Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 30th June 2010 and received Royal Assent on 6th August 2010

An Act of the Scottish Parliament to make provision about sentencing, offenders and defaulters; to make provision about criminal law, procedure and evidence; to make provision about criminal justice and the investigation of crime (including police functions); to amend the law relating to the licensing of certain activities by local authorities; to amend the law relating to the sale of alcohol; and for connected purposes.

VALID FROM 13/12/2010

PART 1

SENTENCING

VALID FROM 07/05/2015

The Scottish Sentencing Council

1 The Scottish Sentencing Council

(1) There is established a body corporate to be known as the "Scottish Sentencing Council" (referred to in this Part as the "Council").

(2) Schedule 1 makes further provision about the Council.

VALID FROM 19/10/2015

2 The Council's objectives

The Council must, in carrying out its functions, seek to—

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(a) promote consistency in sentencing practice,
(b) assist the development of policy in relation to sentencing,
(c) promote greater awareness and understanding of sentencing policy and practice.

VALID FROM 19/10/2015

3 Sentencing guidelines

(1) The Council is from time to time to prepare, for the approval of the High Court of Justiciary, guidelines relating to the sentencing of offenders.

(2) Such guidelines are to be known as "sentencing guidelines".

(3) Sentencing guidelines may in particular relate to—
(a) the principles and purposes of sentencing,
(b) sentencing levels,
(c) the particular types of sentence that are appropriate for particular types of offence or offender,
(d) the circumstances in which the guidelines may be departed from.

(4) Sentencing guidelines may be general in nature or may relate to a particular category of offence or offender or a particular matter relating to sentencing.

(5) The Council must, on preparing any sentencing guidelines, also prepare—
(a) an assessment of the costs and benefits to which the implementation of the guidelines would be likely to give rise,
(b) an assessment of the likely effect of the guidelines on the criminal justice system generally.

(6) The Council—
(a) must from time to time review any sentencing guidelines published by it, and
(b) may prepare, for the approval of the High Court of Justiciary, revised guidelines.

(7) In this section and sections 4 to 13, references to sentencing guidelines include references to revised sentencing guidelines.

VALID FROM 19/10/2015

4 Consultation on proposed sentencing guidelines

(1) The Council must, before submitting any sentencing guidelines to the High Court of Justiciary for approval—
(a) publish a draft of the proposed guidelines together with a draft of the assessments referred to in section 3(5), and
(b) consult the following persons about the drafts—
(i) the Scottish Ministers,

(ii) the Lord Advocate,

(iii) such other persons as the Council considers appropriate.

(2) The Council must, in finalising the guidelines and assessments for submission to the High Court of Justiciary, have regard to any comments made on the drafts following publication and consultation under subsection (1).

VALID FROM 19/10/2015

5 Approval of sentencing guidelines by High Court

(1) Sentencing guidelines have no effect unless approved by the High Court of Justiciary.

(2) On submitting sentencing guidelines to the High Court for approval, the Council must also provide the High Court with the assessments referred to in section 3(5).

(3) Where the Council submits sentencing guidelines to the High Court for approval, the Court may—

(a) approve the proposed guidelines—

(i) in whole or in part,

(ii) with or without modifications, or

(b) reject the proposed guidelines, in whole or in part.

(4) Where the High Court—

(a) rejects any of the proposed guidelines, or

(b) modifies any of them,

the Court must state its reasons for doing so.

(5) Sentencing guidelines approved by the High Court take effect on such date as the Court may determine.

(6) Different dates may be determined in relation to—

(a) different provisions of the guidelines, or

(b) different purposes.

(7) As soon as possible after the approval of sentencing guidelines by the High Court, the Council must publish—

(a) the guidelines as approved (including the date on which they take effect), and

(b) the assessments referred to in section 3(5) (revised as necessary to take account of any modifications of the guidelines prior to their approval).

(8) The guidelines and assessments are to be published in such manner as the Council considers appropriate.

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VALID FROM 19/10/2015

6 Effect of sentencing guidelines

(1) A court (whether at first instance or on appeal) must—

(a) in sentencing an offender in respect of an offence, have regard to any sentencing guidelines which are applicable in relation to the case,

(b) in carrying out any other function relating to the sentencing of offenders, have regard to any sentencing guidelines applicable to the carrying out of the function.

(2) If the court decides not to follow the guidelines, or to depart from them in accordance with provision contained in them under section 3(3)(d), it must state the reasons for its decision.

(3) The sentencing guidelines to which the court must have regard under subsection (1) are those applicable to the case at the time the court is sentencing the offender or, as the case may be, carrying out the function.

[[F1](4) Subsection (5) applies where, on an appeal in any case—

(a) the High Court of Justiciary passes another sentence under one of the following provisions of the 1995 Act—

(i) section 118(3),

(ii) section 118(4)(b),

(iii) section 118(4A)(b),

(iv) section 118(4A)(c)(ii), or

(b) the Sheriff Appeal Court or the High Court passes another sentence under section 189(1)(b) of that Act.**]**

(5) The sentencing guidelines which the High Court **[**[F2]or, as the case may be, the Sheriff Appeal Court**]** must have regard to under subsection (1) in passing that other sentence are those applicable to the case at the time it is passed.

(6) A revision of the sentencing guidelines after an offender is sentenced in respect of an offence is not a ground for the referral of the case to the High Court of Justiciary under section 194B of the 1995 Act (references to the High Court of cases dealt with on indictment).

(7) In section 108 of the 1995 Act (Lord Advocate's right of appeal against disposal where conviction on indictment), after subsection (2) insert—

"(2A) In deciding whether to appeal under subsection (1) in any case, the Lord Advocate must have regard to any sentencing guidelines which are applicable in relation to the case.".

(8) In section 175 of the 1995 Act (prosecutor's right of appeal against disposal in summary proceedings), after subsection (4B) insert—

"(4C) In deciding whether to appeal under subsection (4) in any case, the prosecutor must have regard to any sentencing guidelines which are applicable in relation to the case.".

Textual Amendments

F1 S. 6(4) substituted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(2)(a)**; S.S.I. 2015/336, art. 2(d)

F2 Words in s. 6(5) inserted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(2)(b)**; S.S.I. 2015/336, art. 2(d)

Commencement Information

I1 S. 6 in force at 19.10.2015 by S.S.I. 2015/336, **art. 2(a)**

VALID FROM 19/10/2015

7 Ministers' power to request that sentencing guidelines be prepared or reviewed

(1) The Scottish Ministers may request that the Council consider—

(a) preparing, for the approval of the High Court of Justiciary, sentencing guidelines on any matter, or

(b) reviewing any sentencing guidelines published by the Council.

(2) The Council must have regard to any request made by the Scottish Ministers.

(3) If the Council decides not to comply with a request made by the Scottish Ministers, it must provide the Scottish Ministers with reasons for its decision.

VALID FROM 19/10/2015

8 High Court's power to require preparation or review of sentencing guidelines

(1) Where the High Court of Justiciary pronounces an opinion under section 118(7) or 189(7) of the 1995 Act, the Court may require the Council to—

(a) prepare, for the Court's approval, sentencing guidelines on any matter, or

(b) review any sentencing guidelines published by the Council on any matter.

(2) On making a requirement under subsection (1), the High Court must state its reasons for doing so.

(3) The Council must comply with a requirement made under subsection (1) and, in doing so, must have regard to the High Court's reasons for making the requirement.

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VALID FROM 19/10/2015

9 [F3Publication of High Court and Sheriff Appeal Court guideline judgments]

(1) The Council must publish the opinions of the High Court of Justiciary pronounced under section 118(7) [F4of the 1995 Act and opinions of the Sheriff Appeal Court or the High Court pronounced under section 189(7) of that Act].

(2) As soon as possible after the High Court [F5or the Sheriff Appeal Court] pronounces such an opinion, the Scottish Court Service must provide the Council with a copy of the opinion.

(3) The copy opinion is to be provided in such form and by such means as the Council may require.

(4) The opinions are to be published in such manner, and at such times, as the Council considers appropriate.

(5) This section does not affect any power or responsibility of the Scottish Court Service in relation to the publication of opinions of the High Court.

Textual Amendments

F3 S. 9 title substituted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(4)(c)**; S.S.I. 2015/336, art. 2(d)

F4 Words in s. 9(1) substituted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(4)(a)**; S.S.I. 2015/336, art. 2(d)

F5 Words in s. 9(2) inserted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(4)(b)**; S.S.I. 2015/336, art. 2(d)

Commencement Information

I2 S. 9 in force at 19.10.2015 by S.S.I. 2015/336, **art. 2(a)**

VALID FROM 19/10/2015

10 Scottish Court Service to provide sentencing information to the Council

(1) The Scottish Court Service must provide the Council with such information relating to the sentences imposed by courts as the Council may reasonably require for the purposes of its functions.

(2) The information must be provided in such form and by such means as the Council may require.

(3) The Council must from time to time publish information about the sentences imposed by courts.

VALID FROM 19/10/2015

11 The Council's power to provide information, advice etc.

(1) The Council may—
- (a) publish or otherwise disseminate information about sentencing matters,
- (b) provide advice or guidance of a general nature about such matters,
- (c) conduct research into such matters.

(2) In this section, "sentencing matters" means—
- (a) sentencing guidelines,
- (b) the practice of the courts in relation to sentencing, and
- (c) any other matter relating to sentencing.

VALID FROM 19/10/2015

12 Business plan

(1) The Council must, before the submission day for each period of 3 years, prepare and submit to the Scottish Ministers a plan (a "business plan") describing how the Council proposes to carry out its functions during the period.

(2) The "submission day" is—
- (a) for the period of 3 years beginning on the day on which this section comes into force, the day specified by order made by the Scottish Ministers,
- (b) for each succeeding period of 3 years, the first day of the period.

(3) A business plan must—
- (a) be prepared in such form as the Scottish Ministers may direct,
- (b) contain the information specified in subsection (4) and such other information as they may direct, and
- (c) be submitted by such time as they may direct.

(4) The information referred to in subsection (3)(b) is details of the matters in relation to which the Council proposes to prepare sentencing guidelines.

(5) The Council may include in a business plan such other information as it considers appropriate.

(6) In preparing a business plan, the Council must consult—
- (a) the Scottish Ministers,
- (b) the Lord Advocate,
- (c) the Lord Justice General, and
- (d) such other persons as it considers appropriate.

(7) The Scottish Ministers must lay before the Scottish Parliament each business plan submitted to them.

(8) The Council must, as soon as practicable after a business plan has been laid before the Parliament, publish it in such manner as it considers appropriate.

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(9) The Council may at any time during a period covered by a business plan review the plan for the period and submit to the Scottish Ministers a revised plan.

(10) Subsections (3) to (8) apply to a revised plan as they apply to a business plan.

VALID FROM 19/10/2015

13 Annual report

(1) The Council must, as soon as practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.

(2) The report must—
- (a) be prepared in such form as the Scottish Ministers may direct,
- (b) contain the information specified in subsection (3) and such other information as they may direct, and
- (c) be submitted by such time as they may direct.

(3) The information referred to in subsection (2)(b) is details of—
- (a) the sentencing guidelines published or revised during the year (if any),
- (b) any sentencing guidelines submitted during the year to the High Court of Justiciary for approval and of the Court's response to them,
- (c) any draft sentencing guidelines being consulted upon,
- (d) requests made by the Scottish Ministers under section 7 and of the Council's response to them, [F6]...
- (e) requirements made by the High Court of Justiciary under section 8 and of the Council's response to them **[**[F7], and
- (f) requirements made by the Sheriff Appeal Court under section 8A and of the Council's response to them.**]**

(4) The Council may include in the report such other information as it considers appropriate.

(5) The Scottish Ministers must lay before the Scottish Parliament each report submitted to them.

(6) The Council must, as soon as practicable after the report has been laid before the Parliament, publish it in such manner as it considers appropriate.

Textual Amendments

F6 Word in s. 13(3) repealed (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(5)(a)**; S.S.I. 2015/336, art. 2(d)

F7 S. 13(3)(f) and word inserted (19.10.2015) by Courts Reform (Scotland) Act 2014 (asp 18), s. 138(2), **Sch. 5 para. 17(5)(b)**; S.S.I. 2015/336, art. 2(d)

Commencement Information

I3 S. 13 in force at 19.10.2015 by S.S.I. 2015/336, **art. 2(a)**

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VALID FROM 01/02/2011

Community payback orders

14 Community payback orders

(1) After section 227 of the 1995 Act insert—

"Community payback orders

227A Community payback orders

(1) Where a person (the "offender") is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order on the offender.

(2) A community payback order is an order imposing one or more of the following requirements—
- (a) an offender supervision requirement,
- (b) a compensation requirement,
- (c) an unpaid work or other activity requirement,
- (d) a programme requirement,
- (e) a residence requirement,
- (f) a mental health treatment requirement,
- (g) a drug treatment requirement,
- (h) an alcohol treatment requirement,
- (i) a conduct requirement.

(3) Subsection (4) applies where—
- (a) a person (the "offender") is convicted of an offence punishable by a fine (whether or not it is also punishable by imprisonment), and
- (b) where the offence is also punishable by imprisonment, the court decides not to impose—
  - (i) a sentence of imprisonment, or
  - (ii) a community payback order under subsection (1) instead of a sentence of imprisonment.

(4) The court may, instead of or as well as imposing a fine, impose a community payback order on the offender imposing one or more of the following requirements—
- (a) an offender supervision requirement,
- (b) a level 1 unpaid work or other activity requirement,
- (c) a conduct requirement.

(5) A justice of the peace court may only impose a community payback order imposing one or more of the following requirements—
- (a) an offender supervision requirement,
- (b) a compensation requirement,
- (c) an unpaid work or other activity requirement,

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(d) a residence requirement,

(e) a conduct requirement.

(6) Subsection (5)(c) is subject to section 227J(4).

(7) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed by a community payback order imposed by a justice of the peace court.

(8) An order is not to be made under subsection (7) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

(9) In this section and sections 227B to 227ZK, except where the context requires otherwise—

"court" means the High Court, the sheriff or a justice of the peace court,

"imprisonment" includes detention.

227B Community payback order: procedure prior to imposition

(1) This section applies where a court is considering imposing a community payback order on an offender.

(2) The court must not impose the order unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.

(3) Before imposing a community payback order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

(4) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing information about the offender and the offender's circumstances.

(5) An Act of Adjournal may prescribe—

(a) the form of a report under subsection (4), and

(b) the particular information to be contained in it.

(6) Subsection (4) does not apply where the court is considering imposing a community payback order—

(a) imposing only a level 1 unpaid work or other activity requirement, or

(b) under section 227M(2).

(7) The clerk of the court must give a copy of any report obtained under subsection (4) to—

(a) the offender,

(b) the offender's solicitor (if any), and

(c) the prosecutor.

(8) Before imposing the order, the court must explain to the offender in ordinary language—
- (a) the purpose and effect of each of the requirements to be imposed by the order,
- (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and
- (c) where the court proposes to include in the order provision under section 227X for it to be reviewed, the arrangements for such a review.

(9) The court must not impose the order unless the offender has, after the court has explained those matters, confirmed that the offender—
- (a) understands those matters, and
- (b) is willing to comply with each of the requirements to be imposed by the order.

(10) Subsection (9)(b) does not apply where the court is considering imposing a community payback order under section 227M(2).

227C Community payback order: responsible officer

(1) This section applies where a court imposes a community payback order on an offender.

(2) The court must, in imposing the order—
- (a) specify the locality in which the offender resides or will reside for the duration of the order,
- (b) require the local authority within whose area that locality is situated to nominate, within two days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,
- (c) require the offender to comply with any instructions given by the responsible officer—
  - (i) about keeping in touch with the responsible officer, or
  - (ii) for the purposes of subsection (3),
- (d) require the offender to report to the responsible officer in accordance with instructions given by that officer,
- (e) require the offender to notify the responsible officer without delay of—
  - (i) any change of the offender's address, and
  - (ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and
- (f) where the order imposes an unpaid work or other activity requirement, require the offender to undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.

(3) The responsible officer is responsible for—

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(a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,

(b) promoting compliance with those requirements by the offender,

(c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary, revoke or discharge the order.

(4) References in this Act to the responsible officer are, in relation to an offender on whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).

(5) In reckoning the period of two days for the purposes of subsection (2)(b), no account is to be taken of a Saturday or Sunday or any day which is a local or public holiday in the area of the local authority concerned.

227D Community payback order: further provision

(1) Where a community payback order is imposed on an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.

(2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.

(3) The imposition by a court of a community payback order on an offender does not prevent the court imposing a fine or any other sentence (other than imprisonment), or making any other order, that it would be entitled to impose or make in respect of the offence.

(4) Where a court imposes a community payback order on an offender, the clerk of the court must ensure that—

(a) a copy of the order is given to—

(i) the offender, and

(ii) the local authority within whose area the offender resides or will reside, and

(b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).

(5) A copy of the order may be given to the offender—

(a) by being delivered personally to the offender, or

(b) by being sent—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded.

(6) A community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

227E Requirement to avoid conflict with religious beliefs, work etc.

(1) In imposing a community payback order on an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—
  (a) a conflict with the offender's religious beliefs,
  (b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.

(2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

227F Payment of offenders' travelling and other expenses

(1) The Scottish Ministers may by order made by statutory instrument provide for the payment to offenders of travelling or other expenses in connection with their compliance with requirements imposed on them by community payback orders.

(2) An order under subsection (1) may—
  (a) specify expenses or provide for them to be determined under the order,
  (b) provide for the payments to be made by or on behalf of local authorities,
  (c) make different provision for different purposes.

(3) An order under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Offender supervision requirement

227G Offender supervision requirement

(1) In this Act, an "offender supervision requirement" is, in relation to an offender, a requirement that, during the specified period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender's rehabilitation.

(2) On imposing a community payback order, the court must impose an offender supervision requirement if—
  (a) the offender is under 18 years of age at the time the order is imposed, or
  (b) the court, in the order, imposes—
    (i) a compensation requirement,
    (ii) a programme requirement,
    (iii) a residence requirement,
    (iv) a mental health requirement,

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(v) a drug treatment requirement,

(vi) an alcohol treatment requirement, or

(vii) a conduct requirement.

(3) The specified period must be at least 6 months and not more than 3 years.

(4) Subsection (3) is subject to subsection (5) and section 227ZE(4).

(5) In the case of an offender supervision requirement imposed on a person aged 16 or 17 along with only a level 1 unpaid work or other activity requirement, the specified period must be no more than whichever is the greater of—

(a) the specified period under section 227L in relation to the level 1 unpaid work or other activity requirement, and

(b) 3 months.

(6) In this section, "specified", in relation to an offender supervision requirement, means specified in the requirement.

Compensation requirement

227H Compensation requirement

(1) In this Act, a "compensation requirement" is, in relation to an offender, a requirement that the offender must pay compensation for any relevant matter in favour of a relevant person.

(2) In subsection (1)—

"relevant matter" means any personal injury, loss, damage or other matter in respect of which a compensation order could be made against the offender under section 249 of this Act, and

"relevant person" means a person in whose favour the compensation could be awarded by such a compensation order.

(3) A compensation requirement may require the compensation to be paid in a lump sum or in instalments.

(4) The offender must complete payment of the compensation before the earlier of the following—

(a) the end of the period of 18 months beginning with the day on which the compensation requirement is imposed,

(b) the beginning of the period of 2 months ending with the day on which the offender supervision requirement imposed under section 227G(2) ends.

(5) The following provisions of this Act apply in relation to a compensation requirement as they apply in relation to a compensation order, and as if the references in them to a compensation order included a compensation requirement—

(a) section 249(3), (4), (5) and (8) to (10),

(b) section 250(2),

(c) section 251(1), (1A) and (2)(b), and

(d) section 253.

Unpaid work or other activity requirement

227I Unpaid work or other activity requirement

(1) In this Act, an "unpaid work or other activity requirement" is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—
  (a) unpaid work, or
  (b) unpaid work and other activity.

(2) Whether the offender must undertake other activity as well as unpaid work is for the responsible officer to determine.

(3) The nature of the unpaid work and any other activity to be undertaken by the offender is to be determined by the responsible officer.

(4) The number of hours that may be specified in the requirement must be (in total)—
  (a) at least 20 hours, and
  (b) not more than 300 hours.

(5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a "level 1 unpaid work or other activity requirement".

(6) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a "level 2 unpaid work or other activity requirement".

(7) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (4) to (6).

(8) An order under subsection (7) may only substitute for the number of hours for the time being specified in a provision mentioned in the first column of the following table a number of hours falling within the range set out in the corresponding entry in the second column.

Provision	***Range***	
	No fewer than	***No more than***
Subsection (4)(a)	10 hours	40 hours
Subsection (4)(b)	250 hours	350 hours
Subsections (5) and (6)	70 hours	150 hours

(9) An order under subsection (7) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(10) In this section, "specified", in relation to an unpaid work or other activity requirement, means specified in the requirement.

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227J Unpaid work or other activity requirement: further provision

(1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.

(2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(4), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.

(3) Subsection (2) does not apply where the court is considering imposing a community payback order—
  (a) imposing only a level 1 unpaid work or other activity requirement, or
  (b) under section 227M(2).

(4) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—
  (a) the Scottish Ministers by regulations made by statutory instrument so provide, and
  (b) the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.

(5) Regulations are not to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

227K Allocation of hours between unpaid work and other activity

(1) Subject to subsection (2), it is for the responsible officer to determine how many out of the number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—
  (a) unpaid work, and
  (b) any other activity to be undertaken.

(2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—
  (a) 30% of the number of hours specified in the requirement, and
  (b) 30 hours.

(3) The Scottish Ministers may by order made by statutory instrument—
  (a) substitute another percentage for the percentage for the time being specified in subsection (2)(a),
  (b) substitute another number of hours for the number of hours for the time being specified in subsection (2)(b).

(4) An order is not to be made under subsection (3) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

227L Time limit for completion of unpaid work or other activity

(1) The number of hours of unpaid work and any other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period beginning with the imposition of the requirement.

(2) The "specified period" is—
- (a) in relation to a level 1 unpaid work or other activity requirement, 3 months or such longer period as the court may specify in the requirement,
- (b) in relation to a level 2 unpaid work or other activity requirement, 6 months or such longer period as the court may specify in the requirement.

227M Fine defaulters

(1) This section applies where—
- (a) a fine has been imposed on an offender in respect of an offence,
- (b) the offender fails to pay the fine or an instalment of the fine,
- (c) the offender is not serving a sentence of imprisonment, and
- (d) apart from this section, the court would have imposed a period of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.

(2) Instead of imposing a period of imprisonment under section 219(1) of this Act, the court—
- (a) where the amount of the fine or the instalment does not exceed level 2 on the standard scale, must impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement,
- (b) where the amount of the fine or the instalment exceeds that level, may impose such a community payback order.

(3) The court, in imposing a community payback order under subsection (2) on a person aged 16 or 17, must also impose an offender supervision requirement.

(4) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the number of hours specified in the requirement must not exceed 50.

(5) On completion of the hours of unpaid work and any other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).

(6) If, after a community payback order is imposed on an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.

(7) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (7).

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(8) In this section, "court" does not include the High Court.

227N Offenders subject to more than one unpaid work or other activity requirement

(1) This section applies where—
  (a) a court is considering imposing an unpaid work or other activity requirement on an offender (referred to as the "new requirement"), and
  (b) at the time the court is considering imposing the requirement, there is already in effect one or more community payback orders imposing such a requirement on the same offender (each referred to as an "existing requirement").

(2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.

(3) Where the court makes a direction under subsection (2), hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.

(4) Subsection (5) applies where the court does not make a direction under subsection (2).

(5) The maximum number of hours which may be specified in the new requirement is the number of hours specified in section 227I(4)(b) less the aggregate of the number of hours of unpaid work or activity still to be completed under each existing requirement at the time the new requirement is imposed.

(6) In calculating that aggregate, if any existing requirement is concurrent with another (by virtue of a direction under subsection (2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.

(7) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(4)(a), the court must not impose the new requirement.

227O Rules about unpaid work and other activity

(1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.

(2) Rules under subsection (1) may in particular make provision for—
  (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
  (b) reckoning the time spent undertaking unpaid work or other activity,
  (c) the keeping of records of unpaid work and any other activity undertaken.

(3) Rules under subsection (1) may—
  (a) confer functions on responsible officers,
  (b) contain rules about the way responsible officers are to exercise functions under this Act.

(4) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

Programme requirement

227P Programme requirement

(1) In this Act, a "programme requirement" is, in relation to an offender, a requirement that the offender must participate in a specified programme, at the specified place and on the specified number of days.

(2) In this section, "programme" means a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs.

(3) A court may impose a programme requirement on an offender only if the specified programme is one which has been recommended by an officer of a local authority as being suitable for the offender to participate in.

(4) If an offender's compliance with a proposed programme requirement would involve the co-operation of a person other than the offender, the court may impose the requirement only if the other person consents.

(5) A court may not impose a programme requirement that would require an offender to participate in a specified programme after the expiry of the period specified in the offender supervision requirement to be imposed at the same time as the programme requirement (by virtue of section 227G(2)(b)).

(6) Where the court imposes a programme requirement on an offender, the requirement is to be taken to include a requirement that the offender, while attending the specified programme, complies with any instructions given by or on behalf of the person in charge of the programme.

(7) In this section, "specified", in relation to a programme requirement, means specified in the requirement.

Residence requirement

227Q Residence requirement

(1) In this Act, a "residence requirement" is, in relation to an offender, a requirement that, during the specified period, the offender must reside at a specified place.

(2) The court may, in a residence requirement, require an offender to reside at a hostel or other institution only if the hostel or institution has been

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recommended as a suitable place for the offender to reside in by an officer of a local authority.

(3) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the residence requirement (by virtue of section 227G(2)(b)).

(4) In this section, "specified", in relation to a residence requirement, means specified in the requirement.

Mental health treatment requirement

227R Mental health treatment requirement

(1) In this Act, a "mental health treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both) with a view to improving the offender's mental condition.

(2) The treatment to which an offender may be required to submit under a mental health treatment requirement is such of the kinds of treatment described in subsection (3) as is specified; but otherwise the nature of the treatment is not to be specified.

(3) Those kinds of treatment are—
- (a) treatment as a resident patient in a hospital (other than a State hospital) within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) ("the 2003 Act"),
- (b) treatment as a non-resident patient at such institution or other place as may be specified, or
- (c) treatment by or under the direction of such registered medical practitioner or registered psychologist as may be specified.

(4) A court may impose a mental health treatment requirement on an offender only if the court is satisfied—
- (a) on the written or oral evidence of an approved medical practitioner (within the meaning of the 2003 Act), that Condition A is met,
- (b) on the written or oral evidence of the registered medical practitioner or registered psychologist by whom or under whose direction the treatment is to be provided, that Condition B is met, and
- (c) that Condition C is met.

(5) Condition A is that—
- (a) the offender suffers from a mental condition,
- (b) the condition requires, and may be susceptible to, treatment, and
- (c) the condition is not such as to warrant the offender's being subject to—
  - (i) a compulsory treatment order under section 64 of the 2003 Act, or
  - (ii) a compulsion order under section 57A of this Act.

(6) Condition B is that the treatment proposed to be specified is appropriate for the offender.

(7) Condition C is that arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the hospital proposed to be specified in the requirement.

(8) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the mental health treatment requirement (by virtue of section 227G(2)(b)).

(9) In this section, "specified", in relation to a mental health treatment requirement, means specified in the requirement.

227S Mental health treatment requirements: medical evidence

(1) For the purposes of section 227R(4)(a) or (b), a written report purporting to be signed by an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)) may be received in evidence without the need for proof of the signature or qualifications of the practitioner.

(2) Where such a report is lodged in evidence otherwise than by or on behalf of the offender, a copy of the report must be given to—
  (a) the offender, and
  (b) the offender's solicitor (if any).

(3) The court may adjourn the case if it considers it necessary to do so to give the offender further time to consider the report.

(4) Subsection (5) applies where the offender is—
  (a) detained in a hospital under this Act, or
  (b) remanded in custody.

(5) For the purpose of calling evidence to rebut any evidence contained in a report lodged as mentioned in subsection (2), arrangements may be made by or on behalf of the offender for an examination of the offender by a registered medical practitioner.

(6) Such an examination is to be carried out in private.

227T Power to change treatment

(1) This section applies where—
  (a) a mental health treatment requirement has been imposed on an offender, and
  (b) the registered medical practitioner or registered psychologist by whom or under whose direction the offender is receiving the treatment to which the offender is required to submit in pursuance of the requirement is of the opinion mentioned in subsection (2).

(2) That opinion is—

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(a) that the offender requires, or that it would be appropriate for the offender to receive, a different kind of treatment (whether in whole or in part) from that which the offender has been receiving, or

(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different hospital or other institution or place from that where the offender has been receiving treatment.

(3) The practitioner or, as the case may be, psychologist may make arrangements for the offender to be treated accordingly.

(4) Subject to subsection (5), the treatment provided under the arrangements must be of a kind which could have been specified in the mental health treatment requirement.

(5) The arrangements may provide for the offender to receive treatment (in whole or in part) as a resident patient in an institution or place even though it is one that could not have been specified for that purpose in the mental health treatment requirement.

(6) Arrangements may be made under subsection (3) only if—

(a) the offender and the responsible officer agree to the arrangements,

(b) the treatment will be given by or under the direction of a registered medical practitioner or registered psychologist who has agreed to accept the offender as a patient, and

(c) where the treatment requires the offender to be a resident patient, the offender will be received as such.

(7) Where arrangements are made under subsection (3)—

(a) the responsible officer must notify the court of the arrangements, and

(b) the treatment provided under the arrangements is to be taken to be treatment to which the offender is required to submit under the mental health treatment requirement.

Drug treatment requirement

227U Drug treatment requirement

(1) In this Act, a "drug treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender's dependency on, or propensity to misuse, drugs.

(2) The treatment to which an offender may be required to submit under a drug treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

(3) Those kinds of treatment are—

(a) treatment as a resident in such institution or other place as is specified,

(b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified.

(4) The specified person must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

(5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the drug treatment requirement (by virtue of section 227G(2)(b)).

(6) A court may impose a drug treatment requirement on an offender only if the court is satisfied that—

(a) the offender is dependent on, or has a propensity to misuse, any controlled drug (as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38)),

(b) the dependency or propensity requires, and may be susceptible to, treatment, and

(c) arrangements have been, or can be, made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

(7) In this section, "specified", in relation to a drug treatment requirement, means specified in the requirement.

Alcohol treatment requirement

227V Alcohol treatment requirement

(1) In this Act, an "alcohol treatment requirement" is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to the reduction or elimination of the offender's dependency on alcohol.

(2) The treatment to which an offender may be required to submit under an alcohol treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

(3) Those kinds of treatment are—

(a) treatment as a resident in such institution or other place as is specified,

(b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified,

(c) treatment by or under the direction of such person as is specified.

(4) The person specified under subsection (1) or (3)(c) must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

(5) The specified period must not be longer than the period specified in the offender supervision requirement to be imposed at the same time as the alcohol treatment requirement (by virtue of section 227G(2)(b)).

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(6) A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that—
  (a) the offender is dependent on alcohol,
  (b) the dependency requires, and may be susceptible to, treatment, and
  (c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

(7) In this section, "specified", in relation to an alcohol treatment requirement, means specified in the requirement.

Conduct requirement

227W Conduct requirement

(1) In this Act, a "conduct requirement" is, in relation to an offender, a requirement that the offender must, during the specified period, do or refrain from doing specified things.

(2) A court may impose a conduct requirement on an offender only if the court is satisfied that the requirement is necessary with a view to—
  (a) securing or promoting good behaviour by the offender, or
  (b) preventing further offending by the offender.

(3) The specified period must be not more than 3 years.

(4) The specified things must not include anything that—
  (a) could be required by imposing one of the other requirements listed in section 227A(2), or
  (b) would be inconsistent with the provisions of this Act relating to such other requirements.

(5) In this section, "specified", in relation to a conduct requirement, means specified in the requirement.

Community payback orders: review, variation etc.

227X Periodic review of community payback orders

(1) On imposing a community payback order on an offender, the court may include in the order provision for the order to be reviewed at such time or times as may be specified in the order.

(2) A review carried out in pursuance of such provision is referred to in this section as a "progress review".

(3) A progress review may be carried out by the court which imposed the community payback order or (if different) the appropriate court, and, where those courts are different, the court must specify in the order which of those courts is to carry out the reviews.

(4) A progress review is to be carried out in such manner as the court carrying out the review may determine.

(5) Before each progress review, the responsible officer must give the court a written report on the offender's compliance with the requirements imposed by the community payback order in the period to which the review relates.

(6) The offender must attend each progress review.

(7) If the offender fails to attend a progress review, the court may—
- (a) issue a citation requiring the offender's attendance, or
- (b) issue a warrant for the offender's arrest.

(8) The unified citation provisions apply in relation to a citation under subsection (7)(a) as they apply in relation to a citation under section 216(3)(a) of this Act.

(9) Subsections (10) and (11) apply where, in the course of carrying out a progress review in respect of a community payback order, it appears to the court that the offender has failed to comply with a requirement imposed by the order.

(10) The court must—
- (a) provide the offender with written details of the alleged failure,
- (b) inform the offender that the offender is entitled to be legally represented, and
- (c) inform the offender that no answer need be given to the allegation before the offender—
  - (i) has been given an opportunity to take legal advice, or
  - (ii) has indicated that the offender does not wish to take legal advice.

(11) The court must then—
- (a) if it is the appropriate court, appoint another hearing for consideration of the alleged failure in accordance with section 227ZC, or
- (b) if it is not the appropriate court, refer the alleged failure to that court for consideration in accordance with that section.

(12) On conclusion of a progress review in respect of a community payback order, the court may vary, revoke or discharge the order in accordance with section 227Z.

227Y Applications to vary, revoke and discharge community payback orders

(1) The appropriate court may, on the application of either of the persons mentioned in subsection (2), vary, revoke or discharge a community payback order in accordance with section 227Z.

(2) Those persons are—
- (a) the offender on whom the order was imposed,
- (b) the responsible officer in relation to the offender.

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227Z Variation, revocation and discharge: court's powers

(1) This section applies where a court is considering varying, revoking or discharging a community payback order imposed on an offender.

(2) The court may vary, revoke or discharge the order only if satisfied that it is in the interests of justice to do so having regard to circumstances which have arisen since the order was imposed.

(3) Subsection (2) does not apply where the court is considering varying the order under section 227ZC(7)(d).

(4) In varying an order, the court may, in particular—
- (a) add to the requirements imposed by the order,
- (b) revoke or discharge any requirement imposed by the order,
- (c) vary any requirement imposed by the order,
- (d) include provision for progress reviews under section 227X,
- (e) where the order already includes such provision, vary that provision.

(5) In varying a requirement imposed by the order, the court may, in particular—
- (a) extend or shorten any period or other time limit specified in the requirement,
- (b) in the case of an unpaid work or other activity requirement, increase or decrease the number of hours specified in the requirement,
- (c) in the case of a compensation requirement, vary the amount of compensation or any instalment.

(6) The court may not, under subsection (5)(b), increase the number of hours beyond the appropriate maximum.

(7) The appropriate maximum is the number of hours specified in section 227I(4)(b) at the time the unpaid work or other activity requirement being varied was imposed less the aggregate of the number of hours of unpaid work or other activity still to be completed under each other unpaid work or other activity requirement (if any) in effect in respect of the offender at the time of the variation (a “current requirement”).

(8) In calculating that aggregate, if any current requirement is concurrent with another (by virtue of a direction under section 227N(2)), hours that count for the purposes of compliance with both (or, as the case may be, all) are to be counted only once.

(9) The court may not, under subsection (5)(c), increase the amount of compensation beyond the maximum that could have been awarded at the time the requirement was imposed.

(10) Where the court varies a restricted movement requirement imposed by a community payback order, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.

(11) Where the court revokes a community payback order, the court may deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed.

(12) Subsection (11) applies in relation to a community payback order imposed under section 227M(2) as if the reference to the offence in relation to which the order was imposed were a reference to the failure to pay in respect of which the order was imposed.

(13) Where the court is considering varying, revoking or discharging the order otherwise than on the application of the offender, the court must issue a citation to the offender requiring the offender to appear before the court (except where the offender is required to appear by section 227X(6)) or 227ZC(2)(b).

(14) If the offender fails to appear as required by the citation, the court may issue a warrant for the arrest of the offender.

(15) The unified citation provisions apply in relation to a citation under subsection (13) as they apply in relation to a citation under section 216(3)(a) of this Act.

227ZA Variation of community payback orders: further provision

(1) This section applies where a court is considering varying a community payback order imposed on an offender.

(2) The court must not make the variation unless it has obtained, and taken account of, a report from the responsible officer containing information about the offender and the offender's circumstances.

(3) An Act of Adjournal may prescribe—
  (a) the form of a report under subsection (2), and
  (b) the particular information to be contained in it.

(4) Subsection (2) does not apply where the court is considering varying a community payback order—
  (a) so that it imposes only a level 1 unpaid work or other activity requirement, or
  (b) imposed under section 227M(2).

(5) The clerk of the court must give a copy of any report obtained under subsection (2) to—
  (a) the offender,
  (b) the offender's solicitor (if any).

(6) Before making the variation, the court must explain to the offender in ordinary language—
  (a) the purpose and effect of each of the requirements to be imposed by the order as proposed to be varied,
  (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order as proposed to be varied, and

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(c) where the court proposes to include in the order as proposed to be varied provision for a progress review under section 227X, or to vary any such provision already included in the order, the arrangements for such a review.

(7) The court must not make the variation unless the offender has, after the court has explained those matters, confirmed that the offender—

(a) understands those matters, and

(b) is willing to comply with each of the requirements to be imposed by the order as proposed to be amended.

(8) Where the variation would impose a new requirement—

(a) the court must not make the variation if the new requirement is not a requirement that could have been imposed by the order when it was imposed,

(b) if the new requirement is one which could have been so imposed, the court must, before making the variation take whatever steps the court would have been required to take before imposing the requirement had it been imposed by the order when it was imposed.

(9) Subsection (8)(a) does not prevent the imposition of a restricted movement requirement under section 227ZC(7)(d).

(10) In determining for the purpose of subsection (8)(a) whether an unpaid work or other activity requirement is a requirement that could have been imposed by the order when the order was imposed, the effect of section 227N(7) is to be ignored.

(11) Where the variation would vary any requirement imposed by the order, the court must not make the variation if the requirement as proposed to be varied could not have been imposed, or imposed in that way, by the order when it was imposed.

(12) Subsections (4) and (5) of section 227D apply, with the necessary modifications, where a community payback order is varied as they apply where such an order is imposed.

227ZB Change of offender's residence to new local authority area

(1) The section applies where—

(a) the offender on whom a community payback order has been imposed proposes to change, or has changed, residence to a locality ("the new locality") situated in the area of a different local authority from that in which the locality currently specified in the order is situated, and

(b) the court is considering varying the order so as to specify the new local authority area in which the offender resides or will reside.

(2) The court may vary the order only if satisfied that arrangements have been, or can be, made in the local authority area in which the new locality is situated for the offender to comply with the requirements imposed by the order.

(3) If the court considers that a requirement ("the requirement concerned") imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the new local authority area unless it also varies the order so as to—
  (a) revoke or discharge the requirement concerned, or
  (b) substitute for the requirement concerned another requirement that can be so complied with.

(4) Where the court varies the order, the court must also vary the order so as to require the local authority for the area in which the new locality is situated to nominate an officer of the authority to be the responsible officer for the purposes of the order.

Breach of community payback order

227ZC Breach of community payback order

(1) This section applies where it appears to the appropriate court that an offender on whom a community payback order has been imposed has failed to comply with a requirement imposed by the order.

(2) The court may—
  (a) issue a warrant for the offender's arrest, or
  (b) issue a citation to the offender requiring the offender to appear before the court.

(3) If the offender fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the offender.

(4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.

(5) The court must, before considering the alleged failure—
  (a) provide the offender with written details of the alleged failure,
  (b) inform the offender that the offender is entitled to be legally represented, and
  (c) inform the offender that no answer need be given to the allegation before the offender—
    (i) has been given an opportunity to take legal advice, or
    (ii) has indicated that the offender does not wish to take legal advice.

(6) Subsection (5) does not apply if the offender has previously been provided with those details and informed about those matters under section 227X(10) of this Act.

(7) Where the order was imposed under section 227A, if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—

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(a) impose on the offender a fine not exceeding level 3 on the standard scale,

(b) where the order was imposed under section 227A(1), revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed,

(c) where the order was imposed under section 227A(4), revoke the order and impose on the offender a sentence of imprisonment for a term not exceeding—

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months,

(d) vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order, or

(e) both impose a fine under paragraph (a) and vary the order under paragraph (d).

(8) Where the order was imposed under section 227M(2), if the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—

(a) revoke the order and impose on the offender a period of imprisonment for a term not exceeding—

(i) where the court is a justice of the peace court, 60 days,

(ii) in any other case, 3 months, or

(b) vary—

(i) the number of hours specified in the level 1 unpaid work or other activity requirement imposed by the order, and

(ii) where the order also imposes an offender supervision requirement, the specified period under section 227G in relation to the requirement.

(9) Where the court revokes a community payback order under subsection (7)(b) or (c) and the offender is, in respect of the same offence, also subject to—

(a) a drug treatment and testing order, by virtue of section 234J, or

(b) a restriction of liberty order, by virtue of section 245D(3),

the court must, before dealing with the offender under subsection (7)(b) or (c), revoke the drug treatment and testing order or, as the case may be, restriction of liberty order.

(10) If the court is satisfied that the offender has failed to comply with a requirement imposed by the order but had a reasonable excuse for the failure, the court may, subject to section 227Z(2), vary the order so as to impose a new requirement, vary any requirement imposed by the order or revoke or discharge any requirement imposed by the order.

(11) Subsections (7)(b) and (c) and (9) are subject to section 42(9) of the Criminal Justice (Scotland) Act 2003 (asp 7) (powers of drugs courts to deal with breach of community payback orders).

227ZD Breach of community payback order: further provision

(1) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.

(2) Subsection (3) applies in relation to a community payback order imposing a compensation requirement.

(3) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.

(4) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.

Restricted movement requirement

227ZE Restricted movement requirement

(1) The requirements which the court may impose under section 227ZC(7)(d) include a restricted movement requirement.

(2) If the court varies a community payback order under section 227ZC(7)(d) so as to impose a restricted movement requirement, the court must also vary the order so as to impose an offender supervision requirement, unless an offender supervision requirement is already imposed by the order.

(3) The court must ensure that the specified period under section 227G in relation to the offender supervision requirement is at least as long as the period for which the restricted movement requirement has effect and, where the community payback order already imposes an offender supervision requirement, must vary it accordingly, if necessary.

(4) The minimum period of 6 months in section 227G(3) does not apply in relation to an offender supervision requirement imposed under subsection (2).

(5) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.

(6) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.

(7) On receiving a report under subsection (6), the responsible officer must report the matter to the court.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

227ZF Restricted movement requirement: effect

(1) In this Act, a "restricted movement requirement" is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.

