

Status: Point in time view as at 06/06/2011.

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 07/05/2015

SCHEDULE 1

(introduced by section 1(2))

THE SCOTTISH SENTENCING COUNCIL

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SCHEDULE 2

(introduced by section 1(2))

COMMUNITY PAYBACK ORDERS: CONSEQUENTIAL MODIFICATIONS

PART 1

THE 1995 ACT

The 1995 Act

1 The 1995 Act is amended as follows.

Commencement Information

I1 Sch. 2 para. 1 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

2 In section 52H(3) (early termination of assessment order), the following are repealed—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).

Commencement Information

I2 Sch. 2 para. 2 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

3 In section 52R(3) (termination of treatment order), the following are repealed—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).

Commencement Information

I3 Sch. 2 para. 3 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

4 In section 53(12)(a) (interim compulsion orders), for sub-paragraphs (vi) and (vii) substitute—

“(vi) impose a community payback order;

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- (vii) make a drug treatment and testing order; or
 (viii) make a restriction of liberty order.”.

Commencement Information

I4 Sch. 2 para. 4 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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.”.

Commencement Information

I5 Sch. 2 para. 5 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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 ”.

Commencement Information

I6 Sch. 2 para. 6 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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;”.

Commencement Information

I7 Sch. 2 para. 7 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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) ”.

Commencement Information

I8 Sch. 2 para. 8 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 9 In section 118(4) (disposal of appeals against sentence), after “(d),” insert “ (dza), ”.

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I9 Sch. 2 para. 9 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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- 10 In section 121A(4) (suspension of certain sentences pending determination of appeal), for paragraphs (a) to (c) substitute—
“(aa) a community payback order;”.

Commencement Information

I10 Sch. 2 para. 10 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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) ”.

Commencement Information

I11 Sch. 2 para. 11 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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) ”.

Commencement Information

I12 Sch. 2 para. 12 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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) ”.

Commencement Information

I13 Sch. 2 para. 13 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 14 In section 187(1) (leave to appeal against sentence), for “175(2)(b) or (c)” substitute “ 175(2)(b), (c) or (cza) ”.

Commencement Information

I14 Sch. 2 para. 14 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 15 In section 189(5) (disposal of appeal against sentence), after “175(2)(c)” insert “ or (cza) ”.

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I15 Sch. 2 para. 15 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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.

Commencement Information

I16 Sch. 2 para. 16 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 17 Sections 228 to 234 (probation) are repealed.

Commencement Information

I17 Sch. 2 para. 17 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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). ”.

Commencement Information

I18 Sch. 2 para. 18 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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

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(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) ”.

Commencement Information

I19 Sch. 2 para. 19 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

20 Sections 235 to 245 (supervised attendance orders and community service orders) are repealed.

Commencement Information

I20 Sch. 2 para. 20 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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) ”.

Commencement Information

I21 Sch. 2 para. 21 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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
- (b) in sub-paragraph (ii)—

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- (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.

Commencement Information

I22 Sch. 2 para. 22 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

- 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

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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”.

(4) Subsection (4) is repealed.

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I23 Sch. 2 para. 23 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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 ”.

Commencement Information

I24 Sch. 2 para. 24 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

25 Sections 245K to 245Q (community reparation orders) are repealed.

Commencement Information

I25 Sch. 2 para. 25 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I26 Sch. 2 para. 26 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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;”.

Commencement Information

I27 Sch. 2 para. 27 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

28 In section 307 (interpretation)—

(a) in subsection (1)—

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(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);”

““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.

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I28 Sch. 2 para. 28 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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I29 Sch. 2 para. 29 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

PART 2

OTHER ENACTMENTS

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).”.

Commencement Information

I30 Sch. 2 para. 30 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

The Social Work (Scotland) Act 1968 (c.49)

- 31 (1) The Social Work (Scotland) Act 1968 is amended as follows.
- (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,”.

Commencement Information

I31 Sch. 2 para. 31 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

The Rehabilitation of Offenders Act 1974 (c.53)

- 32 (1) The Rehabilitation of Offenders Act 1974 is amended as follows.

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- (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”.

Commencement Information

I32 Sch. 2 para. 32 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I33 Sch. 2 para. 33 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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 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, ”.

Commencement Information

I34 Sch. 2 para. 34 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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)—

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- (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.”

