

*Status: Point in time view as at 31/03/1996.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Justice (Scotland) Act 1995, Cross Heading: The Criminal Procedure (Scotland) Act 1975 (c. 21). (See end of Document for details)*

## SCHEDULES

### SCHEDULE 6

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART I

#### AMENDMENTS RELATING TO PART I

#### *The Criminal Procedure (Scotland) Act 1975 (c. 21)*

- 6 The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.
- 7 In section 6(3) (jurisdiction and procedure in respect of certain indictable offences committed abroad)—
- (a) after the word “section” there shall be inserted “—(a)”; and
  - (b) for the words “as if” there shall be substituted—  
“; or  
(b) in such sheriff court district as the Lord Advocate may determine,  
as if”.
- 8 Sections 14(3) and 323(3) (warrant to search for or remove any person accused of an offence in respect of a child) shall cease to have effect.
- 9 After section 15 there shall be inserted the following section—
- “15A Warrants for search and apprehension to be signed by judge.**
- Any warrant for search or apprehension granted under this Part of this Act shall be signed by the judge granting it, and execution upon any such warrant may proceed either upon the warrant itself or upon an extract of the warrant issued and signed by the clerk of court.”.
- 10 In section 18(3) (penalty for breach of undertaking to appear), for the words “£200” there shall be substituted “level 3 on the standard scale”.
- 11 In section 19(1)(a) (intimation to a solicitor), for the words from “of” to the end there shall be substituted—
- “(i) of the place where the person is being detained;
  - (ii) whether the person is to be liberated; and
  - (iii) if the person is not to be liberated, the date on which he is to be taken to court and the court to which he is to be taken;”.

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- 12 Section 20(2) (record where accused does not emit declaration) shall cease to have effect.
- 13 In section 20B(9) (service of transcript of record of proceedings at examination)—
- (a) for the words from “may”, where it first occurs, to “service”, where it first occurs, there shall be substituted “ shall be served in such manner as may be prescribed by Act of Adjournal ”; and
  - (b) for the words from “a post” to “letter” there shall be substituted “ the relevant post office receipt ”.
- 14 In each of sections 23 and 329 (remand and committal of persons under 21)—
- (a) in paragraph (a) of subsection (1), for the words from “commit” to the end there shall be substituted “, instead of committing him to prison, commit him to the local authority in whose area the court is situated to be detained —
    - (i) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and
    - (ii) in any other case, in a suitable place of safety chosen by the authority;”;
  - (b) in subsection (4), for the words from “and” in the second place where it occurs to the end there shall be substituted “to be detained—
    - (a) where the court so requires, in secure accommodation within the meaning of the Social Work (Scotland) Act 1968; and
    - (b) in any other case, in a suitable place of safety chosen by the authority.”.
- 15 In section 26 (bail before committal)—
- (a) in subsection (2), for the words from “immediately” to “or” there shall be substituted “ , on any occasion on which he is brought before the sheriff prior to his committal until liberated in due course of law, to apply ”; and
  - (b) in subsection (3), the words “or justice” shall cease to have effect.
- 16 In section 31 (appeal in respect of bail), after subsection (4) there shall be inserted the following subsection—
- “(4A) Where an applicant in an appeal under this section is under 21 years of age, section 23 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or committing a person of the applicant’s age for trial or sentence.”.
- 17 In section 33 (liberation of applicant when appeal by public prosecutor)—
- (a) in subsection (1), the words from “, or where” to “ninety-six hours,”; and
  - (b) in subsection (2), the words “by telegraph”,
- shall cease to have effect.
- 18 For section 42 (procedure on resignation, death or removal of Lord Advocate) there shall be substituted the following section—

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**“42 Resignation, death or demission of office of Lord Advocate.**

- (1) All indictments which have been raised by a Lord Advocate shall remain effective notwithstanding his subsequently having died or demitted office and may be taken up and proceeded with by his successor.
- (2) During any period when the office of Lord Advocate is vacant it shall be lawful to indict accused persons in the name of the Solicitor General then in office.
- (3) The advocates depute shall not demit office when a Lord Advocate dies or demits office but shall continue in office until their successors receive commissions.
- (4) The advocates depute and procurators fiscal shall have power, notwithstanding any vacancy in the office of Lord Advocate, to take up and proceed with any indictment which—
  - (a) by virtue of subsection (1) above, remains effective; or
  - (b) by virtue of subsection (2) above, is in the name of the Solicitor General.
- (5) For the purposes of this Act, where, but for this subsection, demission of office by one Law Officer would result in the offices of both being vacant, he or, where both demit office on the same day, the person demitting the office of Lord Advocate shall be deemed to continue in office until the warrant of appointment of the person succeeding to the office of Lord Advocate is granted.
- (6) The Lord Advocate shall enter upon the duties of his office immediately upon the grant of his warrant of appointment; and he shall as soon as is practicable thereafter take the oaths of office before any Secretary of State or any Lord Commissioner of Justiciary.”.