(2) A restricted movement requirement may in particular require the offender—
- (a) to be in a specified place at a specified time or during specified periods, or
- (b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.

(3) In imposing a restricted movement requirement containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the requirement alone or the requirement taken together with any other relevant requirement or order, to be at any place for periods totalling more than 12 hours in any one day.

(4) In subsection (3), "other relevant requirement or order" means—
- (a) any other restricted movement requirement in effect in respect of the offender at the time the court is imposing the requirement referred to in subsection (3), and
- (b) any restriction of liberty order under section 245A in effect in respect of the offender at that time.

(5) A restricted movement requirement—
- (a) takes effect from the specified day, and
- (b) has effect for such period as is specified.

(6) The period specified under subsection (5)(b) must be—
- (a) not less than 14 days, and
- (b) subject to subsections (7) and (8), not more than 12 months.

(7) Subsection (8) applies in the case of a restricted movement requirement imposed for failure to comply with a requirement of a community payback order—
- (a) where the offender was under 18 years of age at the time the order was imposed, or
- (b) where the only requirement imposed by the order is a level 1 unpaid work or other activity requirement.

(8) The period specified under subsection (5)(b) must be not more than—
- (a) where the order was imposed by a justice of the peace court, 60 days, or
- (b) in any other case, 3 months.

(9) A court imposing a restricted movement requirement must specify in it—
- (a) the method by which the offender's compliance with the requirement is to be monitored, and
- (b) the person who is to be responsible for monitoring that compliance.

(10) The Scottish Ministers may by regulations made by statutory instrument substitute—

(a) for the number of hours for the time being specified in subsection (3) another number of hours,

(b) for the number of months for the time being specified in subsection (6)(b) another number of months.

(11) Regulations are not to be made under subsection (10) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.

(12) In this section, "specified", in relation to a restricted movement requirement, means specified in the requirement.

227ZG Restricted movement requirements: further provision

(1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.

(2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—

(a) the place, and

(b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.

(3) The court may, before imposing the requirement, hear the officer who prepared the report.

227ZH Variation of restricted movement requirement

(1) This section applies where—

(a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and

(b) the court is considering varying the requirement so as to require the offender to be at a different place ("the new place").

(2) Before making the variation, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—

(a) the new place, and

(b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.

(3) The court may, before making the variation, hear the officer who prepared the report.

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227ZI Remote monitoring

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

227ZJ Restricted movement requirements: Scottish Ministers' functions

(1) The Scottish Ministers may by regulations made by statutory instrument prescribe—
  (a) which courts, or class or classes of courts, may impose restricted movement requirements,
  (b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,
  (c) the class or classes of offender on whom such a requirement may be imposed.

(2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.

(3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the “monitor”).

(5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.

(6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.

(7) Subsection (8) applies where—
  (a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and
  (b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as changed.

(8) The appropriate court must—
  (a) vary the restricted movement requirement so as to specify a different person as the monitor,
  (b) send a copy of the requirement as varied to that person and to the responsible officer, and

(c) notify the offender of the variation.

227ZK Documentary evidence in proceedings for breach of restricted movement requirement

(1) This section applies for the purposes of establishing in any proceedings whether an offender on whom a restricted movement requirement has been imposed has complied with the requirement.

(2) Evidence of the presence or absence of the offender at a particular place at a particular time may be given by the production of a document or documents bearing to be—

(a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored, and

(b) a certificate signed by a person nominated for the purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the statement.

(3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.

(4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.

(5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.

Local authorities: annual consultation about unpaid work

227ZL Local authorities: annual consultations about unpaid work

(1) Each local authority must, for each year, consult prescribed persons about the nature of unpaid work and other activities to be undertaken by offenders residing in the local authority's area on whom community payback orders are imposed.

(2) In subsection (1), “prescribed persons” means such persons, or class or classes of person, as may be prescribed by the Scottish Ministers by regulations made by statutory instrument.

(3) A statutory instrument containing regulations under subsection (2) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

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Annual reports on community payback orders

227ZM Annual reports on community payback orders

(1) Each local authority must, as soon as practicable after the end of each reporting year, prepare a report on the operation of community payback orders within their area during that reporting year, and send a copy of the report to the Scottish Ministers.

(2) The Scottish Ministers may issue directions to local authorities about the content of their reports under subsection (1); and local authorities must comply with any such directions.

(3) The Scottish Ministers must, as soon as practicable after the end of each reporting year, lay before the Scottish Parliament and publish a report that collates and summarises the data included in the various reports under subsection (1).

(4) In this section, "reporting year" means—
  (a) the period of 12 months beginning on the day this section comes into force, or
  (b) any subsequent period of 12 months beginning on an anniversary of that day.

Community payback order: meaning of "the appropriate court"

227ZN Meaning of "the appropriate court"

(1) In sections 227A to 227ZK, "the appropriate court" means, in relation to a community payback order—
  (a) where the order was imposed by the High Court of Justiciary, that Court,
  (b) where the order was imposed by a sheriff, a sheriff having jurisdiction in the locality mentioned in subsection (2),
  (c) where the order was imposed by a justice of the peace court—
    (i) the justice of the peace court having jurisdiction in that locality, or
    (ii) if there is no justice of the peace court having jurisdiction in that locality, a sheriff having such jurisdiction.

(2) The locality referred to in subsection (1) is the locality for the time being specified in the community payback order under section 227C(2)(a).".

(2) Schedule 2 modifies enactments in consequence of this section.

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VALID FROM 28/03/2011

Non-harassment orders

15 Non-harassment orders

In section 234A of the 1995 Act (non-harassment orders)—

(a) in subsection (1), for "harassment of" substitute " misconduct towards ",

(b) in subsection (2), for "further harassment" substitute " harassment (or further harassment) ",

(c) after subsection (2) insert—

"(2A) The court may, for the purpose of subsection (2) above, have regard to any information given to it for that purpose by the prosecutor—

(a) about any other offence involving misconduct towards the victim—

(i) of which the offender has been convicted, or

(ii) as regards which the offender has accepted (or has been deemed to have accepted) a fixed penalty or compensation offer under section 302(1) or 302A(1) or as regards which a work order has been made under section 303ZA(6),

(b) in particular, by way of—

(i) an extract of the conviction along with a copy of the complaint or indictment containing the charge to which the conviction relates, or

(ii) a note of the terms of the charge to which the fixed penalty offer, compensation offer or work order relates.

(2B) But the court may do so only if the court may, under section 101 or 101A (in a solemn case) or section 166 or 166A (in a summary case), have regard to the conviction or the offer or order.

(2C) The court must give the offender an opportunity to make representations in response to the application.", and

(d) for subsection (7) substitute—

"(7) For the purposes of this section—

"harassment" and "conduct" are to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40),

"misconduct" includes conduct that causes alarm or distress.".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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VALID FROM 01/02/2011

Short sentences

VALID FROM 13/12/2011

16 Short periods of detention

(1) The 1995 Act is amended as follows.

(2) Section 169 (detention in precincts of court) is repealed.

(3) In section 206 (minimum periods of detention)—
(a) in subsection (1), for "five" substitute " 15 ", and
(b) subsections (2) to (6) are repealed.

17 Presumption against short periods of imprisonment

In section 204 of the 1995 Act (restrictions on passing sentence of imprisonment or detention), after subsection (3) insert—

"(3A) A court must not pass a sentence of imprisonment for a term of 3 months or less on a person unless the court considers that no other method of dealing with the person is appropriate.

(3B) Where a court passes such a sentence, the court must—
(a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and
(b) have those reasons entered in the record of the proceedings.

(3C) The Scottish Ministers may by order made by statutory instrument substitute for the number of months for the time being specified in subsection (3A) another number of months.

(3D) An order under subsection (3C) is not to be made unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.".

PROSPECTIVE

18 Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

(1) The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended as follows.

(2) In section 4 (basic definitions)—
(a) in subsection (1)—
(i) the definitions of "custody-only prisoner" and "custody-only sentence" are repealed,

(ii) in the definition of "custody and community sentence" for "15 days or more" substitute " at least the prescribed period ",

(iii) after the definition of "Parole Board" insert—

""prescribed period" means such period as the Scottish Ministers may by order specify,", and

(iv) after the definition of "punishment part" insert—

""short-term custody and community prisoner" means a person serving a short-term custody and community sentence,

"short-term custody and community sentence" means a sentence of imprisonment for an offence for a term of less than the prescribed period,", and

(b) subsection (2) is repealed.

(3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

"Short-term custody and community prisoners

5 Release of short-term custody and community prisoners

As soon as a short-term custody and community prisoner has served one-half of the prisoner's short-term custody and community sentence the Scottish Ministers must release the prisoner on short-term community licence.".

(4) In Chapter 3 of Part 2, in the chapter title, for "Community" substitute " Short-term community, community ".

(5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—

(a) in sub-paragraph (ii), the words from "serving" to the end are repealed,

(b) sub-paragraph (iii) is repealed,

(c) in sub-paragraphs (iv) and (v), for "person" substitute " short-term custody and community prisoner ",

(d) in sub-paragraph (vi), for "person" substitute " short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and ", and

(e) in sub-paragraph (vii), at the beginning insert " a short-term custody and community prisoner who is ".

(6) After section 29 insert—

"Short-term community licences

29A Release on short-term community licence: conditions

(1) This section applies where, by virtue of section 5, the Scottish Ministers release a prisoner on short-term community licence.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(2) The Scottish Ministers must include in the prisoner's short-term community licence—
  (a) the standard conditions, and
  (b) where the prisoner falls within section 29(2), the supervision conditions.

(3) The Scottish Ministers may include in the prisoner's short-term community licence—
  (a) where the prisoner does not fall within section 29(2), any of the supervision conditions,
  (b) such other conditions as they consider appropriate.

(4) The Scottish Ministers may—
  (a) vary any condition mentioned in subsection (2) or (3),
  (b) cancel any condition mentioned in subsection (3),
  (c) include any further conditions in the licence.

(5) The Scottish Ministers may not cancel any condition mentioned in subsection (2).

(6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.

(7) In this section, "appropriate local authority", in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—
  (a) resided immediately before the imposition of the short-term custody and community sentence, or
  (b) intends to reside on release on short-term community licence.

(8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.".

(7) After section 46 insert—

"Assessment of conditions for short-term community licences

46A Joint arrangements between Scottish Ministers and local authorities

(1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risk posed in the local authority's area by short-term custody and community prisoners released on licence subject to the supervision conditions.

(2) For the purposes of assisting the Scottish Ministers in deciding whether, under section 29A(3)(a), to include any of the supervision conditions in a prisoner's short-term community licence, the Scottish Ministers and the appropriate local authority must, during the first half of a short-

term custody and community prisoner's sentence, assess, in accordance with arrangements established under subsection (1), whether any of those conditions are appropriate.

(3) In this section, "appropriate local authority" is to be construed in accordance with section 29A(7) and (8).".

(8) In section 47 (curfew licences)—

(a) in subsection (1), after "to" insert " a short-term custody and community prisoner or ",

(b) in subsection (2) for "the custody part of the prisoner's sentence" substitute—

"(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence",

(c) after subsection (3) insert—

"(3A) The Scottish Ministers may release a short-term custody and community prisoner on curfew licence only—

(a) after the later of—

(i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner's sentence, or

(ii) the day falling 166 days before the expiry of one-half of the prisoner's sentence, and

(b) before the day falling 14 days before the expiry of one-half of the prisoner's sentence.",

(d) in subsection (4)—

(i) after "a" insert " custody and community ", and

(ii) in paragraph (a)(ii), for "135" substitute " 166 ", and

(e) in subsection (8), for "the custody part of the prisoner's sentence" substitute—

"(a) in the case of a short-term custody and community prisoner, the first half of the prisoner's sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner's sentence".

(9) Schedule 3 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.

VALID FROM 28/03/2011

19 Early removal of certain short-term prisoners from the United Kingdom

For schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) substitute—

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"SCHEDULE 6

(introduced by section 66(3))

TRANSITORY AMENDMENTS

1 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), that Part has effect in accordance with paragraphs 2 to 4.

2 In section 1 (release of short-term and long-term prisoners), subsection (3) has effect as if for paragraphs (a) and (b) there were substituted " must, "

3 Section 9 (persons liable to removal from the United Kingdom) has effect as if—

(a) subsection (1) were repealed, and

(b) in subsection (3), after "section", where it first occurs, there were inserted " and sections 9A and 9B ".

4 That Part has effect as if after section 9 there were inserted—

"**9A Persons eligible for removal from the United Kingdom**

(1) For the purposes of this Part, to be "eligible for removal from the United Kingdom" a person must show, to the satisfaction of the Scottish Ministers, that the condition in subsection (2) is met.

(2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 9B.

(3) The person must not be one who is liable to removal from the United Kingdom.

9B Early removal of certain short-term prisoners from the United Kingdom

(1) Subject to subsection (2), where a short-term prisoner is liable to, or eligible for, removal from the United Kingdom, the Scottish Ministers may remove the prisoner from prison under this section at any time during the period of 180 days ending with the day on which the prisoner will have served one-half of the prisoner's sentence.

(2) Subsection (1) does not apply in relation to a prisoner unless the prisoner has served one-quarter of the sentence.

(3) A prisoner removed from prison under this section—

(a) if liable to removal from the United Kingdom, is so removed only for the purpose of enabling the Secretary of State to remove the prisoner from the United Kingdom under powers conferred by—

(i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or

(ii) section 10 of the Immigration and Asylum Act 1999 (c.33),

(b) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and

(c) in either case, so long as remaining in the United Kingdom, remains liable to be detained in pursuance of the prisoner's sentence until the prisoner has served one-half of the sentence.

(4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Scottish Ministers under section 1(1), 1AA or 3 is exercisable in relation to the prisoner as if the prisoner were in prison.

(5) The Scottish Ministers may by order amend the number of days for the time being specified in subsection (1).

(6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

9C Re-entry into United Kingdom of prisoner removed from prison early

(1) This section applies in relation to a person (referred to in this section as “the removed person”) who, after being removed from prison under section 9B, has been removed from the United Kingdom before serving one-half of the sentence.

(2) Where the removed person re-enters the United Kingdom at any time before the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B), the person is liable to be detained in pursuance of the person's sentence until the earlier of the following—

(a) the date of the expiry of the outstanding custodial period,

(b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).

(3) In the case of a person liable to be detained under subsection (2), the duty to release the person under section 1(1) or 1AA(1) applies only after the expiry of the outstanding custodial period.

(4) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 40 of

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the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large) to be unlawfully at large.

(5) Subsection (2) does not prevent—

(a) the further removal from prison under section 9B(1) of a person falling within that subsection, or

(b) the further removal from the United Kingdom of such a person.

(6) In this section, the "outstanding custodial period" means, in relation to a removed person, a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one-half of the sentence.".

5 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), paragraph (c) of section 24 of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences) has effect as if—

(a) after "9" there were inserted " , 9A, 9B, 9C ", and

(b) after "transfer" there were inserted " , removal ".".

Other sentencing measures

VALID FROM 01/02/2011

20 Reports about supervised persons

(1) Section 203 of the 1995 Act (reports) is amended as follows.

(2) In subsection (3), for the words from "the offender" to the end substitute—

"(a) the offender,

(b) the offender's solicitor (if any), and

(c) the prosecutor.".

VALID FROM 01/02/2011

21 Detention of children convicted on indictment

(1) Section 208 of the 1995 Act (detention of children convicted on indictment) is amended as follows.

(2) After subsection (1), insert—

"(1A) Where the court imposes a sentence of detention on a child, the court must—

(a) state its reasons for the opinion that no other method of dealing with the child is appropriate, and

(b) have those reasons entered in the record of the proceedings.".

(3) In subsection (2), for "Subsection (1) above is" substitute " Subsections (1) and (1A) above are ".

VALID FROM 28/03/2011

22 Pre-sentencing reports about organisations

After section 203 of the 1995 Act (reports), insert—

"**203A Reports about organisations**

(1) This section applies where an organisation is convicted of an offence.

(2) Before dealing with the organisation in respect of the offence, the court may obtain a report into the organisation's financial affairs and structural arrangements.

(3) The report is to be prepared by a person appointed by the court.

(4) The person appointed to prepare the report is referred to in this section as the "reporter".

(5) The court may issue directions to the reporter about—
(a) the information to be contained in the report,
(b) the particular matters to be covered by the report,
(c) the time by which the report is to be submitted to the court.

(6) The court may order the organisation to give the reporter and any person acting on the reporter's behalf—
(a) access at all reasonable times to the organisation's books, documents and other records,
(b) such information or explanation as the reporter thinks necessary.

(7) The reporter's costs in preparing the report are to be paid by the clerk of court, but the court may order the organisation to reimburse to the clerk all or a part of those costs.

(8) An order under subsection (7) may be enforced by civil diligence as if it were a fine.

(9) On submission of the report to the court, the clerk of court must provide a copy of the report to—
(a) the organisation,
(b) the organisation's solicitor (if any), and
(c) the prosecutor.

(10) The court must have regard to the report in deciding how to deal with the organisation in respect of the offence.

(11) If the court decides to impose a fine, the court must, in determining the amount of the fine, have regard to—

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(a) the report, and
(b) if the court makes an order under subsection (7), the amount of costs that the organisation is required to reimburse under the order.

(12) Where the court—
(a) makes an order under subsection (7), and
(b) imposes a fine on the organisation,
any payment by the organisation is first to be applied in satisfaction of the order under subsection (7).

(13) Where the court also makes a compensation order in respect of the offence, any payment by the organisation is first to be applied in satisfaction of the compensation order before being applied in accordance with subsection (12).”.

23 Extended sentences for certain sexual offences

In section 210A of the 1995 Act (extended sentences for sex and violent offenders)—

(a) in subsection (10), at the end of the definition of “sexual offence” add—
“(xxviii) an offence (other than one mentioned in the preceding paragraphs) where the court determines for the purposes of this paragraph that there was a significant sexual aspect to the offender's behaviour in committing the offence;”, and

(b) after subsection (11) add—
“(12) An extended sentence may be passed by reference to paragraph (xxviii) only if the offender is or is to become, by virtue of Schedule 3 to the Sexual Offences Act 2003 (c.42), subject to the notification requirements of Part 2 of that Act.”.

VALID FROM 28/03/2011

24 Effect of probation and absolute discharge

(1) In section 1(4) of the Rehabilitation of Offenders Act 1974 (c.53) (construction of references in Act to “conviction”), for “section 9 of the Criminal Justice (Scotland) Act 1949” substitute “ section 247 of the Criminal Procedure (Scotland) Act 1995 (c.46) ”.

(2) In section 49(6) of the 1982 Act (offences relating to dangerous and annoying creatures: power to order disposal of creature), the words “or makes a probation order in relation to him” are repealed.

(3) In section 58(3) of the 1982 Act (convicted thief in possession: power to order forfeiture of tools etc.)—
(a) the words “or makes a probation order in relation to him” are repealed, and
(b) for the words from “discharged absolutely” to the end substitute “ , as the case may be, discharged absolutely. ”.

(4) In section 96 of the 2005 Act (exclusion orders: supplementary provision), after subsection (2) insert—

"(2A) For the purposes of section 94, section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a violent offence within the meaning of section 94.".

(5) In section 129 of the 2005 Act (relevant and foreign offences), after subsection (4) add—

"(5) For the purposes of the provisions of this Act specified in subsection (6), section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not to be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a relevant offence.

(6) Those provisions are—

(a) section 21(4),
(b) section 23(6),
(c) section 24,
(d) section 33(6),
(e) sections 41 to 44,
(f) section 73(3),
(g) section 75,
(h) sections 80 to 83,
(i) section 89(4) and (5),
(j) subsection (3) of this section, and
(k) section 130.".

25 Offences aggravated by racial or religious prejudice

(1) In section 96 of the Crime and Disorder Act 1998 (c.37) (racially aggravated offences), for subsection (5) substitute—

"(5) The court must—

(a) state on conviction that the offence was racially aggravated,
(b) record the conviction in a way that shows that the offence was so aggravated,
(c) take the aggravation into account in determining the appropriate sentence, and
(d) state—
(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
(ii) otherwise, the reasons for there being no such difference.".

(2) In section 74 of the Criminal Justice (Scotland) Act 2003 (asp 7) (offences aggravated by religious prejudice)—

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(a) after subsection (2) insert—

"(2A) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.",

(b) subsections (3) and (4) are repealed, and

(c) after subsection (4) insert—

"(4A) The court must—

(a) state on conviction that the offence was aggravated by religious prejudice,

(b) record the conviction in a way that shows that the offence was so aggravated,

(c) take the aggravation into account in determining the appropriate sentence, and

(d) state—

(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or

(ii) otherwise, the reasons for there being no such difference.".

26 Voluntary intoxication by alcohol: effect in sentencing

(1) Subsection (2) applies in relation to an offender who was, at the time of the offence, under the influence of alcohol as a result of having voluntarily consumed alcohol.

(2) A court, in sentencing the offender in respect of the offence, must not take that fact into account by way of mitigation.

VALID FROM 28/03/2011

27 Mutual recognition of judgments and probation decisions

(1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

(2) The provision may, in particular, confer functions—

(a) on the Scottish Ministers,

(b) on other persons.

(3) An order under subsection (1) may modify any enactment.

(4) In this section, the "Framework Decision" means Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

PART 2

CRIMINAL LAW

VALID FROM 13/12/2010

Serious organised crime

28 Involvement in serious organised crime

(1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.

(2) Without limiting the generality of subsection (1), a person agrees to become involved in serious organised crime if the person—

(a) agrees to do something (whether or not the doing of that thing would itself constitute an offence), and

(b) knows or suspects, or ought reasonably to have known or suspected, that the doing of that thing will enable or further the commission of serious organised crime.

(3) For the purposes of this section and sections 29 to 31—

"serious organised crime" means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences,

"serious offence" means an indictable offence—

(a) committed with the intention of obtaining a material benefit for any person, or

(b) which is an act of violence committed or a threat made with the intention of obtaining such a benefit in the future, and

"material benefit" means a right or interest of any description in any property, whether heritable or moveable and whether corporeal or incorporeal.

(4) A person guilty of an offence under subsection (1) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

29 Offences aggravated by connection with serious organised crime

(1) This subsection applies where it is—

(a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with serious organised crime, and

(b) proved that the offence is so aggravated.

(2) An offence is aggravated by a connection with serious organised crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime.

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(3) It is immaterial whether or not in committing the offence the person in fact enables the person or another person to commit serious organised crime.

(4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with serious organised crime.

(5) Where subsection (1) applies, the court must—
- (a) state on conviction that the offence is aggravated by a connection with serious organised crime,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
  - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
  - (ii) otherwise, the reasons for there being no such difference.

30 Directing serious organised crime

(1) A person commits an offence by directing another person—
- (a) to commit a serious offence,
- (b) to commit an offence aggravated by a connection with serious organised crime under section 29.

(2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).

(3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person—
- (a) does something, or a series of things, to direct the person to commit the offence,
- (b) intends that the thing or things done will persuade the person to commit the offence, and
- (c) intends that the thing or things done will—
  - (i) result in a person committing serious organised crime, or
  - (ii) enable a person to commit serious organised crime.

(4) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits—
- (a) a serious offence, or
- (b) an offence aggravated by a connection with serious organised crime under section 29.

(5) In this section "directing" a person to commit an offence includes inciting the person to commit the offence.

(6) A person guilty of an offence under subsection (1) or (2) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

31 Failure to report serious organised crime

(1) This section applies where—

(a) a person ("the person") knows or suspects that another person ("the other person") has committed—

(i) an offence under section 28 or 30, or

(ii) an offence which is aggravated by a connection with serious organised crime under section 29, and

(b) that knowledge or suspicion originates from information obtained—

(i) in the course of the person's trade, profession, business or employment, or

(ii) as a result of a close personal relationship between the person and the other person.

(2) In the case of knowledge or suspicion originating from information obtained by the person as a result of a close personal relationship between the person and the other person, this section applies only where the person has obtained a material benefit as a result of the commission of serious organised crime by the other person.

(3) The person commits an offence if the person does not disclose to a constable—

(a) the person's knowledge or suspicion, and

(b) the information on which that knowledge or suspicion is based.

(4) It is a defence for a person charged with an offence under subsection (3) to prove that the person had a reasonable excuse for not making the disclosure.

(5) Subsection (3) does not require disclosure by a person who is a professional legal adviser (an "adviser") of—

(a) information which the adviser obtains in privileged circumstances, or

(b) knowledge or a suspicion based on information obtained in privileged circumstances.

(6) For the purpose of subsection (5), information is obtained by an adviser in privileged circumstances if it comes to the adviser, otherwise than for the purposes of committing serious organised crime—

(a) from a client (or from a client's representative) in connection with the provision of legal advice by the adviser to that person,

(b) from a person seeking legal advice from the adviser (or from that person's representative), or

(c) from a person, for the purpose of actual or contemplated legal proceedings.

(7) The reference in subsection (3) to a constable includes a reference to a police member of the Scottish Crime and Drug Enforcement Agency.

(8) A person guilty of an offence under this section is liable—

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

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

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VALID FROM 28/03/2011

Genocide, crimes against humanity and war crimes

32 Genocide, crimes against humanity and war crimes: UK residents

(1) The International Criminal Court (Scotland) Act 2001 (asp 13) is amended as follows.

(2) After section 8, insert—

"**8A Meaning of "United Kingdom national" and "United Kingdom resident"**

(1) In this Part—

"United Kingdom national" means—

(a) a British citizen, a British Overseas Territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 (c.61) is a British subject, or

(c) a British protected person within the meaning of that Act,

"United Kingdom resident" means a person who is resident in the United Kingdom.

(2) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—

(a) an individual who has indefinite leave to remain in the United Kingdom,

(b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom,

(c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom,

(d) an individual who has made an asylum claim, or a human rights claim, which has been granted,

(e) any other individual who has made an asylum claim or a human rights claim (whether or not the claim has been determined) and who is in the United Kingdom,

(f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a dependant of the individual making the application or claim if—

(i) the application or claim has been granted, or

(ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined),

(g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because

of section 6 of the Human Rights Act 1998 (c.42) or for practical reasons,

(h) an individual—

(i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 (c.77) by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,

(ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and

(iii) who is in the United Kingdom,

(i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c.33),

(j) an individual who is detained in lawful custody in the United Kingdom.

(3) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—

(a) the periods during which the individual is, has been or intends to be in the United Kingdom,

(b) the purposes for which the individual is, has been or intends to be in the United Kingdom,

(c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and

(d) whether the individual has an interest in residential property located in the United Kingdom.

(4) In this section—

"asylum claim" means—

(a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom,

(b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom,

"Convention rights" means the rights identified as Convention rights by section 1 of the Human Rights Act 1998,

"detained in lawful custody" means—

(a) detained in pursuance of a sentence of imprisonment or detention, a sentence of custody for life or a detention and training order,

(b) remanded in or committed to custody by an order of a court,

(c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 (c.31) or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984 (c.47),

(d) detained under Part 3 of the Mental Health Act 1983 (c.20) or by virtue of an order under section 5 of the Criminal Procedure

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(Insanity) Act 1964 (c.84) or section 6 or 14 of the Criminal Appeal Act 1968 (c.19) (hospital orders etc.),

(e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (c.46) (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995,

(f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 (SI 1986/595) or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

"human rights claim" means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights,

"the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention,

"serious harm" has the meaning given by article 15 of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

(5) In this section, a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.

(6) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section).".

(3) In section 28(1)(interpretation), the definitions of "United Kingdom national" and "United Kingdom resident" are repealed.

33 Genocide, crimes against humanity and war crimes: retrospective application

After section 9 of the International Criminal Court (Scotland) Act 2001 (asp 13) insert—

"**9A Retrospective application of certain offences**

(1) Section 1 of this Act applies to acts committed on or after 1 January 1991.

(2) But that section does not apply to an act committed before 17 December 2001 which constitutes a crime against humanity or a war crime within article 8.2(b) or (e) unless, at the time the act was committed, it amounted in the circumstances to a criminal offence under international law.

(3) Section 2 of this Act applies to conduct engaged in on or after 1 January 1991.

(4) The references in subsections (1), (3) and (5) of that section to an offence include an act or conduct that would not constitute an offence but for this section.

(5) Any enactment or rule of law relating to an offence ancillary to a relevant offence applies—
  (a) to conduct engaged in on or after 1 January 1991, and
  (b) even if the act or conduct constituting the relevant offence would not constitute such an offence but for this section.

(6) But section 2 of this Act, and any enactment or rule of law relating to an offence ancillary to a relevant offence, do not apply to—
  (a) conduct engaged in before 17 December 2001, or
  (b) conduct engaged in on or after that date which was ancillary to an act or conduct that—
    (i) was committed or engaged in before that date, and
    (ii) would not constitute a relevant offence but for this section,

  unless, at the time the conduct was engaged in, it amounted in the circumstances to a criminal offence under international law.

(7) Section 5 of this Act, so far as it has effect in relation to relevant offences, applies—
  (a) to failures to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred on or after 1 January 1991, and
  (b) even if the act or conduct constituting the relevant offence would not constitute an offence but for this section.

(8) But section 5 of this Act, so far as it has effect in relation to relevant offences, does not apply to a failure to exercise control of the kind mentioned in subsection (2) or (3) of that section which occurred before 17 December 2001 unless, at the time it occurred, it amounted in the circumstances to a criminal offence under international law.

(9) In this section, "relevant offence" means an offence under section 1 or 2 of this Act or an offence ancillary to such an offence.

9B Provision supplemental to section 9A: modification of penalties

(1) This section applies in relation to—
  (a) an offence under section 1 of this Act on account of an act committed before 17 December 2001 constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969,
  (b) an offence under section 1 of this Act on account of an act committed before 1 September 2001 constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (c.52) (grave breaches of the Conventions),
  (c) an offence ancillary to an offence within paragraph (a) or (b) above.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(2) Section 3(5) of this Act has effect in relation to such an offence as if for "30 years" there were substituted " 14 years ".".

VALID FROM 13/12/2010

Articles banned in prison

34 Articles banned in prison

(1) In section 41 of the Prisons (Scotland) Act 1989 (c.45) (unlawful introduction of tobacco etc. into prison)—

(a) for subsection (1) substitute—

"(1) A person commits an offence if without reasonable excuse the person—

(a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),

(b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).

(1A) A person who commits an offence under this section—

(a) where the proscribed article falls within paragraphs (b) to (f) of subsection (9A), is liable on summary conviction to imprisonment for a period not exceeding 30 days or to a fine not exceeding level 3 on the standard scale (or to both),

(b) where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), is liable to the penalties set out in section 41ZA(5).",

(b) in subsection (2), for "the foregoing subsection" substitute " subsection (1)(a), ",

(c) in subsection (2A)—

(i) for "article mentioned in paragraphs (a) to (e) of subsection (1) above" substitute " proscribed article ", and

(ii) for "article mentioned in those paragraphs" substitute " proscribed article ",

(d) in subsection (2B)(c), for the words from "mentioned" to "that subsection)" substitute " that is a proscribed article falling within paragraph (d) to (f) of subsection (9A) (but not also within paragraph (b) or (c) of that subsection), or falling within paragraph (a) of that subsection ",

(e) in subsection (3), for "subsection (1) above" substitute " this section or section 41ZA ",

(f) after subsection (9) insert—

"(9A) In this section, a "proscribed article" is—

(a) any personal communication device,

(b) any drug,

(c) any firearm or ammunition,

(d) any offensive weapon,

(e) any article which has a blade or is sharply pointed,

(f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.

(9B) In this section, a "personal communication device" includes—

(a) a mobile telephone,

(b) any other portable electronic device that is capable of transmitting or receiving a communication of any kind,

(c) any—

(i) component part of a device mentioned in paragraph (a) or (b),

(ii) article that is designed or adapted for use with such a device.", and

(g) in subsection (10), in the definition of "offensive weapon", for "the Prevention of Crime Act 1953" substitute " section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) ".

(2) After section 41 of that Act insert—

"**41ZA Further provision for communication devices**

(1) A person commits an offence if, knowing another person to be a prisoner, the person gives a personal communication device to the prisoner while the prisoner is inside a prison.

(2) A person commits an offence if, by means of a personal communication device, the person—

(a) transmits, from inside a prison, a communication of any kind, or

(b) intentionally receives, when inside a prison, a communication of any kind.

(3) A person commits an offence if, while inside a prison, the person is in possession of a personal communication device.

(4) A person who commits an offence under subsections (1) to (3) is liable to the penalties set out in subsection (5).

(5) The penalties are—

(a) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine (or to both),

(b) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both).

(6) In this section, "personal communication device" is to be construed in accordance with section 41(9B).

41ZB Exceptions as to communication devices

(1) No offence—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or

(b) under section 41ZA(1) to (3),

is committed by a person where subsection (2) applies.

(2) This subsection applies—

(a) if (and in so far as) the act which constitutes the offence is done by the person at or in relation to a designated area at the prison, or

(b) if (and in so far as) the person is acting in circumstances to which an authorisation under subsection (8) applies.

(3) No offence—

(a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or

(b) under section 41ZA(2) or (3),

is committed by a prison officer (or other prison official) where subsection (4) applies.

(4) This subsection applies—

(a) if the device is one supplied to the person specifically for use in the course of the person's official duties at the prison, or

(b) if (and in so far as) the person is acting in accordance with those duties.

(5) No offence under section 41ZA(3) is committed by a person other than a prisoner if in the circumstances there is a reasonable excuse for the possession.

(6) The defences mentioned in subsection (7) apply in any proceedings for an offence under—

(a) section 41(1), where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or

(b) section 41ZA(1) to (3).

(7) In relation to such an offence, it is a defence for the accused person to show that—

(a) the person reasonably believed that the person was acting in circumstances to which an authorisation under subsection (8) applied (even though no such authorisation did apply), or

(b) in the circumstances there was an overriding public interest which justified the person's actions.

(8) An authorisation under this subsection is a written authorisation that is given—

(a) in favour of any person specified in the authorisation (or person of a specified description),

(b) for a specified purpose, and

(c) by—

(i) the governor or director of a prison in relation to activities at that prison, or

(ii) the Scottish Ministers in relation to activities at any specified prison.

(9) A designated area referred to in subsection (2)(a) is any part of the prison, used solely or principally for an administrative or similar purpose, that is specified as such by a written designation given under this paragraph by the governor or director of the prison.

(10) Prison officers (or other prison officials) who are Crown servants or agents do not benefit from Crown immunity in relation to an offence under—

(a) section 41, where the proscribed article falls within paragraph (a) of subsection (9A) of that section (whether or not also within paragraph (f) of that subsection), or

(b) section 41ZA.”.

VALID FROM 28/03/2011

Crossbows, knives etc.

35 Sale and hire of crossbows to persons under 18

(1) The Crossbows Act 1987 (c.32) is amended as follows.

(2) In section 1 (sale and letting on hire), the words from “unless” to the end are repealed.

(3) After that section insert—

“**1A Defences**

(1) It is a defence for a person charged with an offence under section 1 (referred to in this section as “the accused”) to show that—

(a) the accused believed the person to whom the crossbow or part was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be aged 18 or over, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer's age, or

(ii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was under the age of 18.

(2) For the purposes of subsection (1)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (3), and

(b) the document would have convinced a reasonable person.

(3) Those documents are any document bearing to be—

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order made by statutory instrument prescribe.

(4) A statutory instrument containing an order under subsection (3)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4) After section 3 insert—

“**3A Test purchasing**

(1) A person under the age of 18 who buys or hires, or attempts to buy or hire, a crossbow or a part of a crossbow does not commit an offence under section 2 or 3 if the person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 1.

(2) A chief constable may authorise a person under the age of 18 to buy or hire, or attempt to buy or hire, a crossbow or a part of a crossbow only if satisfied that all reasonable steps have been or will be taken to—

(a) ensure the person's safety, and

(b) avoid any risk to the person's welfare.”.

36 Sale and hire of knives and certain other articles to persons under 18

(1) Section 141A of the Criminal Justice Act 1988 (c.33) (sale of knives and certain articles with blade or point to persons under eighteen) is amended as follows.

(2) In subsection (1), after “sells” insert “ or lets on hire ”.

(3) In subsection (3A), after “sell” insert “ or let on hire ”.

(4) For subsection (4) substitute—

“(4) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—

(a) the accused believed the person to whom the article was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be of or above the relevant age, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer's age, or

(ii) no reasonable person could have suspected from the purchaser or hirer's appearance that the purchaser or hirer was aged under the relevant age.

(4A) For the purposes of subsection (4)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer's age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4B), and

(b) the document would have convinced a reasonable person.

(4B) Those documents are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order prescribe.

(4C) In subsection (4), "the relevant age" is—

(a) in the case where the article is a knife or knife blade designed for domestic use, 16 years, and

(b) in any other case, 18 years.".

VALID FROM 13/12/2010

Offensive weapons etc.

37 Offensive weapons etc.

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.

(2) In section 47 (prohibition of the carrying of offensive weapons)—

(a) in subsection (1), the words from "without" to "him," are repealed,

(b) after subsection (1), insert—

"(1A) It is a defence for a person charged with an offence under subsection (1) to show that the person had a reasonable excuse or lawful authority for having the weapon with the person in the public place.", and

(c) for subsection (4), substitute—

"(4) In this section—

"offensive weapon" means any article—

(a) made or adapted for use for causing injury to a person, or

(b) intended, by the person having the article, for use for causing injury to a person by—

(i) the person having it, or

(ii) some other person,

"public place" means any place other than—

(a) domestic premises,

(b) school premises (within the meaning of section 49A(6)),

(c) a prison (within the meaning of section 49C(7)),

"domestic premises" means premises occupied as a private dwelling (including any stair, passage, garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(3) In section 49 (offence of having in public place article with blade or point)—
- (a) in subsection (4), for the words "prove that he had good reason" substitute " show that the person had a reasonable excuse ",
- (b) in subsection (5), for "prove" substitute " show ", and
- (c) for subsection (7), substitute—

"(7) In this section, "public place" has the same meaning as in section 47(4).".

(4) In section 49A (offence of having article with blade or point (or offensive weapon) on school premises)—
- (a) in subsection (3), for the words "prove that he had good reason" substitute " show that the person had a reasonable excuse ", and
- (b) in subsection (4), for "prove" substitute " show ".

(5) In section 49C(2) (offence of having offensive weapon etc. in prison), for the words "prove that he had good reason" substitute " show that the person had a reasonable excuse ".

(6) In section 50(4) (extension of constable's power to stop, search and arrest without warrant), for "3" substitute " 4 ".

Threatening or abusive behaviour

38 Threatening or abusive behaviour

(1) A person ("A") commits an offence if—
- (a) A behaves in a threatening or abusive manner,
- (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
- (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.

(2) It is a defence for a person charged with an offence under subsection (1) to show that the behaviour was, in the particular circumstances, reasonable.

(3) Subsection (1) applies to—
- (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
- (b) behaviour consisting of—
  - (i) a single act, or
  - (ii) a course of conduct.

(4) A person guilty of an offence under subsection (1) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

Commencement Information

I4 S. 38 in force at 6.10.2010 by S.S.I. 2010/339, **art. 2**

VALID FROM 13/12/2010

Stalking

39 Offence of stalking

(1) A person ("A") commits an offence, to be known as the offence of stalking, where A stalks another person ("B").

(2) For the purposes of subsection (1), A stalks B where—
- (a) A engages in a course of conduct,
- (b) subsection (3) or (4) applies, and
- (c) A's course of conduct causes B to suffer fear or alarm.

(3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.

(4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.

(5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
- (a) was authorised by virtue of any enactment or rule of law,
- (b) was engaged in for the purpose of preventing or detecting crime, or
- (c) was, in the particular circumstances, reasonable.

(6) In this section—

"conduct" means—
- (a) following B or any other person,
- (b) contacting, or attempting to contact, B or any other person by any means,
- (c) publishing any statement or other material—
  - (i) relating or purporting to relate to B or to any other person,
  - (ii) purporting to originate from B or from any other person,
- (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
- (e) entering any premises,
- (f) loitering in any place (whether public or private),
- (g) interfering with any property in the possession of B or of any other person,
- (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
- (i) watching or spying on B or any other person,

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(j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and

"course of conduct" involves conduct on at least two occasions.

(7) A person convicted of the offence of stalking is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

(8) Subsection (9) applies where, in the trial of a person ("the accused") charged with the offence of stalking, the jury or, in summary proceedings, the court—

(a) is not satisfied that the accused committed the offence, but

(b) is satisfied that the accused committed an offence under section 38(1).

(9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

Sexual offences

VALID FROM 13/12/2010

40 Certain sexual offences by non-natural persons

(1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) is amended as follows.

(2) At the end of each of the following provisions insert " or a fine or both "

(a) subsections (4)(b) and (5)(b) of section 9 (paying for sexual services of a child),

(b) subsection (2)(b) of section 10 (causing or inciting provision by child of sexual services or child pornography),

(c) subsection (2)(b) of section 11 (controlling a child providing sexual services or involved in pornography), and

(d) subsection (2)(b) of section 12 (arranging or facilitating provision by child of sexual services or child pornography).

(3) After section 14 insert—

"**14A Offences by bodies corporate etc.**

(1) Subsection (2) applies where an offence under sections 10 to 12 committed—

(a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a director, manager, secretary or other similar officer of the body corporate, or

(ii) purports to act in any such capacity,

(b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a partner, or

(ii) purports to act in that capacity,

(c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is concerned in the management or control of the association, or

(ii) purports to act in the capacity of a person so concerned.

(2) The individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, this section applies in relation to acts and defaults of a member in connection with the member's function of management as if the member were a director of the body corporate.”.

VALID FROM 13/12/2010

41 Indecent images of children

(1) In the 1982 Act—

(a) in section 52 (indecent photographs etc. of children)—

(i) in subsection (2C)(b), for “a pseudo-photograph” substitute “ an indecent pseudo-photograph ”, and

(ii) after subsection (8) add—

“(9) In this section, references to a photograph also include a tracing or other image, whether made by electronic or other means (of whatever nature), which is not itself a photograph or pseudo-photograph but which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).

(10) And subsection (2B) applies in relation to such an image as it applies in relation to a pseudo-photograph.”, and

(b) in section 52A (possession of indecent photographs of children), in subsection (4), for “and (8)” substitute “ and (8) to (10) ”.

(2) In Schedule 1 to the 1995 Act (offences against children under the age of 17 years to which special provisions apply), in paragraph 2B, after “photograph” insert “ or pseudo-photograph ”.

(3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (list of sexual offences for the purposes of Part 2)—

(a) in paragraph 44, for the words from “the” where it third occurs to the end substitute—

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"(a) the prohibited goods included indecent photographs or pseudo-photographs of persons under 16 and the offender—
(i) was 18 or over, or
(ii) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months, or
(b) in imposing sentence or otherwise disposing of the case, the court determines that it is appropriate that the offender be regarded, for the purposes of Part 2 of this Act, as a person who has committed an offence under this paragraph.", and

(b) in paragraph 97(b), for "and (8)" substitute " and (8) to (10) ".

