



# Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

## PART 5

### CRIMINAL JUSTICE

#### *Miscellaneous*

#### **111 Assistance for victim support**

- (1) The Scottish Ministers may make grants for the purposes of or in connection with the provision of assistance to victims, witnesses or other persons affected by an offence.
- (2) Grants under subsection (1) may be made—
  - (a) to such bodies, and
  - (b) subject to such conditions,as the Scottish Ministers consider appropriate.

#### **112 Public defence solicitors**

- (1) In section 28A of the Legal Aid (Scotland) Act 1986 (c.47) (power of Board to employ solicitors to provide criminal assistance)—
  - (a) in subsection (1), the words from “may” where it first occurs to “accordingly,” are repealed, and
  - (b) subsection (9A) is repealed.
- (2) In section 73 of the Criminal Justice (Scotland) Act 2003 (asp 7) (public defence), paragraph (b) is repealed.

#### **113 Compensation for miscarriages of justice**

- (1) In section 133 of the Criminal Justice Act 1988 (c.33) (compensation for miscarriages of justice)—
  - (a) after subsection (1) insert—

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*Status: This is the original version (as it was originally enacted).*

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- “(1A) The Scottish Ministers may by order provide for—
- (a) further circumstances in respect of which a person (or, if dead, the person’s representatives) may be paid compensation for a miscarriage of justice,
  - (b) circumstances in respect of which a person (or, if dead, the person’s representatives) may be paid compensation for wrongful detention prior to acquittal or a decision by the prosecutor to take no proceedings (or to discontinue proceedings).”
- (b) after subsection (2) insert—
- “(2AA) Such an application requires to be made within the period of 3 years starting with—
- (a) in the case of compensation under subsection (1), the date on which the conviction is reversed or (as the case may be) the person is pardoned,
  - (b) in the case of compensation under subsection (1A), whichever is relevant of—
    - (i) that date, or
    - (ii) the date on which the person is acquitted or the relevant decision is made known to the person.
- (2AB) The Scottish Ministers may accept such an application outwith that time limit if they think it is appropriate in exceptional circumstances to do so.”
- (c) in subsection (4A), after paragraph (a) insert—
- “(aa) the seriousness of the offence with which the person was charged or detained (but in respect of which offence the person was not convicted);”
- (d) after subsection (4A) insert—
- “(4B) The assessor must also have particular regard to any guidance issued by the Scottish Ministers for the purposes of this section.”
- (e) in subsection (5)—
- (i) after “quashed” insert “(or set aside)”
  - (ii) the word “or” where it occurs immediately after each of paragraphs (a), (b) and (c) is repealed, and
  - (iii) after paragraph (d) add “; or
    - (e) under section 188(1)(b) of the Criminal Procedure (Scotland) Act 1995.”
- (f) after subsection (6) insert—
- “(6A) For the purposes of this section, a person suffers punishment as a result of conviction also where (in relation to the conviction) the court imposes some other disposal including by way of—
- (a) making a probation order, or
  - (b) discharging the person absolutely.”
- (g) after subsection (7) insert—
- “(8) The power to make an order under subsection (1A) is exercisable by statutory instrument.

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*Status: This is the original version (as it was originally enacted).*

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(9) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(2) In Schedule 12 to that Act (assessors of compensation for miscarriages of justice), in paragraph 1—

- (a) immediately after sub-paragraph (c), insert “or”, and
- (b) sub-paragraph (e) and the word “or” immediately preceding it are repealed.

#### **114 Financial reporting orders**

In section 77 of the Serious Organised Crime and Police Act 2005 (c.15) (financial reporting orders: making in Scotland), after subsection (4) insert—

“(4A) A financial reporting order may be made—

- (a) on the prosecutor’s motion, or
- (b) at the court’s own instance.”.

#### **115 Compensation orders**

(1) In section 249 of the 1995 Act (compensation order against convicted person)—

- (a) in subsection (1)—
  - (i) for “Subject to subsections (2) and (4) below, where” substitute “Where”, and
  - (ii) after “compensation” where it second occurs insert “in favour of the victim”,
- (b) after subsection (1A) insert—

“(1B) Where a person is convicted of an offence, the court may (instead of or in addition to dealing with the person in any other way), in accordance with subsections (3A) to (3C), make a compensation order requiring the convicted person to pay compensation in favour of—

- (a) the victim, or
- (b) a person who is liable for funeral expenses in respect of which subsection (3C)(b) allows a compensation order to be made.

(1C) For the purposes of subsection (1B)(a), “victim” means—

- (a) a person who has suffered personal injury, loss or damage in respect of which a compensation order may be made by virtue of subsection (3A), or
- (b) a relative (as defined in Schedule 1 to the Damages (Scotland) Act 1976 (c.13)) who has suffered bereavement in respect of which subsection (3C)(a) allows a compensation order to be made.”,

(c) after subsection (3) insert—

“(3A) A compensation order may be made in respect of personal injury, loss or damage (apart from loss suffered by a person’s dependents in consequence of a person’s death) that was caused directly or indirectly by an accident arising out of the presence of a motor vehicle on a road if—

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*Status: This is the original version (as it was originally enacted).*

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- (a) it was being used in contravention of section 143(1) of the Road Traffic Act 1988 (c.52), and
- (b) no compensation is payable under arrangements to which the Secretary of State is a party.

(3B) Where a compensation order is made by virtue of subsection (3) or (3A), the order may include an amount representing the whole or part of any loss of (including reduction in) preferential rates of insurance if the loss is attributable to the accident.

(3C) A compensation order may be made—

- (a) for bereavement in connection with a person’s death resulting from the acts which constituted the offence,
- (b) for funeral expenses in connection with such a death, except where the death was due to an accident arising out of the presence of a motor vehicle on a road.”,

(d) in subsection (4)—

- (i) for “No” substitute “Unless (and to the extent that) subsections (3) to (3C) allow a compensation order to be made, no”, and
- (ii) in paragraph (b), the words from “, except” to the end are repealed,

(e) subsection (6) is repealed, and

(f) after subsection (8) insert—

“(8A) In summary proceedings before the sheriff, where the fine or maximum fine to which a person is liable on summary conviction of an offence exceeds the prescribed sum, the sheriff may make a compensation order awarding in respect of the offence an amount not exceeding the amount of the fine to which the person is so liable.”.

(2) In section 251 of that Act (review of compensation order)—

- (a) paragraph (a) of subsection (1) is repealed, and
- (b) after subsection (1) insert—

“(1A) On the application of the prosecutor at any time before a compensation order has been complied with (or fully complied with), the court may increase the amount payable under the compensation order if it is satisfied that the person against whom it was made—

- (a) because of the availability of materially different information about financial circumstances, has more means than were made known to the court when the order was made, or
- (b) because of a material change of financial circumstances, has more means than the person had then.”.