19 After section 48 there shall be inserted the following sections—

**“48A Common law and statutory offences in same indictment.**

It shall be competent to include in one indictment both common law and statutory charges.

**48B Description of offence in words of statute or order.**

In an indictment the description of any offence in the words of the statute or order contravened, or in similar words, shall be sufficient.”.

20 In section 50 (latitude as to time and place), after subsection (3) there shall be inserted the following subsection—

“(4) Notwithstanding subsection (3) above, nothing in any rule of law shall prohibit the amendment of an indictment to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused.”.

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- 21 In section 54 (“money” to include coin, bank notes and post office orders), for the words from “all” to the end there shall be substituted “cheques, banknotes, postal orders, money orders and foreign currency”.
- 22 In subsection (2) of section 58 (authentication of deletion or correction on service copy of indictment etc.), for the word “or” in the fourth place where it occurs there shall be substituted—
- “shall be sufficiently authenticated by the initials of any procurator fiscal or of the person serving the same.
- (3) Any deletion or correction made”.
- 23 After section 60 there shall be inserted the following section—
- “60A Proceedings under the Merchant Shipping Acts.**
- In any proceedings under the Merchant Shipping Acts it shall not be necessary to produce the official register of the ship referred to in the proceedings in order to prove the nationality of the ship, but the nationality of the ship as stated in the indictment shall, in the absence of evidence to the contrary, be presumed.”.
- 24 Sections 62 and 313 (mode of charging certain offences committed against two or more children under 17) shall cease to have effect.
- 25 In section 68 (notice of previous convictions), in each of subsections (2) and (4), the words “of Form No. 1 of Schedule 7 to the Criminal Justice (Scotland) Act 1949 or in the form” shall cease to have effect.
- 26 In section 69 (warrants for citation)—
- (a) the existing provision shall become subsection (1);
- (b) in that subsection—
- (i) after the words “accused persons” there shall be inserted “, witnesses or jurors”;
- (ii) the words from “and” in the third place where it occurs to “Act” in the fourth place where it occurs shall cease to have effect; and
- (iii) the words from “The executions” to the end shall cease to have effect; and
- (c) after that subsection there shall be inserted—
- “(2) A witness may be cited by sending the citation to the witness by ordinary or registered post or by the recorded delivery service and a written execution in the form prescribed by Act of Adjournal or as nearly as may be in such form, purporting to be signed by the person who served such citation together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such citation.”.
- 27 In section 72 (citation of jurors and witnesses)—
- (a) the existing provision shall become subsection (1);
- (b) in that subsection, after the word “shall” in the second place where it occurs there shall be inserted “, subject to subsection (2) below, ”; and
- (c) after that subsection there shall be inserted the following subsection—

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“(2) A court shall not issue a warrant to apprehend a witness who fails to appear at a diet to which he has been duly cited unless the court is satisfied that the witness received the citation or that its contents came to his knowledge.”.

- 28 In section 73(1) (execution of citation of indictment), the words from “, unless” to the end shall cease to have effect.
- 29 In section 77 (alteration of trial diet), for paragraphs (a) and (b) there shall be substituted the words “ two months ”.
- 30 In section 78(1) (lodging of record copy of indictment and list of witnesses), for the words from “record” to the end there shall be substituted “ prosecutor shall on or before the date of service of the indictment lodge the record copy of the indictment with the clerk of court before which the trial is to take place, together with a copy of the list of witnesses and a copy of the list of productions. ”.
- 31 In section 79(1) (description of witnesses), for the words from “, with” to the end there shall be substituted “ together with an address at which they can be contacted for the purposes of precognition. ”.
- 32 In section 80(1) (objection to witnesses), after the word “accused” there shall be inserted “, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, ”.
- 33 In section 81 (examination by prosecutor of witnesses, etc. not included in lists lodged) after the word “address” there shall be inserted “ as mentioned in section 79(1) above, ”.
- 34 In section 82 (notice of special defence, incrimination etc.)—
- (a) in subsection (1)—
    - (i) in paragraph (a), after the word “lodged” there shall be inserted “, where the case is to be tried in the sheriff court, at or before the first diet and, where the case is to be tried in the High Court, ”; and
    - (ii) for paragraph (b) there shall be substituted—
      - “(b) the court, on cause shown, otherwise directs.”; and
  - (b) in subsection (2), for the words from “written notice” to “the court” there shall be substituted—
    - “(a) written notice of the names and addresses of such witnesses and of such productions shall have been given—
      - (i) where the case is to be tried in the sheriff court, to the procurator fiscal of the district of the trial diet at or before the first diet; and
      - (ii) where the case is to be tried in the High Court, to the Crown Agent at least ten clear days before the day on which the jury is sworn; or
    - (b) the court, on cause shown, otherwise directs, in which case it”.
- 35 For section 85 (45 jurors to be returned for trials), there shall be substituted the following section—