VALID FROM 28/03/2011

42 Extreme pornography

(1) In section 51 of the 1982 Act (obscene material)—
(a) for subsection (3) substitute—

"(3) A person guilty of an offence under this section is liable—
(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or
(b) on conviction on indictment—
(i) in a case where the obscene material is or includes an extreme pornographic image, to imprisonment for a period not exceeding 5 years or to a fine or to both, or
(ii) in any other case, to imprisonment for a period not exceeding 3 years or to a fine or to both.", and

(b) in subsection (8)—
(i) before the definition of "material" insert—

""extreme pornographic image" is to be construed in accordance with section 51A;", and
(ii) the definition of "prescribed sum" is repealed.

(2) After section 51 of that Act insert—

"**51A Extreme pornography**

(1) A person who is in possession of an extreme pornographic image is guilty of an offence under this section.

(2) An extreme pornographic image is an image which is all of the following—
(a) obscene,
(b) pornographic,
(c) extreme.

(3) An image is pornographic if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to—

(a) the image itself, and

(b) where the series of images is such as to be capable of providing a context for the image, its context within the series of images,

and reference may also be had to any sounds accompanying the image or the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic (even if it may have been found to be pornographic where taken by itself).

(6) An image is extreme if it depicts, in an explicit and realistic way any of the following—

(a) an act which takes or threatens a person's life,

(b) an act which results, or is likely to result, in a person's severe injury,

(c) rape or other non-consensual penetrative sexual activity,

(d) sexual activity involving (directly or indirectly) a human corpse,

(e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).

(7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to—

(a) how the image is or was described (whether the description is part of the image itself or otherwise),

(b) any sounds accompanying the image,

(c) where the image forms an integral part of a narrative constituted by a series of images—

(i) any sounds accompanying the series of images,

(ii) the context provided by that narrative.

(8) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 3 years or to a fine or to both.

(9) In this section, an “image” is—

(a) a moving or still image (made by any means), or

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(b) data (stored by any means) which is capable of conversion into such an image.

51B Extreme pornography: excluded images

(1) An offence is not committed under section 51A if the image is an excluded image.

(2) An "excluded image" is an image which is all or part of a classified work.

(3) An image is not an excluded image where—
(a) it has been extracted from a classified work, and
(b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.

(4) In determining whether (as found in the person's possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to—
(a) how the image was stored,
(b) how the image is or was described (whether the description is part of the image itself or otherwise),
(c) any sounds accompanying the image,
(d) where the image forms an integral part of a narrative constituted by a series of images—
(i) any sounds accompanying the series of images,
(ii) the context provided by that narrative.

(5) In this section—
"classified work" means a video work in respect of which a classification certificate has been issued by a designated authority,
"classification certificate" and "video work" have the same meanings as in the Video Recordings Act 1984 (c.39),
"designated authority" means an authority which has been designated by the Secretary of State under section 4 of that Act,
"extract" includes an extract of a single image,
"image" is to be construed in accordance with section 51A.

51C Extreme pornography: defences

(1) Where a person ("A") is charged with an offence under section 51A, it is a defence for A to prove one or more of the matters mentioned in subsection (2).

(2) The matters are—
(a) that A had a legitimate reason for being in possession of the image concerned,
(b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image,
(c) that A—

(i) was sent the image concerned without any prior request having been made by or on behalf of A, and

(ii) did not keep it for an unreasonable time.

(3) Where A is charged with an offence under section 51A, it is a defence for A to prove that—

(a) A directly participated in the act depicted, and

(b) subsection (4) applies.

(4) This subsection applies—

(a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person's life,

(b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person's severe injury,

(c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity,

(d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse,

(e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcase of an animal) was not in fact an animal (or a carcase).

(5) The defence under subsection (3) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.

(6) In this section "image" and "extreme pornographic image" are to be construed in accordance with section 51A.".

(3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (sexual offences for the purposes of Part 2 of that Act), after paragraph 44 insert—

"44A An offence under section 51A of the Civic Government (Scotland) Act 1982 (c.45) (possession of extreme pornography) if—

(a) the offender—

(i) was 18 or over, and

(ii) is or has been sentenced in respect of the offence to imprisonment for a term of more than 12 months, and

(b) in imposing sentence, the court determines that it is appropriate that Part 2 of this Act should apply in relation to the offender.".

43 Voyeurism: additional forms of conduct

(1) The Sexual Offences (Scotland) Act 2009 (asp 9) is amended as follows.

(2) In section 9 (voyeurism)—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(a) after subsection (4), insert—

"(4A) The fourth thing is that A—

(a) without another person ("B") consenting, and

(b) without any reasonable belief that B consents,

operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A—

(a) without another person ("B") consenting, and

(b) without any reasonable belief that B consents,

records an image beneath B's clothing of B's genitals or buttocks (whether exposed or covered with underwear) or the underwear covering B's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.",

(b) in subsection (5)—

(i) for "fourth" substitute " sixth ", and

(ii) for paragraph (b), substitute—

"(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).", and

(c) in subsection (7), for "and (4)" substitute " , (4), (4A) and (4B) ".

(3) In section 10(2) (interpretation of section 9), after "section 9(3)" insert " and (4A) ".

(4) In section 26 (voyeurism towards a young child)—

(a) after subsection (4), insert—

"(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe—

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A records an image beneath B's clothing of—

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.",

(b) in subsection (5)—

(i) for "fourth" substitute " sixth ", and

(ii) for paragraph (b), substitute—

"(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).",

(c) in subsection (7), for "and (4)" substitute " , (4), (4A) and (4B) ", and

(d) in subsection (8)—

(i) after "section 9(3)" insert " , (4A) ", and

(ii) after "subsections (3)" insert " , (4A) ".

(5) In section 36 (voyeurism towards an older child)—

(a) after subsection (4), insert—

"(4A) The fourth thing is that A operates equipment beneath B's clothing with the intention of enabling A or another person ("C"), for a purpose mentioned in subsection (7), to observe—

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible.

(4B) The fifth thing is that A records an image beneath B's clothing of—

(a) B's genitals or buttocks (whether exposed or covered with underwear), or

(b) the underwear covering B's genitals or buttocks,

in circumstances where the genitals, buttocks or underwear would not otherwise be visible, with the intention that A or another person ("C"), for a purpose mentioned in subsection (7), will look at the image.",

(b) in subsection (5)—

(i) for "fourth" substitute " sixth ", and

(ii) for paragraph (b), substitute—

"(b) constructs or adapts a structure or part of a structure, with the intention of enabling A or another person to do an act referred to in subsection (2), (3), (4), (4A) or (4B).",

(c) in subsection (7), for "and (4)" substitute " , (4), (4A) and (4B) ", and

(d) in subsection (8)—

(i) after "section 9(3)" insert " , (4A) ", and

(ii) after "subsections (3)" insert " , (4A) ".

Commencement Information

I5 S. 43 in force at 1.12.2010 by S.S.I. 2010/357, **art. 2(b)**

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

44 Sexual offences: defences in relation to offences against older children

In section 39 of the Sexual Offences (Scotland) Act 2009 (asp 9) (defences in relation to offences against older children), in subsection (4)(c), after "section 30(2)(d)" insert " or (e) ".

Commencement Information

I6 S. 44 in force at 1.12.2010 by S.S.I. 2010/357, **art. 2(b)**

VALID FROM 13/12/2010

45 Penalties for offences of brothel-keeping and living on the earnings of prostitution

(1) The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) is amended as follows.

(2) In section 11 (trading in prostitution and brothel-keeping)—

(a) in subsection (1), for the words from "liable" to the end substitute " guilty of an offence and liable to the penalties set out in subsection (1A) ",

(b) after that subsection insert—

"(1A) A person—

(a) guilty of the offence set out in subsection (1)(a) is liable—

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

(ii) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both,

(b) guilty of the offence set out in subsection (1)(b) is liable—

(i) on conviction on indictment, to imprisonment for a term not exceeding two years,

(ii) on summary conviction, to imprisonment for a term not exceeding 12 months.",

(c) in subsection (4), for "subsection (1)" substitute " subsection (1A)(a) ", and

(d) for subsection (6) substitute—

"(6) A person guilty of an offence under subsection (5) is liable—

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

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.".

(3) In section 13(9) (living on earnings of another from male prostitution), for paragraphs (a) and (b) substitute—

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

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both.”.

VALID FROM 28/03/2011

People trafficking

46 People trafficking

(1) In section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.)—

(a) in subsection (1)(a)—

(i) after “arrival in” insert “ or the entry into ”, and

(ii) after “such arrival” insert “ or entry ”,

(b) after subsection (1) insert—

“(1A) A person to whom subsection (6) applies commits an offence if the person arranges or facilitates—

(a) the arrival in or the entry into a country (other than the United Kingdom), or travel there (whether or not following such arrival or entry) by, an individual and—

(i) intends to exercise control over prostitution by the individual or to involve the individual in the making or production of obscene or indecent material; or

(ii) believes that another person is likely to exercise such control or so to involve the individual,

there or elsewhere; or

(b) the departure from a country (other than the United Kingdom) of an individual and—

(i) intends to exercise such control or so to involve the individual; or

(ii) believes that another person is likely to exercise such control or so to involve the individual,

outwith the country.”,

(c) in subsection (2), for “subsection (1)” substitute “ subsections (1) and (1A) ”,

(d) for subsection (4) substitute—

“(4) Subsections (1) and (1A) apply to anything done in or outwith the United Kingdom.”,

(e) for subsection (5) substitute—

“(5) A person may be prosecuted, tried and punished for any offence to which this section applies—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

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as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).", and

(f) in subsection (6)—

(i) the word "and" immediately following paragraph (e) is repealed, and

(ii) after paragraph (f) insert—

"(g) a person who at the time of the offence was habitually resident in Scotland, and

(h) a body incorporated under the law of a part of the United Kingdom.".

(2) In section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation)—

(a) in subsection (1), after "arrival in" insert " or the entry into ",

(b) in subsection (2), the words from "in" where it first occurs to "committed" are repealed,

(c) after subsection (3) insert—

"(3A) A person to whom section 5(2) applies commits an offence if—

(a) in relation to an individual (the "passenger"), he arranges or facilitates—

(i) the arrival in or the entry into a country other than the United Kingdom of the passenger,

(ii) travel by the passenger within a country other than the United Kingdom,

(iii) the departure of the passenger from a country other than the United Kingdom, and

(b) he—

(i) intends to exploit the passenger, or

(ii) believes that another person is likely to exploit the passenger,

(wherever the exploitation is to occur).", and

(d) in subsection (4)—

(i) in paragraph (b), the words from "as a result" to "Act 2004," become sub-paragraph (i),

(ii) immediately following that sub-paragraph insert "or

(ii) which, were it done in Scotland, would constitute an offence mentioned in sub-paragraph (i),",

(iii) after paragraph (b) insert—

"(ba) he is encouraged, required or expected to do anything in connection with the removal of any part of a human body—

(i) as a result of which he or another person would commit an offence under the law of Scotland (other than an offence mentioned in paragraph (b)(i)), or

(ii) which, were it done in Scotland, would constitute such an offence,", and

(iv) for paragraph (d) substitute—

"(d) another person uses or attempts to use him for any purpose within sub-paragraph (i), (ii) or (iii) of paragraph (c), having chosen him for that purpose on the grounds that—

(i) he is mentally or physically ill or disabled, he is young, or he has a family relationship with a person, and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse to be used for that purpose.".

(3) In section 5 of that Act—

(a) in subsection (1), for the words from "(3)" to the end substitute " (3A) of section 4 apply to anything done in or outwith the United Kingdom. ",

(b) in subsection (2)—

(i) the word "and" immediately following paragraph (e) is repealed, and

(ii) after paragraph (f) insert—

"(g) a person who at the time of the offence was habitually resident in Scotland, and

(h) a body incorporated under the law of a part of the United Kingdom.", and

(c) after subsection (2) insert—

"(2A) A person may be prosecuted, tried and punished for any offence to which section 4 applies—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).

(2B) In subsection (2A), "sheriff court district" is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (interpretation).".

VALID FROM 28/03/2011

Slavery, servitude and forced or compulsory labour

47 Slavery, servitude and forced or compulsory labour

(1) A person ("A") commits an offence if—

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(a) A holds another person in slavery or servitude and the circumstances are such that A knows or ought to know that the person is so held, or

(b) A requires another person to perform forced or compulsory labour and the circumstances are such that A knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

(3) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, or to a fine, or to both,

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

(4) In this section "Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950.

VALID FROM 28/03/2011

Fraud and embezzlement

48 Alternative charges for fraud and embezzlement

In Schedule 3 to the 1995 Act (indictments and complaints), after paragraph 8(3) insert—

"(3A) Under an indictment or a complaint for breach of trust and embezzlement, an accused may be convicted of falsehood, fraud and wilful imposition.

(3B) Under an indictment or a complaint for falsehood, fraud and wilful imposition, an accused may be convicted of breach of trust and embezzlement.".

49 Articles for use in fraud

(1) A person ("A") commits an offence if A has in A's possession or under A's control an article for use in, or in connection with, the commission of fraud.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

(3) A person commits an offence if the person makes, adapts, supplies or offers to supply an article—

(a) knowing that the article is designed or adapted for use in, or in connection with, the commission of fraud, or

(b) intending the article to be used in, or in connection with, the commission of fraud.

(4) A person guilty of an offence under subsection (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine, or to both.

(5) In this section, "article" includes a program or data held in electronic form.

VALID FROM 28/03/2011

Conspiracy

50 Conspiracy to commit offences outwith Scotland

(1) The title of section 11A of the 1995 Act becomes "Conspiracy to commit offences outwith Scotland".

(2) In that section—

(a) in subsection (1), for "in a country or territory outside the United Kingdom" substitute " outwith Scotland ",

(b) in subsection (3)—

(i) for "the law in force in the country or territory where the act or other event was intended to take place" substitute " the relevant law ", and

(ii) for "the law in force in the country or territory" where it second occurs substitute " that law ", and

(c) after subsection (3) insert—

"(3A) In subsection (3) above, "the relevant law" is—

(a) if the act or event was intended to take place in another part of the United Kingdom, the law in force in that part,

(b) if the act or event was intended to take place in a country or territory outwith the United Kingdom, the law in force in that country or territory.".

VALID FROM 28/03/2011

Abolition of offences of sedition and leasing-making

51 Abolition of offences of sedition and leasing-making

The following offences under the common law of Scotland are abolished—

(a) the offence of sedition,

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(b) the offence of leasing-making.

PART 3

CRIMINAL PROCEDURE

VALID FROM 28/03/2011

Children

52 Prosecution of children

(1) The 1995 Act is amended as follows.

(2) After section 41 insert—

"**41A Prosecution of children under 12**

(1) A child under the age of 12 years may not be prosecuted for an offence.

(2) A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years.".

(3) In section 42 (prosecution of children), in subsection (1)—
(a) for "No child under the age of 16 years shall" substitute " A child aged 12 years or more but under 16 years may not ",
(b) for "his instance" substitute " the instance of the Lord Advocate ", and
(c) for "a child under the age of 16 years" substitute " such a child ".

(4) In section 234AA (antisocial behaviour order), in subsection (2), paragraph (b) is repealed.

VALID FROM 28/03/2011

Offences: liability of partners

53 Offences: liability of partners

(1) A partner of a partnership (other than a limited liability partnership) is guilty of a corporate offence where—
(a) the partnership is guilty of the corporate offence, and
(b) it is proved that the corporate offence committed by the partnership—
(i) was committed with the consent or connivance of the partner (whether alone or among others), or
(ii) was attributable to the neglect of the partner (whether alone or among others).

(2) In subsection (1), a "corporate offence" is an offence in relation to which an enactment has the effect that where—
  (a) a body corporate is guilty of the offence, and
  (b) it is proved that the offence—
    (i) was committed with the consent or connivance of a director (whether alone or among others), or
    (ii) was attributable to the neglect of a director (whether alone or among others),

  the director (as well as the body corporate) is guilty of the offence.

(3) In subsection (1), the references to a partner of a partnership include references to a person purporting to act as a partner of the partnership.

(4) Subsection (1) does not apply in relation to a corporate offence if an enactment (other than subsection (1)) makes provision in relation to the offence having the same effect as that subsection.

VALID FROM 06/06/2011

Witness statements

54 Witness statements

(1) This section applies where—
  (a) in the course of a criminal investigation, a witness makes a statement in relation to the matter to which the investigation relates,
  (b) the statement is contained in a document, and
  (c) the witness is likely to be cited to give evidence in criminal proceedings arising from the matter.

(2) Before the witness gives evidence in the criminal proceedings, the prosecutor may—
  (a) give the witness a copy of the statement, or
  (b) make the statement available for inspection by the witness at a reasonable time and in a reasonable place.

(3) Section 262 of the 1995 Act (interpretation of certain expressions for purposes of sections 259 to 261A of that Act) applies for the purposes of this section as it applies for the purposes of section 261A of that Act except that for the purposes of this section "statement" does not include a victim statement.

VALID FROM 28/03/2011

Police liberation

55 Breach of undertaking

After section 22 of the 1995 Act insert—

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"**22ZA Offences where undertaking breached**

(1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—
   (a) by reason of failing to appear at court as required under subsection (1C)(a) of section 22, or
   (b) by reason of failing to comply with a condition imposed under subsection (1D) of that section,

   is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—
   (a) a fine not exceeding level 3 on the standard scale, and
   (b) imprisonment for a period—
      (i) where conviction is in the JP court, not exceeding 60 days,
      (ii) where conviction is in the sheriff court, not exceeding 12 months.

(3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—
   (a) the person is not guilty of an offence under that subsection, and
   (b) subsection (4) applies instead.

(4) The court, in determining the sentence for the subsequent offence, must have regard to—
   (a) the fact that the subsequent offence was committed in breach of the undertaking,
   (b) the number of undertakings to which the person was subject when that offence was committed,
   (c) any previous conviction of the person of an offence under subsection (1)(b),
   (d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(5) The reference in subsection (4)(c) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).

(6) The references in subsection (4)(d) to subsection (4) are to be read, in relation to a previous conviction by a court referred to in subsection (5), as references to any provision that is equivalent to subsection (4).

(7) Any issue of equivalence arising in pursuance of subsection (5) or (6) is for the court to determine.

(8) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.

(9) In this section and section 22ZB, "the subsequent offence" is the offence committed by a person while the person is subject to an undertaking.

22ZB Evidential and procedural provision

(1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—

(a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C)(a) of that section, or

(b) was subject to any particular condition imposed under subsection (1D) of that section,

is, unless challenged by preliminary objection before the person's plea is recorded, to be held as admitted.

(2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—

(a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,

(b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,

(c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.

(3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—

(a) in summary proceedings, by preliminary objection before the person's plea is recorded, or

(b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.

(4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—

(a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and

(b) where it is a period of imprisonment—

(i) as respects conviction in the JP court, by 60 days,

(ii) as respects conviction in the sheriff court or the High Court, by 6 months,

even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.

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(6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—

(a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,

(b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

(7) Subsection (6)(b) is subject to section 204A of this Act.

(8) The court must state—

(a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or

(b) otherwise, the reasons for there being no such difference.

(9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.

(10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).

(11) In this section, "the original offence" is the offence in relation to which an undertaking is given.".

VALID FROM 13/12/2010

Grant of warrants

56 Grant of warrants for execution by constables and police members of SCDEA

(1) A sheriff or justice of the peace does not lack power or jurisdiction to grant a warrant for execution by a person mentioned in subsection (2) solely because the person is not a constable of a police force for a police area lying wholly or partly in the sheriff's or justice's sheriffdom.

(2) The persons referred to in subsection (1) are—

(a) a constable,

(b) police member of the Scottish Crime and Drug Enforcement Agency.

VALID FROM 13/12/2010

Bail

VALID FROM 28/03/2011

57 Bail review applications

(1) The 1995 Act is amended as follows.

(2) In section 30 (bail review)—

(a) for subsection (2A) substitute—

"(2A) On receipt of an application under subsection (2), the court must—

(a) intimate the application to the prosecutor, and

(b) before determining the application, give the prosecutor an opportunity to be heard.

(2AA) Despite subsection (2A)(b), the court may grant the application without having heard the prosecutor if the prosecutor consents.", and

(b) in subsection (2C), in paragraph (b), for "heard" substitute " determined ".

(3) In section 31 (bail review on prosecutor's application)—

(a) after subsection (2), insert—

"(2ZA) Despite subsection (2)(b), the court may grant the application without fixing a hearing if the person granted bail consents.", and

(b) in subsection (3), the word "hearing" is repealed.

VALID FROM 28/03/2011

58 Bail condition for identification procedures etc.

In section 24 of the 1995 Act (bail and bail conditions)—

(a) in paragraph (b) of subsection (4), sub-paragraph (ii) and the word "and" immediately preceding it are repealed, and

(b) in subsection (5), after paragraph (ca) insert—

"(cb) whenever reasonably instructed by a constable to do so—

(i) participates in an identification parade or other identification procedure; and

(ii) allows any print, impression or sample to be taken from the accused;".

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59 Bail conditions: remote monitoring requirements

Sections 24A to 24E of the 1995 Act (bail conditions: remote monitoring) are repealed.

VALID FROM 13/12/2010

Prosecution on indictment

60 Prosecution on indictment: Scottish Law Officers

(1) The 1995 Act is amended as follows.

(2) In section 64 (prosecution on indictment), in subsection (1), for "in name" substitute " at the instance ".

(3) The title of section 287 becomes "Demission from office of Lord Advocate and Solicitor General for Scotland".

(4) In that section—

(a) in subsection (1)—

(i) for "by a Lord Advocate" substitute " at the instance of Her Majesty's Advocate ",

(ii) for "his" where it first occurs substitute " the holder of the office of Lord Advocate ", and

(iii) after "successor" insert " or the Solicitor General ",

(b) in subsection (2)—

(i) for "in name of" substitute " at the instance of Her Majesty's Advocate or ", and

(ii) the words "then in office" are repealed,

(c) after subsection (2), insert—

"(2A) Any such indictments in proceedings at the instance of the Solicitor General may be signed by the Solicitor General.

(2B) All indictments which have been raised at the instance of the Solicitor General shall remain effective notwithstanding the holder of the office of Solicitor General subsequently having died or demitted office and may be taken up and proceeded with by his successor or the Lord Advocate.

(2C) Subsection (2D) applies during any period when the offices of Lord Advocate and Solicitor General are both vacant.

(2D) It is lawful to indict accused persons at the instance of Her Majesty's Advocate.", and

(d) in subsection (4)—

(i) after "Advocate" insert " or Solicitor General ",

(ii) in paragraph (a), after "subsection (1)" insert " or (2B) ",

(iii) in paragraph (b), for "in the name" substitute " raised at the instance ", and

(iv) after that paragraph, insert—

"(c) by virtue of subsection (2D) above, is raised at the instance of Her Majesty's Advocate".

(5) In Schedule 2, the words "A.F.R. (*name of Lord Advocate*)," are repealed.

VALID FROM 28/03/2011

Transfer of justice of the peace court cases

61 Transfer of justice of the peace court cases

After section 137C of the 1995 Act insert—

"**137CA Transfer of JP court proceedings within sheriffdom**

(1) Subsection (2) applies—

(a) where the accused person has been cited in summary proceedings to attend a diet of a JP court, or

(b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in a JP court.

(2) The prosecutor may apply to a justice for an order for the transfer of the proceedings to another JP court in the sheriffdom (and for adjournment to a diet of that court).

(3) On an application under subsection (2), the justice may make the order sought.

(4) In this section and sections 137CB and 137CC, "justice" does not include the sheriff.

137CB Transfer of JP court proceedings outwith sheriffdom

(1) Subsection (2) applies where the clerk of a JP court informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the JP court or any other JP court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet.

(2) The prosecutor shall as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a JP court in another sheriffdom (and for adjournment to a diet of that court).

(3) Subsection (4) applies where—

(a) either—

(i) the accused person has been cited in summary proceedings to attend a diet of a JP court, or

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(ii) if the accused person has not been cited to such a diet, summary proceedings against the accused have been commenced in a JP court, and

(b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.

(4) The prosecutor may apply to a justice for an order for the transfer of the proceedings to a JP court in the other sheriffdom (and for adjournment to a diet of that court).

(5) Subsection (6) applies where—

(a) the prosecutor intends to take summary proceedings against an accused person in a JP court, and

(b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.

(6) The prosecutor may apply to a justice for an order for authority for the proceedings to be taken at a JP court in the other sheriffdom.

(7) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(8) On an application under subsection (4) or (6), the justice is to make the order sought if—

(a) the justice considers that it would be expedient for the different cases involved to be dealt with by the same court, and

(b) a justice of the other sheriffdom consents.

(9) On the application of the prosecutor, the sheriff principal who has made an order under subsection (7) may, with the consent of the sheriff principal of the other sheriffdom—

(a) revoke the order, or

(b) vary it so as to restrict its effect.

(10) On the application of the prosecutor, the justice who has made an order under subsection (8) (or another justice of the same sheriffdom) may, with the consent of a justice of the other sheriffdom—

(a) revoke the order, or

(b) vary it so as to restrict its effect.

137CC Custody cases: initiating JP court proceedings outwith sheriffdom

(1) Subsection (2) applies where the prosecutor believes—

(a) that, because of exceptional circumstances (and without an order under subsection (3)), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the JP courts in the sheriffdom, and

(b) that it would not be practicable for those courts to deal with all the cases involved.

(2) The prosecutor may apply to the sheriff principal for an order authorising summary proceedings against some or all of the accused persons to be—

(a) taken at a JP court in another sheriffdom, and

(b) maintained—

(i) at that JP court, or

(ii) at any of the JP courts referred to in subsection (1) as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) may be made by reference to a particular period or particular circumstances.”.

VALID FROM 28/03/2011

Additions to complaint

62 Additional charge where bail etc. breached

(1) In section 27 of the 1995 Act (breach of bail conditions: offences), after subsection (8) insert—

“(8A) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under this section.”.

(2) In section 150 of that Act (failure of accused to appear), for subsection (10) substitute—

“(10) At any time before the trial in the prosecution in which the failure to appear occurred, it is competent to amend the complaint to include an additional charge of an offence under subsection (8).”.

Dockets and charges in sex cases

63 Dockets and charges in sex cases

After section 288B of the 1995 Act insert—

“Dockets and charges in sex cases

288BA Dockets for charges of sexual offences

(1) An indictment or a complaint may include a docket which specifies any act or omission that is connected with a sexual offence charged in the indictment or complaint.

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(2) Here, an act or omission is connected with such an offence charged if it—
  (a) is specifiable by way of reference to a sexual offence, and
  (b) relates to—
    (i) the same event as the offence charged, or
    (ii) a series of events of which that offence is also part.

(3) The docket is to be in the form of a note apart from the offence charged.

(4) It does not matter whether the act or omission, if it were instead charged as an offence, could not competently be dealt with by the court (including as particularly constituted) in which the indictment or complaint is proceeding.

(5) Where under subsection (1) a docket is included in an indictment or a complaint, it is to be presumed that—
  (a) the accused person has been given fair notice of the prosecutor's intention to lead evidence of the act or omission specified in the docket, and
  (b) evidence of the act or omission is admissible as relevant.

(6) The references in this section to a sexual offence are to—
  (a) an offence under the Sexual Offences (Scotland) Act 2009,
  (b) any other offence involving a significant sexual element.

288BB Mixed charges for sexual offences

(1) An indictment or a complaint may include a charge that is framed as mentioned in subsection (2) or (3) (or both).

(2) That is, framed so as to comprise (in a combined form) the specification of more than one sexual offence.

(3) That is, framed so as to—
  (a) specify, in addition to a sexual offence, any other act or omission, and
  (b) do so in any manner except by way of reference to a statutory offence.

(4) Where a charge in an indictment or a complaint is framed as mentioned in subsection (2) or (3) (or both), the charge is to be regarded as being a single yet cumulative charge.

(5) The references in this section to a sexual offence are to an offence under the Sexual Offences (Scotland) Act 2009.

288BC Aggravation by intent to rape

(1) Subsection (2) applies as respects a qualifying offence charged in an indictment or a complaint.

(2) Any specification in the charge that the offence is with intent to rape (however construed) may be given by referring to the statutory offence of rape.

(3) In this section—

(a) the reference to a qualifying offence is to an offence of assault or abduction (and includes attempt, conspiracy or incitement to commit such an offence),

(b) the reference to the statutory offence of rape is (as the case may be) to—

(i) the offence of rape under section 1 of the Sexual Offences (Scotland) Act 2009, or

(ii) the offence of rape of a young child under section 18 of that Act.".

Commencement Information

I7 S. 63 in force at 1.12.2010 by S.S.I. 2010/357, **art. 2(b)**

VALID FROM 13/12/2010

Remand and committal of children

64 Remand and committal of children and young persons

(1) Section 51 of the 1995 Act (remand and committal of children and young persons) is amended in accordance with subsections (2) and (3).

(2) The following provisions are repealed—

(a) in subsection (1)—

(i) in paragraph (a) the words from "but" to "applies", and

(ii) paragraph (bb),

(b) in subsection (2A), the words "Subject to subsection (4) below",

(c) subsections (3) and (4), and

(d) in subsection (4A), the words "or subsection (4) above".

(3) In subsection (5), for "(1)(aa), (b)(ii), (bb)(ii) or (3)(b)" substitute " (1)(aa) or (b)(ii) ".

(4) In section 23 of the Criminal Justice (Scotland) Act 2003 (asp 7) (remand and committal of children and young persons), subsections (6) and (7) are repealed.

VALID FROM 28/03/2011

Prosecution of organisations

65 Meaning of "organisation"

In section 307(1) of the 1995 Act (interpretation), after the definition of "order for lifelong restriction", insert—

""organisation" means—

(a) a body corporate;

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(b) an unincorporated association;
(c) a partnership;
(d) a body of trustees;
(e) a government department;
(f) a part of the Scottish Administration;
(g) any other entity which is not an individual;".

66 Proceedings on indictment against organisations

(1) The title of section 70 of the 1995 Act (proceedings against bodies corporate) is amended by substituting " organisations " for "bodies corporate".

(2) Section 70 of that Act is amended as follows.

(3) In subsection (1), for "a body corporate" substitute " an organisation ".

(4) For subsection (2) substitute—

"(2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at—
(a) in the case of a body of trustees—
(i) the dwelling-house or place of business of any of the trustees, or
(ii) if the solicitor of the body of trustees is known, the place of business of the solicitor,
(b) in the case of any other organisation, the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the organisation.".

(5) In subsection (3)—
(a) for "the registered office or principal place of business of the body corporate" substitute " any place ", and
(b) for "the registered office or place of business" substitute " that place ".

(6) In subsection (4)—
(a) for "A body corporate" substitute " An organisation ", and
(b) the words "of the body corporate" are repealed.

(7) In subsection (5), for "body corporate" in both places that expression occurs substitute " organisation ".

(8) In subsection (5A)(a), for "body corporate" substitute " organisation ".

(9) In subsection (6)—
(a) for "a body corporate" substitute " an organisation ", and
(b) for "the body corporate" substitute " the organisation ".

(10) In subsection (7), for "a body corporate" substitute " an organisation ".

(11) In subsection (8), for paragraph (c) substitute—

"(ba) in the case of a partnership (other than a limited liability partnership), a partner or other person in charge, or locally in charge, of the partnership's affairs;

(bb) in the case of an unincorporated association, the secretary or other person in charge, or locally in charge, of the association's affairs;

(c) in the case of any other organisation, an employee, officer or official of the organisation duly appointed by it for the purposes of the proceedings.".

(12) In subsection (9), after paragraph (b) insert—

"(c) in the case of a partnership (other than a limited liability partnership), purporting to be signed by a partner;

(d) in the case of an unincorporated association, purporting to be signed by an officer of the association;

(e) in the case of a government department or a part of the Scottish Administration, purporting to be signed by a senior officer in the department or part,".

67 Prosecution of organisations by summary procedure

(1) Section 143 of 1995 Act (prosecution of companies etc.) is amended as follows.

(2) In subsection (1), for "a partnership, association, body corporate or body of trustees" substitute " an organisation ".

(3) In subsection (2), for "partnership, association, body corporate or body of trustees in their" substitute " organisation in its ".

(4) In subsection (4), for "A partnership, association, body corporate or body of trustees" substitute " An organisation ".

(5) In subsection (5)(b), for "of the partnership, association, body corporate or body of trustees" substitute " , officer or official of the organisation ".

(6) In subsection (6), after paragraph (d) insert—

"(e) in the case of a government department or part of the Scottish Administration, purporting to be signed by a senior officer in the department or part,".

(7) In subsection (7)—

(a) for "a partnership, association, body corporate or body of trustees" substitute " an organisation ",

(b) for "partnership, association, body corporate or (as the case may be) body of trustees" substitute " organisation ".

68 Manner of citation of organisations in summary proceedings

In section 141 of the 1995 Act (manner of citation), in subsection (2)(b), for "a partnership, association or body corporate" substitute " an organisation other than a body of trustees ".

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VALID FROM 28/03/2011

Personal conduct of case by accused

69 Prohibition of personal conduct of case by accused in certain proceedings

(1) The 1995 Act is amended as follows.

(2) In section 288C (prohibition of personal conduct of defence in cases of certain sexual offences)—

(a) for subsection (1) substitute—

"(1) An accused charged with a sexual offence to which this section applies is prohibited from conducting his case in person at, or for the purposes of, any relevant hearing in the course of proceedings (other than proceedings in a JP court) in respect of the offence.

(1A) In subsection (1), "relevant hearing" means a hearing at, or for the purposes of, which a witness is to give evidence.", and

(b) subsection (8) is repealed.

(3) In section 288D (appointment of solicitor by court in cases to which section 288C applies)—

(a) in subsection (1), after "proceedings" insert " (other than proceedings in a JP court) ",

(b) in subsection (2)(a), for sub-paragraphs (i) and (ii) substitute—

"(i) the conduct of his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the proceedings; or", and

(c) in subsection (6), for the words from "of the accused's defence" to the end substitute " referred to in subsection (2)(a) above. ".

(4) In section 288E (prohibition of personal conduct of defence in certain cases involving child witness under the age of 12)—

(a) subsection (1) is repealed,

(b) in subsection (2)(b), for "the trial" substitute " any hearing in the course of the proceedings ",

(c) after subsection (2) insert—

"(2A) The accused is prohibited from conducting his case in person at, or for the purposes of, any hearing at, or for the purposes of, which the child witness is to give evidence.",

(d) in subsection (4), at the end insert " and as if references to a relevant hearing were references to a hearing referred to in subsection (2A) above ",

(e) in subsection (6)—

(i) for paragraphs (za) and (a) substitute—

"(a) that his case at, or for the purposes of, any hearing in the course of the proceedings at, or for the purposes of, which the child witness is to give evidence may be conducted only by a lawyer,", and

(ii) in paragraph (c), for the words from "preliminary" to "trial" substitute " hearing ", and

(f) subsection (8) is repealed.

(5) In section 288F (power to prohibit personal conduct of defence in other cases involving vulnerable witnesses)—

(a) in subsection (1), for "the trial" substitute " any hearing in the course of the proceedings ",

(b) in subsection (2), for the words from "defence" to the end substitute " case in person at any hearing at, or for the purposes of, which the vulnerable witness is to give evidence. ",

(c) in subsection (3)(a), for "trial" substitute " hearing ",

(d) in subsection (4), for the words from "after" to the end substitute " in relation to a hearing after, as well as before, the hearing has commenced. ",

(e) subsection (4A) is repealed,

(f) in subsection (5), at the end insert " and as if references to a relevant hearing were references to any hearing in respect of which an order is made under this section ", and

(g) subsection (6) is repealed.

VALID FROM 13/12/2010

Disclosure of convictions etc.

VALID FROM 28/03/2011

70 Disclosure of convictions and non-court disposals

(1) After section 101 of the 1995 Act insert—

"**101A Post-offence convictions etc.**

(1) This section applies where an accused person is convicted of an offence ("offence O") on indictment.

(2) The court may, in deciding on the disposal of the case, have regard to—

(a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,

(b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).

(3) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act, or

(ii) compensation offer under section 302A(1) of this Act,

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that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,

(b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.

(4) The court may have regard to any such conviction or alternative disposal only if it is—

(a) specified in a notice laid before the court by the prosecutor, and

(b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).

(5) A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.".

(2) For section 166A of that Act substitute—

"**166A Post-offence convictions etc.**

(1) This section applies where an accused person is convicted of an offence ("offence O") on summary complaint.

(2) The court may, in deciding on the disposal of the case, have regard to—

(a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,

(b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).

(3) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act, or

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,

(b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.

(4) The court may have regard to any such conviction or alternative disposal only if it is—

(a) specified in a notice laid before the court by the prosecutor, and

(b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).

(5) A reference in this section to a conviction which occurred on or after the date of offence O is a reference to such a conviction by a court in any part of the United Kingdom or in any other member State of the European Union.".

(3) In section 302 of that Act (fixed penalty: conditional offer by procurator fiscal), in subsection (2), after sub-paragraph (ii) of paragraph (e) insert—

"(iia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;".

(4) In section 302A of that Act (compensation offer by procurator fiscal), in subsection (2), after sub-paragraph (ii) of paragraph (f) insert—

"(iia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;".

(5) In section 303ZA of that Act (work orders), in subsection (3)—

(a) after sub-paragraph (i) of paragraph (e) insert—

"(ia) that if a work offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;",

(b) in sub-paragraph (ii) of that paragraph, for "the offer has been accepted" substitute " a resultant work order has been completed ",

(c) after sub-paragraph (ii) of that paragraph insert—

"(iia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;", and

(d) in sub-paragraph (iii) of that paragraph, for "work order under subsection (6) below" substitute " resultant work order ".

71 Convictions by courts in other EU member States

(1) Schedule 4 makes modifications of the 1995 Act and other enactments for the purposes of and in connection with implementing obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

(2) The Scottish Ministers may by order make further provision for the purposes of and in connection with implementing those obligations.

(3) The provision may, in particular, confer functions—

(a) on the Scottish Ministers,

(b) on other persons.

(4) An order under subsection (2) may modify any enactment.

(5) In this section, the "Framework Decision" means Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

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VALID FROM 28/03/2011

Appeals: time limits

72 Time limits for lodging certain appeals

(1) The 1995 Act is amended as follows.

(2) In section 74 (appeals in connection with preliminary diets), in subsection (2)(b), for "2" substitute " seven ".

(3) In section 174 (appeals relating to preliminary pleas), in subsection (1), for "two" substitute " seven ".

VALID FROM 28/03/2011

Crown appeals

73 Submissions as to sufficiency of evidence

After section 97 of the 1995 Act insert—

"**97A Submissions as to sufficiency of evidence**

(1) Immediately after one or other (but not both) of the appropriate events, the accused may make either or both of the submissions mentioned in subsection (2) in relation to an offence libelled in an indictment (the "indicted offence").

(2) The submissions are—
(a) that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence or any other offence of which the accused could be convicted under the indictment (a "related offence"),
(b) that there is no evidence to support some part of the circumstances set out in the indictment.

(3) For the purposes of subsection (1), "the appropriate events" are—
(a) the close of the whole of the evidence,
(b) the conclusion of the prosecutor's address to the jury on the evidence.

(4) A submission made under this section must be heard by the judge in the absence of the jury.

97B Acquittals etc. on section 97A(2)(a) submissions

(1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(a).

(2) If the judge is satisfied that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence, then—

(a) where the judge is satisfied that the evidence is also insufficient in law to justify the accused's being convicted of a related offence—

(i) the judge must acquit the accused of the indicted offence, and

(ii) the trial is to proceed only in respect of any other offence libelled in the indictment,

(b) where the judge is satisfied that the evidence is sufficient in law to justify the accused's being convicted of a related offence, the judge must direct that the indictment be amended accordingly.

(3) If the judge is not satisfied as is mentioned in subsection (2)—

(a) the judge must reject the submission, and

(b) the trial is to proceed as if the submission had not been made.

(4) The judge may make a decision under this section only after hearing both (or all) parties.

(5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

(6) In this section, “indicted offence” and “related offence” have the same meanings as in section 97A.

97C Directions etc. on section 97A(2)(b) submissions

(1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(b).

(2) If the judge is satisfied that there is no evidence to support some part of the circumstances set out in the indictment, the judge must direct that the indictment be amended accordingly.

(3) If the judge is not satisfied as is mentioned in subsection (2)—

(a) the judge must reject the submission, and

(b) the trial is to proceed as if the submission had not been made.

(4) The judge may make a decision under this section only after hearing both (or all) parties.

(5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the judge or the clerk of court.

97D No acquittal on “no reasonable jury” grounds

(1) A judge has no power to direct the jury to return a not guilty verdict on any charge on the ground that no reasonable jury, properly directed on the evidence, could convict on the charge.

(2) Accordingly, no submission based on that ground or any ground of like effect is to be allowed.”.

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74 Prosecutor's right of appeal

After section 107 of the 1995 Act insert—

"**107A Prosecutor's right of appeal: decisions on section 97 and 97A submissions**

(1) The prosecutor may appeal to the High Court against—
(a) an acquittal under section 97 or 97B(2)(a), or
(b) a direction under section 97B(2)(b) or 97C(2).

(2) If, immediately after an acquittal under section 97 or 97B(2)(a), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the acquittal under subsection (1), the court of first instance must grant the motion unless the court considers that there are no arguable grounds of appeal.

(3) If, immediately after the giving of a direction under section 97B(2)(b) or 97C(2), the prosecutor moves for the trial diet to be adjourned for no more than 2 days in order to consider whether to appeal against the direction under subsection (1), the court of first instance must grant the motion unless the court considers that it would not be in the interests of justice to do so.

(4) In considering whether it would be in the interests of justice to grant a motion for adjournment under subsection (3), the court must have regard, amongst other things, to—
(a) whether, if an appeal were to be made and to be successful, continuing with the diet would have any impact on any subsequent or continued prosecution,
(b) whether there are any arguable grounds of appeal.

(5) An appeal may not be brought under subsection (1) unless the prosecutor intimates intention to appeal—
(a) immediately after the acquittal or, as the case may be, the giving of the direction,
(b) if a motion to adjourn the trial diet under subsection (2) or (3) is granted, immediately upon resumption of the diet, or
(c) if such a motion is refused, immediately after the refusal.

(6) Subsection (7) applies if—
(a) the prosecutor intimates an intention to appeal under subsection (1)(a), or
(b) the trial diet is adjourned under subsection (2).

(7) Where this subsection applies, the court of first instance must suspend the effect of the acquittal and may—
(a) make an order under section 4(2) of the Contempt of Court Act 1981 (c.49) (which gives a court power, in some circumstances, to order that publication of certain reports be postponed) as if proceedings for the offence of which the person was acquitted were pending or imminent,
(b) after giving the parties an opportunity of being heard, order the detention of the person in custody or admit him to bail.

(8) The court may, under subsection (7)(b), order the detention of the person in custody only if the court considers that there are arguable grounds of appeal.

107B Prosecutor's right of appeal: decisions on admissibility of evidence

(1) The prosecutor may appeal to the High Court against a finding, made after the jury is empanelled and before the close of the evidence for the prosecution, that evidence that the prosecution seeks to lead is inadmissible.

