

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, Cross Heading: The 1995 Act. (See end of Document for details)

SCHEDULE 7 **S** MODIFICATIONS OF ENACTMENTS

The 1995 Act

25 The 1995 Act is amended as follows.

Commencement Information

II Sch. 7 para. 25 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

PROSPECTIVE

26 After section 5 insert—

“5A Signing of warrants etc. outwith sheriff’s jurisdiction

The competence of a sheriff to sign any warrant, judgment, interlocutor or other document relating to any proceedings within the sheriff’s jurisdiction extends to competence to do so at any other place in Scotland.”

27 In section 10A (jurisdiction for transferred cases)—

(a) after subsection (1) insert—

“(1A) The jurisdiction of a JP court includes jurisdiction for any cases which come before it by virtue of section 137CA, 137CB or 137CC of this Act.”,

(b) in subsection (2)—

(i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (a) insert—

“(aa) power to prosecute in any cases which come before a JP court of that district by virtue of a provision mentioned in subsection (1A) above;”, and

(iii) in paragraph (b), for “criminal proceedings which otherwise come before that sheriff” substitute “the other cases which come before that sheriff when exercising criminal jurisdiction or (as the case may be) before that JP court”, and

(c) for subsection (3) substitute—

“(3) This section is without prejudice to sections 4 to 10 of this Act.”

Commencement Information

I2 Sch. 7 para. 27 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

28 In section 11 (certain offences committed outside Scotland)—

(a) in subsection (3), for “proceeded against, indicted” substitute “prosecuted”, and

(b) in subsection (4), for “dealt with, indicted” substitute “prosecuted”.

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I3 [Sch. 7 para. 28](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 29 In section 17A (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest), in subsection (1)—
- (a) for paragraphs (za) and (a) substitute—
- “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and
- (b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.

Commencement Information

I4 [Sch. 7 para. 29](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 30 In section 18(8)(c) (power to take prints etc. under authority of a warrant unaffected by section), for “prints, impressions” substitute “relevant physical data”.

Commencement Information

I5 [Sch. 7 para. 30](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 31 In section 19(1)(b) (samples etc. taken from person convicted of offence), the words “impression or”, in both places where they occur, are repealed.

Commencement Information

I6 [Sch. 7 para. 31](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 32 In section 19A (samples etc. from persons convicted of sexual and violent offences), in subsection (6), in paragraph (a) of the definition of “conviction”, for the words from “, by” to the end substitute “by reason of the special defence set out in section 51A of this Act;”.

Commencement Information

I7 [Sch. 7 para. 32](#) in force at 25.6.2012 with application in accordance with [art. 3](#) by [S.S.I. 2012/160](#), [art. 3](#), [Sch.](#) (with [art. 4](#))

- 33 Section 20 (use of prints, samples, etc.) is repealed.

Commencement Information

I8 [Sch. 7 para. 33](#) in force at 1.8.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 34 In section 22 (liberation by police), subsections (1H), (2), (4), (4A) and (5) are repealed.

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I9 Sch. 7 para. 34 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 35 In section 23A (bail and liberation where person already in custody)—
- (a) in each of subsections (1) and (4), for “23 or 65(8C)” substitute “ 23, 65(8C) or 107A(7)(b) ”, and
 - (b) in subsection (3), for “22A(3) or 23(7)” substitute “ 22A(3), 23(7) or 107A(7)(b) ”.

Commencement Information

I10 Sch. 7 para. 35 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 36 In section 35 (judicial examination), in subsection (4A)—
- (a) for paragraphs (za) and (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and
 - (b) in paragraph (c), for the words from “preliminary” to “trial” substitute “ hearing ”.

Commencement Information

I11 Sch. 7 para. 36 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 37 In section 55(4) (acquittal at examination of facts)—
- (a) for the words from “insane” to “omission” substitute “ not, because of section 51A of this Act, criminally responsible for the conduct ”, and
 - (b) for “on the ground of such insanity” substitute “ by reason of the special defence set out in that section ”.

Commencement Information

I12 Sch. 7 para. 37 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 38 The title of section 57 (disposal of case where accused found to be insane) is amended by substituting “not criminally responsible or unfit for trial” for “to be insane” and the cross-heading which precedes it is amended by substituting “ *where accused found not criminally responsible* ” for “*in case of insanity*”.