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**“85 Number of jurors to be returned for trial.**

For the purposes of a trial, the sheriff principal shall return such number of jurors as he thinks fit or, in relation to a trial in the High Court, such other number as the Lord Justice Clerk or any Lord Commissioner of Justiciary may direct.”.

- 36 In section 93 (names of jurors to be inserted in one roll), for the word “designations” there shall be substituted “ addresses ”.
- 37 In section 100 (no exemptions by sex or marriage from liability to serve as juror), in subsection (1) the words from “but” to the end of the subsection, and subsections (2) and (3), shall cease to have effect.
- 38 In section 103(1) (pleas of guilty), after the word “he” where it first occurs there shall be inserted “ shall do so in open court and ”.
- 39 In section 108 (certain objections competent only at preliminary diet)—
- (a) in subsection (1), after the word “section” there shall be inserted “ 75A(2) or ”; and
  - (b) in subsection (2), after the word “section” in the second place where it occurs there shall be inserted “ 75A(2) or ”.
- 40 Section 110 (where sentence delayed, original warrant of commitment stands) shall cease to have effect.
- 41 After section 114 there shall be inserted the following section—

**“114A Transfer of sheriff court solemn proceedings.**

- (1) Where an accused person has been cited to attend a sitting of the sheriff court the prosecutor may, at any time before the commencement of his trial, apply to the sheriff to transfer the case to a sheriff court in any other district in that sheriffdom.
  - (2) On an application under subsection (1) above the sheriff may—
    - (a) after giving the accused or his counsel or solicitor an opportunity to be heard; or
    - (b) on the joint application of the parties, make an order for the transfer of the case.”.
- 42 In section 124 (plea of guilty at trial diet), the proviso shall cease to have effect.
- 43 For section 125 (on plea of not guilty, jury to be balloted and sworn) there shall be substituted the following section—

**“125 On plea of not guilty, plea to be recorded and jury balloted.**

Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.”.

- 44 In section 127 (procedure where trial does not take place)—
- (a) in subsection (1), for the words “date of such trial diet” there shall be substituted “ last day of the sitting in which the trial diet was to be held ”;
  - (b) after subsection (1) there shall be inserted the following subsection—

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- “(1ZA) Without prejudice to subsection (1) above, where a trial diet has been deserted pro loco et tempore and the court has appointed a further trial diet to be held on a subsequent date at the same sitting the accused shall require to appear and answer the indictment at that further diet.”;
- (c) in subsection (2), the words “Schedule N to the Criminal Procedure (Scotland) Act 1887 or in” shall cease to have effect; and
- (d) after subsection (4) there shall be inserted the following subsection—
- “(5) The warrant issued under section 69 of this Act shall be sufficient warrant for the citation of the accused and witnesses to any further diet appointed under this section.”.
- 45 In section 129 (procedure for selection of jurors), for the words from “which” to the end there shall be substituted “ in such manner as shall be prescribed by Act of Adjournal, and the persons so chosen shall be the jury to try the accused, and their names shall be recorded in the minutes of the proceedings. ”.
- 46 Section 132(2) (procedure in High Court trials where jurors chosen for one trial may continue to serve) shall cease to have effect.
- 47 In section 134 (provision for death or illness of jurors)—
- (a) for the words “any juror is, through illness or for any other reason, unfit” there shall be substituted “ it is for any reason inappropriate for any juror ”; and
- (b) for the words “or on behalf of the Lord Advocate” there shall be substituted “ the prosecutor ”.
- 48 In section 135 (clerk to state charge and swear jury)—
- (a) the existing provision shall become subsection (1);
- (b) in subsection (1), for the words from “it”, where it first occurs, to the end there shall be substituted “ copies of the indictment shall be provided for each member of the jury without lists of witnesses or productions ”; and
- (c) at the end of subsection (1) there shall be inserted the following subsections—
- “(2) Subject to subsection (3) below, where the accused has lodged a plea of special defence, the clerk of court shall, after informing the jury, in accordance with subsection (1) above, of the charge against the accused, and before administering the oath, read to the jury the plea of special defence.
- (3) Where the presiding judge on cause shown so directs, the plea of special defence shall not be read over to the jury in accordance with subsection (2) above; and in any such case the judge shall inform the jury of the lodging of the plea and of the general nature of the special defence.
- (4) Copies of a plea of special defence shall be provided for each member of the jury.”.
- 49 In section 140A(1)(b) (no case to answer), the words “were the offence charged the only offence so charged” shall cease to have effect.