Commencement Information

I35 Sch. 2 para. 35 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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)”.

Commencement Information

I36 Sch. 2 para. 36 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I37 Sch. 2 para. 37 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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

I38 Sch. 2 para. 38 coming into force in accordance with S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

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I39 Sch. 2 para. 39 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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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.

Commencement Information

I40 Sch. 2 para. 40 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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, subparagraphs (27) to (29).

Commencement Information

I41 Sch. 2 para. 41 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I42 Sch. 2 para. 42 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I43 Sch. 2 para. 43 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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) ”.

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(3) Paragraphs 122 to 125 are repealed.

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I44 Sch. 2 para. 44 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I45 Sch. 2 para. 45 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I46 Sch. 2 para. 46 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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”,
- (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

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- (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.

Commencement Information

I47 Sch. 2 para. 47 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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
 - (b) in schedule 4 (minor and consequential amendments), in paragraph 8, sub-paragraph (15).

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Commencement Information

I48 Sch. 2 para. 48 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

The Criminal Justice Act 2003 (c.44)

- 49 In Schedule 32 to the Criminal Justice Act 2003 (amendments relating to sentencing), paragraphs 69 to 72 are repealed.

Commencement Information

I49 Sch. 2 para. 49 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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, subparagraphs (3), (5), (6) and (11).

Commencement Information

I50 Sch. 2 para. 50 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I51 Sch. 2 para. 51 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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

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- (c) in paragraph 26 of the schedule (modification of enactments), subparagraphs (l) and (n).

Commencement Information

I52 Sch. 2 para. 52 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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.

Commencement Information

I53 Sch. 2 para. 53 in force at 1.2.2011 by S.S.I. 2010/413, art. 2, Sch. (with art. 3)

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) ”.

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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)*

(3) In subsection (5), after “on” insert “ short-term community licence, ”.

6 After section 42 insert—

“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 ”.

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- (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, ”.
- 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—

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- (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 ”,
 - (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—

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(a) in sub-paragraph (1)(a), for “custody-only” substitute “ short-term custody and community ”, and

(b) after sub-paragraph (2) insert—

“(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.

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- (2) In subsection (7D), for “any previous custody-only” substitute “ one-half of any previous short-term custody and community ”.
- (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);”.”.

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.

Commencement Information

I54 Sch. 4 para. 1 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 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 ”.

Commencement Information

I55 Sch. 4 para. 2 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 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).

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(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.”.

Commencement Information

I56 Sch. 4 para. 3 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

4 In section 202(2) (deferred sentence), for “Great Britain” substitute “ the United Kingdom or in another member State of the European Union ”.

Commencement Information

I57 Sch. 4 para. 4 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

5 In section 204 (restrictions on passing sentence of imprisonment or detention)—
 (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.”.

Commencement Information

I58 Sch. 4 para. 5 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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;

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- (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.”.

Commencement Information

I59 Sch. 4 para. 6 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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.”.

Commencement Information

I60 Sch. 4 para. 7 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

8 In section 307 (interpretation)—

(a) in subsection (1), insert the following definition at the appropriate place—

““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

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- (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.”.

Commencement Information

I61 Sch. 4 para. 8 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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.”.

Commencement Information

I62 Sch. 4 para. 9 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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;”.

Commencement Information

I63 Sch. 4 para. 10 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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.
- (2) In subsection (2A)—
- (a) the word “or” immediately following paragraph (a) is repealed, and
- (b) after paragraph (a) insert—

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“(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”.

Commencement Information

I64 Sch. 4 para. 11 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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 [^{F1}, where the court considers it to be appropriate,] in any ^{F2}... member State of the European Union.”.

Textual Amendments

F1 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)

F2 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

(ii) after sub-paragraph (i) insert—

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“(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.”.

Commencement Information

I65 Sch. 4 para. 13 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

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.

Commencement Information

I66 Sch. 5 para. 1 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

Pre-commencement anonymity orders: appeals

- 2 (1) This paragraph applies where—
- (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 subparagraph (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.

Commencement Information

I67 Sch. 5 para. 2 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

SCHEDULE 6

(introduced by section 198)

FURTHER MODIFICATIONS OF 2005 ACT

- 1 The 2005 Act is amended in accordance with the following paragraphs.