(2) The appeal may be made only with the leave of the court of first instance, granted—
  (a) on the motion of the prosecutor, or
  (b) on that court's initiative.

(3) Any motion for leave to appeal must be made before the close of the case for the prosecution.

(4) In determining whether to grant leave to appeal the court must consider—
  (a) whether there are arguable grounds of appeal, and
  (b) what effect the finding has on the strength of the prosecutor's case.

107C Appeals under section 107A and 107B: general provisions

(1) In an appeal brought under section 107A or 107B the High Court may review not only the acquittal, direction or finding appealed against but also any direction, finding, decision, determination or ruling in the proceedings at first instance if it has a bearing on the acquittal, direction or finding appealed against.

(2) The test to be applied by the High Court in reviewing the acquittal, direction or finding appealed against is whether it was wrong in law.

107D Expedited appeals

(1) Subsection (2) applies where—
  (a) the prosecutor intimates intention to appeal under section 107A or leave to appeal is granted by the court under section 107B, and
  (b) the court is able to obtain confirmation from the Keeper of the Rolls that it would be practicable for the appeal to be heard and determined during an adjournment of the trial diet.

(2) The court must inform both parties of that fact and, after hearing them, must decide whether or not the appeal is to be heard and determined during such an adjournment.

(3) An appeal brought under section 107A or 107B which is heard and determined during such an adjournment is referred to in this Act as an "expedited appeal".

(4) If the court decides that the appeal is to be an expedited appeal the court must, pending the outcome of the appeal—
  (a) adjourn the trial diet, and

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(b) where the appeal is against an acquittal, suspend the effect of the acquittal.

(5) Where the court cannot obtain from the Keeper of the Rolls confirmation of the kind mentioned in subsection (1)(b), the court must inform the parties of that fact.

(6) Where the High Court in an expedited appeal determines that an acquittal of an offence libelled in the indictment was wrong in law it must quash the acquittal and direct that the trial is to proceed in respect of the offence.

107E Other appeals under section 107A: appeal against acquittal

(1) This section applies where—
(a) an appeal brought under section 107A is not an expedited appeal,
(b) the appeal is against an acquittal, and
(c) the High Court determines that the acquittal was wrong in law.

(2) The court must quash the acquittal.

(3) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.

(4) If—
(a) no motion is made under subsection (3), or
(b) the High Court does not grant a motion made under that subsection,
the High Court must in disposing of the appeal acquit the accused of the offence libelled in the indictment.

107F Other appeals under section 107A or 107B: appeal against directions etc.

(1) This section applies where—
(a) an appeal brought under section 107A or 107B is not an expedited appeal, and
(b) the appeal is not against an acquittal.

(2) The court of first instance must desert the diet *pro loco et tempore* in relation to any offence to which the appeal relates.

(3) The trial is to proceed only if another offence of which the accused has not been acquitted and to which the appeal does not relate is libelled in the indictment.

(4) However, if the prosecutor moves for the diet to be deserted *pro loco et tempore* in relation to such other offence, the court must grant the motion.

(5) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the

High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.”.

75 Power of High Court in appeal under section 107A of 1995 Act

In section 104(1) of the 1995 Act (which makes provision as regards the power of the High Court in appeals under section 106(1) or 108 of that Act), after “106(1)” insert “ , 107A, 107B ”.

76 Further amendment of 1995 Act

(1) In section 110(1) of the 1995 Act (note of appeal), after paragraph (b), add—

“(c) where the prosecutor intimates intention to appeal under section 107A(1), within 7 days after the acquittal or direction appealed against, the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused's solicitor,

(d) within 7 days after leave to appeal under section 107B(1) is granted, the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused's solicitor,

(e) in the case of an expedited appeal, as soon as practicable after the decision as to hearing and determining the case is made under section 107D(2), the prosecutor may—

(i) lodge such a note with the Clerk of Justiciary, and

(ii) provide a copy to the judge and to the accused or to the accused's solicitor.”.

(2) In section 113(1) of that Act (judge's report), after “under” insert “ any of paragraphs (a) to (d) of ”.

(3) After section 113 of that Act insert—

“**113A Judge's observations in expedited appeal**

(1) On receiving a note of appeal given under section 110(1)(e), the judge who presided at the trial may give the Clerk of Justiciary any written observations that the judge thinks fit on—

(a) the case generally,

(b) the grounds contained in the note of appeal.

(2) The High Court may hear and determine the appeal without any such written observations.

(3) If written observations are given under subsection (1), the Clerk of Justiciary must give a copy of them to—

(a) the accused or the accused's solicitor, and

(b) the prosecutor.

(4) The written observations of the judge are available only to—

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(a) the High Court,
(b) the parties, and
(c) any other person or classes of person prescribed by Act of Adjournal, in accordance with any conditions prescribed by Act of Adjournal.”.

(4) In section 119 of that Act (provision where High Court authorises new prosecution)—

(a) in each of subsections (1) and (10), after “118(1)(c)” insert “ or 107E(3) or 107F(5) ”,
(b) for subsection (2), substitute—

“(2) In a new prosecution under this section—
(a) where authority for the prosecution is granted under section 118(1)(c), the accused must not be charged with an offence more serious than that of which the accused was convicted in the earlier proceedings,
(b) where authority for the prosecution is granted under section 107E(3), the accused must not be charged with an offence more serious than that of which the accused was acquitted in the earlier proceedings,
(c) where authority for the prosecution is granted under section 107F(5), the accused must not be charged with an offence more serious than that originally libelled in the indictment in the earlier proceedings.”,

(c) after subsection (2) insert—

“(2A) In a new prosecution under this section brought by virtue of section 107F(5), the circumstances set out in the indictment are not to be inconsistent with any direction given under section 97B(2)(b) or 97C(2) in the proceedings which gave rise to the appeal in question unless the High Court, in disposing of that appeal, determined that the direction was wrong in law.”, and

(d) in subsection (9), after “setting aside the verdict” insert “ or under section 107E(3) or 107F(5) granting authority to bring a new prosecution ”.

VALID FROM 13/12/2010

Retention and use of samples etc.

VALID FROM 28/03/2011

77 Retention of samples etc.

(1) The 1995 Act is amended as follows.

(2) In section 18 (prints, samples etc. in criminal investigations)—

(a) in subsection (3), for “section 18A” substitute “ sections 18A to 18F ”,
(b) in subsection (7A), for “sections 19 to 20” substitute “ , subject to the modification in subsection (7AA), sections 18A to 19C ”, and

(c) after subsection (7A) insert—

"(7AA) The modification is that for the purposes of section 19C as it applies in relation to relevant physical data taken from or provided by a person outwith Scotland, subsection (7A) is to be read as if in paragraph (d) the words from "created" to the end were omitted.".

(3) In section 18A (retention of samples)—

(a) for subsection (1) substitute—

"(1) This section applies to—

(a) relevant physical data taken or provided under section 18(2), and

(b) any sample, or any information derived from a sample, taken under section 18(6) or (6A),

where the condition in subsection (2) is satisfied.",

(b) in subsection (2), after "whom" insert " the relevant physical data was taken or by whom it was provided or, as the case may be, from whom ",

(c) in subsection (3), for "sample or information" substitute " relevant physical data, sample or information derived from a sample ",

(d) after subsection (8) insert—

"(8A) If the sheriff principal allows an appeal against the refusal of an application under subsection (5), the sheriff principal may make an order amending, or further amending, the destruction date.

(8B) An order under subsection (8A) must not specify a destruction date more than 2 years later than the previous destruction date.",

(e) in subsection (10), for "sample or information" substitute " relevant physical data, sample or information derived from a sample ",

(f) in subsection (11)—

(i) in paragraph (a) of the definition of "the relevant chief constable", after "who" insert " took the relevant physical data or to whom it was provided or who ", and

(ii) in the definition of "relevant sexual offence" and "relevant violent offence", after "have" insert " , subject to the modification in subsection (12), ", and

(g) after subsection (11) insert—

"(12) The modification is that the definition of "relevant sexual offence" in section 19A(6) is to be read as if for paragraph (g) there were substituted—

"(g) public indecency if it is apparent from the offence as charged in the indictment or complaint that there was a sexual aspect to the behaviour of the person charged;""

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 28/03/2011

78 Retention of samples etc. where offer under sections 302 to 303ZA of 1995 Act accepted

After section 18A of the 1995 Act insert—

"**18B Retention of samples etc. where offer under sections 302 to 303ZA accepted**

(1) This section applies to—
- (a) relevant physical data taken from or provided by a person under section 18(2), and
- (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

(2) The conditions are—
- (a) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with the offence or offences in relation to which a relevant offer is issued to the person, and
- (b) the person—
  - (i) accepts a relevant offer, or
  - (ii) in the case of a relevant offer other than one of the type mentioned in paragraph (d) of subsection (3), is deemed to accept a relevant offer.

(3) In this section "relevant offer" means—
- (a) a conditional offer under section 302,
- (b) a compensation offer under section 302A,
- (c) a combined offer under section 302B, or
- (d) a work offer under section 303ZA.

(4) Subject to subsections (6) and (7) and section 18C(9) and (10), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.

(5) In subsection (4), "destruction date" means—
- (a) in relation to a relevant offer that relates only to—
  - (i) a relevant sexual offence,
  - (ii) a relevant violent offence, or
  - (iii) both a relevant sexual offence and a relevant violent offence, the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,
- (b) in relation to a relevant offer that relates to—
  - (i) an offence or offences falling within paragraph (a), and
  - (ii) any other offence,

the date of expiry of the period of 3 years beginning with the date on which the relevant offer is issued or such later date as an order under section 18C(2) or (6) may specify,

(c) in relation to a relevant offer that does not relate to an offence falling within paragraph (a), the date of expiry of the period of 2 years beginning with the date on which the relevant offer is issued.

(6) If a relevant offer is recalled by virtue of section 302C(5) or a decision to uphold it is quashed under section 302C(7)(a), all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after—

(a) the prosecutor decides not to issue a further relevant offer to the person,

(b) the prosecutor decides not to institute criminal proceedings against the person, or

(c) the prosecutor institutes criminal proceedings against the person and those proceedings conclude otherwise than with a conviction or an order under section 246(3).

(7) If a relevant offer is set aside by virtue of section 303ZB, all record of the relevant physical data, sample and information derived from a sample must be destroyed as soon as possible after the setting aside.

(8) In this section, "relevant sexual offence" and "relevant violent offence" have, subject to the modification in subsection (9), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

(9) The modification is that the definition of "relevant sexual offence" in section 19A(6) is to be read as if for paragraph (g) there were substituted—

"(g) public indecency if it is apparent from the relevant offer (as defined in section 18B(3)) relating to the offence that there was a sexual aspect to the behaviour of the person to whom the relevant offer is issued;".

18C Section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences

(1) This section applies where the destruction date for relevant physical data, a sample or information derived from a sample falls within section 18B(5)(a) or (b).

(2) 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.

(3) An application under subsection (2) may be made to any sheriff—

(a) in whose sheriffdom the appropriate person resides,

(b) in whose sheriffdom that person is believed by the applicant to be, or

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(c) to whose sheriffdom the person is believed by the applicant to be intending to come.

(4) An order under subsection (2) must not specify a destruction date more than 2 years later than the previous destruction date.

(5) The decision of the sheriff on an application under subsection (2) may be appealed to the sheriff principal within 21 days of the decision.

(6) If the sheriff principal allows an appeal against the refusal of an application under subsection (2), the sheriff principal may make an order amending, or further amending, the destruction date.

(7) An order under subsection (6) must not specify a destruction date more than 2 years later than the previous destruction date.

(8) The sheriff principal's decision on an appeal under subsection (5) is final.

(9) Section 18B(4) does not apply where—

(a) an application under subsection (2) has been made but has not been determined,

(b) the period within which an appeal may be brought under subsection (5) 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) 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 (5) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed, or, as the case may be, the appeal is withdrawn or determined.

(11) In this section—

"appropriate person" means the person from whom the relevant physical data was taken or by whom it was provided or from whom the sample was taken,

"destruction date" has the meaning given by section 18B(5),

"the relevant chief constable" has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the appropriate person.".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 28/03/2011

79 Retention of samples etc. taken or provided in connection with certain fixed penalty offences

After section 18C of the 1995 Act insert—

"**18D Retention of samples etc. taken or provided in connection with certain fixed penalty offences**

(1) This section applies to—
- (a) relevant physical data taken from or provided by a person under section 18(2), and
- (b) any sample, or any information derived from a sample, taken from a person under section 18(6) or (6A),

where the conditions in subsection (2) are satisfied.

(2) The conditions are—
- (a) the person was arrested or detained in connection with a fixed penalty offence,
- (b) the relevant physical data or sample was taken from or provided by the person while the person was under arrest or being detained in connection with that offence,
- (c) after the relevant physical data or sample was taken from or provided by the person, a constable gave the person under section 129(1) of the 2004 Act—
  - (i) a fixed penalty notice in respect of that offence (the "main FPN"), or
  - (ii) the main FPN and one or more other fixed penalty notices in respect of fixed penalty offences arising out of the same circumstances as the offence to which the main FPN relates, and
- (d) the person, in relation to the main FPN and any other fixed penalty notice of the type mentioned in paragraph (c)(ii)—
  - (i) pays the fixed penalty, or
  - (ii) pays any sum that the person is liable to pay by virtue of section 131(5) of the 2004 Act.

(3) Subject to subsections (4) and (5), the relevant physical data, sample or information derived from a sample must be destroyed before the end of the period of 2 years beginning with—
- (a) where subsection (2)(c)(i) applies, the day on which the main FPN is given to the person,
- (b) where subsection (2)(c)(ii) applies and—
  - (i) the main FPN and any other fixed penalty notice are given to the person on the same day, that day,
  - (ii) the main FPN and any other fixed penalty notice are given to the person on different days, the later day.

(4) Where—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) subsection (2)(c)(i) applies, and
(b) the main FPN is revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocation.

(5) Where—
(a) subsection (2)(c)(ii) applies, and
(b) the main FPN and any other fixed penalty notices are revoked under section 133(1) of the 2004 Act,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the revocations.

(6) In this section—
"the 2004 Act" means the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
"fixed penalty notice" has the meaning given by section 129(2) of the 2004 Act,
"fixed penalty offence" has the meaning given by section 128(1) of the 2004 Act.".

80 Retention of samples etc. from children referred to children's hearings

After section 18D of the 1995 Act insert—

"**18E Retention of samples etc.: children referred to children's hearings**

(1) This section applies to—
(a) relevant physical data taken from or provided by a child under section 18(2); and
(b) any sample, or any information derived from a sample, taken from a child under section 18(6) or (6A),

where the first condition, and the second, third or fourth condition, are satisfied.

(2) The first condition is that the child's case has been referred to a children's hearing under section 65(1) of the Children (Scotland) Act 1995 (c.36) (the "Children Act").

(3) The second condition is that—
(a) a ground of the referral is that the child has committed an offence mentioned in subsection (6) (a "relevant offence");
(b) both the child and the relevant person in relation to the child accept, under section 65(5) or (6) of the Children Act, the ground of referral; and
(c) no application to the sheriff under section 65(7) or (9) of that Act is made in relation to that ground.

(4) The third condition is that—
(a) a ground of the referral is that the child has committed a relevant offence;

(b) the sheriff, on an application under section 65(7) or (9) of the Children Act—

(i) deems, under section 68(8) of the Children Act; or

(ii) finds, under section 68(10) of that Act,

the ground of referral to be established; and

(c) no application to the sheriff under section 85(1) of that Act is made in relation to that ground.

(5) The fourth condition is that the sheriff, on an application under section 85(1) of the Children Act—

(a) is satisfied, under section 85(6)(b) of that Act, that a ground of referral which constitutes a relevant offence is established; or

(b) finds, under section 85(7)(b) of that Act, that—

(i) a ground of referral, which was not stated in the original application under section 65(7) or (9) of that Act, is established; and

(ii) that ground constitutes a relevant offence.

(6) A relevant offence is such relevant sexual offence or relevant violent offence as the Scottish Ministers may by order made by statutory instrument prescribe.

(7) An order under subsection (6) may prescribe a relevant violent offence by reference to a particular degree of seriousness.

(8) Subject to section 18F(8) and (9), the relevant physical data, sample or information derived from a sample must be destroyed no later than the destruction date.

(9) The destruction date is—

(a) the date of expiry of the period of 3 years following—

(i) where the second condition is satisfied, the date on which the ground of referral was accepted as mentioned in that condition;

(ii) where the third condition is satisfied, the date on which the ground of referral was established as mentioned in that condition;

(iii) where the ground of referral is established as mentioned in paragraph (a) of the fourth condition, the date on which that ground was established under section 68(8) or, as the case may be, (10) of the Children Act; or

(iv) where the ground of referral is established as mentioned in paragraph (b) of the fourth condition, the date on which that ground was established as mentioned in that paragraph; or

(b) such later date as an order under section 18F(1) may specify.

(10) No statutory instrument containing an order under subsection (6) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

(11) In this section—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"relevant person" has the same meaning as in section 93(2) of the Children Act;

"relevant sexual offence" and "relevant violent offence" have, subject to the modification in subsection (12), the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

(12) The modification is that the definition of "relevant sexual offence" in section 19A(6) is to be read as if for paragraph (g) there were substituted —"(g)public indecency if it is apparent from the ground of referral relating to the offence that there was a sexual aspect to the behaviour of the child;".

18F Retention of samples etc. relating to children: appeals

(1) 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.

(2) An application under subsection (1) may be made to any sheriff—
- (a) in whose sheriffdom the child mentioned in section 18E(1) resides;
- (b) in whose sheriffdom that child is believed by the applicant to be; or
- (c) to whose sheriffdom that child is believed by the applicant to be intending to come.

(3) An order under subsection (1) must not specify a destruction date more than 2 years later than the previous destruction date.

(4) The decision of the sheriff on an application under subsection (1) may be appealed to the sheriff principal within 21 days of the decision.

(5) If the sheriff principal allows an appeal against the refusal of an application under subsection (1), the sheriff principal may make an order amending, or further amending, the destruction date.

(6) An order under subsection (5) must not specify a destruction date more than 2 years later than the previous destruction date.

(7) The sheriff principal's decision on an appeal under subsection (4) is final.

(8) Section 18E(8) does not apply where—
- (a) an application under subsection (1) has been made but has not been determined;
- (b) the period within which an appeal may be brought under subsection (4) 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.

(9) Where—
- (a) the period within which an appeal referred to in subsection (8)(b) 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 (4) against a decision to grant an application is determined in favour of the appellant,

the relevant physical data, sample or information derived from a sample must be destroyed as soon as possible after the period has elapsed or, as the case may be, the appeal is withdrawn or determined.

(10) In this section—

"destruction date" has the meaning given by section 18E(9); and

"relevant chief constable" has the same meaning as in subsection (11) of section 18A, with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in section 18E(1).".

VALID FROM 28/03/2011

81 Extension of section 19A of 1995 Act

In section 19A(6) of the 1995 Act (definitions of certain expressions for purposes of section 19A)—

(a) in the definition of "relevant sexual offence", for paragraph (g) substitute—

"(g) public indecency if the court, in imposing sentence or otherwise disposing of the case, determined for the purposes of paragraph 60 of Schedule 3 to the Sexual Offences Act 2003 (c.42) that there was a significant sexual aspect to the offender's behaviour in committing the offence;", and

(b) in paragraph (h) of the definition of "relevant violent offence", after sub-paragraph (iv), insert—

"(v) section 47(1) (possession of offensive weapon in public place), 49(1) (possession of article with blade or point in public place), 49A(1) or (2) (possession of article with blade or point or offensive weapon on school premises) or 49C(1) (possession of offensive weapon or article with blade or point in prison) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39);".

VALID FROM 01/08/2011

82 Use of samples etc.

(1) After section 19B of the 1995 Act insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**19C Sections 18 and 19 to 19AA: use of samples etc.**

(1) Subsection (2) applies to—
- (a) relevant physical data taken or provided under section 18(2), 19(2)(a), 19A(2)(a) or 19AA(3)(a),
- (b) a sample, or any information derived from a sample, taken under section 18(6) or (6A), 19(2)(b) or (c), 19A(2)(b) or (c) or 19AA(3)(b) or (c),
- (c) relevant physical data or a sample taken from a person—
  - (i) by virtue of any power of search,
  - (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
  - (iii) under the authority of a warrant,
- (d) information derived from a sample falling within paragraph (c), and
- (e) relevant physical data, a sample or information derived from a sample taken from, or provided by, a person outwith Scotland which is given by any person to—
  - (i) a police force,
  - (ii) the Scottish Police Services Authority, or
  - (iii) a person acting on behalf of a police force.

(2) The relevant physical data, sample or information derived from a sample may be used—
- (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
- (b) for the identification of a deceased person or a person from whom the relevant physical data or sample came.

(3) Subsections (4) and (5) apply to relevant physical data, a sample or information derived from a sample falling within any of paragraphs (a) to (d) of subsection (1) ("relevant material").

(4) If the relevant material is held by a police force, the Scottish Police Services Authority or a person acting on behalf of a police force, the police force or, as the case may be, the Authority or person may give the relevant material to another person for use by that person in accordance with subsection (2).

(5) A police force, the Scottish Police Services Authority or a person acting on behalf of a police force may, in using the relevant material in accordance with subsection (2), check it against other relevant physical data, samples and information derived from samples received from another person.

(6) In subsection (2)—
- (a) the reference to crime includes a reference to—
  - (i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or

(ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,

(b) the reference to an investigation includes a reference to an investigation outside Scotland of a crime or suspected crime, and

(c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside Scotland.

(7) This section is without prejudice to any other power relating to the use of relevant physical data, samples or information derived from a sample.”.

(2) In section 56 of the Criminal Justice (Scotland) Act 2003 (asp 7) (use of samples etc. voluntarily given)—

(a) in subsection (1), after “from,” insert “ or provided by ”,

(b) in subsection (2), for the words from “may” where it first occurs to the end substitute “, or information derived from that sample may be held and used—

(a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

(b) for the identification of a deceased person or a person from whom the sample or relevant physical data came.”,

(c) in subsection (3), after “information” insert “ derived from a sample ”,

(d) in subsection (5)(b), the words “with all information derived from them” are repealed,

(e) in subsection (6)(a), for “it or them” substitute “ the sample ”,

(f) in subsection (7)(a), the words “or relevant physical data”, in the second place where they occur, are repealed, and

(g) after subsection (7) insert—

“(7A) In subsection (2)—

(a) the reference to crime includes a reference to—

(i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or

(ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,

(b) the reference to an investigation includes a reference to an investigation outside the United Kingdom of a crime or suspected crime, and

(c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside the United Kingdom.”.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

Referrals from the Scottish Criminal Cases Review Commission

83 Referrals from Scottish Criminal Cases Review Commission: grounds for appeal

In section 194D of the 1995 Act (further provisions as to references to the High Court by the Scottish Criminal Cases Review Commission), after subsection (4) insert—

"(4A) The grounds for an appeal arising from a reference to the High Court under section 194B of this Act must relate to one or more of the reasons for making the reference contained in the Commission's statement of reasons.

(4B) Despite subsection (4A), the High Court may, if it considers it is in the interests of justice to do so, grant leave for the appellant to found the appeal on additional grounds.

(4C) An application by the appellant for leave under subsection (4B) must be made and intimated to the Crown Agent within 21 days after the date on which a copy of the Commission's statement of reasons is sent under subsection (4)(b).

(4D) The High Court may, on cause shown, extend the period of 21 days mentioned in subsection (4C).

(4E) The Clerk of Justiciary must intimate to the persons mentioned in subsection (4F)—

(a) a decision under subsection (4B), and

(b) in the case of a refusal to grant leave for the appeal to be founded on additional grounds, the reasons for the decision.

(4F) Those persons are—

(a) the appellant or the appellant's solicitor, and

(b) the Crown Agent.".

Commencement Information

I8 S. 83 in force at 5.11.2010 by S.S.I. 2010/385, **art. 2** (with arts. 3, 4)

VALID FROM 28/03/2011

PART 4

EVIDENCE

84 Admissibility of prior statements of witnesses: abolition of competence test

(1) This section applies in relation to a prior statement made by a witness before the commencement of section 24 of the Vulnerable Witnesses (Scotland) Act 2004 (asp 3) ("the 2004 Act") (which abolishes the competence test for witnesses in criminal and civil proceedings).

(2) For the purpose of the application of subsection (2)(c) of section 260 of the 1995 Act (admissibility of prior statement depends on competence of the witness at the time of the statement) in relation to the statement, section 24 of the 2004 Act is taken to have been in force at the time the statement was made.

(3) In this section, "prior statement" has the meaning it has in section 260 of the 1995 Act.

VALID FROM 06/06/2011

85 Witness statements: use during trial

(1) The 1995 Act is amended as follows.

(2) After section 261 insert—

"Witness statements

261A Witness statements: use during trial

(1) Subsection (2) applies where—
- (a) a witness is giving evidence in criminal proceedings,
- (b) the witness has made a prior statement,
- (c) the prosecutor has seen or has been given an opportunity to see the statement, and
- (d) the accused (or a solicitor or advocate acting on behalf of the accused in the proceedings) has seen or has been given an opportunity to see the statement.

(2) The court may allow the witness to refer to the statement while the witness is giving evidence.".

(3) In section 262 (construction of sections 259 to 261 of Act)—
- (a) in the title, for "261" substitute " 261A ",
- (b) in each of subsections (1) to (4), for "261" substitute " 261A ", and
- (c) in subsection (3)—
  - (i) in the definition of "criminal proceedings", after "include" insert " (other than in section 261A) ", and
  - (ii) in the definition of "made", after "includes" insert " (other than in section 261A) ".

86 Spouse or civil partner of accused a compellable witness

(1) For section 264 of the 1995 Act (spouse of accused a competent witness) substitute—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**264 Spouse or civil partner of accused a compellable witness**

(1) The spouse or civil partner of an accused is a competent and compellable witness for the prosecution, the accused or any co-accused in the proceedings against the accused.

(2) Subsection (1) is, if the spouse or civil partner is a co-accused in the proceedings, subject to any enactment or rule of law by virtue of which an accused need not (by reason of being an accused) give evidence in the proceedings.

(3) Subsection (1) displaces any other rule of law that would (but for that subsection) prevent or restrict, by reference to the relationship, the giving of evidence by the spouse or civil partner of an accused.".

(2) Section 130 of the Civil Partnership Act 2004 (c.33) (civil partner of accused a competent witness) is repealed.

87 Special measures for child witnesses and other vulnerable witnesses

(1) The 1995 Act is amended as follows.

(2) In section 271 (vulnerable witnesses: main definitions)—

(a) in subsection (1)—

(i) for "a trial" substitute " a hearing in relevant criminal proceedings ", and

(ii) for "the trial", wherever it occurs, substitute " the hearing ", and

(b) in subsection (5)—

(i) the definition of "trial" is repealed, and

(ii) after the definition of "court" insert—

""hearing in relevant criminal proceedings" means any hearing in the course of any criminal proceedings in the High Court or the sheriff court.".

(3) In section 271A (child witnesses)—

(a) in subsection (1), for "a trial" substitute " a hearing in relevant criminal proceedings ",

(b) in subsection (5A)(c), for "the trial diet" substitute " the hearing at which the evidence is to be given ",

(c) in subsection (6)(a), for "the trial" substitute " a hearing in relevant criminal proceedings ",

(d) in subsection (7)(b)(ii), for "the trial" substitute " the hearing at which the evidence is to be given ",

(e) in subsection (8), for "the trial diet" substitute " the hearing at which the evidence is to be given ",

(f) in subsection (10)(b)(i), for "the trial diet" substitute " the hearing at which the evidence is to be given ",

(g) in subsection (12), for "the trial diet in the case" substitute " the hearing at which the evidence is to be given ", and

(h) in subsection (13A)(c), for "the trial diet" substitute " the hearing at which the evidence is to be given ".

(4) In section 271B (further special provision for child witnesses under the age of 12)—
- (a) in subsection (1)(a), for "a trial" substitute " a hearing in relevant criminal proceedings ",
- (b) in subsection (1)(b), for "the trial" substitute " the hearing ", and
- (c) in subsection (3)(b)(i), for "the trial" substitute " the hearing ".

(5) In section 271C (vulnerable witnesses other than child witnesses)—
- (a) in subsection (1), for "a trial" substitute " a hearing in relevant criminal proceedings ",
- (b) in subsection (5A)(c), for "the trial diet" substitute " the hearing at which the evidence is to be given ",
- (c) in subsection (6), for "the trial diet" substitute " the hearing at which the evidence is to be given ",
- (d) in subsection (10), for "the trial diet in the case" substitute " the hearing at which the evidence is to be given ", and
- (e) in subsection (12)(c), for "the trial diet" substitute " the hearing at which the evidence is to be given ".

(6) In section 271D (review of arrangements for vulnerable witnesses)—
- (a) in subsection (1)—
  - (i) for "the trial", where it first occurs, substitute " a hearing in relevant criminal proceedings ", and
  - (ii) for "the trial", where it second occurs, substitute " the hearing ", and
- (b) in subsection (4)(b)(i), for "the trial" substitute " the hearing ".

(7) In section 271F (the accused)—
- (a) in subsection (1)—
  - (i) for "the trial", where it first occurs, substitute " a hearing in relevant criminal proceedings ", and
  - (ii) for "the trial", where it second occurs (in subsection (1)(a)), substitute " the hearing ",
- (b) in subsection (2)—
  - (i) for "the trial", where it first occurs, substitute " the hearing ",
  - (ii) for "the trial", where it second occurs (in subsection (2)(a)(iii)), substitute " a hearing in relevant criminal proceedings ", and
  - (iii) for "the trial", where it third occurs (in subsection (2)(b)(i)), substitute " a hearing in relevant criminal proceedings ",
- (c) in subsection (3), for "the trial" substitute " a hearing in relevant criminal proceedings ", and
- (d) in subsection (5), for "the trial" substitute " the hearing ".

(8) In section 271J (live television link)—
- (a) in subsection (1), for "the trial" substitute " the hearing ",
- (b) in subsection (2)(b), for "the trial" substitute " the hearing ", and
- (c) in subsection (5)(a), for "the trial" substitute " the hearing ".

(9) In section 271L (supporters), in subsection (2), for "the trial" substitute " that or any other hearing in the proceedings ".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(10) In section 288E (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12), in subsection (5), for "a child witness referred to in subsection (2)(b) above" substitute " the trial ".

88 Child witnesses in proceedings for people trafficking offences

In section 271 of the 1995 Act (vulnerable witnesses: main definitions)—

(a) in subsection (1)(a), for "age of 16" substitute " relevant age ", and

(b) after subsection (1), insert—

"(1A) In subsection (1)(a), "the relevant age" means—

(a) in the case of a person who is giving or is to give evidence in proceedings for an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (trafficking in prostitution etc.) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation), the age of 18, and

(b) in any other case, the age of 16.".

89 Amendment of Criminal Justice (Scotland) Act 2003

Section 15A of the Criminal Justice (Scotland) Act 2003 (asp 7) (application of certain vulnerable witness provisions in proofs) is repealed.

90 Witness anonymity orders

(1) After section 271M of the 1995 Act insert—

"Witness anonymity orders

271N Witness anonymity orders

(1) A court may make an order requiring such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The court may make such an order only on an application made in accordance with sections 271P and 271Q, if satisfied of the conditions set out in section 271R having considered the matters set out in section 271S.

(3) The kinds of measures that may be required to be taken in relation to a witness include in particular measures for securing one or more of the matters mentioned in subsection (4).

(4) Those matters are—

(a) that the witness's name and other identifying details may be—

(i) withheld,

(ii) removed from materials disclosed to any party to the proceedings,

(b) that the witness may use a pseudonym,

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness,

(d) that the witness is screened to any specified extent,

(e) that the witness's voice is subjected to modulation to any specified extent.

(5) Nothing in this section authorises the court to require—

(a) the witness to be screened to such an extent that the witness cannot be seen by the judge or the jury,

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by the judge or the jury.

(6) An order made under this section is referred to in this Act as a "witness anonymity order".

(7) In this section "specified" means specified in the order concerned.

271P Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) must (unless the court directs otherwise) inform the court of the identity of the witness, but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings (or to the legal representatives of any other party to the proceedings).

(3) Where an application is made by the accused, the accused—

(a) must inform the court and the prosecutor of the identity of the witness, but

(b) if there is more than one accused, is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other accused (or to the legal representatives of any other accused).

(4) Subsections (5) and (6) apply where the prosecutor or the accused proposes to make an application under this section in respect of a witness.

(5) Any relevant information which is disclosed by or on behalf of that party before the determination of the application must be disclosed in such a way as to prevent—

(a) the identity of the witness, or

(b) any information that might enable the witness to be identified,

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from being disclosed except as required by subsection (2)(a) or (3)(a).

(6) Despite any provision in this Act to the contrary, any relevant list, application or notice lodged, made or given by that party before the determination of the application must not—
  (a) disclose the identity of the witness, or
  (b) contain any other information that might enable the witness to be identified,

but the list, application or notice must, instead, refer to the witness by a pseudonym.

(7) "Relevant information" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(8) "Relevant list, application or notice" means—
  (a) a list of witnesses,
  (b) a list of productions,
  (c) a notice under section 67(5) or 78(4) relating to the witness,
  (d) a motion or application under section 268, 269 or 270 relating to the witness,
  (e) any other motion, application or notice relating to the witness.

(9) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(10) Subsection (9) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(11) Nothing in this section is to be taken as restricting any power to make rules of court.

271Q Making and determination of applications

(1) In proceedings on indictment, an application under section 271P is a preliminary issue (and sections 79 and 87A and other provisions relating to preliminary issues apply accordingly).

(2) No application under section 271P may be made in summary proceedings by any party unless notice of the party's intention to do so has been given—
  (a) if an intermediate diet has been fixed, before that diet,
  (b) if no intermediate diet has been fixed, before the commencement of the trial.

(3) Subsection (2) is subject to subsections (4) and (8).

(4) In summary proceedings in which an intermediate diet has been fixed, the court may, on cause shown, grant leave for an application under section 271P to be made without notice having been given in accordance with subsection (2)(a).

(5) Subsection (6) applies where—
  (a) the court grants leave for a party to make an application under section 271P without notice having been given in accordance with subsection (2)(a), or
  (b) notice of a party's intention to make such an application is given in accordance with subsection (2)(b).

(6) The application must be disposed of before the commencement of the trial.

(7) Subsection (8) applies where a motion or application is made under section 268, 269 or 270 to lead the evidence of a witness.

(8) Despite section 79(1) and subsection (2) above, an application under section 271P may be made in respect of the witness at the same time as the motion or application under section 268, 269 or 270 is made.

(9) The application must be determined by the court before continuing with the trial.

(10) Where an application is made under section 271P, the court may postpone or adjourn (or further adjourn) the trial diet.

(11) In this section, "commencement of the trial" means the time when the first witness for the prosecution is sworn.

271R Conditions for making orders

(1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make the order only if it is satisfied that Conditions A to D below are met.

(3) Condition A is that the proposed order is necessary—
  (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or
  (b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused's receiving a fair trial.

(5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify.

(6) Condition D is that—
  (a) the witness would not testify if the proposed order were not made, or
  (b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(7) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard in particular to any reasonable fear on the part of the witness—
  (a) that the witness or another person would suffer death or injury, or

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(b) that there would be serious damage to property,

if the witness were to be identified.

271S Relevant considerations

(1) When deciding whether Conditions A to D in section 271R are met in the case of an application for a witness anonymity order, the court must have regard to—

(a) the considerations mentioned in subsection (2), and

(b) such other matters as the court considers relevant.

(2) The considerations are—

(a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings,

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the witness's evidence comes to be assessed,

(c) whether evidence given by the witness might be material in implicating the accused,

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed,

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard in particular to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,

(f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

271T Direction to jury

(1) Subsection (2) applies where, in a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such direction as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

271U Discharge and variation of order

(1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.

(2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271R and 271S that applied to the making of the order.

(3) The court may do so—
- (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
- (b) on its own initiative.

(4) The court must give every party to the proceedings the opportunity to be heard—
- (a) before determining an application made to it under subsection (3)(a), and
- (b) before discharging or varying the order on its own initiative.

(5) Subsection (4) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) In subsection (3)(a) "the relevant time" means—
- (a) the time when the order was made, or
- (b) if a previous application has been made under that subsection, the time when the application (or the last application) was made.

271V Appeals

(1) The prosecutor or the accused may appeal to the High Court against—
- (a) the making of a witness anonymity order under section 271N,
- (b) the kinds of measures that are required to be taken in relation to a witness under a witness anonymity order made under that section,
- (c) the refusal to make a witness anonymity order under that section,
- (d) the discharge of a witness anonymity order under section 271U,
- (e) the variation of a witness anonymity order under that section, or
- (f) the refusal to discharge or vary a witness anonymity order under that section.

(2) The appeal may be brought only with the leave of the court of first instance, granted—
- (a) on the motion of the party making the appeal, or
- (b) on its own initiative.

(3) The procedure in relation to the appeal is to be prescribed by Act of Adjournal.

(4) If an appeal is brought under this section—
- (a) the period between the lodging of the appeal and its determination does not count towards any time limit applying in respect of the case,
- (b) the court of first instance or the High Court may do either or both of the following—
  - (i) postpone or adjourn (or further adjourn) the trial diet,
  - (ii) extend any time limit applying in respect of the case.

(5) An appeal under this section does not affect any right of appeal in relation to any other decision of any court in the criminal proceedings.

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271W Appeal against the making of a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(a) against the making of a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the order and the trial is to proceed as if the order had not been made.

271X Appeal against the refusal to make a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(c) against the refusal to make a witness anonymity order in relation to a witness in criminal proceedings, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must make an order requiring such specified measures to be taken in relation to the witness in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

271Y Appeal against a variation of a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(e) against a variation of a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the variation.

(3) If the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.

271Z Appeal against a refusal to vary or discharge a witness anonymity order

(1) This section applies where—

(a) an appeal is brought under section 271V(1)(f) against a refusal to discharge or vary a witness anonymity order, and

(b) the High Court determines that the decision of the judge at first instance was wrong in law.

(2) The High Court must discharge the order, or make the variation, as the case requires.

(3) If, in the case of a variation, the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271R and 271S, the court may do so.".

(2) The 1995 Act is amended as follows—

(a) in section 79 (preliminary pleas and preliminary issues)—

(i) after subsection (1), insert—

"(1A) Subsection (1) is subject to section 271Q(8).", and

(ii) in subsection (2)(b), after sub-paragraph (ii), insert—

"(iia) an application for a witness anonymity order under section 271P of this Act;", and

(b) in section 148 (intermediate diets), after subsection (3), insert—

"(3AA) At an intermediate diet, the court shall also dispose of any application for a witness anonymity order under section 271P of this Act of which notice has been given in accordance with section 271Q(2)(a) of this Act.".

(3) Sections 271N to 271Z of the 1995 Act apply to proceedings in cases where the trial or hearing begins on or after the day on which this section comes into force.

(4) Nothing in this section or sections 271N to 271Z of the 1995 Act affects the power of a court under any rule of law to make an order for securing that the identity of a witness in a trial or hearing in criminal proceedings is withheld from the accused (or, on a defence application, from other accused), where the trial or hearing begins before the day on which this section comes into force.

(5) Schedule 5 makes provision about certain appeals.

91 Television link evidence

(1) The 1995 Act is amended as follows.

(2) In section 273 (television link evidence from abroad), in subsection (1), for "solemn" substitute " criminal ".

(3) After that section insert—

"Evidence from other parts of the United Kingdom

273A Television link evidence from other parts of the United Kingdom

(1) In any criminal proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—

(a) the witness is within the United Kingdom but outside Scotland,

(b) an application under this section for the issue of a letter of request has been granted, and

(c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.

(2) The prosecutor or the defence in any proceedings referred to in subsection (1) may apply for the issue of a letter of request.

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(3) The application must be made to a judge of the court in which the trial is to take place or, if that court is not yet known, to a judge of the High Court.

(4) The judge may, on an application under this section, issue a letter to a court or tribunal exercising jurisdiction in the place where the witness is ordinarily resident requesting assistance in facilitating the giving of evidence by that witness through a live television link, if the judge is satisfied of the matters set out in subsection (5).

(5) Those matters are—

(a) that the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial,

(b) that the granting of the application—

(i) is in the interests of justice, and

(ii) in the case of an application by the prosecutor, is not unfair to the accused.”.

PROSPECTIVE

92 European evidence warrants

(1) The Scottish Ministers may by order make provision for the purposes of and in connection with implementing any obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).

(2) The provision may, in particular, confer functions—

(a) on the Scottish Ministers,

(b) on the Lord Advocate,

(c) on other persons.

(3) An order under subsection (1) may modify any enactment.

(4) An order under subsection (1) may contain provision creating offences and a person who commits such an offence is liable to such penalties, not exceeding those mentioned in subsection (5), as are provided for in the order.

(5) Those penalties are—

(a) on conviction on indictment, imprisonment for a period not exceeding 2 years, or a fine, or both,

(b) on summary conviction, imprisonment for a period not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

(6) In this section, the “Framework Decision” means Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.

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PART 5

CRIMINAL JUSTICE

VALID FROM 13/12/2010

Jury service

93 Lists of jurors

(1) The 1995 Act is amended as follows.

(2) In section 84 (juries: returns of jurors and preparation of lists)—

(a) in subsection (3), for "list" substitute " lists ",

(b) for subsection (4) substitute—

"(4) For the purpose of a trial in the sheriff court, the sheriff principal must furnish the clerk of court with a list of names, containing the number of persons required, from lists of potential jurors of—

(a) the sheriff court district in which the trial is to be held (the "local district"), and

(b) if the sheriff principal considers it appropriate, any other sheriff court district or districts in the sheriffdom in which the trial is to be held ("other districts").

(4A) Where the sheriff principal furnishes a list containing names of potential jurors of other districts, the sheriff principal may determine the proportion as between the local district and the other districts in which jurors are to be summoned.",

(c) in subsection (5), for "list", in both places where it occurs, substitute " lists ", and

(d) subsection (7) is repealed.

(3) In section 85(4) (juries: citation and attendance of jurors)—

(a) for the words from the beginning to "shall", in the first place where it occurs, substitute "The sheriff clerk of—

(a) the sheriffdom in which the High Court is to sit, or

(b) the sheriff court district in which a trial in the sheriff court is to be held,

shall ", and

(b) the word "such", in the first place where it occurs, is repealed.

VALID FROM 10/01/2011

94 Upper age limit for jurors

(1) Section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55) (qualification of jurors) is amended as follows.

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(2) In subsection (1)—
- (a) in paragraph (b), at beginning insert " subject to subsection (1A), ", and
- (b) the words ", civil or criminal" are repealed.

(3) After subsection (1) insert—

"(1A) In relation to criminal proceedings, a person is qualified and liable to serve as a juror despite being over 65 years of age.".

VALID FROM 10/01/2011

95 Excusal from jury service

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended as follows.