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- 50 For section 142 (evidence of the accused) there shall be substituted the following section—
- “**142** Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.”.
- 51 Section 144 (notice of spouse as witness) shall cease to have effect.
- 52 Section 145(4) (interruption of trial) shall cease to have effect.
- 53 Section 146 (sheriff’s notes of evidence) shall cease to have effect.
- 54 In each of sections 148 and 340 (examination of witnesses)—
- (a) the existing provision shall become subsection (1); and
- (b) after that subsection there shall be inserted the following subsections—
- “(2) The judge may, on the motion of either party, on cause shown order that the examination of a witness for that party (“the first witness”) shall be interrupted to permit the examination of another witness for that party.
- (3) Where the judge makes an order under subsection (2) above he shall, after the examination of the other witness, permit the recall of the first witness.”.
- 55 In section 150 (admissions and agreements as to evidence in solemn proceedings)—
- (a) in subsection (1), the words “, where the accused is legally represented,” shall cease to have effect; and
- (b) in subsection (2), for paragraphs (a) and (b) there shall be substituted the following paragraphs—
- “(a) in the case of an admission, by the party making the admission or, if that party is the accused and he is legally represented, his counsel or solicitor; and
- (b) in the case of an agreement, by the prosecutor and by the accused or, if he is legally represented, his counsel or solicitor”.
- 56 In section 151(2) (application to have all or part of record of proceedings at judicial examination withheld from jury)—
- (a) after the words “competent for” there shall be inserted “ the prosecutor or ”; and
- (b) for the words “the defence and for the prosecutor” there shall be substituted “ either party ”.
- 57 In section 153 (seclusion of jury, etc, after retiral)—
- (a) subsection (1) shall cease to have effect; and
- (b) in subsection (3)(b)(ii), the words from “(as” to the end shall cease to have effect.
- 58 In section 156 (interruption of trial to give direction to jury in preceding trial)—
- (a) in subsection (1)(b), the words from “, as” to the end; and
- (b) subsections (4) and (5), shall cease to have effect.
- 59 In section 157 (interruption of trial for plea or sentence in another cause)—



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- (a) in subsection (1), the words “through his counsel”, “in which the panel has pleaded guilty under section 102 of this Act” and “(other than a trial for murder)”; and
- (b) subsection (2),
- shall cease to have effect.
- 60 Section 159(1) (previous convictions labelled as aggravations) and (3) (passing of sentence on second or subsequent conviction) and section 356(1) and (3) (equivalent provisions in relation to summary procedure) shall cease to have effect.
- 61 Section 160(3) (verdict as to whether previous convictions proved) shall cease to have effect.
- 62 In section 162(3) (proof of convictions), for the words “An official” there shall be substituted “ A prison officer ”.
- 63 Section 163 (extract conviction to be issued by clerk having record copy of indictment) shall cease to have effect.
- 64 In each of sections 166 and 362 (power to clear court while child giving evidence), in subsection (1), for the words from “members” to the end there shall be substituted—
- “(a) members or officers of the court;
  - (b) parties to the case before the court, their counsel or solicitors or persons otherwise directly concerned in the case;
  - (c) bona fide representatives of news gathering or reporting organisations present for the purpose of the preparation of contemporaneous reports of the proceedings; or
  - (d) such other persons as the court may specially authorise to be present,
- shall be excluded from the court during the taking of the evidence of that witness.”.
- 65 In section 174 (insanity in bar of trial or as ground of acquittal)—
- (a) in subsection (2)—
    - (i) for the words “as aforesaid” in the first place where they occur there shall be substituted “ on indictment with the commission of the offence ”; and
    - (ii) after the word “and” in the second place where it occurs there shall be inserted “ , if so, ”; and
  - (b) subsections (3) and (4) shall cease to have effect.
- 66 In section 176 (requirements as to medical evidence)—
- (a) in subsection (1), after the word “sections” there shall be inserted “ 174(1), ”;
  - (b) in subsection (2), for the word “section” where it first occurs there shall be substituted “ sections 174(1) and ”; and
  - (c) in subsection (4), after the word “hospital” there shall be inserted “ or, as respects a report for the purposes of section 174(1), remanded in custody ”.
- 67 In section 178(3) (restriction orders), for the words “section 60(4)” there shall be substituted “ section 60(3) ”.
- 68 In each of sections 179(1) and 380(1) (power of court to adjourn case before sentence)—

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(a) for the words “so adjourns the case” there shall be substituted “ adjourns the case solely for that purpose ”; and

(b) after the words “shall not” there shall be inserted “ solely ”.