Commencement Information

I13 Sch. 7 para. 38 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 39 In section 57 (disposal of case where accused found to be insane), in subsection (1) (a), for the words from “, by” to “omission” substitute “ acquitted by reason of the special defence set out in section 51A of this Act ”.

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I14 [Sch. 7 para. 39](#) in force at 25.6.2012 with application in accordance with art. 3 by [S.S.I. 2012/160](#), art. 3, [Sch.](#) (with art. 4)

- 40 In section 60C(7) (disapplication of provision where person acquitted on ground of insanity)—
- (a) after “apply” insert “ in a case where the person is acquitted by reason of the special defence set out in section 51A of this Act. ”, and
 - (b) paragraphs (a) and (b) are repealed.

Commencement Information

I15 [Sch. 7 para. 40](#) in force at 25.6.2012 with application in accordance with art. 3 by [S.S.I. 2012/160](#), art. 3, [Sch.](#) (with art. 4)

- 41 In section 61 (requirements as to medical evidence)—
- (a) in subsection (1), the words “under section 54(1)(a) of this Act or” are repealed,
 - (b) in subsection (3), the words “or 54(1)(a)” are repealed, and
 - (c) in subsection (5), for “the said section 54(1)” substitute “ section 54(1)(c) of this Act ”.

Commencement Information

I16 [Sch. 7 para. 41](#) in force at 25.6.2012 with application in accordance with art. 3 by [S.S.I. 2012/160](#), art. 3, [Sch.](#) (with art. 4)

- 42 The title of section 62 (appeal by accused in case involving insanity) is amended by substituting “ not criminally responsible or unfit for trial ” for “in case involving insanity” and the section is amended as follows—
- (a) in subsection (1)(a), for “insane” substitute “ unfit for trial ”, and
 - (b) in subsection (2)(b)(iii), for the words from “virtue” to “omission” substitute “ reason of the special defence set out in section 51A of this Act ”.

Commencement Information

I17 [Sch. 7 para. 42](#) in force at 25.6.2012 with application in accordance with art. 3 by [S.S.I. 2012/160](#), art. 3, [Sch.](#) (with art. 4)

- 43 The title of section 63 (appeal by prosecutor in case involving insanity) is amended by substituting “ where accused found not criminally responsible or unfit for trial ” for “in case involving insanity” and subsection (1) of that section is amended as follows—
- (a) in paragraph (a), for “insane” substitute “ unfit for trial ”,
 - (b) for paragraph (b) substitute—
 - “(b) an acquittal by reason of the special defence set out in section 51A of this Act;”, and

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- (c) in paragraph (c), for the words from “on” to “omission” substitute “by reason of the special defence set out in section 51A of this Act”.

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I18 Sch. 7 para. 43 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 44 In section 66 (service and lodging of indictment etc.), in subsection (6A)(a)—
- (a) for sub-paragraphs (zi) and (i) substitute—
- “(i) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer”, and
- (b) in sub-paragraph (iii), for the words from “preliminary” to “trial” substitute “hearing”.

Commencement Information

I19 Sch. 7 para. 44 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 45 In section 71 (first diet)—
- (a) in subsection (A1), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”,
- (b) in subsection (B1)(c), for the words “before the trial diet” substitute “in relation to any hearing in the course of the proceedings”,
- (c) in subsection (1A)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
- (d) in subsection (1B)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
- (e) in subsection (5A)(b), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”, and
- (f) after subsection (7), insert—
- “(7A) In subsections (A1) and (5A)(b), “relevant hearing” means—
- (a) in relation to proceedings mentioned in paragraph (a) of subsection (B1), any hearing at, or for the purposes of, which a witness is to give evidence,
- (b) in relation to proceedings mentioned in paragraph (b) of that subsection, a hearing referred to in section 288E(2A),
- (c) in relation to proceedings mentioned in paragraph (c) of that subsection, a hearing in respect of which an order is made under section 288F.”.

Commencement Information

I20 Sch. 7 para. 45 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

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- 46 In section 78(2) (which attracts the procedure for notifying special defences in relation to certain other defences), after “apply” insert “ to a plea of diminished responsibility or ”.

Commencement Information

I21 Sch. 7 para. 46 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 47 In section 79 (preliminary pleas and preliminary issues), in subsection (2)(b)(ii), after “under section” insert “ 22ZB(3)(b), ”.

