



# Criminal Justice (Scotland) Act 2003

## 2003 asp 7

### PART 12

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### 73 Public defence

In section 28A of the Legal Aid (Scotland) Act 1986 (c. 47) (power of Scottish Legal Aid Board directly to employ solicitors to provide criminal legal assistance)—

- (a) subsections (2), (3) and (10) to (15) are repealed; and
- (b) <sup>F1</sup> .....

#### Textual Amendments

**F1** S. 73(b) repealed (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), ss. [112\(2\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch.

#### 74 Offences aggravated by religious prejudice

- (1) This section applies where it is—
  - (a) libelled in an indictment; or
  - (b) specified in a complaint,and, in either case, proved that an offence has been aggravated by religious prejudice.
- (2) For the purposes of this section, an offence is aggravated by religious prejudice if—
  - (a) at the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or

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- (b) the offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

[<sup>F2</sup>(2A) It is immaterial whether or not the offender's malice and ill-will is also based (to any extent) on any other factor.]

- (3) <sup>F3</sup> .....
- (4) <sup>F3</sup> .....

[<sup>F4</sup>(4A) The court must—

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

(5) For the purposes of this section, evidence from a single source is sufficient to prove that an offence is aggravated by religious prejudice.

(6) In subsection (2)(a)—  
“membership” in relation to a group includes association with members of that group; and  
“presumed” means presumed by the offender.

(7) In this section, “religious group” means a group of persons defined by reference to their—  
(a) religious belief or lack of religious belief;  
(b) membership of or adherence to a church or religious organisation;  
(c) support for the culture and traditions of a church or religious organisation; or  
(d) participation in activities associated with such a culture or such traditions.

| Textual Amendments |  |
|--------------------|--|
| <b>F2</b>          | S. 74(2A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(a), 206; S.S.I. 2010/413, art. 2, Sch.   |
| <b>F3</b>          | S. 74(3)(4) repealed (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(b), 206; S.S.I. 2010/413, art. 2, Sch. |
| <b>F4</b>          | S. 74(4A) inserted (13.12.2010) by Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), ss. 25(2)(c), 206; S.S.I. 2010/413, art. 2, Sch.   |

<sup>F5</sup>75 **Reintroduction of ranks of deputy chief constable and chief superintendent**

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### Textual Amendments

**F5** S. 75 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 8 Pt. 1**; [S.S.I. 2013/51](#), **art. 2** (with transitional provisions and savings in [S.S.I. 2013/121](#))

## 76 Police custody and security officers

<sup>F6</sup>(1) .....

<sup>F6</sup>(2) .....

<sup>F6</sup>(3) .....

<sup>F6</sup>(4) .....

<sup>F6</sup>(5) .....

<sup>F6</sup>(6) .....

<sup>F6</sup>(7) .....

<sup>F6</sup>(8) .....

<sup>F6</sup>(9) .....

(10) In section 102(5) of the Criminal Justice and Public Order Act 1994 (c33) (compliance with warrants or orders), at the end there is added “ or by a police custody and security officer in the performance of functions prescribed under section 9(1A)(b) of the Police (Scotland) Act 1967 (c. 77) ”.

(11) In section 307(1) of the 1995 Act (interpretation), in paragraph (c) of the definition of “officer of law”—

(a) after the word “employed” there is inserted “ or appointed ”;

(b) after the words “and who” there is inserted “ either ”; and

(c) at the end there is added “ or is a police custody and security officer ”.

### Textual Amendments

**F6** S. 76(1)-(9) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), **sch. 8 Pt. 1**; [S.S.I. 2013/51](#), **art. 2** (with transitional provisions and savings in [S.S.I. 2013/121](#))

## 77 Wildlife offences

Schedule 3 to this Act, which contains amendments to the Wildlife and Countryside Act 1981 (c. 69) relating to penalties for, and powers of arrest as regards, offences under Part I of that Act, has effect.

## 78 Disqualification from jury service

(1) In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c. 55) (ineligibility for and disqualification and excusal from jury service), in Part II, after paragraph (b) there is inserted—

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- “(bb) persons who have been convicted of an offence if, in respect of the conviction, one or more of the following orders was made—
- (i) a probation order under section 228(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (section 247 of that Act being disregarded for the purposes of this head);
  - (ii) a drug treatment and testing order under section 234B(2) of that Act;
  - (iii) a community service order under section 238(1) of that Act;
  - (iv) a restriction of liberty order under section 245A(1) of that Act;
  - (v) a community order as defined by section 33(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);
  - (vi) a community order as defined by article 2(2) of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (N.I.24));
  - (vii) a drug treatment and testing order under article 8(2) of the Criminal Justice (Northern Ireland) Order 1998 (SI 1998/2839 (N.I.20)),
- except where they are rehabilitated persons for the purposes of the Rehabilitation of Offenders Act 1974 (c. 53);”.