69 After section 182 there shall be inserted the following—

*“ Caution*

**182A Caution.**

Where a person is convicted of an offence (other than an offence the sentence for which is fixed by law) the court may, instead of or in addition to imposing a fine or a period of imprisonment, ordain the accused to find caution for good behaviour for a period not exceeding 12 months and to such amount as the court considers appropriate.”.

70 In subsection (7) of each of sections 183 and 384 (notification of probation order)—

(a) after the word “shall” there shall be inserted “ (a) ”;

(b) the words “, to the probationer,” shall cease to have effect; and

(c) at the end there shall be inserted—

“; and

(b) cause a copy thereof to be given to the probationer or sent to him by registered post or by the recorded delivery service; and an acknowledgement or certificate of delivery of a letter containing such copy order issued by the Post Office shall be sufficient evidence of the delivery of the letter on the day specified in such acknowledgement or certificate.”.

71 In each of sections 186(1) and 387(1) (failure to comply with requirement of probation order), the words “on oath” shall cease to have effect.

72 Sections 190 and 391 (supplementary provisions as to probation: security for good behaviour) shall cease to have effect.

73 In section 191(4) (effect of probation and absolute discharge) the words “placed on probation or” and “probation order or” shall cease to have effect.

74 In each of sections 192 and 393 (probation reports), the words from “(other than” to “Act)” and the proviso shall cease to have effect.

75 In each of sections 196(1) and 402 (fines, etc. may be enforced in another district), the proviso shall cease to have effect.

76 Sections 225 (interlocutors to be signed by clerk), 226 (record copies to be inserted in books of adjournal of High Court) and 227 (indictment to be inserted in record book in sheriff court) shall cease to have effect.

77 In section 235 (applications in connection with appeals may be made orally or in writing), the words from “but in regard” to the end shall cease to have effect.

78 In section 236A(3) (judge’s report), for the words “and the parties” there shall be substituted “ , the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed ”.

79 Section 236C (signing of appeal documents) shall cease to have effect.

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- 80 Section 237 (note of proceedings) shall cease to have effect.
- 81 In section 238 (bail pending appeal), in subsection (2), the words “or of any application for leave to appeal” and, in paragraphs (a)(i) and (b)(i), the words “or application” shall cease to have effect.
- 82 In section 239 (clerk to give notice of date of hearing)—
- (a) in subsection (1), the words from “and” in the second place where it occurs to the end; and
  - (b) subsection (2),
- shall cease to have effect.
- 83 In section 240 (appellant may be present at hearing), the words from “except” where it first occurs to the end shall cease to have effect.
- 84 Section 246 (sittings of the High Court to be arranged by Lord Justice General) shall cease to have effect.
- 85 In section 254 (disposal of appeals)—
- (a) in subsection (4)(b), for the words “and ordering” to the end there shall be substituted “and—
    - (i) making, in respect of the appellant, any order mentioned in section 174ZC(2)(a) to (d) of this Act; or
    - (ii) making no order.”; and
  - (b) for subsection (5) there shall be substituted the following subsection—

“(5) Subsections (3) and (4) of section 174ZC of this Act shall apply to an order made under subsection (4)(b)(i) above as they apply to an order made under subsection (2) of that section.”.
- 86 After section 254A there shall be inserted the following section—
- “254B Convictions not to be quashed on certain grounds.**
- No conviction, sentence, judgment, order of court or other proceeding whatsoever in or for the purposes of solemn proceedings under this Act—
- (a) shall be quashed for want of form; or
  - (b) where the accused had legal assistance in his defence, shall be suspended or set aside in respect of any objections to—
    - (i) the relevancy of the indictment, or the want of specification therein; or
    - (ii) the competency or admission or rejection of evidence at the trial in the inferior court,unless such objections were timeously stated.”.

