Act 1967 (c. 83) (interpretation), after the definition of “sea fishing boat” there is inserted the following definition—
- ““Scottish fishing boat” means a fishing vessel registered in the register maintained under section 8 of the Merchant Shipping Act 1995 (c. 21) whose entry in the register specifies a port in Scotland as the port to which the vessel is to be treated as belonging;”.
- (3) In section 15 of the Sea Fisheries Act 1968 (c. 77) (amendment of Sea Fisheries (Shellfish) Act 1967), after subsection (2) there is inserted—
- “(2A) The reference in section 3(1) of the Sea Fisheries (Shellfish) Act 1967 to an order under section 1 of that Act conferring on the grantees a right of regulating a fishery which imposes restrictions on, or makes regulations respecting, the dredging, fishing for and taking of shellfish shall be construed as including a reference to an order under section 1 of that Act conferring on the grantees such a right which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations; and the references in sections 3(1)(a), (2) and (3) of that Act to restrictions and regulations shall be construed as including a reference to restrictions so imposed and regulations so made.

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(2B) The references in sections 4A(1) and 4B(1) of the Sea Fisheries (Shellfish) Act 1967 to restrictions imposed by, or regulations made by, an order under section 1 of that Act conferring a right of regulating a fishery, shall be construed as including a reference to restrictions imposed by, or regulations made by, the grantees by virtue of an order under section 1 of that Act which enables the grantees, with the consent of the appropriate Minister, to impose such restrictions or make such regulations.”.