Commencement Information

I68 Sch. 6 para. 1 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

VALID FROM 01/11/2011

- 2 In section 4 (the licensing objectives), subsection (2) is repealed.
- 3 In section 21 (notification of premises licence applications), subsection (5) is repealed.

Commencement Information

I69 Sch. 6 para. 3 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

- 4 In section 22 (objections and representations), subsection (2) is repealed.

Commencement Information

I70 Sch. 6 para. 4 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

- 5 In section 23 (determination of premises licence application), for subsection (6) substitute—

Status: Point in time view as at 06/06/2011.

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)

“(6) In considering whether the granting of the application would be inconsistent with one or more of the licensing objectives, the Licensing Board must in particular take into account—

- (a) any conviction, notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21, and
- (b) any report given by the appropriate chief constable under section 24A(2).”.

Commencement Information

I71 Sch. 6 para. 5 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

6 (1) Section 24 (applicant's duty to notify Licensing Board of convictions) is amended as follows.

(2) In subsection (8)(b), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

(3) For subsection (10) substitute—

“(10) In considering for the purposes of section 23 whether the granting of the application would be inconsistent with one or more of the licensing objectives, the Licensing Board must take into account, in addition to the matters in subsection (6) of that section—

- (a) any conviction confirmation of which is given by the appropriate chief constable in a notice under subsection (7)(b) of this section, or
- (b) any recommendation of the chief constable included in such a notice.”.

Commencement Information

I72 Sch. 6 para. 6 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

7 (1) Section 33 (transfer of premises licence on application of licence holder) is amended as follows.

(2) For subsections (7) to (9) substitute—

“(7) On giving a notice under subsection (6)(a) or (b), if the appropriate chief constable considers that it is necessary for the purposes of any of the licensing objectives that the application for the transfer of the licence to the transferee be refused, the chief constable may include in the notice a recommendation to that effect.

(8) Where, in relation to an application under subsection (1)—

- (a) the Licensing Board receives a notice under subsection (6)(a), and
 - (b) the notice does not include a recommendation under subsection (7),
- the Board must grant the application.

(9) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.”.

Status: Point in time view as at 06/06/2011.

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 (10)(a), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

Commencement Information

I73 Sch. 6 para. 7 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 8 In section 44 (procedure where Licensing Board receives notice of conviction), in subsection (5)(b), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

Commencement Information

I74 Sch. 6 para. 8 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

VALID FROM 01/11/2011

- 9 In section 57 (notification of occasional licence application to chief constable and Licensing Standards Officer), subsection (2) is repealed.

VALID FROM 01/11/2011

- 10 (1) Section 59 (determination of occasional licence application) is amended as follows.
(2) In subsection (2), paragraph (a) is repealed.
(3) Subsection (7) is repealed.

- 11 In section 69 (notification of extended hours application), in subsection (2), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

Commencement Information

I75 Sch. 6 para. 11 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 12 In section 73 (notification of personal licence application to chief constable), for subsection (4) substitute—
“(4) On giving a notice under subsection (3)(a) or (b), if the appropriate chief constable considers that it is necessary for the purposes of any of the licensing objectives that the personal licence application be refused, the chief constable may include in the notice a recommendation to that effect.”.

Commencement Information

I76 Sch. 6 para. 12 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

- 13 (1) Section 74 (determination of personal licence application) is amended as follows.
(2) In subsection (5), for paragraph (b) substitute—

Status: Point in time view as at 06/06/2011.

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 notice received from the appropriate chief constable under subsection (3)(a) or (b) of section 73 includes a recommendation under subsection (4) of that section.”.

(3) After subsection (5) insert—

“(5A) If—

- (a) all of those conditions are met in relation to the applicant,
- (b) the Board has received from the appropriate chief constable a notice under subsection (3)(b) of section 73, and
- (c) the notice does not include a recommendation under subsection (4) of that section,

the Board may hold a hearing for the purpose of considering and determining the application.

(5B) If the Board decides not to hold a hearing under subsection (5A), the Board must grant the application.”.

(4) In subsection (6)—

- (a) after “subsection (5)” insert “ or (5A) ”, and
- (b) in paragraph (a), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

Commencement Information

I77 Sch. 6 para. 13 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

14 (1) Section 75 (applicant's duty to notify Licensing Board of convictions) is amended as follows.