87 Section 256 (summary dismissal of frivolous or vexatious appeals) shall cease to have effect.

88 In section 257 (failure to appear at hearing), for the words from the beginning to “where” in the second place where it occurs there shall be substituted—

“Where—

    - (a) intimation of the diet appointed for the hearing of an appeal has been made to the appellant;

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- (b) no appearance is made by or on behalf of the appellant at the diet; and
- (c)".
- 89 Section 259 (continuation of hearing) shall cease to have effect.
- 90 In section 263 (prerogative of mercy), after subsection (2) there shall be inserted the following subsection—
- “(3) This section shall apply in relation to a finding under section 174ZA(2) and an order under section 174ZC(2) of this Act as it applies, respectively, in relation to a conviction and a sentence.”.
- 91 In section 263A (power of Lord Advocate to refer point of law for opinion of High Court)—
- (a) in subsection (1), after the word “acquitted” there shall be inserted “ or convicted ”; and
- (b) in subsection (5), after the word “acquittal” there shall be inserted “ or, as the case may be, conviction ”.
- 92 In section 264 (disqualification, forfeiture etc.)—
- (a) in each of subsections (1) and (2), after the words “section 228(1)(b)” there shall be inserted “ , (bb), (bc) or (bd) ”; and
- (b) after subsection (3) there shall be inserted the following subsection—
- “(4) Where, upon conviction, a fine has been imposed on a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980, then, for a period of four weeks from the date of the verdict against such person or, in the event of an intimation of intention to appeal (or in the case of an appeal under section 228(1)(b), (bb), (bc) or (bd) or 228A of this Act a note of appeal) being lodged under this Part of this Act, until such appeal, if it is proceeded with, is determined,—
- (a) the fine or compensation order shall not be enforced against that person and he shall not be liable to make any payment in respect of the fine or compensation order; and
- (b) any money paid by that person under the compensation order shall not be paid by the clerk of court to the person entitled to it under section 60(1) of the Act of 1980.”.
- 93 In section 265 (fines and caution)—
- (a) in subsection (1), for the word “thereto” there shall be substituted “ to the conviction or sentence ”; and
- (b) subsections (3) and (5) shall cease to have effect.
- 94 In section 268 (reckoning of time spent on bail pending appeal), in subsection (4)—
- (a) after the word “safety” in the first place where it occurs there shall be inserted “ or, as respects a child sentenced to be detained under section 206 of this Act, the place directed by the Secretary of State ”; and
- (b) after the word “safety” in the second place where it occurs there shall be inserted “ or, as respects such a child, place directed by the Secretary of State ”.
- 95 In section 269 (extract convictions), after the words “section 228(1)(b)” there shall be inserted “ , (bb), (bc), or (bd) ”.

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- 96 In section 270 (release of documents, productions etc. after trial), the following provisions shall cease to have effect—
- (a) in subsection (2), the words from “(or any” to “note of appeal)” where first occurring and from “(or in the case” to “note of appeal)” where second occurring;
  - (b) in subsection (3), the words from “(or in the case” to “note of appeal”); and
  - (c) in subsection (4), the words from “(or in the case” to “note of appeal”.
- 97 Sections 272 (note to be kept of appeal) and 273 (register of appeals) shall cease to have effect.
- 98 In section 274(5)(e) (record of proceedings at trial), for the words “summing up by the judge” there shall be substituted “ judge’s charge to the jury ”.
- 99 Section 276 (declaration administered to shorthand writer) shall cease to have effect.
- 100 In section 277(2) (non-compliance with certain provisions may be waived), the words “section 236C”, “section 237”, “section 246”, “section 259”, “section 272” and “section 273” shall cease to have effect.
- 101 Section 282 (power to make Acts of Adjournal: solemn procedure) shall cease to have effect.
- 102 For subsection (1) of section 283 (application of Part II of that Act) there shall be substituted the following subsections—
- “(1) This Part of this Act applies to summary proceedings in respect of any offence which might prior to the passing of this Act, or which may under the provisions of this or any Act, whether passed before or after this Act, be tried summarily.
  - (1A) Without prejudice to subsection (1) above, this Part of this Act also applies to procedure in all courts of summary jurisdiction in so far as they have jurisdiction in respect of—
    - (a) any offence or the recovery of a penalty under any enactment or rule of law which does not exclude summary procedure as well as, in accordance with section 196 of this Act, to the enforcement of a fine imposed in solemn proceedings; and
    - (b) any order ad factum praestandum, or other order of court or warrant competent to a court of summary jurisdiction.”.
- 103 Section 289D(1A)(d) (power to alter sums specified in section 435(e) of that Act) shall cease to have effect.
- 104 In section 296 (police liberation or detention of children arrested), in subsections (1) and (2), the words “sitting summarily” in each place where they occur shall cease to have effect.
- 105 In section 300 (appeal in respect of bail)—
- (a) after subsection (3) there shall be inserted the following subsection—
    - “(3A) Where an applicant in an appeal under this section is under 21 years of age, section 329 of this Act shall apply to the High Court or, as the case may be, the Lord Commissioner of Justiciary when disposing of the appeal as it applies to a court when remanding or

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committing a person of the applicant’s age for trial or sentence.”;  
and

- (b) in subsection (4)—
- (i) the words from “, or where” to “96 hours” shall cease to have effect; and
  - (ii) for the word “periods” there shall be substituted “ period ”.