Commencement Information

I22 Sch. 7 para. 47 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 48 In section 85 (juries: citation and attendance of jurors), in subsection (6), after “section 1” insert “ or 1A ”.

Commencement Information

I23 Sch. 7 para. 48 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

- 49 In section 90D (review of orders under section 90B(1)(a) or (b)), in subsection (3) (b), for “any other any” substitute “ any other ”.

Commencement Information

I24 Sch. 7 para. 49 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

- 50 In section 102A (failure of accused to appear), for paragraph (b) of subsection (4) substitute—
 “(b) section 27(7) of this Act.”.

Commencement Information

I25 Sch. 7 para. 50 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 51 In section 118(5) (disposal of appeal from solemn proceedings where High Court considers appellant to have been insane)—
 (a) for “insane when he did so” substitute “ not, because of section 51A of this Act, criminally responsible for it ”, and
 (b) for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of this Act ”.

Commencement Information

I26 Sch. 7 para. 51 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

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- 52 In section 136A (time limits for transferred and related cases), in subsection (1)—
- (a) in paragraph (a)(i), for “in pursuance of section 137A(1)” substitute “ under section 137A or 137CA ”, and
 - (b) in paragraph (a)(ii), for “in pursuance of section 137B(1), (1A) or (1C)” substitute “ under 137B or 137CB ”.

Commencement Information

I27 Sch. 7 para. 52 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 53 In section 137B (transfer of sheriff court summary proceedings outwith sheriffdom), in subsection (4), for “a sheriff who has made an order under subsection (2A) above” substitute “ the sheriff who has made an order under subsection (2A) above (or another sheriff of the same sheriffdom) ”.

Commencement Information

I28 Sch. 7 para. 53 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 54 In section 140 (citation), in subsection (2A)—
- (a) for paragraph (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,”, and
 - (b) in paragraph (c), for the words “his defence at the trial” substitute “ the conduct of his case at, or for the purposes of, the hearing ”.

Commencement Information

I29 Sch. 7 para. 54 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 55 In section 144 (procedure at first diet), in subsection (3A)—
- (a) for paragraph (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and
 - (b) in paragraph (c), for the words “his defence at the trial” substitute “ the conduct of his case at, or for the purposes of, the hearing ”.

Commencement Information

I30 Sch. 7 para. 55 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 56 In section 146 (plea of not guilty), in subsection (3A)—
- (a) for paragraph (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,”, and

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- (b) in paragraph (c), for the words “his defence at the trial” substitute “ the conduct of his case at, or for the purposes of, the hearing ”.

Commencement Information

I31 Sch. 7 para. 56 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 57 The title of section 190 (disposal of appeal where appellant insane) is amended by substituting “ not criminally responsible ” for “insane”.

Commencement Information

I32 Sch. 7 para. 57 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 58 In section 190—
- (a) in subsection (1), for “insane when he did so” substitute “ not, because of section 51A of this Act, criminally responsible for it ”, and
- (b) for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of this Act ”.

Commencement Information

I33 Sch. 7 para. 58 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

- 59 In section 247 (effect of probation and absolute discharge)—
- (a) in subsection (1), for the words from “placing” to “him” substitute “ discharging the offender ”,
- (b) in subsection (2), the words “placed on probation or” are repealed, and
- (c) subsection (6) is repealed.

Commencement Information

I34 Sch. 7 para. 59 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 60 In section 254 (search warrant for forfeited articles)—
- (a) the existing provision becomes subsection (1), and
- (b) after that subsection insert—
- “(2) In subsection (1), “article” includes animal.”.

Commencement Information

I35 Sch. 7 para. 60 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 61 In section 258 (uncontroversial evidence), after subsection (4A) insert—

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“(4AA) Where in summary proceedings the relevant diet for the purposes of subsection (4A) above is an intermediate diet, an application under that subsection may be made at (or at any time before) that diet.”.

Commencement Information

I36 Sch. 7 para. 61 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

62 In section 307 (interpretation), in subsection (1), after the definition of “treatment order”, insert—

““unfit for trial” has the meaning given by section 53F of this Act;”.

Commencement Information

I37 Sch. 7 para. 62 in force at 25.6.2012 with application in accordance with art. 3 by S.S.I. 2012/160, art. 3, Sch. (with art. 4)

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