(2) In subsection (7)(b), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

(3) In subsection (9)—

- (a) the word “and” immediately following paragraph (a) is repealed, and
- (b) after paragraph (b) add “, and
- (c) references in it to a recommendation under section 73(4) include references to a recommendation under subsection (7) of this section.”.

Commencement Information

I78 Sch. 6 para. 14 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

15 (1) Section 83 (procedure where Licensing Board receives notice of conviction) is amended as follows.

(2) In subsection (5)(b), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

(3) In subsection (8)(c), for “the crime prevention objective” substitute “ any of the licensing objectives ”.

Status: Point in time view as at 06/06/2011.

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

I79 Sch. 6 para. 15 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

16 After section 84 insert—

“84A Power of chief constable to report conduct inconsistent with the licensing objectives

- (1) If a chief constable considers that any personal licence holder has acted in a manner which is inconsistent with any of the licensing objectives, the chief constable may report the matter to the relevant Licensing Board.
- (2) Where a Licensing Board receives a report from a chief constable under subsection (1), the Board must hold a hearing.
- (3) Subsections (6), (7) and (8)(a) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.
- (4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

Commencement Information

I80 Sch. 6 para. 16 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

VALID FROM 01/11/2011

17 In section 148 (index of defined expressions), in the table, the entry relating to “crime prevention objective” is repealed.

18 In schedule 1 (Licensing Boards), in paragraph 10(4), the words from “, or no notice” to the end are repealed.

Commencement Information

I81 Sch. 6 para. 18 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch. (with Sch.)

SCHEDULE 7

(introduced by section 203)

MODIFICATIONS OF ENACTMENTS

The Libel Act 1792 (c.60)

1 The Libel Act 1792 is repealed.

Status: Point in time view as at 06/06/2011.

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

I82 Sch. 7 para. 1 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Criminal Libel Act 1819 (c.8)

2 The Criminal Libel Act 1819 is repealed.

Commencement Information

I83 Sch. 7 para. 2 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The False Oaths (Scotland) Act 1933 (c.20)

3 The False Oaths (Scotland) Act 1933 is repealed.

Commencement Information

I84 Sch. 7 para. 3 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Public Records (Scotland) Act 1937 (c.43)

4 In section 14 of the Public Records (Scotland) Act 1937 (interpretation)—

(a) for the definition of “court records” substitute—

““court records” includes (in addition to records of the ordinary courts) records of the Scottish Land Court;”, and

(b) for subsection (2) substitute—

“(2) Any question as to whether or not a document is part of the records of a particular court is to be determined—

(a) in the case of the High Court, by the Lord Justice General,

(b) in any other case, by the Lord President.”.

Commencement Information

I85 Sch. 7 para. 4 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

The Law Officers Act 1944 (c.25)

5 In section 2(3) of the Law Officers Act 1944 (Lord Advocate and Solicitor General for Scotland), for the words from “three” to the end substitute “ 287 of the Criminal Procedure (Scotland) Act 1995 (c.46) ”.

Commencement Information

I86 Sch. 7 para. 5 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

The Defamation Act 1952 (c.66)

6 In the Defamation Act 1952, section 17(2) is repealed.

Commencement Information

I87 Sch. 7 para. 6 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

VALID FROM 01/11/2011

The Rehabilitation of Offenders Act 1974 (c.53)

7 The Rehabilitation of Offenders Act 1974 is amended as follows.

VALID FROM 25/06/2012

8 In section 1 (rehabilitated persons and spent convictions), in subsection (4) (b), after “insanity” insert “ or, as the case may be, a finding that a person is not criminally responsible under section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46) ”.

9 In section 6(6)(bb) (convictions in service disciplinary proceedings), for “the Schedule” substitute “ Schedule 1 ”.

10 The Schedule (service disciplinary proceedings) is renumbered as Schedule 1.

The Evidence (Proceedings in Other Jurisdictions) Act 1975 (c.34)

11 In Schedule 1 to the Evidence (Proceedings in Other Jurisdictions) Act 1975 (consequential amendments), the paragraph relating to the False Oaths (Scotland) Act 1933 is repealed.