(2) Subject to subsection (3), the insertion made by subsection (1) has effect even in relation to a case where the probation order, drug treatment and testing order, community service order, restriction of liberty order or community order is made before the date on which subsection (1) is brought into force.

- (3) A person—
- (a) cited under section 85(4) of the 1995 Act (citation of jurors); or
  - (b) summoned by virtue of section 12 of the Court of Session Act 1988 (c. 36) (summoning of jury),

before that date is not, by virtue of subsection (1), excused from attending in compliance with the citation or disqualified from serving as a juror at the sitting, or trial, in question.

## 79 Separation of jury after retiral

It shall no longer be mandatory for the period during which a jury, after retiring to consider their verdict, are enclosed to be continuous; and accordingly, in section 99 of the 1995 Act (seclusion of jury to consider verdict)—

- (a) in subsection (1), for the word “after” there is substituted “ while ”;
- (b) in subsection (2), for the words “until the jury” there is substituted “ while the jury are enclosed and until they ”;
- (c) in subsection (4)(b), after the word “and” there is inserted “ , unless under subsection (7) below the court permits them to separate, ”; and
- (d) at the end there is added—

“(7) The court may, if it thinks fit, permit the jury to separate even after they have retired to consider their verdict.”.

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**F7 80      Television link from court to prison or other place of detention**

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**Textual Amendments**

**F7** S. 80 repealed (25.1.2018) by Criminal Justice (Scotland) Act 2016 (asp 1), ss. 110(2)(b), 117(2); S.S.I. 2017/345, art. 3, sch. (with art. 10)

**81      Warrants issued in Northern Ireland for search of premises in Scotland**

- (1) Where a warrant issued by a magistrate or county court judge in Northern Ireland for the search of premises in Scotland is duly endorsed by a sheriff or justice of the peace in whose jurisdiction the warrant purports to authorise search, the warrant has effect as if granted by the sheriff or, as the case may be, justice of the peace.
- (2) The reference in subsection (1) to the warrant being duly endorsed is to its being endorsed in the manner specified in subsection (1) of section 4 of the Summary Jurisdiction (Process) Act 1881 (c. 24) as if it were a process mentioned in that subsection.

**82      Use of electronic communications or electronic storage in connection with warrants to search**

- (1) This section, which is without prejudice to section 8 of the Electronic Communications Act 2000 (c. 7) (power to modify legislation), applies to warrants to search granted under section 134(1) of the 1995 Act (that is to say, where incidental to proceedings by complaint or although no subsequent proceedings by complaint may follow).
- (2) Subject to subsections (1) and (4), the Scottish Ministers may, in relation to warrants to which this section applies, by order modify—
  - (a) any rule of law; or
  - (b) the practice and procedure in relation to criminal proceedings,in such manner as they think fit so as to authorise or facilitate the use of electronic communications or electronic storage (instead of other forms of communication or storage) for any purpose mentioned in subsection (3).
- (3) Those purposes are (in relation to the rule of law or the practice and procedure) the purposes mentioned (in relation to the provisions which may be modified under subsection (1) of section 8 of that Act of 2000) in any of paragraphs (a) to (f) of subsection (2) of that section.
- (4) The Scottish Ministers are not to make an order under subsection (2) authorising the use of electronic communications or electronic storage for any purpose unless they consider that the authorisation is such that the extent (if any) to which records of things done for that purpose will be available will be no less satisfactory in cases where use is made of electronic communications or electronic storage than in other cases.
- (5) Subsections (4) to (6) and (8) of section 8 and (5) and (6) of section 9 of that Act of 2000 apply in relation to an order made under subsection (2) as they apply in relation to an order made under subsection (1) of the said section 8.

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- (6) Expressions used in this section and in that Act of 2000 have the same meanings in this section as in that Act.

83

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F8 .....

#### Textual Amendments

**F8** S. 83 repealed (28.10.2004) by [Antisocial Behaviour etc. \(Scotland\) Act 2004 \(asp 8\)](#), ss. 144(2), 145(2), [Sch. 5](#); [S.S.I. 2004/420](#), [art. 3](#), Sch. 1

#### General

#### 84 Transitional provisions etc.

- (1) The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act or of any order made under this Act.
- (2) An order under subsection (1) above may amend or repeal any enactment (including any provision of this Act).

#### 85 Minor and consequential amendments

Schedule 4 to this Act, which contains minor amendments and amendments consequential on the provisions of this Act, has effect.