(2) In section 1 (qualification of jurors)—
- (a) in subsection (1), after "below" insert " and to section 1A ",
- (b) in subsection (2), after "service" in the second place where it occurs insert " in relation to civil proceedings ",
- (c) in subsection (3), after "service" in the first place where it occurs insert " in relation to civil proceedings ",
- (d) in subsection (5), after "above" insert " or under section 1A ", and
- (e) in subsection (6), after paragraph (a) insert—

  "(aa) section 1A;".

(3) After section 1 insert—

"**1A Excusal of jurors in relation to criminal proceedings**

(1) Subject to subsection (3), a person who is qualified under section 1(1) but is among the persons listed in Part III of Schedule 1 to this Act (being persons excusable as of right from jury service) is to be excused from jury service in relation to criminal proceedings on any occasion where the person—
- (a) has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 (c.22); and
- (b) gives written notice to the sheriff principal that the person wishes to be excused, before the end of the period of 7 days beginning with the day on which the person receives the requirement.

(2) Without prejudice to subsection (1), a person who is qualified under section 1(1) but is among the persons listed in Group C of Part III of Schedule 1 to this Act is to be excused from jury service in relation to criminal proceedings on any occasion where—
- (a) the person has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825; and
- (b) the person's commanding officer certifies to the sheriff principal that it would be prejudicial to the efficiency of the force of which the person is a member were the person required to be absent from duty.

(3) Subsection (1) does not apply to a person who is qualified under section 1(1) but is among the persons listed in paragraph (a)(iii) of Group F of Part III of Schedule 1 to this Act (persons who have attained the age of 71), but instead such a person is to be excused from jury service in relation to criminal proceedings on any occasion where—

(a) in the case of a person who has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825, the person gives written notice to the sheriff principal that the person wishes to be excused; or

(b) in the case of a person who has been cited to attend for jury service, the person—

(i) gives written notice to the clerk of court issuing the citation that the person wishes to be excused, before the date on which the person is cited first to attend; or

(ii) attends in compliance with the citation and intimates to the court that the person wishes to be excused.”.

(4) In section 3(1)(a) (offences in connection with jury service), after “been” insert “ required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 or ”.

VALID FROM 10/01/2011

96 Persons excusable from jury service

In the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55), in Schedule 1 (ineligibility for and disqualification and excusal from jury service), Part 3, Group F, for paragraph (a) substitute—

“(a) where citation for jury service would result in a person's serving as a juror in relation to criminal proceedings—

(i) persons who have served as a juror in the period of 5 years ending with the date on which the person is cited first to attend;

(ii) persons who have attended for jury service in relation to criminal proceedings, but have not served as a juror, in the period of 2 years ending with the date on which the person is cited first to attend; and

(iii) persons who have attained the age of 71;

(aa) where citation for jury service would result in a person's serving as a juror in relation to civil proceedings, persons who have served, or duly attended for service, as a juror in the period of 5 years ending with the date on which the person is cited first to attend;”.

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Data matching for detection of fraud etc.

97 Data matching for detection of fraud etc.

(1) The Public Finance and Accountability (Scotland) Act 2000 (asp 1) is amended as follows.

(2) In section 11 (Audit Scotland: financial provisions)—

(a) after subsection (1)(c) insert—

"(ca) carrying out a data matching exercise under section 26A,", and

(b) after subsection (5) insert—

"(5A) Charges under subsection (1)(ca) may be imposed on (either or both)—

(a) persons who disclose data for a data matching exercise,

(b) persons who receive the results of such an exercise.".

(3) After section 26 insert—

"**PART 2A**

DATA MATCHING

26A Power to carry out data matching exercises

(1) Audit Scotland may carry out data matching exercises or arrange for them to be carried out on its behalf.

(2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).

(3) The power in subsection (1) may be exercised for one or more of the following purposes—

(a) assisting in the prevention and detection of fraud,

(b) assisting in the prevention and detection of crime (other than fraud),

(c) assisting in the apprehension and prosecution of offenders.

(4) A data matching exercise may not be used for the sole purpose of identifying patterns and trends in a person's characteristics or behaviour which suggest the person is likely to commit fraud in the future.

26B Voluntary disclosure of data to Audit Scotland

(1) For the purposes of a data matching exercise, any person may disclose data to Audit Scotland (or a person acting on its behalf).

(2) Such disclosure does not breach—

(a) any duty of confidentiality owed by the person making the disclosure, or

(b) any other restriction on the disclosure of data.

(3) Nothing in this section authorises a disclosure—
- (a) which contravenes the Data Protection Act 1998 (c.29),
- (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c.23) (interception, acquisition and disclosure of communications data), or
- (c) of data comprising or including patient data.

(4) "Patient data" means data relating to an individual which is held for medical purposes and from which the individual can be identified.

(5) "Medical purposes" are the purposes of—
- (a) preventative medicine,
- (b) medical diagnosis,
- (c) medical research,
- (d) the provision of care and treatment,
- (e) the management of health and social care services, and
- (f) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment.

(6) Nothing in this section prevents disclosure of data under any other provision of this Act, another enactment or any rule of law.

(7) Data matching exercises may include data disclosed by a person outside Scotland.

26C Power to require disclosure of data

(1) Audit Scotland may require the persons mentioned in subsection (2) to disclose to it (or a person acting on its behalf) such data as it (or the person acting on its behalf) may reasonably require for the purpose of carrying out data matching exercises in such form as it (or such person) may so require.

(2) Those persons are—
- (a) a body or an office holder any of whose accounts is an account in relation to which sections 21 and 22 apply,
- (b) a body whose accounts must be audited under Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance),
- (c) a Licensing Board continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16), or
- (d) an officer or a member of a body, office holder or board mentioned in paragraph (a), (b) or (c).

(3) Audit Scotland must not require a person to disclose data if—
- (a) the disclosure would contravene the Data Protection Act 1998 (c.29),
- (b) the disclosure is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c.23) (interception, acquisition and disclosure of communications data).

(4) A disclosure made in response to a requirement imposed under subsection (1) does not breach—
- (a) any duty of confidentiality owed by the person making the disclosure, or

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) any other restriction on the disclosure of data.

(5) A person mentioned in subsection (2) who without reasonable excuse fails to comply with a requirement made in accordance with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

26D Disclosure of results of data matching

(1) This section applies to the following data—
- (a) data relating to a particular person obtained by or on behalf of Audit Scotland for the purpose of carrying out a data matching exercise, and
- (b) the results of such an exercise.

(2) Data to which this section applies may be disclosed by or on behalf of Audit Scotland if the disclosure is—
- (a) for, or in connection with, a purpose for which a data matching exercise is carried out,
- (b) to a Scottish audit agency, or a related party, for, or in connection with a function of that audit agency under—
  - (i) Part 2 of this Act, or
  - (ii) Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance),
- (c) to a United Kingdom audit agency, or a related party, for, or in connection with, a function of that audit agency corresponding or similar to—
  - (i) the functions of a Scottish audit agency, or
  - (ii) the functions of Audit Scotland under this Part, or
- (d) in pursuance of a duty imposed by or under an enactment.

(3) "Scottish audit agency", for the purpose of subsections (2)(b) and (c)(i), means—
- (a) the Auditor General, or
- (b) the Accounts Commission.

(4) "United Kingdom audit agency", for the purposes of subsection (2)(c), means—
- (a) the National Audit Office,
- (b) the Audit Commission for Local Authorities and the National Health Service in England,
- (c) the Auditor General for Wales,
- (d) the Comptroller and Auditor General for Northern Ireland, or
- (e) a person designated as a local government auditor under article 4 of the Local Government (Northern Ireland) Order 2005 (S.I. 2005/1968 (NI.18)).

(5) "Related party", in relation to a Scottish or United Kingdom audit agency means—
- (a) a person acting on its behalf,
- (b) a body or office holder whose accounts are required to be audited by it or by a person appointed by it, or

(c) a person appointed by it to audit those accounts.

(6) If the data used for a data matching exercise includes patient data—

(a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body, and

(b) subsection (2)(b) or (c) applies only so far as the function for, or in connection with, which the disclosure is made relates to such a body.

(7) In subsection (6)—

"patient data" has the same meaning as section 26B(4), and

"relevant NHS body" means—

(a) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5),

(b) a health service body as defined in section 53(1) of the Audit Commission Act 1998 (c.18),

(c) a Welsh NHS body as defined in section 60 of the Public Audit (Wales) Act 2004 (c.23),

(d) a

(8) Data disclosed under subsection (2) may not be further disclosed except—

(a) for, or in connection with—

(i) the purpose for which it was disclosed under subsection (2)(a), or

(ii) the function for which it was disclosed under subsection (2)(b) or (c),

(b) otherwise for the investigation or prosecution of an offence, or

(c) in pursuance of a duty imposed by or under an enactment.

(9) Except as authorised by subsections (2) and (8), a person who discloses data to which this section applies is guilty of an offence and liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both, or

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

26E Publication of reports on data matching

(1) Audit Scotland may publish a report on a data matching exercise (including a report on the results of an exercise).

(2) Such a report must not include data relating to a particular person if—

(a) the person is the subject of any data included in the data matching exercise,

(b) the person can be identified from the data, and

(c) the data is not otherwise in the public domain.

(3) A report published under subsection (1) is to be published in such manner as Audit Scotland considers appropriate for the purposes of bringing it to the attention of those members of the public who may be interested.

(4) Nothing in section 26D prevents publication under this section.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(5) This section does not affect any powers of an auditor where the data matching exercise in question forms part of an audit under—
  (a) Part 2 of this Act, or
  (b) Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance).

26F Data matching code of practice

(1) Audit Scotland must prepare, and keep under review, a code of practice with respect to data matching exercises.

(2) Regard must be had to the code in carrying out and participating in any such exercise.

(3) Audit Scotland must consult the following persons before preparing or altering the code of practice—
  (a) the Information Commissioner,
  (b) the persons mentioned in section 26C(2), and
  (c) any other person Audit Scotland thinks fit.

(4) Audit Scotland must, from time to time, publish the code.

26G Powers of the Scottish Ministers

(1) The Scottish Ministers may by order amend this Part—
  (a) to add a public body to the persons mentioned in section 26C(2),
  (b) to modify the application of this Part in relation to a public body so added, or
  (c) to remove a person from the persons mentioned in section 26C(2).

(2) An order under this section may include such incidental, consequential, supplementary or transitional provision as the Scottish Ministers think fit.

(3) In this section, "public body" means a person whose functions—
  (a) are functions of a public nature, or
  (b) include functions of a public nature.

(4) A person referred to in subsection (3)(b) is a public body to the extent only of the functions referred to in that subsection.".

Commencement Information
I9 S. 97 in force at 6.10.2010 by S.S.I. 2010/339, **art. 2**

VALID FROM 08/11/2021

Sharing information with anti-fraud organisations

98 Sharing information with anti-fraud organisations

In the Serious Crime Act 2007 (c.27), the following provisions are repealed—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(a) in section 68 (disclosure of information to prevent fraud), subsections (5) and (6),

(b) in section 69 (offence for certain further disclosures of information), subsection (3), and

(c) in section 71 (code of practice for disclosure of information to prevent fraud) —

(i) subsection (4), and

(ii) in subsection (6), the definition of "relevant public authority".

VALID FROM 13/12/2010

Closure of premises associated with human exploitation etc.

99 Closure of premises associated with human exploitation etc.

(1) In section 26 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (authorisation of closure notice)—

(a) in subsection (1), for "and (3)" substitute " to (3B) ",

(b) in subsection (3), after "may" insert " , in a case involving antisocial behaviour, ", and

(c) after subsection (3) insert—

"(3A) A senior police officer may, in a case involving an exploitation offence, authorise the service of a closure notice only where the senior police officer—

(a) has reasonable grounds for believing that—

(i) such an offence is being (or, at any time in the immediately preceding 3 months, was) committed in the premises, or

(ii) the premises are being (or, at any time in the immediately preceding 3 months, have been) used for or in connection with the commission of such an offence, and

(b) is satisfied that—

(i) the local authority for the area in which the premises are situated has been consulted, and

(ii) reasonable steps have been taken to establish the identity of any person who lives on, has control of, has responsibility for or has an interest in the premises.

(3B) Subsection (3A) is without prejudice to subsection (3) (including in so far as subsection (3) is applicable in relation to a brothel or other place where prostitution may occur).".

(2) In section 27 of that Act (service etc.), in subsection (2)—

(a) in paragraph (b)(i), after "section 26(3)(b)(ii)" insert " or (as the case may be) (3A)(b)(ii) ", and

(b) in paragraph (b)(ii), for "in that subsection" substitute " there ".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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(3) In section 30 of that Act (application: determination)—

(a) in subsection (1), after "subsection (2)" insert " or (2A) ",

(b) in subsection (2), for "Those" substitute " Where the application is in a case involving antisocial behaviour, the ",

(c) after subsection (2) insert—

"(2A) Where the application is in a case involving an exploitation offence, the conditions are—

(a) that it appears that—

(i) such an offence is being (or was recently) committed in the premises, or

(ii) the premises continue to be (or recently have been) used for or in connection with the commission of such an offence, and

(b) that the making of the order is necessary to prevent the commission of such an offence for the period specified in the order.",

(d) in subsection (3)(b), for the words from "engaged" to the end substitute "(as the case may be)—

(i) engaged in antisocial behaviour which has occurred in the premises, or

(ii) involved in the commission of an exploitation offence in or connected with the premises.", and

(e) after subsection (3) insert—

"(3A) For the purpose of paragraph (b)(ii) of subsection (3), a person such as is mentioned in paragraph (a) of that subsection is not involved in the commission of an exploitation offence where that person is the victim of the offence.".

(4) In section 32 of that Act (extension)—

(a) after subsection (1) insert—

"(1A) The sheriff may, on the application of a senior police officer and if satisfied that it is necessary to do so to prevent the commission of an exploitation offence, make an order extending the period for which a closure order has effect for a period not exceeding the maximum period.",

(b) in subsection (2), for "subsection (1)" substitute " subsections (1) and (1A) ",

(c) in subsection (3)—

(i) after "may" insert " , in a case involving antisocial behaviour, ", and

(ii) for "this section" substitute " subsection (1) ", and

(d) after subsection (3) insert—

"(3A) A senior police officer may, in a case involving an exploitation offence, make an application under subsection (1A) only if—

(a) it is made while the closure order has effect, and

(b) the senior police officer—

(i) has reasonable grounds for believing that it is necessary to extend the period for which the closure

order has effect for the purpose of preventing the commission of an exploitation offence, and

(ii) is satisfied that the appropriate local authority has been consulted about the intention to make the application.”.

(5) In section 33 of that Act (revocation), in subsection (1), for the words from “the occurrence” to the end substitute “(as the case may be)—

(a) the occurrence of relevant harm, or

(b) the commission of an exploitation offence,

revoke the order. ”.

(6) In section 36 of that Act (appeals), in subsection (5), after “section 32(1)” insert “ or (1A) ”.

(7) After section 40 of that Act insert—

“**40A Exploitation offences**

(1) In this Part, an “exploitation offence” is any of the following offences—

(a) so far as concerning travel or identity documentation for enabling the trafficking of people (including passports, visas and work permits)—

(i) fraud, or

(ii) uttering a forged document,

(b) so far as concerning the trafficking of people, an offence under section 26(1)(d) of the Immigration Act 1971 (c.77) (falsification of documentation),

(c) an offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (c.45) (possession, taking or distribution of indecent images of children),

(d) an offence under sections 7 to 12 or 13(9) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (offences relating to prostitution and brothels),

(e) an offence under section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.),

(f) an offence under section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (meeting a child following certain preliminary contact),

(g) an offence under sections 9 to 12 of that Act (offences relating to provision by child of sexual services or child pornography),

(h) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation),

(i) an offence under Part 1 of the Sexual Offences (Scotland) Act 2009 (asp 9) (rape etc.),

(j) an offence under Part 4 of that Act (sexual offences involving children) other than an offence under section 37 (older children engaging in sexual conduct with each other),

(k) an offence under section 42 of that Act (sexual abuse of trust),

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(l) an offence under section 46 of that Act (sexual abuse of trust of a mentally disordered person),

(m) an offence under section 47 (slavery, servitude and forced or compulsory labour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(2) For the purposes of subsection (1)(a) and (b), a reference to trafficking of people is a reference to a person intentionally doing something in respect of at least one other person which involves the commission of an offence mentioned in subsection (1)(e) or (h).

(3) For the purposes of subsection (1), a reference to an offence includes a reference to—

(a) an attempt to commit an offence,

(b) incitement to commit an offence,

(c) counselling or procuring the commission of an offence,

(d) involvement art and part in an offence, and

(e) an offence as modified by section 54 of the Sexual Offences (Scotland) Act 2009 (asp 9) (incitement to commit certain sexual acts outside the United Kingdom).

(4) The Scottish Ministers may by order add to or otherwise modify the specification of offences listed in subsection (1).”.

VALID FROM 01/11/2011

Sexual offences prevention orders

100 Sexual offences prevention orders

(1) In section 141 of the Criminal Justice and Immigration Act 2008 (c.4) (sexual offences prevention orders: relevant sexual offences), subsection (2) is repealed.

(2) In the Sexual Offences Act 2003 (c.42)—

(a) in section 106 (applications and grounds for sexual offences prevention orders: supplemental), in subsection (13), the words from “in their” to the end are repealed,

(b) in section 109 (interim SOPOs), in subsection (5), for “107(3)” substitute “ 107(2) ”,

(c) after section 111 insert—

“**111A SOPO and interim SOPO requirements: Scotland**

(1) This section applies in relation to a sexual offences prevention order or an interim sexual offences prevention order made, or to be made, by a court in Scotland.

(2) Such an order, in addition to or instead of prohibiting the defendant from doing anything described in the order, may require the defendant to do anything described in the order.

(3) Accordingly, in relation to such an order—

(a) the references in sections 107(2) and 108(5) to a prohibition include a reference to a requirement, and

(b) the reference in section 113(1) to a person's doing anything which he is prohibited from doing includes a reference to his failing to do anything which he is required to do.", and

(d) in section 112 (provisions relating to sexual offences prevention orders in Scotland), in subsection (1), after paragraph (d) insert—

"(da) a court may make an order under section 104(1)—

(i) at its own instance, or

(ii) on the motion of the prosecutor;".

VALID FROM 13/12/2010

Foreign travel orders

101 Foreign travel orders

(1) The Sexual Offences Act 2003 (c.42) is amended as follows.

(2) In section 115 (definition of "protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom"), in subsection (2), for "16" in both places it occurs substitute " 18 ".

(3) In section 116 (qualifying offenders: offences), in subsection (2)(d), for "16" substitute " 18 ".

(4) In section 117(1) (foreign travel orders: effect), for "6 months" substitute " 5 years ".

(5) Before section 118, insert—

"117B **Surrender of passports: Scotland**

(1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).

(2) The order must require the person in respect of whom the order has effect to surrender all of the person's passports, at a police station in Scotland specified in the order—

(a) on or before the date when the prohibition takes effect, or

(b) within a period specified in the order.

(3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).

(4) Subsection (3) does not apply in relation to—

(a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;

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(b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.

(5) In this section "passport" means—

(a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c.77);

(b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;

(c) a document that can be used (in some or all circumstances) instead of a passport.".

(6) In section 122 (breach of foreign travel order), before subsection (2) insert—

"(1B) A person commits an offence if, without reasonable excuse, the person fails to comply with—

(a) a requirement under section 117A(2) (surrender of passports: England and Wales and Northern Ireland), or

(b) a requirement under section 117B(2) (surrender of passports: Scotland).

(1C) A person may be prosecuted, tried and punished for any offence under subsection (1B)—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on the trial or punishment, to be deemed to have been committed in that district).".

VALID FROM 28/03/2011

Sex offender notification requirements

102 Sex offender notification requirements

(1) The Sexual Offences Act 2003 (c.42) is amended as follows.

(2) In section 85 (notification requirements: periodic notification)—

(a) in subsection (1), for "period of one year" substitute " applicable period ",

(b) in subsection (3), for "period referred to in subsection (1)" substitute " applicable period ", and

(c) after subsection (4) insert—

"(5) In this section, the "applicable period" means—

(a) in any case where subsection (6) applies to the relevant offender, such period not exceeding one year as the Scottish Ministers may prescribe in regulations, and

(b) in any other case, the period of one year.

(6) This subsection applies to the relevant offender if the last home address notified by the offender under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).”.

(3) In section 86 (notification requirements: travel outside the United Kingdom), subsection (4) is repealed.

(4) In section 87 (method of notification and related matters), subsection (6) is repealed.

(5) In section 96 (information about release or transfer), subsection (4) is repealed.

(6) In section 138 (orders and regulations)—

(a) in subsection (2), after “84,” insert “ 85, ”, and

(b) after subsection (3) insert—

“(4) Orders or regulations made by the Scottish Ministers under this Act may—

(a) make different provision for different purposes,

(b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”.

VALID FROM 13/12/2010

Risk of sexual harm orders

VALID FROM 01/11/2011

103 Risk of sexual harm orders

(1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) is amended as follows.

(2) In section 2 (risk of sexual harm orders: applications, grounds and effect)—

(a) in subsection (7)(a), after “doing” insert “ , or requires that person to do, ”, and

(b) in subsection (8), after “prohibitions” insert “ or requirements ”.

(3) In section 4 (risk of sexual harm orders: variations, renewals and discharges), in subsection (4), after “prohibitions” in both places where it occurs insert “ or requirements ”.

(4) In section 5 (interim risk of sexual harm orders), in subsection (3), after “doing” insert “ , or requiring that person to do, ”.

(5) In section 7 (offence: breach of risk of sexual harm order or interim risk of sexual harm order), in subsection (1), after “doing” insert “ , or fails to do anything which the person is required to do, ”.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

104 Risk of sexual harm orders: spent convictions

In section 7 of the Rehabilitation of Offenders Act 1974 (c.53) (limitations on rehabilitation under the Act), in subsection (2), after paragraph (bb) insert—

"(bc) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;".

VALID FROM 13/12/2010

Obtaining information from outwith United Kingdom

105 Obtaining information from outwith United Kingdom

After section 194I of the 1995 Act insert—

"**194IA Power to request assistance in obtaining information abroad**

(1) Where it appears to the Commission that there may be information which they require for the purposes of carrying out their functions, and the information is outside the United Kingdom, they may apply to the High Court to request assistance.

(2) On an application made by the Commission under subsection (1), the High Court may request assistance if satisfied that it is reasonable in the circumstances.

(3) In this section, "request assistance" means request assistance in obtaining outside the United Kingdom any information specified in the request for use by the Commission for the purposes of carrying out their functions.

(4) Section 8 of the Crime (International Co-operation) Act 2003 (c.32) (sending requests for assistance) applies to requests for assistance under this section as it applies to requests for assistance under section 7 of that Act.

(5) Subsections (2), (3) and (6) of section 9 of that Act (use of evidence obtained) apply to information obtained pursuant to a request for assistance under this section as they apply under subsection (1) of that section to evidence obtained pursuant to a request for assistance under section 7 of that Act.".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 28/03/2011

Surveillance

106 Grant of authorisations for surveillance

(1) The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) is amended as follows.

(2) In section 10 (authorisation of intrusive surveillance)—

(a) in subsection (1), for the words from "the" where it second occurs to the end substitute " any of the persons mentioned in subsection (1A) may grant authorisations for the carrying out of intrusive surveillance. ", and

(b) after that subsection insert—

"(1A) Those persons are—

(a) the chief constable of every police force,

(b) the Director General of the Scottish Crime and Drug Enforcement Agency,

(c) the Deputy Director General of the Scottish Crime and Drug Enforcement Agency.".

(3) After that section insert—

"**10A Authorisation of surveillance: joint surveillance operations**

In the case of a joint surveillance operation, where authorisation is sought for the carrying out of any form of conduct to which this Act applies, authorisation may be granted by any one of the persons having power to grant authorisation for the carrying out of that conduct.".

(4) In section 11 (rules for grant of authorisations), in subsection (3), after "General" insert " or the Deputy Director General ".

(5) In section 12A (grant of authorisations in cases of urgency: Scottish Crime and Drug Enforcement Agency), in subsection (1), after "General" insert " or the Deputy Director General ".

(6) In section 14 (approval required for authorisations to take effect)—

(a) in subsection (5)(b), after "General" insert " or the Deputy Director General ", and

(b) subsection (7) is repealed.

(7) In section 16 (appeals against decisions by Surveillance Commissioners), in subsection (1), after "General" insert " or the Deputy Director General ".

(8) In section 31 (interpretation), in subsection (1), after the definitions of "directed" and "intrusive" insert—

""joint surveillance operation" means a case involving—

(a) at least two police forces in Scotland working together; or

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency working together;".

VALID FROM 28/03/2011

Interference with property

107 Authorisations to interfere with property etc.

(1) The Police Act 1997 (c.50) is amended as follows.

(2) In section 93 (authorisations to interfere with property etc.)—

(a) after subsection (3A) insert—

"(3B) In the case of a joint operation, an authorising officer mentioned in subsection (3C) may authorise a person mentioned in subsection (3D) to take such action as is referred to in subsection (1).

(3C) Those authorising officers are—

(a) the chief constable of a police force—

(i) maintained under or by virtue of section 1 of the Police (Scotland) Act 1967, and

(ii) involved in the joint operation,

(b) where the Scottish Crime and Drug Enforcement Agency is involved in the joint operation, the Director General or Deputy Director General of that Agency.

(3D) The persons who may be authorised under subsection (1) are—

(a) a constable of any of the police forces involved in the joint operation (whether or not the authorised action is to be carried out in the area of operation of the constable's police force),

(b) where the joint operation falls within paragraph (b) of subsection (3C), a police member of the Scottish Crime and Drug Enforcement Agency.

(3E) In subsection (3B), "joint operation" means a case involving—

(a) at least two police forces in Scotland working together, or

(b) at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency working together.",

(b) in paragraph (j) of subsection (5), after "General" insert " , or Deputy Director General, ", and

(c) in paragraph (cc) of subsection (6), after "General" insert " , or Deputy Director General, ".

(3) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (2)(h), after "(5)" insert " or, as the case may be, subsection (6) ",

(b) in subsection (5), at the beginning insert " Where the case is not a joint operation, ", and

(c) after subsection (5), add—

"(6) Where the case is a joint operation, the person referred to in subsection (2)(h) is the chief constable of a police force involved in the joint operation in the relevant area.

(7) In subsections (5) and (6)—

"joint operation" has the meaning given by section 93(3E), and

"relevant area" means the area—

(a) for which the police forces involved in the joint operation are maintained, and

(b) to which the application for authorisation relates.".

Amendments of Part 5 of Police Act 1997

108 Amendments of Part 5 of Police Act 1997

(1) The Police Act 1997 (c.50) is amended as follows.

(2) In section 113B (enhanced criminal record certificates), in subsection (3), for the words from ", or" immediately following paragraph (a) to the end of paragraph (b), substitute "(or states that there is no such matter or information), and

(b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.".

(3) After that section insert—

"**113BA Information held outside the United Kingdom**

(1) The Scottish Ministers may by order made by statutory instrument amend the definition of—

(a) "criminal conviction certificate" in section 112(2),

(b) "central records" in sections 112(3) and 113A(6),

(c) "criminal record certificate" in section 113A(3),

(d) "relevant matter" in section 113A(6),

(e) "enhanced criminal record certificate" in section 113B(3).

(2) An order under subsection (1) may be made only for the purposes of, or in connection with, enabling certificates issued under this Part to include details of information held outside the United Kingdom.

(3) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.".

(4) In section 120ZB (regulations about registration), after subsection (2) insert—

"(2A) The provision which may be made by virtue of subsection (2)(a) includes in particular provision for—

(a) the payment of fees in respect of applications to be listed in the register,

(b) the payment of different fees in different circumstances,

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(c) annual or other recurring fees to be paid in respect of registration, and

(d) such annual or other recurring fees to be paid in advance or in arrears.

(2B) Where provision is made under subsection (2)(a) for a fee to be charged in respect of an application to be listed in the register, the Scottish Ministers need not consider the application unless the fee is paid.".

Commencement Information

I10 S. 108(1) in force at 12.10.2010 for specified purposes by S.S.I. 2010/344, **art. 2(b)(i)**

I11 S. 108(4) in force at 12.10.2010 by S.S.I. 2010/344, **art. 2(b)(ii)**

VALID FROM 01/11/2011

Rehabilitation of offenders

109 Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974

(1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.

(2) After section 8A (protection afforded to spent cautions), insert—

"**8B Protection afforded to spent alternatives to prosecution: Scotland**

(1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—

(a) has been given a warning in respect of the offence by—

(i) a constable in Scotland, or

(ii) a procurator fiscal,

(b) has accepted, or is deemed to have accepted—

(i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or

(ii) a compensation offer issued in respect of the offence under section 302A of that Act,

(c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,

(d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),

(e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or

(f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.

(2) In this Act, references to an "alternative to prosecution" are to be read in accordance with subsection (1).

(3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.".

(3) After section 9A (unauthorised disclosure of spent cautions), insert—

"**9B Unauthorised disclosure of spent alternatives to prosecution: Scotland**

(1) In this section—

(a) "official record" means a record that—

(i) contains information about persons given an alternative to prosecution in respect of an offence, and

(ii) is kept for the purposes of its functions by a court, police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,

(b) "relevant information" means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,

(c) "subject of the information", in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.

(2) Subsection (3) applies to a person who, in the course of the person's official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.

(3) The person commits an offence if the person—

(a) obtains relevant information in the course of the person's official duties,

(b) knows or has reasonable cause to suspect that the information is relevant information, and

(c) discloses the information to another person otherwise than in the course of the person's official duties.

(4) Subsection (3) is subject to the terms of an order under subsection (6).

(5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—

(a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or

(b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.

(6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.

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(7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.

(9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.".

(4) After Schedule 2 (protection for spent cautions) insert—

"SCHEDULE 3

(introduced by section 8B(3))

PROTECTION FOR SPENT ALTERNATIVES TO PROSECUTION: SCOTLAND

Preliminary

1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—

(a) in the case of—

(i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or

(ii) a fixed penalty notice referred to in paragraph (d) of that subsection,

at the time the warning or notice is given,

(b) in any other case, at the end of the relevant period.

(2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.

(3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).

(4) Sub-paragraph (2) is subject to sub-paragraph (6).

(5) If a person who is given a fixed penalty notice referred to in section 8B(1)(d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—

(a) becomes spent at the end of the rehabilitation period for the offence, and

(b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.

(6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—

(a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and

(b) if the conviction occurs after the end of the period referred to in sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.

2 (1) In this Schedule, "ancillary circumstances", in relation to an alternative to prosecution, means any circumstances of the following—

(a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,

(b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),

(c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),

(d) any judicial review proceedings relating to the alternative to prosecution,

(e) anything done or undergone in pursuance of the terms of the alternative to prosecution.

(2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.

(3) In this Schedule, "proceedings before a judicial authority" has the same meaning as in section 4.

Protection for spent alternatives to prosecution and ancillary circumstances

3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.

(2) Despite any enactment or rule of law to the contrary—

(a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,

(b) a person must not, in any such proceedings, be asked any question relating to the person's past which cannot be answered without acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and

(c) if a person is asked such a question in any such proceedings, the person is not required to answer it.

(3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—

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(a) for the offence in respect of which the alternative to prosecution was given, and

(b) which are not part of the ancillary circumstances.

4 (1) This paragraph applies where a person ("A") is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—

(a) A's or another person's previous conduct or circumstances,

(b) offences previously committed by A or the other person, or

(c) alternatives to prosecution previously given to A or the other person.

(2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.

(3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.

5 (1) An obligation imposed on a person ("A") by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.

(2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

6 The Scottish Ministers may by order—

(a) exclude or modify the application of either or both of sub-paragraphs (2) and (3) of paragraph 4 in relation to questions put in such circumstances as may be specified in the order,

(b) provide for exceptions from any of the provisions of paragraph 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order

7 Paragraphs 3 to 5 do not affect—

(a) the operation of an alternative to prosecution, or

(b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent

8 (1) Section 7(2), (3) and (4) apply for the purpose of this Schedule as follows.

(2) Subsection (2), apart from paragraphs (b) and (d), applies to the determination of any issue, and the admission or requirement of evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.

(3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person's previous convictions and the circumstances ancillary thereto.

(4) For that purpose, subsection (3) has effect as if—

(a) a reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph, and

(b) the words "or proceedings to which section 8 below applies" were omitted.

(5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.

(6) For that purpose, subsection (4) has effect as if the words "(other than proceedings to which section 8 below applies)" were omitted.

(7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.".

VALID FROM 01/11/2011

Medical services in prisons

110 Medical services in prisons

(1) For section 3A of the Prisons (Scotland) Act 1989 (c.45) (medical services in prisons) substitute—

"**3A Medical officers for prisons**

(1) The Scottish Ministers must designate one or more medical officers for each prison.

(2) A person may be designated as a medical officer for a prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).

(3) A medical officer has the functions that are conferred on a medical officer for a prison by or under this Act or any other enactment.

(4) A medical officer is not an officer of the prison for the purposes of this Act.

(5) Rules under section 39 of this Act may provide for the governor of a prison to authorise the carrying out by officers of the prison of a search of any person who is in, or is seeking to enter, the prison for the purpose of providing medical services for any prisoner at the prison.

(6) Nothing in rules made by virtue of subsection (5) allows the governor to authorise an officer of a prison to require a person to remove any of the person's clothing other than an outer coat, jacket, headgear, gloves and footwear.".

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(2) In section 41D of that Act (unlawful disclosure of information by medical officers), for subsection (1) substitute—

"(1) This section applies to—

(a) a medical officer for a prison, and

(b) any person acting under the supervision of such a medical officer.".

(3) In section 107 of the Criminal Justice and Public Order Act 1994 (c.33) (officers of contracted out prisons), for subsections (6) to (8) substitute—

"(6) The director must designate one or more medical officers for the prison.

(7) A person may be designated as a medical officer for the prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).".

(4) In section 110 of that Act (consequential modifications of the 1989 Act etc.)—

(a) in each of subsections (3) and (4), for "3A(6)" substitute " 3A(5) and (6) ",

(b) subsection (4A) is repealed, and

(c) in subsection (6), for "3A(1) to (5) (medical services)" substitute " 3A(1) and (2) (medical officers) ".

(5) In section 111(3) of that Act (intervention by the Scottish Ministers), in paragraph (c), after "prison" insert " and the medical officer or officers for the prison ".

VALID FROM 13/12/2010

Miscellaneous

111 Assistance for victim support

(1) The Scottish Ministers may make grants for the purposes of or in connection with the provision of assistance to victims, witnesses or other persons affected by an offence.

(2) Grants under subsection (1) may be made—

(a) to such bodies, and

(b) subject to such conditions,

as the Scottish Ministers consider appropriate.

112 Public defence solicitors

(1) In section 28A of the Legal Aid (Scotland) Act 1986 (c.47) (power of Board to employ solicitors to provide criminal assistance)—

(a) in subsection (1), the words from "may" where it first occurs to "accordingly," are repealed, and

(b) subsection (9A) is repealed.

(2) In section 73 of the Criminal Justice (Scotland) Act 2003 (asp 7) (public defence), paragraph (b) is repealed.

113 Compensation for miscarriages of justice

(1) In section 133 of the Criminal Justice Act 1988 (c.33) (compensation for miscarriages of justice)—

(a) after subsection (1) insert—

"(1A) The Scottish Ministers may by order provide for—

(a) further circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for a miscarriage of justice,

(b) circumstances in respect of which a person (or, if dead, the person's representatives) may be paid compensation for wrongful detention prior to acquittal or a decision by the prosecutor to take no proceedings (or to discontinue proceedings).",

(b) after subsection (2) insert—

"(2AA) Such an application requires to be made within the period of 3 years starting with—

(a) in the case of compensation under subsection (1), the date on which the conviction is reversed or (as the case may be) the person is pardoned,

(b) in the case of compensation under subsection (1A), whichever is relevant of—

(i) that date, or

(ii) the date on which the person is acquitted or the relevant decision is made known to the person.

(2AB) The Scottish Ministers may accept such an application outwith that time limit if they think it is appropriate in exceptional circumstances to do so.",

(c) in subsection (4A), after paragraph (a) insert—

"(aa) the seriousness of the offence with which the person was charged or detained (but in respect of which offence the person was not convicted);",

(d) after subsection (4A) insert—

"(4B) The assessor must also have particular regard to any guidance issued by the Scottish Ministers for the purposes of this section.",

(e) in subsection (5)—

(i) after "quashed" insert " (or set aside) ",

(ii) the word "or" where it occurs immediately after each of paragraphs (a), (b) and (c) is repealed, and

(iii) after paragraph (d) add "; or

(e) under section 188(1)(b) of the Criminal Procedure (Scotland) Act 1995.",

(f) after subsection (6) insert—

"(6A) For the purposes of this section, a person suffers punishment as a result of conviction also where (in relation to the conviction) the court imposes some other disposal including by way of—

(a) making a probation order, or

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(b) discharging the person absolutely.", and

(g) after subsection (7) insert—

"(8) The power to make an order under subsection (1A) is exercisable by statutory instrument.

(9) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.".

(2) In Schedule 12 to that Act (assessors of compensation for miscarriages of justice), in paragraph 1—

(a) immediately after sub-paragraph (c), insert " or ", and

(b) sub-paragraph (e) and the word "or" immediately preceding it are repealed.

114 Financial reporting orders

In section 77 of the Serious Organised Crime and Police Act 2005 (c.15) (financial reporting orders: making in Scotland), after subsection (4) insert—

"(4A) A financial reporting order may be made—

(a) on the prosecutor's motion, or

(b) at the court's own instance.".

VALID FROM 28/03/2011

115 Compensation orders

(1) In section 249 of the 1995 Act (compensation order against convicted person)—

(a) in subsection (1)—

(i) for "Subject to subsections (2) and (4) below, where" substitute " Where ", and

(ii) after "compensation" where it second occurs insert " in favour of the victim ",

(b) after subsection (1A) insert—

"(1B) Where a person is convicted of an offence, the court may (instead of or in addition to dealing with the person in any other way), in accordance with subsections (3A) to (3C), make a compensation order requiring the convicted person to pay compensation in favour of—

(a) the victim, or

(b) a person who is liable for funeral expenses in respect of which subsection (3C)(b) allows a compensation order to be made.

(1C) For the purposes of subsection (1B)(a), "victim" means—

(a) a person who has suffered personal injury, loss or damage in respect of which a compensation order may be made by virtue of subsection (3A), or

(b) a relative (as defined in Schedule 1 to the Damages (Scotland) Act 1976 (c.13)) who has suffered bereavement

in respect of which subsection (3C)(a) allows a compensation order to be made.”,

(c) after subsection (3) insert—

“(3A) A compensation order may be made in respect of personal injury, loss or damage (apart from loss suffered by a person's dependents in consequence of a person's death) that was caused directly or indirectly by an accident arising out of the presence of a motor vehicle on a road if—

(a) it was being used in contravention of section 143(1) of the Road Traffic Act 1988 (c.52), and

(b) no compensation is payable under arrangements to which the Secretary of State is a party.

(3B) Where a compensation order is made by virtue of subsection (3) or (3A), the order may include an amount representing the whole or part of any loss of (including reduction in) preferential rates of insurance if the loss is attributable to the accident.

(3C) A compensation order may be made—

(a) for bereavement in connection with a person's death resulting from the acts which constituted the offence,

(b) for funeral expenses in connection with such a death,

except where the death was due to an accident arising out of the presence of a motor vehicle on a road.”,

(d) in subsection (4)—

(i) for “No” substitute “ Unless (and to the extent that) subsections (3) to (3C) allow a compensation order to be made, no ”, and

(ii) in paragraph (b), the words from “, except” to the end are repealed,

(e) subsection (6) is repealed, and

(f) after subsection (8) insert—

“(8A) In summary proceedings before the sheriff, where the fine or maximum fine to which a person is liable on summary conviction of an offence exceeds the prescribed sum, the sheriff may make a compensation order awarding in respect of the offence an amount not exceeding the amount of the fine to which the person is so liable.”.

(2) In section 251 of that Act (review of compensation order)—

(a) paragraph (a) of subsection (1) is repealed, and

(b) after subsection (1) insert—

“(1A) On the application of the prosecutor at any time before a compensation order has been complied with (or fully complied with), the court may increase the amount payable under the compensation order if it is satisfied that the person against whom it was made—

(a) because of the availability of materially different information about financial circumstances, has more means than were made known to the court when the order was made, or

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(b) because of a material change of financial circumstances, has more means than the person had then.”.

VALID FROM 06/06/2011

PART 6

DISCLOSURE

Meaning of “information”

116 Meaning of “information”

(1) In this Part, “information”, in relation to criminal proceedings relating to a person, means material of any kind given to or obtained by the prosecutor in connection with the proceedings.

(2) In this Part, “information”, in relation to appellate proceedings, includes material of any kind given to or obtained by the prosecutor in connection with the appellate proceedings or the earlier proceedings.

(3) In subsection (2)—

“appellate proceedings” has the meaning given by section 132,

“earlier proceedings” has the meaning given by section 133(5).

Provision of information to prosecutor

117 Provision of information to prosecutor: solemn cases

(1) This section applies where in a prosecution—

(a) an accused appears for the first time on petition, or

(b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter).

(2) As soon as practicable after the appearance, the investigating agency must provide the prosecutor with details of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the appearance relates.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.

(4) In this section, “investigating agency” means—

(a) a police force, or

(b) such other person who—

(i) engages (to any extent) in the investigation of crime or sudden deaths, and

(ii) submits reports relating to those investigations to the procurator fiscal,

as the Scottish Ministers may prescribe by regulations.

118 Continuing duty to provide information: solemn cases

(1) This section applies where—

(a) an investigating agency has complied with section 117(2) in relation to an accused, and

(b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused's case.

(2) As soon as practicable after becoming aware of the further information, the investigating agency must provide the prosecutor with details of it.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.

(4) In this section, "relevant period" means the period—

(a) beginning with the investigating agency's compliance with section 117(2) in relation to the accused, and

(b) ending with the agency's receiving notice from the prosecutor of the conclusion of the proceedings against the accused.

(5) For the purposes of subsection (4), proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,

(e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,

(f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or

(g) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

119 Provision of information to prosecutor: summary cases

(1) This section applies where a plea of not guilty is recorded against an accused charged on summary complaint.

(2) As soon as practicable after the recording of the plea, the investigating agency must inform the prosecutor of the existence of all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the plea relates.

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(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that information that the prosecutor specifies in the requirement.

120 Continuing duty of investigating agency: summary cases

(1) This section applies where—
- (a) an investigating agency has complied with section 119(2) in relation to an accused, and
- (b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused's case.

(2) As soon as practicable after becoming aware of the further information, the investigating agency must inform the prosecutor of the existence of the information.

(3) As soon as practicable after being required to do so by the prosecutor, the investigating agency must provide the prosecutor with any of that further information that the prosecutor specifies in the requirement.

(4) In this section, “relevant period” means the period—
- (a) beginning with the investigating agency's compliance with section 119(2) in relation to the accused, and
- (b) ending with the agency's receiving notice from the prosecutor of the conclusion of the proceedings against the accused.