Commencement Information

I88 Sch. 7 para. 11 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The 1982 Act

12 The 1982 Act is amended as follows.

Commencement Information

I89 Sch. 7 para. 12 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

13 In section 52 (indecent photographs etc. of children), subsection (7) is repealed.

Commencement Information

I90 Sch. 7 para. 13 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

- 14 In section 64 (appeals against orders in relation to public processions), in subsection (6), for “paragraph (a)(ii)” substitute “ paragraph (a)(i) ”.

Commencement Information

I91 Sch. 7 para. 14 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Incest and Related Offences (Scotland) Act 1986 (c.36)

- 15 The Incest and Related Offences (Scotland) Act 1986 is repealed.

Commencement Information

I92 Sch. 7 para. 15 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

VALID FROM 25/06/2012

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

- 16 In section 22 of the Legal Aid (Scotland) Act 1986 (automatic availability of criminal legal aid), in subsection (1)—
- (a) in paragraph (da), for “he is insane so that his trial cannot proceed or continue;” substitute “ the accused is unfit for trial under section 53F of the Criminal Procedure (Scotland) Act 1995; ”, and
 - (b) in paragraph (dc), for “in case involving insanity” substitute “ where accused found not criminally responsible or unfit for trial ”.

The Criminal Justice (Scotland) Act 1987 (c.41)

- 17 In the Criminal Justice (Scotland) Act 1987, sections 51 to 54 (investigation of serious or complex fraud) are repealed.

Commencement Information

I93 Sch. 7 para. 17 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Criminal Justice Act 1988 (c.33)

- 18 In the Criminal Justice Act 1988, in Schedule 15 (minor and consequential amendments), paragraphs 89, 111 and 117 are repealed.

Commencement Information

I94 Sch. 7 para. 18 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

The Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)

- 19 In section 243(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction of offence of conspiracy: Scotland), the words “or sedition” are repealed.

Commencement Information

I95 Sch. 7 para. 19 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Criminal Justice and Public Order Act 1994 (c.33)

- 20 In the Criminal Justice and Public Order Act 1994, in section 164 (extension of powers of Serious Fraud Office and of powers to investigate serious fraud in Scotland), subsections (3) and (4) are repealed.

Commencement Information

I96 Sch. 7 para. 20 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

- 21 The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

Commencement Information

I97 Sch. 7 para. 21 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 22 Section 16 (powers of search) is repealed.

Commencement Information

I98 Sch. 7 para. 22 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

- 23 In section 23 (interpretation of Part 2), in the definition of “period of a designated sporting event”, for “in” substitute “it”.

Commencement Information

I99 Sch. 7 para. 23 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)

- 24 In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (minor and consequential amendments), in paragraph 44, sub-paragraph (2) is repealed.

Status: Point in time view as at 06/06/2011.

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

I100 Sch. 7 para. 24 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch. (with Sch.)

The 1995 Act

25 The 1995 Act is amended as follows.

Commencement Information

I101 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

I102 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

Status: Point in time view as at 06/06/2011.

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

Commencement Information

I103 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

I104 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

I105 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

I106 Sch. 7 para. 31 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

VALID FROM 25/06/2012

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;”.

VALID FROM 01/08/2011

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

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

Status: Point in time view as at 06/06/2011.

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

I107 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

I108 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

I109 Sch. 7 para. 36 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

VALID FROM 25/06/2012

- 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 ”.

VALID FROM 25/06/2012

- 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*”.

VALID FROM 25/06/2012

- 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 ”.

Status: Point in time view as at 06/06/2011.

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 25/06/2012

- 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.

VALID FROM 25/06/2012

- 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 ”.

VALID FROM 25/06/2012

- 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 ”.

VALID FROM 25/06/2012

- 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
 - (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 ”.

- 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

Status: Point in time view as at 06/06/2011.

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)

- 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

I110 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

I111 Sch. 7 para. 45 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

VALID FROM 25/06/2012

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

Commencement Information

I112 Sch. 7 para. 47 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

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

Commencement Information

I113 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

I114 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

I115 Sch. 7 para. 50 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

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- 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 ”.

- 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

I116 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

I117 Sch. 7 para. 53 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

- 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

I118 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

I119 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
 - (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

I120 Sch. 7 para. 56 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

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

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- 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

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(b) for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of this Act ”.

- 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

I121 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

I122 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—
- “(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

I123 Sch. 7 para. 61 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

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- 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;”.