106 For section 305 (intimation to a solicitor) there shall be substituted the following section—

**“305 Right of accused to have access to solicitor.**

- (1) Where any person has been arrested on any criminal charge, such person shall be entitled immediately upon such arrest—
  - (a) to have intimation sent to a solicitor that his professional assistance is required by such a person and informing him—
    - (i) of the place where the person is being detained;
    - (ii) whether the person is to be liberated; and
    - (iii) if the person is not to be liberated, the date on which he is to be taken to court and the court to which he is to be taken;
  - (b) to be told what rights there are under paragraph (a) above and subsections (2) and (3) below.
- (2) Such solicitor shall be entitled to have a private interview with the person accused before he is examined on declaration, and to be present at such examination.
- (3) It shall be in the power of the sheriff or justice to delay such examination for a period not exceeding 48 hours from and after the time of such person’s arrest, in order to allow time for the attendance of such solicitor.”.

107 In section 309(1) (forms of procedure in summary proceedings), the words “Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.

108 In section 310 (incidental applications)—

- (a) the words “Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect; and
- (b) after the word “open” there shall be inserted “ shut and ”.

109 In section 311 (complaint)—

- (a) in subsection (1), the words from “in” where it first occurs to the end shall cease to have effect; and
- (b) subsections (4) and (5) shall cease to have effect.

110 In section 312 (form of charge in complaint)—

- (a) in paragraph (f), at the end there shall be inserted the words “ provided also that nothing in the foregoing provisions of this paragraph or in any rule of law shall prohibit the amendment of a complaint to include a time outwith the exceptional latitude if it appears to the court that the amendment would not prejudice the accused; ”; and
- (b) in paragraph (j), for the words from “all” to the end there shall be substituted “ cheques, banknotes, postal orders, money orders and foreign currency; ”.

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- 111 In section 314 (orders of court on complaint)—
- (a) in subsection (1)(d), the words “or interim order” shall cease to have effect; and
  - (b) after subsection (4) there shall be inserted the following subsection—
    - “(4A) Where all the parties join in an application under subsection (4) above, the court may proceed under that subsection without hearing the parties.”.
- 112 In section 315(2) (citation), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.
- 113 In section 316(3) (manner of citation of accused)—
- (a) after the word “accused” in the first place where it occurs there shall be inserted “ or a witness ”;
  - (b) after the words “prosecutor and” there shall be inserted—
    - “(a) in the case of the accused,”;
  - (c) after the word “service” there shall be inserted—
    - “; and
    - (b) in the case of a witness, sent by ordinary post,”; and
  - (d) after the word “accused” in the second place where it occurs there shall be inserted “ or witness ”.
- 114 In section 318(2) (citation of offender), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in” shall cease to have effect.
- 115 In section 319(1) (citation by post), the words “other than a witness” shall cease to have effect.
- 116 In section 320 (apprehension of witness), after the word “may” where it first occurs there shall be inserted “ , if it is satisfied that he received the citation or that its contents came to his knowledge, ”.
- 117 In section 321 (warrants of apprehension and search)—
- (a) in subsection (1), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect;
  - (b) in subsection (3), the words “either by way of trial or by way of remit to another court” shall cease to have effect;
  - (c) in subsection (5), for the words from “the date” to the end there shall be substituted—
    - “(a) the date fixed for the hearing of the case; or
    - (b) the date when security to the amount fixed under subsection (6) below is found,

whichever is the earlier. ” ; and
  - (d) after subsection (5), there shall be inserted the following subsection—
    - “(6) A witness apprehended under a warrant under section 320 of this Act shall, wherever practicable, be brought immediately by the officer of law who executed that warrant before a justice, who shall fix such sum as he considers appropriate as security for the appearance of the witness at all diets.”.

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- 118 In section 335(1) (amendment of complaint), the words “penalty or” shall cease to have effect.
- 119 Section 336 (record of plea of guilty) shall cease to have effect.
- 120 In section 338(1) (failure of accused to appear), after the word “cited” where it first occurs there shall be inserted “ (other than a diet which, by virtue of section 337A(3) of this Act, he is not required to attend) ”.
- 121 In section 339 (alibi), for the words “prior to the examination of the first witness for the prosecution” there shall be substituted “ at any time before the first witness is sworn ”.
- 122 In section 344(1) (punishment of witness for contempt), the words “or to produce documents in his possession when required by the court,” shall cease to have effect.
- 123 Section 345 (administration of oath to same witness in case at same diet) shall cease to have effect.
- 124 For section 347 (evidence of the accused) there shall be substituted the following section—

**“347 Evidence of the accused.**

Where, in any trial, the accused is to be called as a witness he shall be so called as the first witness for the defence unless the court, on cause shown, otherwise directs.”.