(5) For the purposes of subsection (4), proceedings against an accused are to be taken to be concluded if—
- (a) a plea of guilty is recorded against the accused,
- (b) the accused is acquitted,
- (c) the proceedings against the accused are deserted simpliciter,
- (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
- (e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,
- (f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
- (g) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

Prosecutor's duty to disclose information

121 Prosecutor's duty to disclose information

(1) This section applies where in a prosecution—
- (a) an accused appears for the first time on petition,
- (b) an accused appears for the first time on indictment (not having appeared on petition in relation to the same matter), or

(c) a plea of not guilty is recorded against an accused charged on summary complaint.

(2) As soon as practicable after the appearance or the recording of the plea, the prosecutor must—

(a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and

(b) disclose to the accused the information to which subsection (3) applies.

(3) This subsection applies to information if—

(a) the information would materially weaken or undermine the evidence that is likely to be led by the prosecutor in the proceedings against the accused,

(b) the information would materially strengthen the accused's case, or

(c) the information is likely to form part of the evidence to be led by the prosecutor in the proceedings against the accused.

122 Disclosure of other information: solemn cases

(1) This section applies where by virtue of subsection (2)(b) of section 121 the prosecutor is required to disclose information to an accused who falls within paragraph (a) or (b) of subsection (1) of that section.

(2) As soon as practicable after complying with the requirement, the prosecutor must disclose to the accused details of any information which the prosecutor is not required to disclose under section 121(2)(b) but which may be relevant to the case for or against the accused.

(3) The prosecutor need not disclose under subsection (2) details of sensitive information.

(4) In subsection (3), "sensitive", in relation to an item of information, means that if it were to be disclosed there would be a risk of—

(a) causing serious injury, or death, to any person,

(b) obstructing or preventing the prevention, detection, investigation or prosecution of crime, or

(c) causing serious prejudice to the public interest.

123 Continuing duty of prosecutor

(1) Subsection (2) applies where the prosecutor has complied with section 121(2)(b) in relation to an accused.

(2) During the relevant period, the prosecutor must—

(a) from time to time review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and

(b) disclose to the accused any information to which section 121(3) applies.

(3) As soon as practicable after complying with subsection (2) in relation to an accused who falls within section 121(1)(a) or (b), the prosecutor must disclose to the accused details of any other information that may be relevant to the case for or against the accused of which the prosecutor is aware.

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(4) The prosecutor need not disclose under subsection (3) details of sensitive information.

(5) In subsection (2)—

"relevant period" means the period—

(a) beginning with the prosecutor's compliance with section 121(2)(b) in relation to an accused, and

(b) ending with the conclusion of the proceedings against the accused,

"sensitive" has the meaning given by section 122(4).

(6) For the purposes of subsection (5), proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,

(e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,

(f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or

(g) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

Defence statements

124 Defence statements: solemn proceedings

(1) This section applies where the accused lodges a defence statement under section 70A of the 1995 Act.

(2) As soon as practicable after the prosecutor receives a copy of the defence statement, the prosecutor must—

(a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and

(b) disclose to the accused any information to which section 121(3) applies.

(3) After section 70 of the 1995 Act insert—

"**70A Defence statements**

(1) This section applies where an indictment is served on an accused.

(2) The accused must lodge a defence statement at least 14 days before the first diet.

(3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.

(4) At least 7 days before the trial diet the accused must—

(a) where there has been no material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a statement stating that fact,

(b) where there has been a material change in circumstances in relation to the accused's defence since the last defence statement was lodged, lodge a defence statement.

(5) If after lodging a statement under subsection (2), (3) or (4) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.

(6) Where subsection (5) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.

(7) The accused may lodge a defence statement—

(a) at any time before the trial diet, or

(b) during the trial diet if the court on cause shown allows it.

(8) As soon as practicable after lodging a defence statement or a statement under subsection (4)(a), the accused must send a copy of the statement to the prosecutor and any co-accused.

(9) In this section, "defence statement" means a statement setting out—

(a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,

(b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,

(c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,

(d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,

(e) by reference to the accused's defence, the nature of any information that the accused requires the prosecutor to disclose, and

(f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.".

(4) In section 78 of the 1995 Act (special defences, incrimination, notice of witnesses etc.), after subsection (1) insert—

"(1A) Subsection (1) does not apply where—

(a) the accused lodges a defence statement under section 70A, and

(b) the accused's defence consists of or includes a special defence.".

125 Defence statements: summary proceedings

(1) This section applies where—

(a) a plea of not guilty is recorded against an accused charged on summary complaint, and

(b) during the relevant period the accused lodges a defence statement.

(2) A defence statement must set out—

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(a) the nature of the accused's defence, including any particular defences on which the accused intends to rely,
(b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
(c) particulars of the matters of fact on which the accused intends to rely for the purposes of the accused's defence,
(d) any point of law which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
(e) by reference to the accused's defence, the nature of any information that the accused wishes the prosecutor to disclose, and
(f) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.

(3) As soon as practicable after lodging a defence statement, the accused must send a copy of the statement to the prosecutor and any co-accused.

(4) As soon as practicable after receiving a copy of the defence statement the prosecutor must—
(a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and
(b) disclose to the accused any information to which section 121(3) applies.

(5) In this section, "relevant period", in relation to the accused, is the period—
(a) beginning with the recording of the accused's plea of not guilty, and
(b) ending with the conclusion of the proceedings to which the plea relates.

(6) For the purposes of subsection (5), proceedings are to be taken to be concluded if—
(a) a plea of guilty is recorded against the accused,
(b) the accused is acquitted,
(c) the proceedings against the accused are deserted simpliciter,
(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
(e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,
(f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
(g) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

(7) In section 149B of the 1995 Act (notice of defences), after subsection (2) insert—

"(2A) Subsection (1) does not apply where—
(a) the accused lodges a defence statement under section 125 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13),
(b) the statement is lodged—
(i) where an intermediate diet is to be held, at or before the diet, or
(ii) where such a diet is not to be held, no later than 10 clear days before the trial diet, and

(c) the accused's defence consists of or includes a defence to which that subsection applies.”.

126 Change in circumstances following lodging of defence statement: summary proceedings

(1) This section applies where the accused lodges a defence statement under section 125 at least 14 days before the trial diet.

(2) At least 7 days before the trial diet the accused must—

(a) where there has been no material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a statement stating that fact,

(b) where there has been a material change in circumstances in relation to the accused's defence since the defence statement was lodged, lodge a defence statement.

(3) If after lodging a statement under subsection (2) there is a material change in circumstances in relation to the accused's defence, the accused must lodge a defence statement.

(4) Where subsection (3) requires a defence statement to be lodged, it must be lodged before the trial diet begins unless on cause shown the court allows it to be lodged during the trial diet.

(5) As soon as practicable after lodging a statement under subsection (2)(a) or a defence statement under subsection (2)(b) or (3), the accused must send a copy of the statement concerned to the prosecutor and any co-accused.

(6) As soon as practicable after receiving a copy of a defence statement lodged under subsection (2)(b) or (3) the prosecutor must—

(a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and

(b) disclose to the accused any information to which section 121(3) applies.

(7) In this section, “defence statement” is to be construed in accordance with section 125(2).

Sections 121 to 126: general

127 Sections 121 to 126: no need to disclose same information more than once

(1) Subsection (2) applies where the prosecutor is required by section 121(2)(b), 122(2), 123(2)(b) or (3), 124(2)(b), 125(4)(b) or 126(6)(b) to disclose information to an accused.

(2) The prosecutor need not disclose anything that the prosecutor has already disclosed to the accused in relation to the same matter (whether because the same matter has been the subject of an earlier petition, indictment or complaint or otherwise).

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Court rulings on disclosure

128 Application by accused for ruling on disclosure

(1) This section applies where the accused—
- (a) has lodged a defence statement under section 70A of the 1995 Act or section 125 or 126 of this Act, and
- (b) considers that the prosecutor has failed, in responding to the statement, to disclose to the accused an item of information to which section 121(3) applies (the "information in question").

(2) The accused may apply to the court for a ruling on whether section 121(3) applies to the information in question.

(3) An application under subsection (2) is to be made in writing and must set out—
- (a) where the accused is charged with more than one offence, the charge or charges to which the application relates,
- (b) a description of the information in question, and
- (c) the accused's grounds for considering that section 121(3) applies to the information in question.

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—
- (a) comply with subsection (3), or
- (b) otherwise disclose any reasonable grounds for considering that section 121(3) applies to the information in question.

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.

(7) On determining the application, the court must—
- (a) make a ruling on whether section 121(3) applies to the information in question or to any part of the information in question, and
- (b) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who is presiding, or is to preside, at the accused's trial.

129 Review of ruling under section 128

(1) This section applies where—
- (a) the court has made a ruling under section 128 that section 121(3) does not apply to an item of information (the "information in question"), and
- (b) during the relevant period—
  - (i) the accused becomes aware of information (the "secondary information") that was unavailable to the court at the time it made its ruling, and

(ii) the accused considers that, had the secondary information been available to the court at that time, it would have made a ruling that section 121(3) does apply to the information in question.

(2) The accused may apply to the court which made the ruling for a review of the ruling.

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the accused is charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question and the secondary information, and

(c) the accused's grounds for considering that section 121(3) applies to the information in question.

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that section 121(3) applies to the information in question.

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the accused an opportunity to be heard before determining the application.

(7) On determining the application, the court may—

(a) affirm the ruling being reviewed, or

(b) recall that ruling and—

(i) make a ruling that section 121(3) applies to the information in question or to any part of the information in question, and

(ii) where the accused is charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) Except where it is impracticable to do so, the application is to be assigned to the justice of the peace, sheriff or judge who dealt with the application for the ruling that is being reviewed.

(9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.

(10) In this section, “relevant period”, in relation to an accused, means the period—

(a) beginning with the making of the ruling being reviewed, and

(b) ending with the conclusion of proceedings against the accused.

(11) For the purposes of subsection (10), proceedings against the accused are taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before expiry of the time allowed for such an appeal,

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(e) the accused is convicted and appeals against the conviction before the expiry of the time allowed for such an appeal,

(f) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or

(g) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

130 Appeals against rulings under section 128

(1) The prosecutor or the accused may, within the period of 7 days beginning with the day on which a ruling is made under section 128, appeal to the High Court against the ruling.

(2) Where an appeal is brought under subsection (1), the court of first instance or the High Court may—

(a) postpone any trial diet that has been appointed for such period as it thinks appropriate,

(b) adjourn or further adjourn any hearing for such period as it thinks appropriate,

(c) direct that any period of postponement or adjournment under paragraph (a) or (b) or any part of such period is not to count toward any time limit applying in the case.

(3) In disposing of an appeal under subsection (1), the High Court may—

(a) affirm the ruling, or

(b) remit the case back to the court of first instance with such directions as the High Court thinks appropriate.

(4) This section does not affect any other right of appeal which any party may have in relation to a ruling under section 128.

Effect of guilty plea

131 Effect of guilty plea

(1) This section applies where—

(a) by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b) the prosecutor is required to disclose information to an accused, but

(b) before the prosecutor does so, a plea of guilty is recorded against the accused.

(2) The prosecutor need not comply with the requirement in so far as it relates to the disclosure of information which but for that plea would have been likely to have formed part of the evidence to be led by the prosecutor in the proceedings against the accused.

(3) Subsections (1) and (2) cease to apply if the accused withdraws the plea of guilty.

Disclosure after conclusion of proceedings at first instance

132 Sections 133 to 140: interpretation

In sections 133 to 140—

"appellant", in relation to appellate proceedings, includes a person authorised by an order under section 303A(4) of the 1995 Act to institute or continue the proceedings,

"appellate proceedings" means—

(a) an appeal under section 106(1)(a) or (f) of the 1995 Act which brings under review an alleged miscarriage of justice,

(b) an appeal under paragraph (b), (ba), (bb), (c), (d), (db) or (dc) of subsection (1) of section 106 of the 1995 Act which brings under review in accordance with subsection (3)(a) of that section an alleged miscarriage of justice,

(c) an appeal under section 175(2)(a) or (d) of the 1995 Act which brings under review an alleged miscarriage of justice,

(d) an appeal under paragraph (b), (c) or (cb) of subsection (2) of section 175 of the 1995 Act which brings under review an alleged miscarriage of justice which is based on the type of miscarriage described in subsection (5) of that section,

(e) an appeal to the Supreme Court against a determination by the High Court of Justiciary of a devolution issue,

(f) an appeal against conviction by bill of suspension under section 191(1) of the 1995 Act,

(g) an appeal against conviction by bill of advocation,

(h) a petition to the *nobile officium* in respect of a matter arising out of criminal proceedings which brings under review an alleged miscarriage of justice which is based on the existence and significance of new evidence,

(i) an appeal under section 62(1)(b) of the 1995 Act against a finding under section 55(2) of that Act,

(j) the referral to the High Court of Justiciary under section 194B of the 1995 Act of—

(i) a conviction, or

(ii) a finding under section 55(2) of that Act.

133 Duty to disclose after conclusion of proceedings at first instance

(1) This section applies where appellate proceedings are instituted in relation to an appellant.

(2) As soon as practicable after the relevant act the prosecutor must—

(a) review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings, and

(b) disclose to the appellant any information that falls within subsection (3).

(3) Information falls within this subsection if it is—

(a) information that the prosecutor was required by virtue of section 121(2)(b) or 123(2)(b) to disclose in the earlier proceedings but did not disclose,

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(b) information to which, during the earlier proceedings, the prosecutor considered paragraph (a) or (b) of section 121(3) did not apply but to which the prosecutor now considers one or both of those paragraphs would apply, or

(c) information of which the prosecutor has become aware since the disposal of the earlier proceedings that, had the prosecutor been aware of it during those proceedings, the prosecutor would have been required to disclose by virtue of section 121(2)(b) or 123(2)(b).

(4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.

(5) In this section—

"earlier proceedings", in relation to appellate proceedings, means the proceedings to which the appellate proceedings relate,

"relevant act" means—

(a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition, the granting under section 107(1)(a) of the 1995 Act of leave to appeal,

(b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition, the granting under section 180(1)(a) or, as the case may be, 187(1)(a) of that Act of leave to appeal,

(c) in relation to proceedings of the type mentioned in paragraph (e) of the relevant definition, the granting of leave to appeal by the High Court of Justiciary or, as the case may be, the Supreme Court,

(d) in relation to proceedings of the type mentioned in paragraph (f) of the relevant definition—

(i) if leave to appeal is required, the granting under section 191(2) of that Act of leave to appeal,

(ii) if leave to appeal is not required, service on the prosecutor under the relevant rule of a certified copy of the bill of suspension and the interlocutor granting first order for service,

(e) in relation to proceedings of the type mentioned in paragraph (g) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the bill of advocation and the interlocutor granting first order for service,

(f) in relation to proceedings of the type mentioned in paragraph (h) of the relevant definition, service on the prosecutor under the relevant rule of a certified copy of the petition and the interlocutor granting first order for service,

(g) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the lodging of the appeal,

(h) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition, the lodging of the grounds of appeal by the person to whom the referral relates,

"relevant definition" means the definition of appellate proceedings in section 132,

"relevant rule" means rule 29A.1(3) of the Criminal Procedure Rules 1996 (S.I. 1996/513).

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134 Continuing duty of prosecutor

(1) This section applies where the prosecutor has complied with section 133(2) in relation to an appellant.

(2) During the relevant period, the prosecutor must—
- (a) from time to time review all information of which the prosecutor is aware that relates to the grounds of appeal in the appellate proceedings which relate to the appellant, and
- (b) disclose to the appellant any information that falls within section 133(3).

(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the appellant.

(4) In subsection (2), "relevant period" means the period—
- (a) beginning with the prosecutor's compliance with section 133(2), and
- (b) ending with the relevant conclusion.

(5) In subsection (4), "relevant conclusion" means—
- (a) in relation to proceedings of the type mentioned in paragraph (a) or (b) of the relevant definition—
  - (i) the lodging under section 116(1) of the 1995 Act of a notice of abandonment, or
  - (ii) the disposal of the appeal under section 118 of that Act,
- (b) in relation to proceedings of the type mentioned in paragraph (c) or (d) of the relevant definition—
  - (i) the disposal of the appeal under section 183(1)(b) to (d) of that Act,
  - (ii) the abandonment of the appeal under section 184(1) of that Act,
  - (iii) the setting aside of the conviction or sentence or, as the case may be, conviction and sentence under section 188(1) of that Act, or
  - (iv) the disposal of the appeal under section 190(1) of that Act,
- (c) in relation to proceedings of the type mentioned in paragraph (e), (f), (g) or (h) of the relevant definition, the disposal or abandonment of the appeal,
- (d) in relation to proceedings of the type mentioned in paragraph (i) of the relevant definition, the disposal of the appeal under section 62(6) of that Act or the abandonment of the appeal,
- (e) in relation to proceedings of the type mentioned in paragraph (j) of the relevant definition—
  - (i) if the referral or finding is being treated as if it were an appeal under Part 8 of that Act, the conclusion mentioned in paragraph (a) above,
  - (ii) if the referral or finding is being treated as if it were an appeal under Part 10 of that Act, the conclusion mentioned in paragraph (b) above or, where the referral or finding proceeds by way of bill of suspension, bill of advocation or petition to the *nobile officium*, paragraph (c) above.

(6) In this section, "relevant definition" has the meaning given by section 133(5).

135 Application to prosecutor for further disclosure

(1) This section applies where—

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(a) the prosecutor has complied with section 133(2) in relation to an appellant, and

(b) the appellant lodges a further disclosure request—

(i) during the preliminary period, or

(ii) if the court on cause shown allows it, after the preliminary period but before the relevant conclusion.

(2) A further disclosure request must set out—

(a) by reference to the grounds of appeal, the nature of the information that the appellant wishes the prosecutor to disclose, and

(b) the reasons why the appellant considers that disclosure by the prosecutor of any such information is necessary.

(3) As soon as practicable after receiving a copy of the further disclosure request the prosecutor must—

(a) review any information of which the prosecutor is aware that relates to the request, and

(b) disclose to the appellant any of that information that falls within section 133(3).

(4) The prosecutor need not disclose under subsection (3)(b) anything that the prosecutor has already disclosed to the appellant.

(5) In this section—

"preliminary period", in relation to the appellate proceedings concerned, means the period beginning with the relevant act and ending with the beginning of the hearing of the appellate proceedings,

"relevant act" has the meaning given by section 133(5),

"relevant conclusion" has the meaning given by section 134(5).

136 Further duty of prosecutor: conviction upheld on appeal

(1) This section applies where—

(a) in an appeal to the High Court of Justiciary, the High Court upholds the conviction of a person, and

(b) after the conclusion of the appeal the prosecutor becomes aware of—

(i) information that the prosecutor was required by virtue of section 121(2)(b) or 123(2)(b) to disclose in the earlier proceedings but did not disclose, or

(ii) information that falls within section 133(3) which would have related to the grounds of appeal but was not disclosed.

(2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.

(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

(4) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

(5) In this section, "earlier proceedings" has the meaning given by section 133(5).

137 Further duty of prosecutor: convicted persons

(1) This section applies where—

(a) a person has been convicted,

(b) after conviction the prosecutor becomes aware of information that the prosecutor was required by virtue of section 121(2)(b) or 123(2)(b) to disclose in the proceedings in which the person was convicted but did not disclose, and

(c) section 136 does not apply.

(2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.

(3) If the person institutes appellate proceedings in relation to the conviction, the prosecutor need not comply with the duty imposed by subsection (2) during the appropriate period.

(4) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

(5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

(6) In this section—

"appropriate period", in relation to appellate proceedings, means the period beginning with the relevant act and ending with the relevant conclusion,

"relevant act" has the meaning given by section 133(5),

"relevant conclusion" has the meaning given by section 134(5).

138 Further duty of prosecutor: appeal against acquittal

(1) This section applies where—

(a) the prosecutor appeals against the acquittal of a person, and

(b) after lodging the appeal the prosecutor becomes aware of information which relates to the appeal and falls within section 133(3).

(2) As soon as practicable after becoming aware of the information the prosecutor must disclose it to the person.

(3) The prosecutor need not disclose under subsection (2) anything that the prosecutor has already disclosed to the person.

(4) The prosecutor ceases to be subject to the duty imposed by subsection (2) on the disposal of the appeal by the High Court of Justiciary.

(5) Nothing in this section requires the prosecutor to carry out a review of information of which the prosecutor is aware.

Court rulings on disclosure: appellate proceedings

139 Application by appellant for ruling on disclosure

(1) This section applies where the appellant—

(a) has made a further disclosure request under section 135, and

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(b) considers that the prosecutor has failed, in responding to the request, to disclose to the appellant an item of information falling within section 133(3) (the "information in question").

(2) The appellant may apply to the court for a ruling on whether the information in question falls within section 133(3).

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question, and

(c) the appellant's grounds for considering that the information in question falls within section 133(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 133(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.

(7) On determining the application, the court must—

(a) make a ruling on whether the information in question, or any part of the information in question, falls within section 133(3), and

(b) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) In this section, "the court" means the court before which the appellant's appeal is brought.

(9) Except where it is impracticable to do so, the application is to be assigned to the judges who are to hear the appellant's appeal.

140 Review of ruling under section 139

(1) This section applies where—

(a) the court has made a ruling under section 139 that an item of information (the "information in question") does not fall within section 133(3), and

(b) during the relevant period—

(i) the appellant becomes aware of information ("secondary information") that was unavailable to the court at the time it made its ruling, and

(ii) the appellant considers that, had the secondary information been available to the court at that time, it would have made a ruling that the information in question does fall within section 133(3).

(2) The appellant may apply to the court which made the ruling for a review of the ruling.

(3) An application under subsection (2) is to be made in writing and must set out—

(a) where the appellant is or was charged with more than one offence, the charge or charges to which the application relates,

(b) a description of the information in question and the secondary information, and

(c) the appellant's grounds for considering that the information in question falls within section 133(3).

(4) On receiving an application under subsection (2), the court must appoint a hearing at which the application is to be considered and determined.

(5) However, the court may dispose of the application without appointing a hearing if the court considers that the application does not—

(a) comply with subsection (3), or

(b) otherwise disclose any reasonable grounds for considering that the information in question falls within section 133(3).

(6) At a hearing appointed under subsection (4), the court must give the prosecutor and the appellant an opportunity to be heard before determining the application.

(7) On determining the application, the court may—

(a) affirm the ruling being reviewed, or

(b) recall that ruling and—

(i) make a ruling that the information in question, or any part of the information in question, falls within section 133(3), and

(ii) where the appellant is or was charged with more than one offence, specify the charge or charges to which the ruling relates.

(8) Except where it is impracticable to do so, the application is to be assigned to the judges who dealt with the application for the ruling that is being reviewed.

(9) Nothing in this section affects any right of appeal in relation to the ruling being reviewed.

(10) In this section, “relevant period”, in relation to an appellant, means the period—

(a) beginning with the making of the ruling being reviewed, and

(b) ending with the relevant conclusion.

(11) In subsection (10), “relevant conclusion” has the meaning given by section 134(5).

Applications to court: orders preventing or restricting disclosure

141 Application for section 145 order

(1) This section applies where the conditions in subsection (2) or (3) are met.

(2) The conditions are that—

(a) by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b) the prosecutor is required to disclose an item of information to an accused,

(b) section 121(3)(a) or (b) applies to the information, and

(c) the prosecutor considers that subsection (4) applies.

(3) The conditions are that—

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(a) by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2) the prosecutor is required to disclose an item of information to an appellant or, as the case may be, a person,

(b) where there are proceedings, the information is not likely to form part of the evidence to be led by the prosecutor in the proceedings, and

(c) the prosecutor considers that subsection (4) applies.

(4) This subsection applies if disclosure of the item of information would be likely to cause a real risk of substantial harm or damage to the public interest.

(5) The prosecutor must apply to the court for an order under section 145 (a "section 145 order").

142 Application for non-notification order or exclusion order

(1) This section applies where the prosecutor is required by section 141(5) to apply to the court for a section 145 order.

(2) If the application for a section 145 order relates to solemn proceedings (whether continuing or concluded), the prosecutor may also apply to the court for—

(a) a non-notification order and an exclusion order, or

(b) an exclusion order (but not a non-notification order).

(3) If the application for a section 145 order relates to summary proceedings (whether continuing or concluded), the prosecutor may also apply to the court for an exclusion order.

(4) A non-notification order is an order under section 143 prohibiting notice being given to the accused of—

(a) the making of an application for—

(i) the section 145 order to which the non-notification order relates,

(ii) the non-notification order, and

(iii) an exclusion order, and

(b) the determination of those applications.

(5) An exclusion order is an order under section 143 or 144 prohibiting the accused from attending or making representations in proceedings for the determination of the application for a section 145 order to which the exclusion order relates.

(6) Subsection (7) applies where the prosecutor applies—

(a) by virtue of subsection (2)(a) for a non-notification order and an exclusion order, or

(b) by virtue of subsection (2)(a) or (b) for an exclusion order.

(7) Before determining in accordance with section 145 the application for the section 145 order, the court must—

(a) in accordance with section 143, determine any applications for a non-notification order and an exclusion order,

(b) in accordance with section 144, determine any application for an exclusion order.

(8) In this section and sections 143 to 145—

"accused" includes, where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, the appellant or other person to whom the prosecutor is required to disclose the item of information,

"appellant" has the meaning given by section 132.

143 Application for non-notification order and exclusion order

(1) This section applies where the prosecutor applies for a non-notification order and an exclusion order.

(2) On receiving the application, the court must appoint a hearing to determine whether a non-notification order should be made.

(3) The accused is not to be notified of—

(a) the applications for the section 145 order, non-notification order and exclusion order, or

(b) the hearing appointed under subsection (2).

(4) The accused is not to be given the opportunity to be heard or be represented at the hearing.

(5) If, after giving the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a non-notification order.

(6) Those conditions are—

(a) that disclosure to the accused of the making of the application for the section 145 order would be likely to cause a real risk of substantial harm or damage to the public interest, and

(b) that, having regard to all the circumstances, the making of a non-notification order would be consistent with the accused's receiving a fair trial.

(7) If the court makes a non-notification order it must also make an exclusion order.

(8) If the court refuses to make a non-notification order the court must appoint a hearing to determine the application for an exclusion order.

(9) If after giving the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section 144 are met, the court may make an exclusion order under subsection (4) of that section.

(10) On the application of the prosecutor the court may exclude the accused from the hearing appointed under subsection (8).

(11) In this section and sections 144 and 145, references to the accused's receiving a fair trial include, where subsection (5) of section 141 applies by virtue of the conditions in subsection (3) of that section being met, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial.

144 Application for exclusion order

(1) This section applies where by virtue of section 142(2)(b) or (3) the prosecutor applies for an exclusion order (but not a non-notification order).

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(2) On receiving the application the court must appoint a hearing.

(3) On the application of the prosecutor the court may exclude the accused from the hearing.

(4) If after giving the prosecutor and, subject to subsection (3), the accused an opportunity to be heard on the applications for the exclusion order and the section 145 order to which it relates the court is satisfied that the conditions in subsection (5) are met, the court may make an exclusion order.

(5) Those conditions are—

(a) that disclosure to the accused of the nature of the information to which the application for the section 145 order relates would be likely to cause a real risk of substantial harm or damage to the public interest, and

(b) that, having regard to all the circumstances, the making of an exclusion order would be consistent with the accused's receiving a fair trial.

145 Application for section 145 order: determination

(1) This section applies where—

(a) the prosecutor applies for a section 145 order, and

(b) any application for a non-notification order or an exclusion order has been determined by the court.

(2) The court must—

(a) consider the item of information to which the application for a section 145 order relates,

(b) give the prosecutor and (if the court has not made an exclusion order) the accused the opportunity to be heard, and

(c) determine—

(i) where the application for the section 145 order is made by virtue of section 141(2), whether the conditions in subsection (3) apply, or

(ii) where the application for the section 145 order is made by virtue of section 141(3), whether the conditions in subsection (4) apply, and

(d) if the court determines that the conditions in subsection (3) or, as the case may be, (4) apply, determine whether subsection (5) applies.

(3) The conditions are—

(a) that by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b) the prosecutor is required to disclose the item of information,

(b) that section 121(3)(a) or (b) applies to the information,

(c) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,

(d) that withholding the item of information would be consistent with the accused's receiving a fair trial, and

(e) that the public interest would be protected only if a section 145 order were to be made.

(4) The conditions are—

(a) that by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2) the prosecutor is required to disclose an item of information to an appellant or, as the case may be, a person,

(b) where there are proceedings, the information is not likely to form part of the evidence to be led by the prosecutor in the proceedings,

(c) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,

(d) that withholding the item of information is not inconsistent with the person's having received a fair trial in the proceedings to which the item relates, and

(e) that the public interest would be protected only if a section 145 order were to be made.

(5) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—

(a) the condition in paragraph (c) of subsection (3) or, as the case may be, paragraph (c) of subsection (4) would not be met, and

(b) the disclosure (or partial disclosure) would be consistent with the accused's receiving a fair trial.

(6) If the court considers that subsection (3) or, as the case may be, (4) (but not subsection (5)) applies, it may make a section 145 order preventing disclosure of the information.

(7) If the court considers that subsection (5) applies, it may make a section 145 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.

(8) For the purposes of subsection (5) the ways in which the item of information might be disclosed or partly disclosed include in particular—

(a) providing the information after (whether by redaction or otherwise) removing or obscuring parts of it,

(b) providing extracts or summaries of the information or part of it.

Orders preventing or restricting disclosure: Secretary of State

146 Order preventing or restricting disclosure: application by Secretary of State

(1) Where the condition in subsection (2), (3) or (4) is met in relation to an item of information that the prosecutor proposes to disclose, the Secretary of State may apply to the court for an order under this section (a "section 146 order") in relation to the item of information.

(2) The condition is that the prosecutor proposes to disclose to the accused information which the prosecutor is required to disclose by virtue of section 121(2)(b), 123(2)(b), 124(2)(b), 125(4)(b) or 126(6)(b).

(3) The condition is that the prosecutor proposes to disclose to an appellant or, as the case may be, a person information which the prosecutor is required to disclose by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2).

(4) The condition is that the prosecutor proposes to disclose to an accused, appellant or person to whom section 136, 137 or 138 applies information which the prosecutor is not required to disclose by virtue of this Part.

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(5) If the Secretary of State also makes an application in accordance with subsection (2) or (3) of section 147, the court must comply with subsections (6) and (7) of that section.

(6) Where an application is made under subsection (1), the court must—

(a) consider the item of information to which the application relates,

(b) give the Secretary of State and the prosecutor the opportunity to be heard,

(c) if the application relates to information which the prosecutor is required to disclose by virtue of subsection (2) or (3) and a non-attendance order has not been made, give the accused the opportunity to be heard,

(d) determine—

(i) where the application for the section 146 order is made by virtue of subsection (2), whether the conditions in subsection (7) apply, or

(ii) where the application for the section 146 order is made by virtue of subsection (3) or (4), whether the conditions in subsection (8) apply, and

(e) if the court determines that the conditions in subsection (7) or, as the case may be, (8) apply, determine whether subsection (9) applies.

(7) The conditions are—

(a) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,

(b) that withholding the item of information would be consistent with the accused's receiving a fair trial, and

(c) that the public interest would be protected only if a section 146 order of the type mentioned in subsection (10) were to be made.

(8) The conditions are—

(a) in the case of an application made by virtue of subsection (3), that by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2) the prosecutor is required to disclose an item of information to an appellant or, as the case may be, a person,

(b) that if the item of information were to be disclosed there would be a real risk of substantial harm or damage to the public interest,

(c) that withholding the item of information is not inconsistent with the person's having received a fair trial in the proceedings to which the item relates, and

(d) that the public interest would be protected only if a section 146 order of the type mentioned in subsection (10) were to be made.

(9) This subsection applies if the court considers that the item of information could be disclosed or partly disclosed in such a way that—

(a) the condition in paragraph (a) of subsection (7) or, as the case may be, paragraph (b) of subsection (8) would not be met, and

(b) the disclosure (or partial disclosure) would be consistent with the accused's receiving a fair trial.

(10) If the court considers that subsection (7) or, as the case may be, (8) (but not subsection (9)) applies, it may make a section 146 order preventing disclosure of the information.

(11) If the court considers that subsection (9) applies, it may make a section 146 order requiring the information to be disclosed or partly disclosed to the accused in the manner specified in the order.

(12) For the purposes of subsection (11) the order may in particular specify that—
- (a) the item of information be disclosed after removing or obscuring parts of it (whether by redaction or otherwise),
- (b) extracts or summaries of the item of information (or part of it) be disclosed instead of the item of information.

(13) In this section and sections 147 to 149—

"accused" includes, where subsection (3) or (4) applies, the appellant or other person to whom the prosecutor is required to disclose the item of information,

"appellant" has the meaning given by section 132.

(14) In this section and sections 147 to 149, references to the accused's receiving a fair trial include, where subsection (3) or (other than in relation to an accused) (4) applies, references to the appellant or other person to whom the prosecutor is required to disclose the item of information having received a fair trial.

147 Application for ancillary orders: Secretary of State

(1) This section applies where the Secretary of State applies for a section 146 order.

(2) If the application under section 146 relates to solemn proceedings (whether continuing or concluded), the Secretary of State may also apply to the court for—
- (a) a restricted notification order and a non-attendance order, or
- (b) a non-attendance order (but not a restricted notification order).

(3) If the application under section 146 relates to summary proceedings (whether continuing or concluded), the Secretary of State may also apply to the court for a non-attendance order.

(4) A restricted notification order is an order under section 148 prohibiting notice being given to the accused of—
- (a) the making of an application for—
  - (i) the section 146 order to which the restricted notification order relates,
  - (ii) the restricted notification order, and
  - (iii) a non-attendance order, and
- (b) the determination of those applications.

(5) A non-attendance order is an order under section 148(7) or 149 prohibiting the accused from attending or making representations in proceedings for the determination of the application for the section 146 order to which the non-attendance order relates.

(6) Subsection (7) applies where the Secretary of State applies—
- (a) by virtue of subsection (2)(a) for a restricted notification order and a non-attendance order, or
- (b) by virtue of subsection (2)(a) or (b) for a non-attendance order.

(7) Before determining the application for the section 146 order, the court must—

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(a) in accordance with section 148, determine any application for a restricted notification order and a non-attendance order,

(b) in accordance with section 149, determine any application for a non-attendance order.

148 Application for restricted notification order and non-attendance order

(1) This section applies where by virtue of section 147(2)(a) the Secretary of State applies for a restricted notification order and a non-attendance order.

(2) On receiving the application, the court must appoint a hearing to determine whether a restricted notification order should be made.

(3) The accused is not to be notified of—

(a) the applications for the section 146 order, the restricted notification order and the non-attendance order, or

(b) the hearing appointed under subsection (2).

(4) The accused is not to be given the opportunity to be heard or be represented at the hearing.

(5) If, after giving the Secretary of State and the prosecutor an opportunity to be heard, the court is satisfied that the conditions in subsection (6) are met, the court may make a restricted notification order.

(6) Those conditions are—

(a) that disclosure to the accused of the making of the application for the section 146 order would be likely to cause a real risk of substantial harm or damage to the public interest, and

(b) that, having regard to all the circumstances, the making of a restricted notification order would be consistent with the accused's receiving a fair trial.

(7) If the court makes a restricted notification order, it must also make a non-attendance order.

(8) If the court refuses to make a restricted notification order, the court must appoint a hearing to determine the application for a non-attendance order.

(9) If after giving the Secretary of State, the prosecutor and, subject to subsection (10), the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (5) of section 149 are met, the court may make a non-attendance order under subsection (4) of that section.

(10) On the application of the Secretary of State the court may exclude the accused from the hearing appointed under subsection (8).

149 Application for non-attendance order

(1) This section applies where by virtue of section 147(2)(b) the Secretary of State applies for a non-attendance order (but not a restricted notification order).

(2) On receiving the application, the court must appoint a hearing.

(3) On the application of the Secretary of State the court may exclude the accused from the hearing.

(4) If after giving the Secretary of State, the prosecutor and, if not excluded under subsection (3), the accused an opportunity to be heard the court is satisfied that the conditions in subsection (5) are met, the court may make a non-attendance order.

(5) Those conditions are—

(a) that disclosure to the accused of the nature of the information to which the application for the section 146 order relates would be likely to cause a real risk of substantial harm or damage to the public interest, and

(b) that, having regard to all the circumstances, the making of a non-attendance order would be consistent with the accused's receiving a fair trial.

Special counsel

150 Special counsel

(1) This section applies where the court is determining—

(a) an application for a non-notification order,

(b) an application for an exclusion order,

(c) an application for a section 145 order,

(d) an application for a restricted notification order,

(e) an application for a non-attendance order,

(f) an application for a section 146 order,

(g) an application for review of the grant or refusal of any of those orders,

(h) an appeal relating to any of those orders.

(2) If the condition in subsection (3) is met, the court may appoint a person ("special counsel") to represent the interests of the accused in relation to the determination of the application, review or appeal.

(3) The condition is that the court considers that the appointment of special counsel is necessary to ensure that the accused receives a fair trial.

(4) Before deciding whether to appoint special counsel in a non-notification case, the court—

(a) must give the prosecutor an opportunity to be heard, but

(b) must not give the accused an opportunity to be heard.

(5) Before deciding whether to appoint special counsel in a restricted notification case, the court—

(a) must give the prosecutor and the Secretary of State an opportunity to be heard,

(b) must not give the accused an opportunity to be heard.

(6) Before deciding whether to appoint special counsel in any case other than a non-notification case or a restricted notification case, the court must give all the parties an opportunity to be heard.

(7) The prosecutor may appeal to the High Court against a decision of the court not to appoint special counsel in any case.

(8) The Secretary of State may appeal to the High Court against a decision of the court not to appoint special counsel in a restricted notification case.

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(9) The accused may appeal to the High Court against a decision not to appoint special counsel in any case other than a non-notification case or a restricted notification case.

(10) In this section and section 152—

"accused" includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,

"appellant" has the meaning given by section 132,

"non-notification case" means a case where the court is determining—

(a) an application for a non-notification order,

(b) an application for review of the grant or refusal of a non-notification order,

(c) an appeal relating to such an order,

"restricted notification case" means a case where the court is determining—

(a) an application for a restricted notification order,

(b) an application for review of the grant or refusal of a restricted notification order,

(c) an appeal relating to such an order.

151 Persons eligible for appointment as special counsel

The court may appoint a person as special counsel under section 150(2) only if the person is a solicitor or advocate.

152 Role of special counsel

(1) Special counsel's duty is, in relation to the determination of the relevant application or appeal, to act in the best interests of the accused with a view only to ensuring that the accused receives a fair trial.

(2) Special counsel—

(a) is entitled to see the confidential information, but

(b) must not disclose any of the confidential information to the accused or the accused's representative (if any).

(3) Special counsel appointed in a non-notification case or a restricted notification case must not—

(a) disclose to the accused or the accused's representative (if any) the making of the relevant application or appeal, or

(b) otherwise communicate with the accused or the accused's representative (if any) about the relevant application or appeal.

(4) Special counsel appointed in any case other than a non-notification case or a restricted notification case must not communicate with the accused or the accused's representative (if any) about the relevant application or appeal except—

(a) with the permission of the court, and

(b) where permission is given, in accordance with such conditions as the court may impose.

(5) Before deciding whether to grant permission, the court must give—

(a) the prosecutor, and

(b) in the case of an application for a section 146 order or a non-attendance order, the Secretary of State,

an opportunity to be heard.

(6) In this section—

"the confidential information" means—

(a) the information to which the relevant application or appeal relates, and

(b) a copy of the relevant application or appeal,

"relevant application or appeal" means the application or appeal referred to in section 150(1) in respect of which special counsel is appointed.

Appeals

153 Appeals

(1) The prosecutor may appeal to the High Court against—

(a) the making of a section 145 order under section 145(7),

(b) the making of a section 146 order,

(c) the making of a restricted notification order,

(d) the making of a non-attendance order,

(e) the refusal of an application for a non-notification order,

(f) the refusal of an application for an exclusion order, or

(g) the refusal of an application for a section 145 order.

(2) The accused may appeal to the High Court against the making of—

(a) an exclusion order under section 144(4),

(b) a section 145 order,

(c) a section 146 order, or

(d) a non-attendance order.

(3) The Secretary of State may appeal to the High Court against—

(a) the making of a section 146 order under section 146(11),

(b) the refusal of an application for a restricted notification order,

(c) the refusal of an application for a non-attendance order, or

(d) the refusal of an application for a section 146 order.

(4) If special counsel was appointed in relation to an application for a non-notification order, special counsel may appeal to the High Court against the making of—

(a) the non-notification order, or

(b) a section 145 order in relation to the same item of information.

(5) If special counsel was appointed in relation to an application for a restricted notification order, special counsel may appeal to the High Court against the making of—

(a) the restricted notification order, or

(b) a section 146 order in relation to the same item of information.

(6) An appeal must be lodged not later than 7 days after the decision appealed against.

(7) The prosecutor is entitled to be heard in any appeal under this section.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(8) The accused is entitled to be heard in an appeal under—

(a) subsection (1)(a) or (g) or (2)(b) unless—

(i) a non-notification order has been made, or

(ii) an exclusion order has been made,

(b) subsection (1)(b), (2)(c) or (3)(a) or (d) unless—

(i) a restricted notification order has been made, or

(ii) a non-attendance order has been made,

(c) subsection (1)(d), (2)(d) or (3)(c) unless the court, on the application of the Secretary of State, excludes the accused from the hearing,

(d) subsection (1)(f) or (2)(a) unless the court, on the application of the prosecutor excludes the accused from the hearing.

(9) The Secretary of State is entitled to be heard in an appeal under subsection (1)(b), (c) or (d), (2)(c) or (d) or (5).

(10) In this section—

"accused" includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,

"appellant" has the meaning given by section 132.

154 Prohibition on disclosure pending determination of certain appeals

(1) Subsection (2) applies where—

(a) the prosecutor appeals to the High Court under subsection (1)(a), (b) or (g) of section 153, or

(b) the Secretary of State appeals to the High Court under subsection (3)(a) or (d) of that section.

(2) Pending the determination or abandonment of the appeal, the prosecutor must not disclose the item of information to which the appeal relates.

Review of section 145 and 146 orders

155 Review of section 145 order

(1) This section applies where—

(a) the court makes a section 145 order, and

(b) during the relevant period the prosecutor or the accused becomes aware of information that was unavailable to the court at the time when the order was made.

(2) The prosecutor or, as the case may be, special counsel or the accused may apply to the court to review the section 145 order.

(3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the section 145 order.

(4) If—

(a) a non-notification order was granted in relation to the section 145 order which is under review, and

(b) the court is satisfied that the conditions in section 143(6) are met,

the court may, where the prosecutor or, as the case may be, special counsel applies for the review, make an order prohibiting notification being given to the accused of the application for review.

(5) If—

(a) an exclusion order was granted in relation to the section 145 order which is under review, and

(b) the court is satisfied that the conditions in section 144(5) are met,

the court may, where the prosecutor or, as the case may be, special counsel or the accused applies for the review, exclude the accused from the review.