The Offensive Weapons Act 1996 (c.26)

- 63 In the Offensive Weapons Act 1996, section 5 is repealed.

Commencement Information

I124 Sch. 7 para. 63 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

The Defamation Act 1996 (c.31)

64 In the Defamation Act 1996, section 20(2) is repealed.

Commencement Information

I125 Sch. 7 para. 64 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Crime and Punishment (Scotland) Act 1997 (c.48)

65 The Crime and Punishment (Scotland) Act 1997 is amended as follows.

Commencement Information

I126 Sch. 7 para. 65 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

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66 In section 9 (power to specify hospital unit), in subsection (1)(a), for “insane” substitute “ found not criminally responsible or unfit for trial ”.

67 In section 13 (increase in sentences available to sheriff and district courts), subsection (2) is repealed.

Commencement Information

I127 Sch. 7 para. 67 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

68 In section 56 (powers of the court on remand or committal of children and young persons), subsection (3) is repealed.

Commencement Information

I128 Sch. 7 para. 68 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

The Terrorism Act 2000 (c.11)

69 In paragraph 30 of Part II of Schedule 5 to the Terrorism Act 2000 (explanations), in sub-paragraph (3)(a), for “section 2 of the False Oaths (Scotland) Act 1933” substitute “ section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) ”.

Commencement Information

I129 Sch. 7 para. 69 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

PROSPECTIVE

The Protection of Children (Scotland) Act 2003 (asp 5)

- 70 In section 10 of the Protection of Children (Scotland) Act 2003 (referral of individuals acquitted of offence against a child on ground of insanity), in subsection (11)(a)—
- (a) in sub-paragraph (i), for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46) ”, and
 - (b) in sub-paragraph (ii), for “the Criminal Procedure (Scotland) Act 1995 (c.46)” substitute “ that Act ”.

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The Criminal Justice (Scotland) Act 2003 (asp 7)

- 71 In section 3 of the Criminal Justice (Scotland) Act 2003 (the Risk Management Authority), in paragraph (b) of subsection (2), for “to be insane” substitute “ not criminally responsible or unfit for trial ”.

The Legal Deposit Libraries Act 2003 (c.28)

- 72 Section 10 of the Legal Deposit Libraries Act 2003 (exemption from liability: activities in relation to publications) is amended as follows—
- (a) in subsection (1), the words “, or subject to any criminal liability,” are repealed,
 - (b) in subsection (2)(a), the words “in the case of liability in damages” are repealed,
 - (c) in subsection (3), the words “, or subject to any criminal liability,” are repealed,
 - (d) in subsection (4)(a), the words “in the case of liability in damages” are repealed,
 - (e) in subsection (6)(a), the words “, or subject to any criminal liability,” are repealed, and
 - (f) in subsection (8), the words “and criminal liability” are repealed.

Commencement Information

I130 Sch. 7 para. 72 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

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The Sexual Offences Act 2003 (c.42)

- 73 In section 135 of the Sexual Offences Act 2003 (interpretation: mentally disordered persons), after subsection (2) insert—
- “(2A) In the application of this Part in relation to Scotland, a reference to a person being found not guilty of an offence by reason of insanity is to be read as a reference to a person being acquitted of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995.”.

The Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)

- 74 In the Criminal Procedure (Amendment) (Scotland) Act 2004 the following provisions are repealed—
- (a) in section 4 (prohibition on accused conducting case in person in certain cases), subsection (4),
 - (b) section 17 (bail conditions: remote monitoring of restrictions on movements), and
 - (c) in the schedule (further modifications of the 1995 Act), paragraph 55.

Commencement Information

I131 [Sch. 7 para. 74](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

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The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)

- 75 In section 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003)—
- (a) in subsection (1)—
 - (i) the word “or” immediately following paragraph (c) is repealed, and
 - (ii) after paragraph (c) insert—

“(ca) is acquitted by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and
 - (b) in subsection (5)—
 - (i) in paragraph (a), for “(1)(a), (c) or (d)” substitute “ (1)(a) or (c) to (d) ”, and
 - (ii) in paragraph (c), for “(1)(a), (c) or (d)” substitute “ (1)(a) or (c) to (d) ”.