#### Commencement Information

**I1** S. 85 partly in force; s. 85 not in force at Royal Assent, see s. 89(2); s. 85 in force for specified purposes at 27.6.2003 by [S.S.I. 2003/288](#), [art. 2](#), Sch.; s. 85 in force for further specified purposes at 25.11.2003 by [S.S.I. 2003/475](#), [art. 2](#), Sch.

#### 86 Repeals

The enactments mentioned in schedule 5 to this Act are repealed to the extent mentioned in the second column of that schedule.

#### Commencement Information

**I2** S. 86 wholly in force at 27.6.2003; s. 86 in force for specified purposes at Royal Assent, see s. 89(2)(d); s. 86 in force so far as not already in force at 27.6.2003 by [S.S.I. 2003/288](#), art. 2, Sch.

#### 87 Interpretation

- (1) In this Act—

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“the 1989 Act” means the Prisons (Scotland) Act 1989 (c. 45);  
“the 1993 Act” means the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9);  
“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c. 46); and  
“prescribed”, except in section 21(4), means prescribed by order made by the Scottish Ministers.

- (2) Any expression used in this Act and in the 1995 Act is, unless the context requires otherwise, to be construed in accordance with section 307 of that Act (interpretation).

## 88 Orders

- (1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument; and subject to subsection (2) a statutory instrument containing any such order or regulations, other than an order under section 89(2), is subject to annulment in pursuance of a resolution of the Parliament.
- (2) A statutory instrument containing an order under section—
- (a) 6(1)(b), 11(1), 14(1) [<sup>F9</sup>or (2)], 14(12) (including as applied to section 16(5)), 16(4) [<sup>F10</sup>, 18B] or 42(5); or
  - (b) [<sup>F11</sup>14(13) or] 84 which amends or repeals any part of an Act,
- is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

### Textual Amendments

- F9** Words in s. 88(2)(a) inserted (18.3.2021) by [The Criminal Justice \(Scotland\) Act 2003 \(Supplemental Provisions\) Order 2021 \(S.S.I. 2021/150\)](#), arts. 1(2), **2(3)**
- F10** Word in s. 88 inserted (30.9.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), ss. **59(3)**, 61(2); [S.S.I. 2017/234](#), art. 2(2)(b)
- F11** Words in s. 88(2)(b) inserted (10.2.2021) by [Victims and Witnesses \(Scotland\) Act 2014 \(asp 1\)](#), ss. **23(14)**, 34; [S.S.I. 2020/405](#), art. 2(a)

## 89 Short title and commencement

- (1) This Act may be cited as the Criminal Justice (Scotland) Act 2003.
- (2) With the exception of—
- (a) this section;
  - (b) section 77 and schedule 3;
  - (c) section 84;
  - (d) in so far as relating to the Wildlife and Countryside Act 1981 (c. 69), section 86 and schedule 5;
  - (e) section 87; and
  - (f) section 88,
- this Act comes into force on such day as the Scottish Ministers may by order appoint.
- (3) Different days may be so appointed for different provisions and for different purposes.

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### **Subordinate Legislation Made**

- P1** S. 89 power partly exercised; dates appointed for specified provisions and purposes as follows:
- 27.6.2003 by {[S.S.I. 2003/288](#)}, art. 2, Sch.;
  - 27.10.2003, 3.11.2003, 25.11.2003, 1.12.2003, 1.1.2004 and 12.1.2004 by {[S.S.I. 2003/475](#)}, art. 2, Sch. (with art. 3);
  - 10.6.2004 and 25.6.2004 by {[S.S.I. 2004/240](#)}, art. 2;
  - 1.11.2004 by {[S.S.I. 2004/451](#)}, art. 2;
  - 4.10.2005 by {[S.S.I. 2005/433](#)}, art. 2;
  - 1.4.2006 by {[S.S.I. 2006/168](#)}, art. 2;
  - 2.4.2006 by {[S.S.I. 2006/85](#)}, art. 1(2);
  - 19.6.2006 by {[S.S.I. 2006/332](#)}, art. 2



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**Changes and effects yet to be applied to :**

- specified provision(s) and purposes Appointed Day(s) by [S.S.I. 2003/439 art. 23Sch.](#) (Effect not applied to [legislation.gov.uk](#). This S.S.I. is revoked (1.10.2003) by S.S.I. 2003/475, art. 4)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16D inserted by [2023 asp 4 s. 14\(3\)](#)
- s. 16ZA inserted by [2023 asp 4 s. 14\(2\)](#)
- s. 17E(6) inserted by [2023 asp 4 s. 14\(7\)\(d\)](#)
- s. 17DA inserted by [2023 asp 4 s. 14\(6\)](#)
- s. 17ZA inserted by [2023 asp 4 s. 14\(4\)](#)
- s. 18A(5) inserted by [2023 asp 4 s. 14\(8\)\(b\)](#)