(6) If the court is not satisfied that the conditions mentioned in section 145(3) are met, the court may—

(a) recall the section 145 order, or

(b) recall the section 145 order and make an order requiring disclosure to the specified extent.

(7) Nothing in this section affects any right of appeal in relation to the section 145 order.

(8) In this section—

"accused" includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,

"appellant" has the meaning given by section 132,

"relevant period", in relation to an accused, means the period—

(a) beginning with the making of the section 145 order, and

(b) ending with the conclusion of the proceedings against the accused,

"specified" means specified in the order of the court.

(9) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,

(e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed,

(f) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation,

(g) any appeal by the prosecutor is determined or abandoned, or

(h) the accused is convicted and any appeal is determined or abandoned.

(10) In its application to proceedings against an appellant or other person, subsection (9) is to be read as if paragraphs (a) to (f) were omitted.

156 Review of section 146 order

(1) This section applies where—

(a) the court makes a section 146 order, and

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) during the relevant period the Secretary of State, the prosecutor, special counsel or the accused becomes aware of information that was unavailable to the court at the time when the order was made.

(2) The Secretary of State or, as the case may be, the prosecutor, special counsel or the accused may apply to the court to review the order.

(3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the order.

(4) If—

(a) a restricted notification order was granted in relation to the order which is under review, and

(b) the court is satisfied that the conditions in section 148(6) are met,

the court may, where the Secretary of State or, as the case may be, the prosecutor or special counsel applies for the review, make an order prohibiting notification of the application for review being given to the accused.

(5) If—

(a) a non-attendance order was granted in relation to the order which is under review, and

(b) the court is satisfied that the conditions in section 149(5) are met,

the court may, where the Secretary of State or, as the case may be, the prosecutor, special counsel or the accused applies for the review, exclude the accused from the review.

(6) If the court is not satisfied that the conditions mentioned in section 146(7) are met, the court may—

(a) recall the order which is under review, or

(b) recall the order which is under review and make an order requiring the information to be disclosed or partly disclosed to the accused in the specified manner.

(7) Nothing in this section affects any right of appeal in relation to the order which is under review.

(8) In this section—

"accused" includes appellant or, where the order relates to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,

"appellant" has the meaning given by section 132,

"relevant period", in relation to an accused, means the period—

(a) beginning with the making of the section 146 order, and

(b) ending with the conclusion of the proceedings against the accused,

"specified" means specified in the order of the court.

(9) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted simpliciter,

(d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,

(e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed,

(f) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation,

(g) any appeal by the prosecutor is determined or abandoned, or

(h) the accused is convicted and any appeal is determined or abandoned.

(10) In its application to proceedings against an appellant or other person, subsection (9) is to be read as if paragraphs (a) to (f) were omitted.

157 Review by court of section 145 and 146 orders

(1) This section applies where the court makes a section 145 order or a section 146 order.

(2) During the relevant period, the court must from time to time consider in relation to each order whether, having regard to the information of which the court is aware, the order concerned continues to be appropriate.

(3) If the court considers that the order concerned might no longer be appropriate, the court must appoint a hearing to review the matter.

(4) In this section, "relevant period" has the same meaning as in section 155(8).

Applications and reviews: general

158 Applications and reviews: general provisions

(1) Subsection (3) applies in relation to—

(a) an application for an order mentioned in subsection (2), and

(b) a review relating to such an order.

(2) The orders are—

(a) a non-notification order,

(b) an exclusion order,

(c) a section 145 order,

(d) a restricted notification order,

(e) a non-attendance order,

(f) a section 146 order.

(3) Except where it is impracticable to do so, the application or review is to be assigned in accordance with subsection (4).

(4) The application or, as the case may be, review is to be assigned—

(a) if the proceedings against the accused to which the application or review relates are continuing (or have concluded and there are no appellate proceedings), to the same justice of the peace, sheriff or, as the case may be, judge as has been (or is to be or was) assigned to the trial diet in those proceedings,

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(b) if the appellate proceedings to which the application or review relates are continuing, to the same judge as has been (or is to be) assigned to those proceedings.

(5) The accused, appellant or, as the case may be, other person to whom the order relates is not entitled to see or be made aware of the contents of an application for—
(a) an order mentioned in subsection (2),
(b) a review relating to such an order made by the prosecutor, the Secretary of State or special counsel.

(6) In this section, "appellant" and "appellate proceedings" have the meanings given by section 132.

(7) The reference in subsection (4)(a) to proceedings against the accused includes a reference to an appeal by the prosecutor against an acquittal.

General

159 Exemptions from disclosure

Information must not be disclosed by virtue of this Part to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000 (c.23).

160 Means of disclosure

(1) This section applies where by virtue of this Part the prosecutor is required to disclose information to an accused.

(2) The prosecutor may disclose the information by any means.

(3) In particular, the prosecutor may disclose the information by enabling the accused to inspect it at a reasonable time and in a reasonable place.

(4) Subsection (5) applies if the information is contained in—
(a) a precognition,
(b) a victim statement,
(c) a statement given by a person whom the prosecutor does not intend to call to give evidence in the proceedings, or
(d) where the proceedings relating to the accused are summary proceedings, a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings.

(5) In complying with the requirement, the prosecutor need not disclose the precognition or, as the case may be, statement.

(6) Subsection (7) applies where the proceedings relating to the accused are solemn proceedings and—
(a) the information is contained in a statement given by a person whom the prosecutor intends to call to give evidence in the proceedings, or
(b) the information is contained in a statement and the prosecutor intends to apply under section 259 of the 1995 Act to have evidence of the statement admitted in the proceedings.

(7) In complying with the requirement, the prosecutor must disclose a copy of the statement (but subsections (2) and (3) continue to apply).

(8) This section is subject to any provision made by an order under section 145(7), 146(11), 155(6) or 156(6).

(9) In this section—

"accused" includes appellant or, in any case relating to section 136(2), 137(2) or 138(2), other person to whom the section concerned applies,

"appellant" has the meaning given by section 132.

161 Redaction of non-disclosable information by prosecutor

(1) Subsection (2) applies where—

(a) by virtue of this Part the prosecutor is required to disclose an item of information (the "disclosable information"), and

(b) the disclosable information forms part of, or contains, other information (the "non-disclosable information") which the prosecutor is not required to disclose by virtue of this Part.

(2) Before disclosing the disclosable information, the prosecutor may (whether by redaction or otherwise) remove or obscure the non-disclosable information.

162 Confidentiality of disclosed information

(1) This section applies where by virtue of this Part the prosecutor discloses information to an accused.

(2) The accused must not use or disclose the information or anything recorded in it other than in accordance with subsection (3).

(3) The accused may use or disclose the information—

(a) for the purposes of the proper preparation and presentation of the accused's case in the proceedings in relation to which the information was disclosed ("the original proceedings"),

(b) with a view to the taking of an appeal in relation to the matter giving rise to the original proceedings,

(c) for the purposes of the proper preparation and presentation of the accused's case in any such appeal.

(4) A person to whom information is disclosed by virtue of subsection (3) must not use or disclose the information or anything recorded in it other than for the purpose for which it was disclosed.

(5) If despite subsection (2) the accused discloses the information or anything recorded in it other than in accordance with subsection (3), a person to whom information is disclosed must not use or disclose the information or anything recorded in it.

(6) Subsections (2), (4) and (5) do not apply in relation to the use or disclosure of information which is in the public domain at the time of the use or disclosure.

(7) In subsection (3) "appeal" includes—

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(a) the reference of a case to the High Court of Justiciary by the Scottish Criminal Cases Review Commission under section 194B of the 1995 Act,

(b) a petition to the *nobile officium*,

(c) proceedings in the European Court of Human Rights.

(8) In this section, "accused" includes, where information is disclosed by virtue of section 133(2)(b), 134(2)(b), 135(3)(b), 136(2), 137(2) or 138(2), the appellant or, as the case may be, person to whom the prosecutor is required to disclose the information.

(9) Nothing in this section affects any other restriction or prohibition on the use or disclosure of information, whether the restriction or prohibition arises by virtue of an enactment (whenever passed or made) or otherwise.

163 Contravention of section 162

(1) A person who knowingly uses or discloses information in contravention of section 162 commits an offence.

(2) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

164 Code of practice

(1) The Lord Advocate—

(a) must issue a code of practice providing guidance about this Part, and

(b) may from time to time revise the code for the time being in force.

(2) The persons mentioned in subsection (3) must have regard to the code of practice for the time being in force in carrying out their functions in relation to the investigation and reporting of crime and sudden deaths.

(3) Those persons are—

(a) police forces,

(b) prosecutors,

(c) such other persons who—

(i) engage (to any extent) in the investigation of crime or sudden deaths, and

(ii) submit reports relating to those investigations to the procurator fiscal,

as the Scottish Ministers may prescribe by regulations.

(4) The Lord Advocate must lay before the Scottish Parliament any code or revised code issued under this section.

165 Acts of Adjournal

The High Court may by Act of Adjournal make such rules as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Part.

166 Abolition of common law rules about disclosure

(1) The provisions of this Part replace any equivalent common law rules about disclosure of information by the prosecutor in connection with criminal proceedings.

(2) The common law rules about disclosure of information by the prosecutor in connection with criminal proceedings are abolished in so far as they are replaced by or are inconsistent with the provisions of this Part.

(3) Sections 128 and 139 do not affect any right under the common law of an accused or appellant to seek disclosure or recovery of information by or from the prosecutor by means of a procedure other than an application under one or other of those sections.

(4) Subsection (5) applies where, following an application (the "earlier disclosure application") by the accused or the appellant under section 128 or 139, the court has made a ruling that (as the case may be)—
   (a) section 121(3) does not apply to information, or
   (b) information does not fall within section 133(3).

(5) The accused or, as the case may be, the appellant, is not entitled to seek the disclosure or recovery of the same information by or from the prosecutor by means of any other procedure at common law on grounds that are substantially the same as any of those on which the earlier disclosure application was made.

(6) Subsection (7) applies where, following an application (the "earlier common law application") by the accused under a procedure other than an application under section 128 or 139, the court has decided not to make an order for the recovery or disclosure of information by or from the prosecutor.

(7) The accused or, as the case may be, the appellant is not entitled to make an application under section 128 or 139 in relation to the same information on grounds that are substantially the same as any of those on which the earlier common law application was made.

(8) In this section, "appellant" has the meaning given by section 132.

Interpretation of Part 6

167 Interpretation of Part 6

(1) In this Part—
   "investigating agency" has the meaning given by section 117(4),
   "procurator fiscal" and "prosecutor" have the meanings given by section 307(1) of the 1995 Act.

(2) References in the following sections to the accused include references to a solicitor or advocate acting on behalf of the accused—
   (a) section 121(2)(b),

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(b) section 122(2),
(c) section 123(2)(b) and (3),
(d) section 124(2)(b),
(e) section 125(4)(b),
(f) section 126(6)(b),
(g) section 127(2),
(h) section 128(1)(b),
(i) section 129(6).

(3) References in the following sections to the accused or the appellant or other person include references to a solicitor or advocate acting on behalf of the accused or, as the case may be, the appellant or other person—
(a) section 141,
(b) section 142,
(c) section 143,
(d) section 144 (other than subsection (5)(b)),
(e) section 145(4)(a) and (7),
(f) section 146 (other than subsections (7)(b), (8)(c) and (9)(b)),
(g) section 147,
(h) section 148 (other than subsection (6)(b)),
(i) section 149 (other than subsection (5)(b)),
(j) section 153(8)(c) and (d),
(k) section 155(1) and (4),
(l) section 156(1)(b), (4), (5) (in the second place where it occurs) and (6),
(m) section 158(5),
(n) section 160,
(o) section 162(1), (2), (3) (where it first occurs) and (5).

(4) References in the following sections to an appellant include references to a solicitor or advocate acting on behalf of the appellant—
(a) section 133(2)(b) and (4),
(b) section 134(1), (2)(b) and (3),
(c) section 135(1), (2), (3)(b) and (4).

(5) References in the following sections to a person include references to a solicitor or advocate acting on behalf of the person or, as the case may be, to a solicitor or advocate who acted on behalf of the person in the proceedings to which the information relates—
(a) section 136(2) and (3),
(b) section 137(2) and (4),
(c) section 138(2) and (3).

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VALID FROM 25/06/2012

PART 7

MENTAL DISORDER AND UNFITNESS FOR TRIAL

168 Criminal responsibility of persons with mental disorder

Before section 52 of the 1995 Act insert—

"Criminal responsibility of mentally disordered persons

51A Criminal responsibility of persons with mental disorder

(1) A person is not criminally responsible for conduct constituting an offence, and is to be acquitted of the offence, if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct.

(2) But a person does not lack criminal responsibility for such conduct if the mental disorder in question consists only of a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.

(3) The defence set out in subsection (1) is a special defence.

(4) The special defence may be stated only by the person charged with the offence and it is for that person to establish it on the balance of probabilities.

(5) In this section, "conduct" includes acts and omissions.

Diminished responsibility

51B Diminished responsibility

(1) A person who would otherwise be convicted of murder is instead to be convicted of culpable homicide on grounds of diminished responsibility if the person's ability to determine or control conduct for which the person would otherwise be convicted of murder was, at the time of the conduct, substantially impaired by reason of abnormality of mind.

(2) For the avoidance of doubt, the reference in subsection (1) to abnormality of mind includes mental disorder.

(3) The fact that a person was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—

(a) constitute abnormality of mind for the purposes of subsection (1), or

(b) prevent such abnormality from being established for those purposes.

(4) It is for the person charged with murder to establish, on the balance of probabilities, that the condition set out in subsection (1) is satisfied.

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(5) In this section, "conduct" includes acts and omissions.".

169 Acquittal involving mental disorder: procedure

Before section 54 of the 1995 Act insert—

"Acquittal involving mental disorder

53E **Acquittal involving mental disorder**

(1) Where the prosecutor accepts a plea (by the person charged with the commission of an offence) of the special defence set out in section 51A of this Act, the court must declare that the person is acquitted by reason of the special defence.

(2) Subsection (3) below applies where—
(a) the prosecutor does not accept such a plea, and
(b) evidence tending to establish the special defence set out in section 51A of this Act is brought before the court.

(3) Where this subsection applies the court is to—
(a) in proceedings on indictment, direct the jury to find whether the special defence has been established and, if they find that it has, to declare whether the person is acquitted on that ground,
(b) in summary proceedings, state whether the special defence has been established and, if it states that it has, declare whether the person is acquitted on that ground.".

170 Unfitness for trial

(1) In the 1995 Act, after section 53E (inserted by section 169), insert—

"Unfitness for trial

53F Unfitness for trial

(1) A person is unfit for trial if it is established on the balance of probabilities that the person is incapable, by reason of a mental or physical condition, of participating effectively in a trial.

(2) In determining whether a person is unfit for trial the court is to have regard to—
(a) the ability of the person to—
(i) understand the nature of the charge,
(ii) understand the requirement to tender a plea to the charge and the effect of such a plea,
(iii) understand the purpose of, and follow the course of, the trial,
(iv) understand the evidence that may be given against the person,

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(v) instruct and otherwise communicate with the person's legal representative, and

(b) any other factor which the court considers relevant.

(3) The court is not to find that a person is unfit for trial by reason only of the person being unable to recall whether the event which forms the basis of the charge occurred in the manner described in the charge.

(4) In this section "the court" means—

(a) as regards a person charged on indictment, the High Court or the sheriff court,

(b) as regards a person charged summarily, the sheriff court.".

(2) The title of section 54 of the 1995 Act (insanity in bar of trial) is replaced by "Unfitness for trial: further provision", the cross-heading which precedes it is omitted and the section is amended as follows—

(a) in subsection (1)—

(i) the words ", on the written or oral evidence of two medical practitioners," are repealed, and

(ii) for "insane" substitute " unfit for trial ",

(b) in subsection (3)—

(i) for "the insanity of a person" substitute " whether a person is unfit for trial ", and

(ii) after "mental" insert " or physical ", and

(c) in subsection (5), for "insane" substitute " unfit for trial ".

(3) Subsections (6) and (7) are repealed.

171 Abolition of common law rules

Any rule of law providing for—

(a) the special defence of insanity,

(b) the plea of diminished responsibility, or

(c) insanity in bar of trial,

ceases to have effect.

PART 8

LICENSING UNDER CIVIC GOVERNMENT (SCOTLAND) ACT 1982

VALID FROM 28/03/2011

172 Conditions to which licences under 1982 Act are to be subject

(1) The 1982 Act is amended as follows.

(2) In section 3(4) (automatic grant or renewal of licence where application not determined within specified period), the word "unconditionally" is repealed.

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(3) After section 3 insert—

"**3A Mandatory licence conditions**

(1) The Scottish Ministers may by order made by statutory instrument prescribe conditions to which licences granted by licensing authorities under this Act are to be subject.

(2) Different conditions may be prescribed under subsection (1)—
  (a) in respect of different licences, or different types of licence,
  (b) otherwise for different purposes, circumstances or cases.

(3) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

(4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—
  (a) to which licences granted by licensing authorities under this Act are to be subject, or
  (b) to be imposed by licensing authorities in granting or renewing licences under this Act.

(5) The following conditions are referred to in this Part and Part 2 of this Act as "mandatory conditions"—
  (a) conditions prescribed under subsection (1),
  (b) conditions prescribed under any power referred to in subsection (4), and
  (c) conditions imposed, or required to be imposed, by any provision of this Part or Part 2 of this Act.

(6) In this section and section 3B, references to licences granted by licensing authorities include references to—
  (a) licences renewed by licensing authorities, and
  (b) licences deemed by virtue of section 3(4) to be granted or renewed by licensing authorities.

3B Standard licence conditions

(1) A licensing authority may determine conditions to which licences granted by them under this Act are to be subject.

(2) Conditions determined under subsection (1) are referred to in this Part and Part 2 as "standard conditions".

(3) Different conditions may be determined under subsection (1)—
  (a) in respect of different licences, or different types of licence,
  (b) otherwise for different purposes, circumstances or cases.

(4) A licensing authority must publish, in such manner as they think appropriate, any standard conditions determined by them.

(5) Standard conditions have no effect—

(a) unless they are published, and
(b) so far as they are inconsistent with any mandatory conditions.

(6) Subsection (1) is subject to paragraph 5(1A)(a) of Schedule 1 to this Act.".

(4) In section 27C (conditions in respect of knife dealers' licences)—
(a) in subsection (1)—
(i) in paragraph (b), after "prejudice to" insert " section 3B and ", and
(ii) in paragraph (c), after "that" insert " section and ", and
(b) subsection (2) is repealed.

(5) In section 41(3) (power to attach conditions to public entertainment licences), after "prejudice to" insert " section 3B of and ".

(6) In Schedule 1 (further provisions as to the general licensing system), in paragraph 5—
(a) in sub-paragraph (1)—
(i) in paragraph (a), the word "unconditionally" is repealed, and
(ii) paragraph (b) is repealed,
(b) after that sub-paragraph insert—

"(1A) In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both)—
(a) disapply or vary any standard conditions so far as applicable to the licence,
(b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.",
(c) in sub-paragraph (2), for "(1)(b)" substitute " (1A)(b) ", and
(d) after that sub-paragraph insert—

"(2A) A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject.".

Commencement Information
I12 S. 172(1)-(3)(4)(a)(5)(6) in force at 28.3.2011 by S.S.I. 2011/178, art. 2, **Sch.** (with Sch.)

VALID FROM 13/12/2010

173 Licensing: powers of entry and inspection for civilian employees

(1) The 1982 Act is amended as follows.

(2) In section 5 (rights of entry and inspection)—
(a) in subsection (1), after "licensing authority" insert " , an authorised civilian employee ",
(b) in subsection (3)(a) and (b)—
(i) after "constable" where it first occurs insert " , an authorised civilian employee ", and

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(ii) after "such an" insert " employee or ",

(c) in subsection (3)(c), after "constable" insert " , an authorised civilian employee ",

(d) in subsection (4)—

(i) after "licensing authority" insert " , an authorised civilian employee ", and

(ii) after "the officer" insert " , employee ", and

(e) in subsection (6), after "licensing authority" insert " or authorised civilian employee ".

(3) In section 8 (interpretation of Parts 1 and 2), after the definition of "appropriate relevant authority" insert—

""authorised civilian employee" means a person—

(a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and

(b) authorised by the chief constable for the purposes of sections 5 and 11 of this Act;".

(4) In section 11 (inspection and testing of vehicles), in subsection (2)—

(a) after "the authority)" insert " , an authorised civilian employee ",

(b) in paragraph (b), after "licensing authority" insert " , an authorised civilian employee ", and

(c) after "authorised officer" where it last occurs, insert " , employee ".

(5) In paragraph 3 (miscellaneous definitions) of Schedule 2 (control of sex shops), after the definition of "appropriate relevant authority" insert—

""authorised civilian employee" means a person—

(a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and

(b) authorised by the chief constable for the purposes of paragraph 20 of this Schedule;".

(6) In paragraph 20 of that Schedule (rights of entry and inspection)—

(a) in sub-paragraph (1), after "local authority" insert " , an authorised civilian employee ",

(b) in sub-paragraph (3), after "local authority" insert " or an authorised civilian employee ", and

(c) in sub-paragraph (5)—

(i) after "constable" where it first occurs insert " , an authorised civilian employee ", and

(ii) after "such" insert " employee or ".

VALID FROM 01/11/2011

174 Licensing of taxis and private hire cars

(1) The 1982 Act is amended as follows.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(2) In section 13 (taxi and private hire car licences), in subsection (3), for "during any continuous period of 12 months" substitute " throughout the period of 12 months immediately ".

(3) In section 17 (taxi fares)—

(a) for subsections (2) to (4) substitute—

"(2) The licensing authority must fix scales for the fares and other charges mentioned in subsection (1) within 18 months beginning with the date on which the scales came into effect.

(3) In fixing scales under subsection (2), the licensing authority may—

(a) alter fares or other charges,

(b) fix fares or other charges at the same rates.

(4) Before fixing scales under subsection (2), the licensing authority must review the scales in accordance with subsection (4A).

(4A) In carrying out a review, the licensing authority must—

(a) consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area,

(b) following such consultation—

(i) review the existing scales, and

(ii) propose new scales (whether at altered rates or the same rates),

(c) publish those proposed scales in a newspaper circulating in its area—

(i) setting out the proposed scales,

(ii) explaining the effect of the proposed scales,

(iii) proposing a date on which the proposed scales are to come into effect, and

(iv) stating that any person may make representations in writing until the relevant date, and

(d) consider any such representations.

(4B) In subsection (4A)(c)(iv) "the relevant date" is a date specified by the licensing authority falling at least one month after the first publication by the authority of the proposed scales.

(4C) After fixing scales under subsection (2), the licensing authority must give notice in accordance with subsection (4D).

(4D) The licensing authority must—

(a) set out, and explain the effect of, the scales as fixed,

(b) notify the persons mentioned in subsection (4E) of—

(i) the date on which the scales as fixed are to come into effect, and

(ii) the rights of appeal under section 18.

(4E) Those persons are—

(a) all operators of taxis operating within their area, and

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) the persons and organisations consulted under subsection (4A)(a).", and

(b) in subsection (5)—

(i) for "(4)" where it first occurs substitute " (4D)(b) ", and

(ii) in paragraph (a)—

(A) for "(4)" where it first occurs substitute " (4E) ", and

(B) for "five days after the decision referred to in subsection (4)" substitute " seven days after the scales are fixed under subsection (2) ".

(4) In section 18 (appeals in respect of taxi fares)—

(a) for subsection (1) substitute—

"(1) Any person mentioned in subsection (1A) may, within 14 days of notice being given under section 17(4C), appeal against those scales to the traffic commissioner for the Scottish Traffic Area as constituted for the purpose of the Public Passenger Vehicles Act 1981.",

(b) after that subsection insert—

"(1A) Those persons are—

(a) any person who operates a taxi in an area for which scales have been fixed under section 17(2), and

(b) any person or organisation appearing to the traffic commissioner to be representative of such taxi operators.",

(c) in subsection (3)—

(i) the words "to them" are repealed,

(ii) in paragraph (b) the word "may" is repealed, and

(iii) in paragraph (b)(i), for "on the grounds that" substitute " if ", and

(d) subsection (9) is repealed.

(5) After section 18 insert—

"**18A Publication and coming into effect of taxi fares**

(1) Following the fixing of scales by a licensing authority under section 17(2), the licensing authority must—

(a) determine the date on which the scales are to come into effect, and

(b) publish the scales in accordance with subsections (3) to (5).

(2) The scales may come into effect no earlier than seven days after the date on which they are published.

(3) The licensing authority must—

(a) give notice of the scales by advertisement in a newspaper circulating in its area, and

(b) specify in that advertisement the date on which the scales are to come into effect.

(4) The authority must give notice of the scales—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) where no appeal has been lodged under subsection (1) of section 18, as soon as practicable after the expiry of the period of 14 days mentioned in that subsection,

(b) where such an appeal has been lodged, as soon as practicable after the determination of the appeal.

(5) For the purposes of subsection (4), an appeal is determined on the date on which the appeal is abandoned or notice is given to the appellant of its disposal.”.

VALID FROM 28/03/2011

175 Licensing of street trading: food hygiene certificates

(1) Section 39 of the 1982 Act (street traders' licences) is amended as follows.

(2) In subsection (4), for the words from “the requirements” to the end substitute “ such requirements as the Scottish Ministers may by order made by statutory instrument specify ”.

(3) After subsection (4), insert—

“(5) An order under subsection (4) may specify requirements by reference to provision contained in another enactment.

(6) A statutory instrument containing an order made under subsection (4) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

VALID FROM 01/04/2012

176 Licensing of public entertainment

(1) Section 41 of the 1982 Act (public entertainment licences) is amended as follows.

(2) In subsection (2)—

(a) the words “, on payment of money or money's worth,” are repealed,

(b) in paragraph (d), for “, section 1 of the Cinemas Act 1985 or Part II of the Gaming Act 1968” substitute “ or section 1 of the Cinemas Act 1985 ”,

(c) for paragraph (e), substitute—

“(e) premises in respect of which there is a club gaming permit (within the meaning of section 271 of the Gambling Act 2005 (c.19)) or a prize gaming permit (within the meaning of section 289 of that Act of 2005);”,

(d) the word “or” immediately preceding paragraph (g) is repealed, and

(e) after paragraph (g), add “, or

(h) such other premises as the Scottish Ministers may by order made by statutory instrument specify.”.

(3) After subsection (2) insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"(2A) A statutory instrument containing an order made under subsection (2)(h) is subject to annulment in pursuance of a resolution of the Scottish Parliament.".

VALID FROM 01/10/2012

177 Licensing of late night catering

(1) Section 42 of the 1982 Act (late hours catering) is amended as follows.

(2) In subsections (1) and (2), for "meals or refreshment" in each place where those words occur substitute " food ".

(3) In subsection (2), for "they are" substitute " it is ".

(4) In subsection (3), for "meals or refreshments" in both places where those words occur substitute " food ".

(5) After subsection (6), add—

"(7) In this section "food" has the meaning given in section 1 of the Food Safety Act 1990 (c.16).".

178 Applications for licences

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (further provisions as to the general licensing system)—

(a) in paragraph 1(2)(b), for "and address" in both places where those words occur substitute " , address and date and place of birth ",

(b) in paragraph 1(2)(c)—

(i) in sub-paragraph (iii), for "and private addresses" substitute " , private addresses and dates and places of birth ", and

(ii) in sub-paragraph (iv), for "and address" substitute " , address and date and place of birth ",

(c) in paragraph 2(3)(b), after "application" insert " (other than the date and place of birth of any person) ",

(d) in paragraph 2(8)(a), after "application" insert " (other than the date and place of birth of any person) ",

(e) in paragraph 3(1)(e), for "21" substitute " 28 ",

(f) in paragraph 4(2), for "7" substitute " 14 ",

(g) in paragraph 8, after sub-paragraph (5) insert—

"(5A) On good cause being shown, a licensing authority may, for the purposes of sub-paragraph (5), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.",

(h) in paragraph 11(8), for "21" substitute " 14 ", and

(i) in paragraph 17(2), for "28" substitute " 21 ".

(3) In Schedule 2 (control of sex shops)—

(a) in paragraph 6(2), for paragraph (b) substitute—

"(b) the date and place of birth of the applicant;",

(b) in paragraph 6(2)(c), for "age" substitute " date and place of birth ",

(c) in paragraph 6(3)—

(i) in paragraph (c), for "and private addresses" substitute " , private addresses and dates and places of birth ", and

(ii) in paragraph (d), for "age" substitute " date and place of birth ",

(d) in paragraph 8(7), after "them" insert " and, where they propose to do so, must, within such reasonable period (not being less than 14 days) of the date of the hearing, notify the applicant and each such person of that date ",

(e) in paragraph 9(3), in both paragraphs (e) and (f), for "the United Kingdom" substitute " a member state of the European Union ",

(f) in paragraph 12, after sub-paragraph (3) insert—

"(3A) On good cause being shown, a local authority may, for the purposes of sub-paragraph (3), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.",

(g) in paragraph 13(6), for "21" substitute " 14 ", and

(h) in paragraph 23(2), for "28" substitute " 21 ".

Commencement Information

I13 S. 178(3)(e) in force at 16.8.2010 for specified purposes by S.S.I. 2010/297, **art. 2**

VALID FROM 13/12/2010

PART 9

ALCOHOL LICENSING

VALID FROM 30/03/2018

179 Premises licence applications: statements about disabled access etc.

(1) Section 20 of the 2005 Act (application for premises licence) is amended as follows.

(2) In subsection (2)(b)—

(a) the word "and" immediately following sub-paragraph (ii) is repealed, and

(b) after that sub-paragraph, insert—

"(iia) a disabled access and facilities statement, and".

(3) After subsection (5), insert—

"(6) A "disabled access and facilities statement" is a statement, in the prescribed form, containing information about—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) provision made for access to the subject premises by disabled persons,

(b) facilities provided on the subject premises for use by disabled persons, and

(c) any other provision made on or in connection with the subject premises for disabled persons.

[[F8](7) In subsection (6), "disabled person" is to be interpreted in accordance with section 6 of the Equality Act 2010 (c.15)."].

Textual Amendments

F8 Words in s. 179(3) substituted (9.11.2012) by The Criminal Justice and Licensing (Scotland) Act 2010 (Incidental Provisions) Order 2012 (S.S.I. 2012/304), arts. 1(2), **2**

180 Premises licence applications: notification requirements

(1) Section 21 of the 2005 Act (notification of premises licence application) is amended as follows.

(2) For subsection (2), substitute—

"(2) On giving notice of an application under subsection (1), the Licensing Board—

(a) must provide the appropriate chief constable with a copy of the application, and

(b) may provide any other person to whom notice is given with a copy of the application.".

(3) In subsection (3), the following are repealed—

(a) the word "and" after paragraph (a), and

(b) paragraph (b).

(4) In subsection (6), the following are repealed—

(a) the definition of "antisocial behaviour",

(b) the word "and" following the definition of "neighbouring land", and

(c) the definition of "relevant period".

181 Premises licence applications: modification of layout plans

In section 23 of the 2005 Act (determination of premises licence application), in subsection (7)(b), after "plan" insert " or layout plan (or both) ".

VALID FROM 28/02/2011

182 Reviews of premises licences: notification of determinations

(1) The 2005 Act is amended as follows.

(2) After section 39 (Licensing Board's powers on review), insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**39A Notification of determinations**

(1) Where a Licensing Board, at a review hearing—
(a) decides to take one of the steps mentioned in section 39(2), or
(b) decides not to take one of those steps,
the Board must give notice of the decision to each of the persons mentioned in subsection (2).

(2) The persons referred to in subsection (1) are—
(a) the holder of the premises licence, and
(b) where the decision is taken in connection with a premises licence review application, the applicant.

(3) Where subsection (1)(a) applies, the holder of the premises licence may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.

(4) Where—
(a) subsection (1)(a) or (b) applies, and
(b) the decision is taken in connection with a premises licence review application,
the applicant may, by notice to the clerk of the Board, require the Board to give a statement of reasons for the decision.

(5) Where the clerk of a Board receives a notice under subsection (3) or (4), the Board must issue a statement of the reasons for the decision to—
(a) the person giving the notice, and
(b) any other person to whom the Board gave notice under subsection (1).

(6) A statement of reasons under subsection (5) must be issued—
(a) by such time, and
(b) in such form and manner,
as may be prescribed.".

183 Premises licence applications: antisocial behaviour reports

(1) The 2005 Act is amended as follows.

(2) In section 22 (objections and representations), after subsection (2) insert—

"(2A) The appropriate chief constable may, under subsection (1)(b), make representations concerning a premises licence application by giving to the Licensing Board a report detailing—
(a) any cases of antisocial behaviour indentified by constables as having taken place on, or in the vicinity of, the premises,
(b) any complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the premises.".

(3) After section 24 insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**24A Power to request antisocial behaviour report**

(1) A Licensing Board may, at any time before determining a premises licence application, request the appropriate chief constable to give the Board a report detailing—
   (a) all cases of antisocial behaviour indentified within the relevant period by constables as having taken place on, or in the vicinity of, the premises,
   (b) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.

(2) The appropriate chief constable must give the report within 21 days of the request.

(3) Where the Licensing Board requests a report under subsection (1), the Board must suspend consideration of the application until it receives the report.

(4) On receipt of the chief constable's report under subsection (2), the Licensing Board must—
   (a) give a copy of the report to the applicant in such manner and by such time as may be prescribed by regulations, and
   (b) resume consideration of the application and determine it in accordance with section 23.

(5) In this section—
   "antisocial behaviour" has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and
   "relevant period" means the period of one year ending with the date of the request.".

184 Premises licences: connected persons and interested parties

(1) The 2005 Act is amended as follows.

(2) After section 40 insert—

"Connected persons and interested parties

40A Connected persons and interested parties: licence holder's duty to notify changes

(1) A premises licence holder must, not later than one month after a person becomes or ceases to be—
   (a) a connected person in relation to the licence holder, or
   (b) an interested party in relation to the licensed premises,
   give the appropriate Licensing Board notice of that fact.

(2) A notice under subsection (1) that a person has become a connected person or an interested party must specify—
   (a) the name and address of the person, and

(b) if the person is an individual, the person's date of birth.

(3) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.

(4) A premises licence holder who fails, without reasonable excuse, to comply with subsection (1) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.".

(3) In section 48 (notification of change of name or address)—

(a) in subsection (1)—

(i) the word "or" immediately following paragraph (a) is repealed, and

(ii) after paragraph (b) insert ", or

(c) the name or address of any person who is—

(i) a connected person in relation to the licence holder, or

(ii) an interested party in relation to the licensed premises,",

(b) after subsection (2) insert—

"(2A) Where a Licensing Board receives a notice under subsection (1), the Board must give a copy of the notice to the appropriate chief constable.".

(4) In section 147 (interpretation), after subsection (4) insert—

"(5) For the purposes of this Act, a person is an interested party in relation to licensed premises if the person is not the holder of the premises licence nor the premises manager in respect of the premises but—

(a) has an interest in the premises as an owner or tenant, or

(b) has management and control over the premises or the business carried on on the premises.".

(5) In section 148 (index of defined expressions), in the table, insert at the appropriate place—

"interested party	section 147(5).".

Commencement Information

I14 S. 184(1)(3)(a)(i)(b) in force at 13.12.2010 by S.S.I. 2010/413, art. 2, **Sch.**

I15 S. 184(2) in force at 13.12.2010 for specified purposes by S.S.I. 2010/413, art. 2, **Sch.**

I16 S. 184(3)(a)(ii) in force at 13.12.2010 for specified purposes by S.S.I. 2010/413, art. 2, **Sch.**

185 Provisional premises licences: duration

In section 45 of the 2005 Act (provisional premises licence), in subsection (6), for "2" substitute " 4 ".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 28/03/2011

186 Premises licence applications: food hygiene certificates

(1) Section 50 of the 2005 Act (certificates as to planning, building standards and food hygiene) is amended as follows.

(2) In subsection (7), for the words from "the requirements" to the end substitute " such requirements as the Scottish Ministers may, by order, specify. ".

(3) After subsection (7), insert—

"(7A) An order under subsection (7) may specify requirements by reference to provision contained in another enactment.".

(4) In subsection (8)(c), for "the 1990 Act" substitute " section 5 of the Food Safety Act 1990 (c.16) ".

187 Provision of copies of licences to chief constable

(1) The 2005 Act is amended as follows.

(2) In section 26 (issue of licence and summary), after subsection (2) insert—

"(3) Where a Licensing Board grants a premises licence application, the Board must send a copy of the premises licence to the appropriate chief constable.".

(3) In section 47 (temporary premises licence), after subsection (4) insert—

"(4A) Where a Licensing Board issues a temporary premises licence, the Board must send a copy of the temporary premises licence to the appropriate chief constable.".

(4) In section 49 (Licensing Board's duty to update premises licence), after subsection (2) insert—

"(2A) Where a Licensing Board issues a new summary of the licence under subsection (2), the Board must send a copy of the new summary of the licence to the appropriate chief constable.".

(5) In section 56 (occasional licence), after subsection (9) insert—

"(10) Where a Licensing Board issues an occasional licence under subsection (1), the Board must send a copy of the occasional licence to the appropriate chief constable.".

188 Sale of alcohol to trade

(1) The 2005 Act is amended as follows.

(2) In section 63 (prohibition of sale, consumption and taking away of alcohol outwith licensed hours), in subsection (2)(f), after "on" where it first occurs insert " or taken from ".

(3) In section 117 (offence relating to sale of alcohol to trade), in subsection (1), after "from" insert " licensed premises or ".

VALID FROM 01/10/2011

189 Occasional licences

(1) The 2005 Act is amended as follows.

(2) In section 57 (notification of application to chief constable and Licensing Standards Officer), after subsection (3), add—

"(4) Subsection (5) applies where the Licensing Board is satisfied that the application requires to be dealt with quickly.

(5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 21 days were references to such shorter period of not less than 24 hours as the Board may determine.".

(3) In paragraph 10 of schedule 1 (delegation of functions of Licensing Boards), in sub-paragraph (4), after "Board" in the second place where it appears insert " or to a member of staff provided under paragraph 8(1)(b) ".

VALID FROM 01/10/2011

190 Extended hours applications: notification period

(1) Section 69 of the 2005 Act (notification of extended hours application) is amended as follows.

(2) After subsection (3), add—

"(4) Subsections (5) and (6) apply where the Licensing Board is satisfied that the application requires to be dealt with quickly.

(5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 10 days were references to such shorter period of not less than 24 hours as the Board may determine.

(6) Subsection (3) has effect in relation to the application as if for the word "must" there were substituted " may ".".

VALID FROM 28/03/2011

191 Extended hours applications: variation of conditions

After section 70 of the 2005 Act insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**70A Extended hours applications: variation of conditions**

(1) On granting an extended hours application under section 68(1) in respect of a premises licence, the Licensing Board may make such variation of the conditions to which the licence is subject as the Board considers necessary or expedient for the purposes of any of the licensing objectives.

(2) A variation made under subsection (1)—
(a) may have effect only in relation to a period of licensed hours which is extended under section 68(1), and
(b) ceases to have effect at the end of the period for which the extension of the licensed hours has effect under section 68(2).

(3) In subsection (1), "variation" includes addition, deletion or other modification.".

192 Personal licences

(1) The 2005 Act is amended as follows.

(2) In section 74 (determination of personal licence application)—
(a) in subsection (2)—
(i) the word "and" immediately following paragraph (a) is repealed, and
(ii) after paragraph (b) add—
"(c) the notice does not include a recommendation under section 73(4),
(d) the applicant has signed the application, and
(e) subsection (8) does not apply,",
(b) in subsection (3)—
(i) the word "and" immediately following paragraph (b) is repealed, and
(ii) after paragraph (b) insert—
"(ba) the applicant does not already hold a personal licence, and", and
(c) after subsection (6) insert—

"(7) Subsection (8) applies if—
(a) all of the conditions specified in subsection (3) are met in relation to the applicant,
(b) the Board has received from the appropriate chief constable a notice under section 73(3)(a), and
(c) the applicant has held a personal licence which—
(i) expired within the period of 3 years ending on the day on which the application was received, or
(ii) was surrendered by the applicant by notice under section 77(6) received within that period.

(8) The Licensing Board may—

(a) hold a hearing for the purposes of considering and determining the application, and

(b) after having regard to the circumstances in which the personal licence previously held expired or, as the case may be, was surrendered—

(i) refuse the application, or

(ii) grant the application.".

(3) In section 76 (issue of licence), after subsection (3) add—

"(4) A person who holds a void personal licence must surrender it to the Licensing Board.

(5) A person who, without reasonable excuse, fails to comply with subsection (4) commits an offence.

(6) A person who passes off a void personal licence as a valid personal licence knowing that the licence is void commits an offence.

(7) A person guilty of an offence under subsection (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.".

(4) In section 92 (theft, loss etc. of personal licence), after subsection (3) insert—

"(3A) A replacement personal licence is void if at the time it is issued the personal licence in respect of which it was issued is not lost, stolen, damaged or destroyed.

(3B) Where a replacement personal licence is issued in respect of a personal licence which has been lost or stolen, the replacement personal licence becomes void if the personal licence is subsequently found or recovered.

(3C) A person who holds a void replacement personal licence must surrender it to the Licensing Board.

(3D) A person who, without reasonable excuse, fails to comply with subsection (3C) commits an offence.

(3E) A person who passes off a void replacement personal licence as a valid licence, knowing that the licence is void, commits an offence.

(3F) A person guilty of an offence under subsection (3D) or (3E) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.".

193 Emergency closure orders

(1) The 2005 Act is amended as follows.

(2) In section 97 (closure orders)—

(a) in subsection (2), for "senior police officer may, if the officer" substitute " constable of or above the rank of inspector may, if the constable ", and

(b) in subsection (4), the words "by a senior police officer" are repealed.

(3) In section 98 (termination of closure orders)—

(a) in subsection (1)—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(i) for "senior police officer" substitute " constable of or above the rank of inspector ", and

(ii) for "the officer" substitute " the constable ", and

(b) in subsection (2)—

(i) for "senior police office" substitute " constable ", and

(ii) for "the officer" substitute " the constable ".

(4) In section 99 (extension of emergency closure order), in subsection (1)—

(a) for "senior police officer" substitute " constable of or above the rank of inspector ", and

(b) in paragraph (b), for "officer" substitute " constable ".

194 Appeals

In section 131(2) of the 2005 Act (appeals), the words "by way of stated case, at the instance of the appellant," are repealed.

195 Liability for offences

(1) The 2005 Act is amended as follows.

(2) In each of the following provisions, the word "knowingly" is repealed—

(a) section 1(3)(b),

(b) section 103(1),

(c) section 106(2),

(d) section 107(1),

(e) section 118(1),

(f) section 120(2) and (3),

(g) section 121(1),

(h) section 127(4), and

(i) section 128(5).

(3) After section 141 (offences by bodies corporate etc.) insert—

"**141A Defence of due diligence for certain offences**

(1) It is a defence for a person charged with an offence to which this section applies to prove that the person—

(a) did not know that the offence was being committed, and

(b) exercised all due diligence to prevent the offence being committed.