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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)

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The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

- 76 In section 10 of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders)—
- (a) in subsection (1)—
 - (i) in paragraph (c)(i), for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of that Act of 1995 ”, and
 - (ii) in paragraph (d), for the words from “section 54(1)” to the end substitute “ section 53F of that Act of 1995 (unfitness for trial) to be unfit for trial; ”, and
 - (b) in subsection (11)(a), for “to be insane” substitute “ not criminally responsible or unfit for trial ”.

The Serious Organised Crime and Police Act 2005 (c.15)

- 77 In section 65 of the Serious Organised Crime and Police Act 2005 (restrictions on the use of statements), in subsection (2)(c), for “section 2 of the False Oaths (Scotland) Act 1933 (c.20)” substitute “ section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) ”.

Commencement Information

I132 [Sch. 7 para. 77](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

- 78 The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.

Commencement Information

I133 [Sch. 7 para. 78](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 79 In section 7 (liberation on undertaking), in subsection (2), paragraphs (c), (e), (f) and (g) are repealed.

Commencement Information

I134 [Sch. 7 para. 79](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

- 80 In section 74 (appointment of stipendiary magistrates), subsection (6) is repealed.

Commencement Information

I135 [Sch. 7 para. 80](#) in force at 28.3.2011 by [S.S.I. 2011/178](#), [art. 2](#), [Sch.](#)

Status: Point in time view as at 06/06/2011.

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)

81 After section 74 insert—

“74A Exercise of functions by stipendiary magistrates

- (1) A stipendiary magistrate may, by reason of holding that office—
- (a) exercise the same judicial and signing functions as are exercisable by a JP,
 - (b) do so in the same manner as a JP (including by using the title of office of JP).
- (2) For the purpose of subsection (1)—
- (a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
 - (b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.
- (3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.
- (4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).”.

Commencement Information

I136 Sch. 7 para. 81 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

82 In section 76 (signing functions)—

- (a) in subsection (2), for “signing functions in the same manner as” substitute “the same signing functions as are exercisable by”, and
- (b) subsection (4) is repealed.

Commencement Information

I137 Sch. 7 para. 82 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

83 In the schedule (modification of enactments)—

- (a) paragraph 3(b) is repealed, and
- (b) in paragraph 26—
 - (i) the words “(in addition to the provisions amended by paragraphs 7(4) and 16(a))” are repealed, and
 - (ii) sub-paragraph (b) is repealed.

Commencement Information

I138 Sch. 7 para. 83 in force at 28.3.2011 by S.S.I. 2011/178, art. 2, Sch.

Status: Point in time view as at 06/06/2011.

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)

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84

The Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

In section 32 of the Protection of Vulnerable Groups (Scotland) Act 2007 (relevant offences etc.), in subsection (3)(b)(i), for “on the ground of insanity” substitute “ by reason of the special defence set out in section 51A of the 1995 Act ”.

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85

The Counter-Terrorism Act 2008 (c.28)

In section 45 of the Counter-Terrorism Act 2008 (sentences or orders triggering notification requirements), in subsection (2)(b)—

- (a) in sub-paragraph (ii), for the words from “on grounds of insanity” to the end substitute “ by reason of the special defence set out in section 51A of that Act (criminal responsibility of persons with mental disorder), or ”, and
- (b) in sub-paragraph (iii), for the words from “the Criminal” to “facts)” substitute “ that Act (examination of facts where person unfit for trial) ”.

The Sexual Offences (Scotland) Act 2009 (asp 9)

86

In section 55(7) of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom), for “proceeded against, indicted” substitute “ prosecuted ”.

Commencement Information

I139 Sch. 7 para. 86 in force at 13.12.2010 by S.S.I. 2010/413, art. 2, Sch.

VALID FROM 25/06/2012

87

The Coroners and Justice Act 2009 (c.25)

In section 156 of the Coroners and Justice Act 2009 (exploitation proceeds orders: qualifying offenders)—

- (a) in subsection (2)—
 - (i) the word “or” immediately following paragraph (b) is repealed, and
 - (ii) after paragraph (b) insert—
 - “(ba) has been acquitted by such a court of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and

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- (b) in subsection (3)(a)—
- (i) the word “or” immediately following sub-paragraph (ii) is repealed, and
 - (ii) after sub-paragraph (ii) insert—
 - “(iia) such a court has made, in respect of a foreign offence, a finding equivalent to a finding of the person’s acquittal by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995, or”.

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010.