(2) This section applies to an offence under any of the following provisions of this Act—

section 1(3)(b),
section 103(1),
section 106(2),
section 107(1),
section 118(1),
section 120(2) or (3),

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section 121(1),
section 127(4),
section 128(5).

141B Vicarious liability of premises licence holders and interested parties

(1) Subsection (2) applies where, on or in relation to any licensed premises, a person commits an offence to which this section applies while acting as the employee or agent of—
  (a) the holder of the premises licence, or
  (b) an interested party.

(2) The holder of the premises licence or, as the case may be, the interested party is also guilty of the offence and liable to be proceeded against and punished accordingly.

(3) It is a defence for a holder of a premises licence or an interested party charged with an offence to which this section applies by virtue of subsection (2) to prove that the holder of the licence or, as the case may be, the interested party—
  (a) did not know that the offence was being committed by the employee or agent, and
  (b) exercised all due diligence to prevent the offence being committed.

(4) Proceedings may be taken against the holder of the premises licence or the interested party in respect of the offence whether or not proceedings are also taken against the employee or agent who committed the offence.

(5) This section applies to an offence under any of the following provisions of this Act—
  section 1(3),
  section 15(5),
  section 63(1),
  section 97(7),
  section 102(1),
  section 103(1),
  section 106(2),
  section 107(1),
  section 108(2) or (3),
  section 113(1),
  section 114,
  section 115(2),
  section 118(1),
  section 119(1),
  section 120(2),
  section 121(1),
  section 138(5).”.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

Commencement Information

I17 S. 195(2) in force at 13.12.2010 by S.S.I. 2010/413, art. 2, **Sch.** (with Sch.)

I18 S. 195(3) in force at 13.12.2010 for specified purposes by S.S.I. 2010/413, art. 2, **Sch.**

196 False statements in applications: offence

After section 134 of the 2005 Act insert—

"134A Offence of knowingly making a false statement in an application

(1) A person who knowingly makes a false statement in an application under this Act commits an offence.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.".

VALID FROM 29/06/2018

197 Powers of Licensing Standards Officers

(1) Section 15 of the 2005 Act is amended as follows.

(2) The section title becomes "Powers of entry, inspection and seizure".

(3) In subsection (2)—

(a) the word "and" immediately preceding paragraph (b) is repealed, and

(b) after that paragraph insert—

"(c) power to take copies of, or of an entry in, any document found on the premises, and

(d) power to seize and remove any substances, articles or documents found on the premises.".

(4) In subsection (3)—

(a) for "either" substitute " any ", and

(b) in paragraph (b), after "information" insert " or explanation ".

(5) After subsection (4) insert—

"(4A) Subsection (3)(c) includes power to require any document which is stored in electronic form and which is accessible from the premises to be produced in a form—

(a) in which it is legible, and

(b) in which it can be removed from the premises.

(4B) Nothing in subsection (3) requires a person to produce any document if the person would be entitled to refuse to produce that document in any proceedings in any court on the grounds of confidentiality of communications.

(4C) Nothing in subsection (3) requires a person to provide any information or explanation or produce any document if to do so would incriminate that person or that person's spouse or civil partner.”.

(6) After subsection (6) insert—

“(7) The Scottish Ministers may by regulations make further provision about the procedure to be followed in the exercise of a power under this section.

(8) Where a Licensing Standards Officer seizes any substance, article or document under subsection (2)(d), the Officer must leave on the premises a notice—

(a) stating what was seized, and

(b) explaining why it was seized.

(9) The Scottish Ministers may by regulations make provision about the treatment of substances, articles or documents seized under subsection (2)(d).

(10) Regulations under subsection (9) may, in particular, make provision—

(a) about the retention, use, return, disposal or destruction of anything seized,

(b) about compensation for anything seized.”.

198 Further modifications of 2005 Act

Schedule 6 makes further modifications of the 2005 Act (including extending police powers to object).

VALID FROM 13/12/2010

PART 10

MISCELLANEOUS

199 Annual report on Criminal Justice (Terrorism and Conspiracy) Act 1998

Section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c.40) (requirement for annual report on working of the Act) is repealed.

PROSPECTIVE

200 Modification of references to “Act”, “enactment” etc. in certain Acts of Parliament

(1) The 1982 Act is amended as follows—

(a) in section 8 (interpretation of Parts 1 and 2), insert at the appropriate place—

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""enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;",

(b) in section 49 (dangerous and annoying creatures), after subsection (8), add—

"(9) In subsection (7), "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.", and

(c) in Schedule 2 (control of sex shops), in paragraph 3 (miscellaneous definitions), insert at the appropriate place—

""enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;".

(2) The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows—

(a) in section 30 (disclosure of information), after subsection (7) add—

"(8) In subsection (2) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.",

(b) in section 44 (false statements and declarations), in each of the following provisions, namely subsection (2)(b) and (c), subsection (3)(a) and subsection (4), after "Act of Parliament" insert " or any Act of the Scottish Parliament ",

(c) in section 45 (provision supplementary to section 44), after subsection (5) add—

"(6) In subsections (4) and (5), "other Act" includes an Act of the Scottish Parliament.", and

(d) in section 46 (proceedings for a contravention of section 44)—

(i) in subsection (4), the words "(including subordinate legislation)" are repealed, and

(ii) after subsection (4) add—

"(5) In subsection (4), "enactment" includes—

(a) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament, and

(b) subordinate legislation.".

(3) Section 307(1) of the 1995 Act (interpretation) is amended as follows—

(a) in the definition of "crime", after "this Act," insert " or under any Act of the Scottish Parliament (whenever passed), ",

(b) for the definition of "enactment" substitute—

""enactment" includes—

(a) an enactment contained in any local Act or any order, regulation or other instrument having effect by virtue of an Act, and

(b) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;", and

(c) for the definition of "statute" substitute—

""statute" means—

(a) any Act of Parliament, public, general, local or private,
(b) any Provisional Order confirmed by Act of Parliament, or
(c) any Act of the Scottish Parliament;".

PART 11

GENERAL

201 Orders and regulations

(1) Any power of the Scottish Ministers to make regulations or an order under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—
- (a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
- (b) different provision for different purposes or different areas.

(3) Subject to subsection (4), a statutory instrument containing regulations or an order under this Act (except an order under section 206(1)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—
- (a) an order under section 27(1),
- (b) an order under section 71(2),
- (c) an order under section 92(1),
- (d) an order under section 204(1) containing provisions which modify any enactment (including this Act), or
- (e) an order under section 205(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument containing the order has been laid before, and approved by resolution of, the Parliament.

202 Interpretation

In this Act—
"the 1982 Act" means the Civic Government (Scotland) Act 1982 (c.45),
"the 1995 Act" means the Criminal Procedure (Scotland) Act 1995 (c.46), and
"the 2005 Act" means the Licensing (Scotland) Act 2005 (asp 16).

VALID FROM 28/03/2011

203 Modification of enactments

Schedule 7 modifies enactments.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
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204 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

205 Transitional provision etc.

(1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

206 Commencement and short title

(1) The provisions of this Act, other than this section and sections 201, 202, 204 and 205, come into force in accordance with provision made by order by the Scottish Ministers.

(2) This Act may be cited as the Criminal Justice and Licensing (Scotland) Act 2010.

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VALID FROM 07/05/2015

SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH SENTENCING COUNCIL

. . . . . .

SCHEDULE 2

(introduced by section 1(2))

COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

VALID FROM 01/02/2011

PART 1

THE 1995 ACT

The 1995 Act

1 The 1995 Act is amended as follows.

2 In section 52H(3) (early termination of assessment order), the following are repealed—
(a) the word "or" immediately following paragraph (e), and
(b) paragraph (f).

3 In section 52R(3) (termination of treatment order), the following are repealed—
(a) the word "or" immediately following paragraph (e), and
(b) paragraph (f).

4 In section 53(12)(a) (interim compulsion orders), for sub-paragraphs (vi) and (vii) substitute—
"(vi) impose a community payback order;
(vii) make a drug treatment and testing order; or
(viii) make a restriction of liberty order,".

5 In section 57A(15)(a) (compulsion order), for sub-paragraphs (vi) and (vii) substitute—
"(vi) impose a community payback order;
(vii) make a drug treatment and testing order; or
(viii) make a restriction of liberty order,".

6 In section 58(8) (order for hospital admission or guardianship), for "make a probation order or a community service order" substitute " impose a community payback order or make a drug treatment and testing order ".

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7 In section 106(1) (right of appeal), for paragraph (d) substitute—

"(d) against any drug treatment and testing order;

(dza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8)(a) of this Act;".

8 In section 108 (Lord Advocate's right of appeal against disposal)—

(a) in subsection (1), paragraphs (d) and (e) are repealed, and

(b) in subsection (2)(b)(iii), for "(d) to (e)" substitute " (dd) ".

9 In section 118(4) (disposal of appeals against sentence), after "(d)," insert " (dza), ".

10 In section 121A(4) (suspension of certain sentences pending determination of appeal), for paragraphs (a) to (c) substitute—

"(aa) a community payback order;".

11 In section 173(2) (quorum of High Court in relation to appeals), for "175(2)(b) or (c)" substitute " 175(2)(b), (c) or (cza) ".

12 In section 175 (right of appeal)—

(a) in subsection (2)—

(i) in paragraph (c), for "probation order, drug treatment and testing order or any community service order" substitute " drug treatment and testing order ", and

(ii) after paragraph (c), insert—

"(cza) against any disposal under section 227ZC(7)(a) to (c) or (e) or (8)(a) of this Act;",

(b) in subsection (4), paragraphs (d) and (e) are repealed, and

(c) in subsection (4A)(b)(iii), for "(d) to (e)" substitute " (dd) ".

13 In section 186 (appeals against sentence only), in each of subsections (1), (2)(a), (9) and (10), for "175(2)(b) or (c)" substitute " 175(2)(b), (c) or (cza) ".

14 In section 187(1) (leave to appeal against sentence), for "175(2)(b) or (c)" substitute " 175(2)(b), (c) or (cza) ".

15 In section 189(5) (disposal of appeal against sentence), after "175(2)(c)" insert " or (cza) ".

16 In section 193A(4) (suspension of certain sentences pending determination of appeal)—

(a) for paragraphs (a) to (c) substitute—

"(aa) a community payback order;", and

(b) paragraph (e) is repealed.

17 Sections 228 to 234 (probation) are repealed.

18 In section 234H (disposal on revocation of drug treatment and testing order)—

(a) in subsection (1), for "drugs" substitute " drug ", and

(b) in subsection (3), for the words from "subject to" where they first occur to the end substitute " , in respect of the same offence, also subject to a community payback order, by virtue of section 234J, or a restriction of liberty order, by virtue of section 245D, the court shall, before disposing of the offender under subsection (1) above, revoke the community payback order or restriction of liberty order (as the case may be). ".

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19 (1) Section 234J (concurrent drug treatment and testing and probation orders) is amended as follows.

(2) In subsection (1)—

(a) for "sections 228(1) and" substitute " section ", and

(b) for "probation order" substitute " community payback order ".

(3) In subsection (3)—

(a) for "probation order" substitute " community payback order ", and

(b) for paragraphs (b) and (c) substitute—

"(ba) the local authority within whose area the offender will reside for the duration of each order.".

(4) In subsection (4)—

(a) in paragraph (a), for "probation order and is dealt with under section 232(2)(c)" substitute " community payback order and is dealt with under section 227ZC(7)(d) ", and

(b) in paragraph (b), for "232(2)(c) of this Act in relation to the probation order" substitute " 227ZC(7)(d) of this Act in relation to the community payback order ".

(5) In subsection (5)—

(a) for "probation order" substitute " community payback order ", and

(b) for "232(2)" substitute " 227ZC(7) ".

20 Sections 235 to 245 (supervised attendance orders and community service orders) are repealed.

21 (1) Section 245A (restriction of liberty orders) is amended as follows.

(2) In subsection (2), the words from "but" to the end are repealed.

(3) After subsection (2) insert—

"(2A) In making a restriction of liberty order containing provision under subsection (2)(a), the court must ensure that the offender is not required, either by the order alone or the order taken together with any other relevant order or requirement, to be in any place or places for a period or periods totalling more than 12 hours in any one day.

(2B) In subsection (2A), "other relevant order or requirement" means—

(a) any other restriction of liberty order in effect in respect of the offender at the time the court is making the order referred to in subsection (2A), and

(b) any restricted movement requirement under section 227ZF in effect in respect of the offender at that time.".

(4) In subsection (12)(a), for "subsection (2)" substitute " subsection (2A) ".

22 (1) Section 245D (combination of restriction of liberty orders with other orders) is amended as follows.

(2) In subsection (1)(b)—

(a) in sub-paragraph (i), for "probation order made under section 228(1)" substitute " community payback order imposed under section 227A(1) ", and

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(b) in sub-paragraph (ii)—

(i) for "probation order made under section 228(1) of this Act," substitute " community payback order imposed under section 227A(1) of this Act or ", and

(ii) the words "or both such orders" are repealed.

(3) In subsection (2), for "probation order" substitute " community payback order ".

(4) In subsection (3)—

(a) the word "228(1)," is repealed,

(b) in paragraph (a), for "probation order" substitute " community payback order ", and

(c) in paragraph (b), for "either or both of a probation order and" substitute " either a community payback order or ".

(5) In subsection (4)—

(a) for "probation order" substitute " community payback order ", and

(b) for paragraph (b) substitute—

"(b) the local authority within whose area the offender will reside for the duration of each order.".

(6) Subsection (6) is repealed.

(7) In subsection (7)—

(a) in paragraph (a)—

(i) for "contained in a probation order and is dealt with under section 232(2)(c)" substitute " imposed by a community payback order and is dealt with under section 227ZC(7)(d) ", and

(ii) the words from "234G(2)(b)" to "section" where it third occurs are repealed,

(b) in paragraph (b), the words from "232(2)(c)" to "section" where it third occurs are repealed, and

(c) in paragraph (c), for "232(2)(c) of this Act in relation to a probation order" substitute " 227ZC(7)(d) of this Act in relation to a community payback order ".

(8) In subsection (8), for "232(2)" substitute " 227ZC ".

(9) In subsection (9)—

(a) in paragraph (a), for "probation order" substitute " community payback order ", and

(b) paragraph (c) is repealed.

23 (1) Section 245G (disposal on revocation of restriction of liberty order) is amended as follows.

(2) In subsection (2), for the words from "by virtue" to the end substitute " in respect of the same offence, also subject to a community payback order or a drug treatment and testing order, by virtue of section 245D(3), it shall before disposing of the offender under subsection (1) above, revoke the community payback order or drug treatment and testing order. ".

(3) In subsection (3), for "probation order discharged" substitute " community payback order ".

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(4) Subsection (4) is repealed.

24 In section 245J (breach of certain orders: adjourning hearing and remanding in custody etc.)—

(a) in subsection (1)—

(i) for "a probationer or" substitute " an ",

(ii) for "probation order" substitute " community payback order ", and

(iii) the words "supervised attendance order, community service order" are repealed,

(b) in subsection (2), the words "probationer or" are repealed, and

(c) in subsection (4), for "A probationer or" substitute " An ".

25 Sections 245K to 245Q (community reparation orders) are repealed.

26 In section 246 (admonition and absolute discharge), in each of subsections (2) and (3), the words "and that a probation order is not appropriate" are repealed.

27 In section 249(2) (compensation order against convicted person), for paragraph (b) substitute—

"(ab) where, under section 227A of this Act, it imposes a community payback order;".

28 In section 307 (interpretation)—

(a) in subsection (1)—

(i) insert at the appropriate places—

""alcohol treatment requirement" has the meaning given in section 227V(1);"

""community payback order" means a community payback order (within the meaning of section 227A(2)) imposed under section 227A(1) or (4) or 227M(2);"

""compensation requirement" has the meaning given in section 227H(1);"

""conduct requirement" has the meaning given in section 227W(1);"

""drug treatment requirement" has the meaning given in section 227U(1);"

""mental health treatment requirement" has the meaning given in section 227R(1);"

""offender supervision requirement" has the meaning given in section 227G(1);"

""programme requirement" has the meaning given in section 227P(1);"

""residence requirement" has the meaning given in section 227Q(1);"

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""responsible officer", in relation to a community payback order, is to be construed in accordance with section 227C;"

""restricted movement requirement" has the meaning given in section 227ZF(1);"

""unpaid work or other activity requirement" has the meaning given in section 227I(1), and "level 1 unpaid work or other activity requirement" and "level 2 unpaid work or other activity requirement" are to be construed in accordance with section 227I(5) and (6) respectively;", and

(ii) the definitions of the following terms are repealed—

"appropriate court"
"community service order"
"probationer"
"probation order"
"probation period", and

(b) subsection (3) is repealed.

29 Schedules 6 and 7 are repealed.

PART 2

OTHER ENACTMENTS

VALID FROM 01/02/2011

The Firearms Act 1968 (c.27)

30 (1) The Firearms Act 1968 is amended as follows.

(2) In section 21(3ZA) (possession of firearms by persons previously convicted of crime), for paragraph (b) substitute—

"(b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).".

(3) In section 52(1A) (forfeiture and disposal of firearms: cancellation of certificate by convicting court), for paragraph (b) substitute—

"(b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).".

VALID FROM 01/02/2011

The Social Work (Scotland) Act 1968 (c.49)

31 (1) The Social Work (Scotland) Act 1968 is amended as follows.

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(2) In section 27 (supervision and care of persons put on probation or released from prisons etc.), in subsection (1)(b)—

(a) in paragraph (iii), for the words from "community service order" to the end substitute " community payback order imposed under section 227A or 227M of the Criminal Procedure (Scotland) Act 1995 imposing an unpaid work or other activity requirement ", and

(b) sub-paragraphs (iv) and (va) are repealed.

(3) In section 86(3) (adjustments between authority providing accommodation etc. and authority of area of residence), after "supervision order" insert " , community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995, ".

VALID FROM 01/02/2011

The Rehabilitation of Offenders Act 1974 (c.53)

32 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.

(2) In section 5(4A)(rehabilitation periods for particular sentences), the words "a probation order or" are repealed.

(3) In section 6(3)(the rehabilitation period applicable to a conviction), the following are repealed—

(a) the words "or a probation order was made",

(b) the words "or a breach of the order", and

(c) the words "or probation order".

VALID FROM 01/02/2011

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

33 In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part 2 (ineligibility for and disqualification and excusal from jury service), in paragraph (bb)—

(a) for sub-paragraph (i) substitute—

"(i) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46);", and

(b) sub-paragraph (iii) is repealed.

VALID FROM 01/02/2011

The Local Government and Planning (Scotland) Act 1982 (c.43)

34 In section 24 of the Local Government and Planning (Scotland) Act 1982 (councils' functions in relation to the provision of gardening assistance for the

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disabled and the elderly), in subsection (3), for the words from "instruction" to "that Act" substitute " determination that may be made or instruction that may be given, for the purposes of an unpaid work or other activity requirement imposed in a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46), by the responsible officer in relation to the order, ".

VALID FROM 01/02/2011

The 1982 Act

35 (1) The 1982 Act is amended as follows.

(2) In section 49(6) (dangerous and annoying creatures), the words "or makes a probation order in relation to him" are repealed.

(3) In section 58(3) (convicted thief in possession)—

(a) the words "or makes a probation order in relation to him" are repealed, and

(b) for the words from "discharged absolutely," to the end substitute " discharged absolutely. ".

VALID FROM 01/02/2011

The Foster Children (Scotland) Act 1984 (c.56)

36 In section 2 of the Foster Children (Scotland) Act 1984 (exceptions to section 1), in subsection (3), for "probation order" substitute " community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46) ".

VALID FROM 01/02/2011

The Road Traffic Offenders Act 1988 (c.53)

37 In section 46(3)(b) of the Road Traffic Offenders Act 1988 (combination of disqualification and endorsement with probation orders and orders for discharge), the words "section 228 (probation) or" are repealed.

The Jobseekers Act 1995 (c.18)

38 In section 20D(5) of the Jobseekers Act 1995 (as inserted by section 25(2) of the Welfare Reform Act 2009 (c.24) (jobseeker's allowance: sanctions for violent conduct etc. in connection with claim)), the words "or a court in Scotland makes a probation order" are repealed.

Commencement Information

I19 Sch. 2 para. 38 coming into force in accordance with S.S.I. 2010/413, art. 2, **Sch.** (with art. 3)

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 01/02/2011

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)

39 In Schedule 3 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (transitional provisions, transitory modifications and savings), in Part 2, paragraph 13 is repealed.

VALID FROM 01/02/2011

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

40 (1) The Proceeds of Crime (Scotland) Act 1995 is amended as follows.

(2) In section 25(9) (recall or variation of suspended forfeiture order), the words "probation order or" are repealed.

(3) In section 26(9) (property wrongly forfeited: return or compensation), the words "probation order or" are repealed.

VALID FROM 01/02/2011

The Crime and Punishment (Scotland) Act 1997 (c.48)

41 In the Crime and Punishment (Scotland) Act 1997, the following provisions are repealed—

(a) section 26 (evidence concerning certain orders), and

(b) in Schedule 1 (minor and consequential amendments), in paragraph 21, sub-paragraphs (27) to (29).

VALID FROM 01/02/2011

The Crime and Disorder Act 1998 (c.37)

42 In the Crime and Disorder Act 1998, in Schedule 6 (drug treatment and testing orders: amendment of the 1995 Act), in Part 1, paragraphs 1 and 2 are repealed.

VALID FROM 01/02/2011

The Powers of Criminal Courts (Sentencing) Act 2000 (c.6)

43 In Schedule 9 to the Powers of Criminal Courts (Sentencing) Act 2000 (consequential amendments), paragraphs 176 to 178 are repealed.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

VALID FROM 01/02/2011

The Criminal Justice and Court Services Act 2000 (c.43)

44 (1) Schedule 7 to the Criminal Justice and Court Services Act 2000 (minor and consequential amendments) is amended as follows.

(2) In paragraph 4(2), in the entry relating to the Criminal Procedure (Scotland) Act 1995, for "sections 209(3)(a) and 234(1)(a)" substitute " section 209(3)(a) ".

(3) Paragraphs 122 to 125 are repealed.

VALID FROM 01/02/2011

The Social Security Fraud Act 2001 (c.11)

45 (1) The Social Security Fraud Act 2001 is amended as follows.

(2) In section 6C(5)(b)(i) (provisions supplementary to section 6B), the words "or a court in Scotland makes a probation order" are repealed.

(3) In section 7(9)(b) (loss of benefit for commission of benefit offences), the words "or a court in Scotland makes a probation order" are repealed.

VALID FROM 01/02/2011

The Justice (Northern Ireland) Act 2002 (c.26)

46 In Schedule 4 to the Justice (Northern Ireland) Act 2002 (functions of justices of the peace), paragraph 37 is repealed.

VALID FROM 01/02/2011

The Criminal Justice (Scotland) Act 2003 (asp 7)

47 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 42 (drugs courts)—

(a) in subsection (4)—

(i) for "probationer with the requirements of a probation order" substitute " community payback order ",

(ii) in paragraph (b), for the words from "make" to "work" substitute " in the case of a failure to comply with the requirements of a drug treatment and testing order, make a community payback order imposing a level 1 unpaid work or other activity requirement, so however that the total hours of unpaid work or other activity ", and

(iii) for "probation order" where those words second occur substitute " community payback order ",

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) in subsection (6), for paragraph (b) substitute—

"(b) alleged at—

(i) a progress review carried out by such a court in relation to a community payback order; or

(ii) a diet of such a court to which an offender has been cited under section 227ZC(2) of that Act (breach of community payback order),

that the offender has failed to comply with a requirement imposed by a community payback order,",

(c) in subsection (7)—

(i) the words "or probationer" are repealed, and

(ii) for "232" substitute " 227ZC ",

(d) for subsection (9) substitute—

"(9) If a community payback order is revoked under section 227ZC(7)(b) of the 1995 Act, the court (whether or not a drugs court) must, in dealing with the offender by virtue of that section, take into account any sentence which has been imposed under paragraph (a) of subsection (4) of this section in relation to a failure to comply with the community payback order.",

(e) in subsection (10)—

(i) insert at the appropriate places—

""community payback order" means an order imposed under section 227A of the 1995 Act;"

""level 1 unpaid work or other activity requirement" has the meaning given in section 227I(5) of the 1995 Act;", and

(ii) the definition of "probation order" is repealed, and

(f) in subsection (11), paragraphs (a) and (b) are repealed.

(3) Section 46 (requirement for remote monitoring in probation order) is repealed.

(4) In section 50 (amendments in relation to certain non-custodial sentences), subsections (1), (2) and (4) are repealed.

(5) In section 60 (unified citation provisions)—

(a) in subsection (1), paragraphs (a), (b), (e) and (f) are repealed, and

(b) subsections (3) and (4) are repealed.

VALID FROM 01/02/2011

The Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

48 In the Mental Health (Care and Treatment) (Scotland) Act 2003, the following provisions are repealed—

(a) section 135 (amendment of 1995 Act: probation for treatment of mental disorder), and

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(b) in schedule 4 (minor and consequential amendments), in paragraph 8, sub-paragraph (15).

VALID FROM 01/02/2011

The Criminal Justice Act 2003 (c.44)

49 In Schedule 32 to the Criminal Justice Act 2003 (amendments relating to sentencing), paragraphs69 to 72 are repealed.

VALID FROM 01/02/2011

The Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

50 In the Antisocial Behaviour etc. (Scotland) Act 2004, the following provisions are repealed—

(a) section 120 (community reparation orders), and

(b) in schedule 4 (minor and consequential amendments), in paragraph 5, sub-paragraphs (3), (5), (6) and (11).

VALID FROM 01/02/2011

The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

51 (1) The Management of Offenders etc. (Scotland) Act 2005 is amended as follows.

(2) In section 10 (arrangements for assessing and managing risks posed by certain offenders), in subsection (1)(b), for sub-paragraph (i) substitute—

"(i) is subject to a community payback order imposed under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46) imposing an offender supervision requirement (within the meaning given by section 227G(1) of that Act) whether alone or along with any other requirement, or".

(3) Section 12(probation progress review) is repealed.

VALID FROM 01/02/2011

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

52 In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, the following provisions are repealed—

(a) in section 49 (compensation orders), subsection (4),

(b) section 57(probation and community service orders), and

(c) in paragraph 26 of the schedule (modification of enactments), sub-paragraphs (l) and (n).

VALID FROM 01/02/2011

The Criminal Justice and Immigration Act 2008 (c.4)

53 In Part 1 of Schedule 4 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders: consequential amendments), paragraphs 43 to 46 are repealed.

PROSPECTIVE

SCHEDULE 3

(introduced by section 18(9))

SHORT-TERM CUSTODY AND COMMUNITY SENTENCES: CONSEQUENTIAL AMENDMENTS

Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

1 The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended in accordance with paragraphs 2 to 14.

2 In section 34 (period during which licence in force), for subsection (1) substitute—

"(1) Where a short-term custody and community prisoner is released on short-term community licence by virtue of section 5, 27(1) or, as the case may be, 42(4)(a), the licence remains in force until the expiry of the prisoner's sentence.".

3 In the following places after "section" insert " 5, "

(a) section 35 (prisoner to comply with licence conditions),

(b) subsection (1)(a) of section 36 (suspension of licence conditions while detained), and

(c) subsections (1)(a) and (4)(a) of section 37 (revocation of licence).

4 In section 40 (compassionate release: effect of revocation in certain circumstances), in subsection (3), for paragraph (a) substitute—

"(a) in the case of a short-term custody and community prisoner, one-half of the prisoner's sentence,".

5 (1) Section 42 (consideration by Parole Board) is amended as follows.

(2) In subsection (1), after "41(2)(b)" insert " , 42A(9) ".

(3) In subsection (5), after "on" insert " short-term community licence, ".

6 After section 42 insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"**42A Determination that section 42(3) applicable: consequences for short-term custody and community prisoners**

(1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a short-term custody and community prisoner.

(2) The Parole Board must give the prisoner reasons in writing for its determination.

(3) If on the day of the determination less than 4 months of the prisoner's sentence remain to be served, the prisoner must be confined until the expiry of the prisoner's sentence.

(4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner's sentence remain to be served, the Parole Board may, subject to section 26, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner's case.

(5) That period is the period—
(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending on the expiry of the prisoner's sentence.

(6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner's sentence.

(7) If on the day of the determination at least 2 years of the prisoner's sentence remain to be served, the Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner's case.

(8) That period is the period—
(a) beginning with the day falling 4 months after the day of the determination, and
(b) ending immediately before the second anniversary of the day of the determination.

(9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.".

7 (1) Section 45 (prisoner's right to request early reconsideration by Parole Board) is amended as follows.

(2) In subsection (1), after "under—" insert—
"(za) section 42A(4),
(zb) section 42A(7),".

(3) In subsection (2), after "section" insert " 42A(4), 42A(7), ".

(4) In subsection (3), after "section" insert " 42A(4) or ".

(5) In subsection (4), after "section" insert " 42A(4) or, as the case may be, ".

8 In section 46 (multiple licences to be replaced by single licence), in subsection (1)(a), after "section" insert " 5, ".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

9 (1) Section 51 (prisoners serving extended sentences) is amended as follows.

(2) In subsection (1), for "(2)" substitute " (1A) ".

(3) After that subsection insert—

"(1A) In section 5, the reference to the prisoner's short-term custody and community sentence is to be read as a reference to the confinement term of the prisoner's extended sentence.".

10 (1) Section 55 (application to young offenders and children) is amended as follows.

(2) In subsection (1), for "custody-only" substitute " short-term custody and community ".

(3) In subsection (2)(a), for "15 days" substitute " the prescribed period ".

(4) In subsection (4)(a), for "15 days or more" substitute " at least the prescribed period ".

11 In section 56 (fine defaulters and persons in contempt of court), in subsection (1), for "custody-only" substitute " short-term custody and community ".

12 In section 65 (rules, regulations and orders), in subsection (4)(a), for "4(2), 7, 47(1)(b)" substitute " 4(1), 7, 47(1)(b), 55(2) or (4) ".

13 (1) Schedule 2 (prisoners serving more than one sentence) is amended as follows.

(2) Before paragraph 1, in the italic heading, for "custody-only" substitute " short-term custody and community ".

(3) In paragraph 1—

(a) in sub-paragraph (1)(a), for "custody-only" substitute " short-term custody and community ",

(b) in sub-paragraph (3)—

(i) for "and 34(1)" substitute " , 34(1) and 42A ", and

(ii) for "custody-only" in both places where it occurs substitute " short-term custody and community ", and

(c) after sub-paragraph (3) add—

"(4) In section 47(3A)—

(a) references to the expiry of one-half of the prisoner's sentence are to be read as references to the expiry of one-half of the short-term custody and community sentence that expires after the expiry of one-half of the other short-term custody and community sentence (or sentences),

(b) in paragraph (a)(i), the reference to the expiry of the prisoner's sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.".

(4) Before paragraph 3, in the italic heading, for "custody-only" substitute " short-term custody and community ".

(5) In paragraph 3—

(a) in sub-paragraph (1)(a), for "custody-only" substitute " short-term custody and community ",

(b) in sub-paragraph (3), for "and 34(1)" substitute " , 34(1), 42A and subsections (3A) and (8)(a) of section 47 ",

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(c) in sub-paragraph (4)—

(i) for "the custody-only" substitute " one-half of the short-term custody and community ", and

(ii) in paragraph (a), for "any other custody-only" substitute " one-half of any other short-term custody and community ", and

(d) in sub-paragraph (5)(b)(ii) and (6)(b), for "the custody-only" substitute " at least one-half of the short-term custody and community ".

(6) In paragraph 5—

(a) in sub-paragraph (1), in both paragraphs (a) and (b), for "custody-only" substitute " short-term custody and community ",

(b) in sub-paragraph (3)—

(i) after "19" insert " , 29A, 29B ", and

(ii) after "(2)" insert " , 42A ", and

(c) in sub-paragraph (4)—

(i) for "the custody-only" substitute " one-half of the short-term custody and community ", and

(ii) in paragraph (a), for "any other custody-only" substitute " one-half of any other short-term custody and community ".

(7) In paragraph 6, in sub-paragraph (1)(b), after "section" insert " 5, ".

(8) In paragraph 7, after sub-paragraph (1) insert—

"(1A) Where a short-term custody and community sentence imposed on a prisoner is an extended sentence, the modifications in paragraphs 1(3) and (4) and 3(4), (5)(b)(ii), (6) and (8A) are to be read subject to sub-paragraph (2).".

14 (1) Schedule 3 (sentences framed to run consecutively) is amended as follows.

(2) In paragraph 1(4)(a), for "custody-only sentence, that sentence" substitute " short-term custody and community sentence, one-half of that sentence ".

(3) Before paragraph 3 insert—

"2A (1) This paragraph applies where—

(a) the court imposes a short-term custody and community sentence as a further sentence,

(b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and

(c) the prisoner's previous sentence (or one of the prisoner's previous sentences) is a short-term custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.".

(4) In paragraph 3—

(a) in sub-paragraph (1)(a), for "custody-only" substitute " short-term custody and community ", and

(b) after sub-paragraph (2) insert—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

"(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.".

(5) After paragraph 3 insert—

"3A (1) This paragraph applies where—

(a) the court imposes a custody and community sentence as a further sentence,

(b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and

(c) the prisoner's previous sentence (or one of the prisoner's previous sentences) is a short-term custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.".

(6) In paragraph 5—

(a) sub-paragraph (1) is repealed,

(b) in sub-paragraphs (2) and (3), for "paragraph 4" substitute " the relevant paragraph ",

(c) in sub-paragraph (4)—

(i) in paragraph (a), for "4(2) and (3)" substitute " sub-paragraphs (2) and (3) of the relevant paragraph ", and

(ii) in paragraph (c), for "paragraph 4(3)" substitute " sub-paragraph (3) of the relevant paragraph ",

(d) after sub-paragraph (4) insert—

"(4A) Where a short-term custody and community sentence or custody and community sentence imposed on a prisoner is an extended sentence, references in this schedule to—

(a) the prisoner's "previous sentence" are to be read as references to the "previous confinement term" of the prisoner's sentence,

(b) the prisoner's "further sentence" are to be read as references to the "further confinement term" of the prisoner's sentence.", and

(e) after sub-paragraph (5) insert—

"(6) In this paragraph "the relevant paragraph" means paragraph 2A, 3, 3A or 4 (whichever applies in the circumstances described).".

The 1995 Act

15 The 1995 Act is amended in accordance with paragraphs 16 and 17.

16 (1) Section 167 (forms of finding and sentence in summary proceedings) is amended as follows.

(2) In subsection (7D), for "any previous custody-only" substitute " one-half of any previous short-term custody and community ".

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(3) In subsection (7E), for "custody-only" substitute " short-term custody and community ".

17 (1) Section 210A (extended sentences for sex and violent offenders) is amended as follows.

(2) In subsections (1)(b) and (2)(b), after "a" insert " short-term community or ".

(3) In subsection (10), after the definition of "sexual offence" insert—

""short-term community licence" has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17);".".

VALID FROM 13/12/2010

SCHEDULE 4

(introduced by section 71(1))

CONVICTIONS BY COURTS IN OTHER EU MEMBER STATES: MODIFICATIONS OF ENACTMENTS

PART 1

THE 1995 ACT

The 1995 Act

1 The 1995 Act is amended as follows.

2 In section 23C(2)(d)(i) (previous convictions to be taken into consideration in determining bail), for "outwith Scotland" substitute " by courts outside the European Union ".

3 In section 27 (breach of bail conditions: offences), after subsection (3) insert—

"(3A) The reference in subsection (3)(b) to any previous conviction of an offence under subsection (1)(b) includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to an offence under subsection (1)(b).

(3B) The references in subsection (3)(c) to subsection (3) are to be read, in relation to a previous conviction by a court referred to in subsection (3A), as references to any provision that is equivalent to subsection (3).

(3C) Any issue of equivalence arising in pursuance of subsection (3A) or (3B) is for the court to determine.".

4 In section 202(2) (deferred sentence), for "Great Britain" substitute " the United Kingdom or in another member State of the European Union ".

5 In section 204 (restrictions on passing sentence of imprisonment or detention)—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(a) in each of subsections (1) and (2), after "United Kingdom" insert " or in another member State of the European Union ", and

(b) after subsection (4) insert—

"(4A) The court shall, for the purpose of determining whether a person has been previously sentenced to imprisonment or detention by a court in a member State of the European Union other than the United Kingdom—

(a) disregard any previous sentence of imprisonment which, being the equivalent of a suspended sentence, has not taken effect;

(b) construe detention as meaning an equivalent sentence to any of those mentioned in subsection (4)(b).

(4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.".

6 In section 205B (minimum sentence for third conviction of certain offences relating to drug trafficking)—

(a) in subsection (1)(b), for "been convicted in any part of the United Kingdom of two other class A drug trafficking offences" substitute " two previous convictions for relevant offences ", and

(b) after subsection (1) insert—

"(1A) In subsection (1), "relevant offence" means—

(a) in relation to a conviction by a court in any part of the United Kingdom, a class A drug trafficking offence;

(b) in relation to a conviction by a court in a member State of the European Union other than the United Kingdom, an offence that is equivalent to a class A drug trafficking offence.

(1B) Any issue of equivalence arising in pursuance of subsection (1A)(b) is for the court to determine.".

7 In section 275A (disclosure of accused's previous convictions where court allows questioning or evidence under section 275)—

(a) in subsection (10)—

(i) the word "or" immediately following paragraph (a) is repealed, and

(ii) after paragraph (a) insert—

"(aa) a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to one to which section 288C of this Act applies by virtue of subsection (2) thereof; or", and

(b) after subsection (10) insert—

"(10A) Any issue of equivalence arising in pursuance of subsection (10)(aa) is for the court to determine.".

8 In section 307 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

""conviction", in relation to a previous conviction by a court outside Scotland, means a final decision of a criminal court establishing guilt of a criminal offence;", and

(b) for subsection (5) substitute—

"(5) Except where the context requires otherwise—

(a) any reference in this Act to a previous conviction is to be construed as a reference to a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;

(b) any reference in this Act to a previous sentence is to be construed as a reference to a previous sentence passed by any such court;

(c) any reference to a previous conviction of a particular offence is to be construed, in relation to a previous conviction by a court outside Scotland, as a reference to a previous conviction of an equivalent offence; and

(d) any reference to a previous sentence of a particular kind is to be construed, in relation to a previous sentence passed by a court outside Scotland, as a reference to a previous sentence of an equivalent kind.".

PART 2

OTHER ENACTMENTS

The 1982 Act

9 In section 58 of the 1982 Act, after subsection (4) insert—

"(4A) In subsection (4), the reference to a conviction for theft includes a reference to a conviction by a court in England and Wales, Northern Ireland or a member State of the European Union other than the United Kingdom of an offence that is equivalent to theft.

(4B) Any issue of equivalence arising in pursuance of subsection (4A) is for the court to determine.".

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

10 In section 27(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (interpretation of Part 1), insert at the appropriate place—

""previous conviction" means a previous conviction by a court in any part of the United Kingdom or in any other member State of the European Union;".

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

11 (1) Section 9 of the Criminal Law (Consolidation) (Scotland) Act 1995 (permitting girl to use premises for intercourse) is amended as follows.

Status: *Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(2) In subsection (2A)—

(a) the word "or" immediately following paragraph (a) is repealed, and

(b) after paragraph (a) insert—

"(aa) that person has a previous conviction for a relevant foreign offence committed against a person under the age of 16; or".

(3) In subsection (3)—

(a) the word "and" immediately following paragraph (a) is repealed, and

(b) after paragraph (a) insert—

"(aa) "a previous conviction for a relevant foreign offence" has the same meaning as in section 39(5)(aa) of that Act; and".

PROSPECTIVE

The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

12 In section 4(1) of the Custodial Sentences and Weapons (Scotland) Act 2007 (basic definitions for purposes of Part 2), insert at the appropriate place—

""previous conviction" means a previous conviction by a court in any part of the United Kingdom or **[**[F9], where the court considers it to be appropriate,**]** in any [F10]... member State of the European Union,".

Textual Amendments

F9 Words in sch. 4 para. 12 inserted (31.12.2020) by The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **15(4)(a)** (with reg. 16)

F10 Word in sch. 4 para. 12 omitted (31.12.2020) by virtue of The Criminal Justice (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (S.S.I. 2020/339), regs. 1(3), **15(4)(b)** (with reg. 16)

The Sexual Offences (Scotland) Act 2009 (asp 9)

13 (1) Section 39 of the Sexual Offences (Scotland) Act 2009 (defences in relation to offences against older children) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a)—

(i) the word "or" immediately following sub-paragraph (i) is repealed, and

(ii) after sub-paragraph (i) insert—

"(ia) if A has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or", and

(b) in paragraph (b)—

(i) the word "or" immediately following sub-paragraph (i) is repealed, and

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Changes to legislation: *There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010. (See end of Document for details)*

(ii) after sub-paragraph (i) insert—

"(ia) if B has a previous conviction for a relevant foreign offence committed against a person under the age of 16, or".

(3) In subsection (5), after paragraph (a) insert—

"(aa) "a previous conviction for a relevant foreign offence" means a previous conviction by a court in a member State of the European Union other than the United Kingdom for an offence that is equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1,".

(4) After subsection (5) insert—

"(5A) Any issue of equivalence arising in pursuance of subsection (5)(aa) is for the court to determine.

(5B) For that purpose, an offence may be equivalent to one listed in paragraph 1, 4, 7, 10, 13 (so far as applying to an offence listed in paragraph 1, 4, 7 or 10) or 14 of schedule 1 even though, under the law of the member State (or part of the member State) in question, it is an offence—

(a) regardless of the age of the victim, or

(b) only if committed against a person under an age other than 16 years.".

VALID FROM 28/03/2011

SCHEDULE 5

(introduced by section 90(5))

WITNESS ANONYMITY ORDERS: TRANSITIONAL

Interpretation

1 In this schedule—

"commencement" means the day on which section 90 comes into force,

"pre-commencement anonymity order" means an order made by a court before commencement under any rule of law relating to the power of the court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the accused (or, on a defence application, from other accused),

"witness anonymity order" has the meaning given by section 271N of the 1995 Act.

Pre-commencement anonymity orders: appeals

2 (1) This paragraph applies where—

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(a) the High Court of Justiciary is considering an appeal against a conviction in a case where the trial began before commencement, and

(b) the court from which the appeal lies ("the trial court") made a pre-commencement anonymity order in relation to a witness at the trial.

(2) The High Court—

(a) may not quash the conviction solely on the ground that the trial court had no power under any rule of law to make the order mentioned in sub-paragraph (1)(b), but

(b) must quash the conviction if it considers that, as a result of the order, the accused did not receive a fair trial.

VALID FROM 13/12/2010

SCHEDULE 6

(introduced by section 198)

FURTHER MODIFICATIONS OF 2005 ACT

. . . . . .

VALID FROM 13/12/2010

SCHEDULE 7

(introduced by section 203)

MODIFICATIONS OF ENACTMENTS

. . . . . .

Status:
Point in time view as at 01/12/2010. This version of this Act contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010.