- 125 In section 352(2) (application to have all or part of record of proceedings at judicial examination not admitted as evidence)—
- (a) after the words “competent for” there shall be inserted “ the prosecutor or ”; and
  - (b) for the words “the defence and for the prosecutor” there shall be substituted “ either party ”.
- 126 In section 354(1) (admissions and agreements as to evidence in summary proceedings), the proviso shall cease to have effect.
- 127 In section 357 (proof of convictions)—
- (a) in subsection (1)(a), the words “Form No. 2 or 3 of Part III of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or of” shall cease to have effect;
  - (b) in subsection (2)—
    - (i) for the words “An official” there shall be substituted “ A prison officer ”; and
    - (ii) for the word “official” in the second place where it occurs there shall be substituted “ prison officer ”; and
  - (c) subsection (4) shall cease to have effect.
- 128 In section 359 (record of summary proceedings), after the words “than the complaint” there shall be inserted “ , or a copy of the complaint certified as true by a procurator fiscal ”.
- 129 Section 360 (proceedings written or printed) shall cease to have effect.
- 130 In section 360A (interruption of summary proceedings for verdict in earlier trial)—
- (a) in subsection (1)(b), the words from “as” to the end of the paragraph; and



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- (b) subsection (2),  
shall cease to have effect.
- 131 In section 366 (procedure where sheriff sits summarily in respect of offence by child)—  
(a) in subsection (1)(c), for the words “newspapers or news agencies” there shall be substituted “ news gathering or reporting organisations present for the purpose of contemporaneous reports of the proceedings ”; and  
(b) subsection (2) shall cease to have effect.
- 132 In section 375(3) (insanity in bar of trial), for the word “called” there shall be substituted “ sworn ”.
- 133 In section 376 (power of court to order hospital admission or guardianship)—  
(a) subsection (2) shall cease to have effect; and  
(b) in subsection (3), for the words “as aforesaid” there shall be substituted “ summarily in the sheriff court with an act or omission constituting an offence ”.
- 134 In section 377 (requirements as to medical evidence)—  
(a) in subsection (1), after the word “sections” there shall be inserted “ 375(2), ”;  
(b) in subsection (2), for the word “section” in the first place where it occurs there shall be substituted “ sections 375(2) and ”; and  
(c) in subsection (4), after the word “hospital” there shall be inserted “ or, as respects a report for the purposes of section 375(2), remanded in custody ”.
- 135 In section 379(3) (restriction orders), for the words “section 62(1)” there shall be substituted “ section 60(3) ”.
- 136 In section 392 (effects of probation and absolute discharge on right to appeal)—  
(a) in subsection (4), the words “placed on probation or” shall cease to have effect; and  
(b) in subsection (5), the words “placed on probation or” and “probation order or” shall cease to have effect.
- 137 In section 396(7) (time for payment of fine), the words “, subject to any rules under this Part of this Act” shall cease to have effect.
- 138 In section 398(1) (restriction on imprisonment after fine or caution)—  
(a) after the word “fine” in the second place where it occurs there shall be inserted “ or, as the case may be, to find caution ”; and  
(b) after the word “paid” there shall be inserted “ or, as the case may be, caution has not been found ”.
- 139 In section 406 (substitution of custody for imprisonment where a child defaults on fine), the words “damages or expenses,” shall cease to have effect.
- 140 In section 408 (discharge from imprisonment to be specified), for the words “for payment of a fine or for finding of” there shall be substituted “ in default of payment of a fine or on failure to find ”.
- 141 In section 413(1) (detention of children in residential care)—

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- (a) after the word “authority” in the first place where it occurs there shall be inserted “ for such period not exceeding one year as may be specified in the order ”; and
- (b) the words from “and shall” to the end shall cease to have effect.
- 142 In section 430 (consecutive sentences)—
- (a) in subsection (1), the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect; and
- (b) for subsection (4) there shall be substituted the following subsection—
- “(4) A court of summary jurisdiction may frame—
- (a) a sentence following on conviction; or
- (b) an order for committal in default of payment of any sum of money or for contempt of court,
- so as to take effect on the expiry of any previous sentence or order which, at the date of the later conviction or order, the accused is undergoing.”.
- 143 In section 432(1) (deferred sentence), the words from “and”, where it second occurs, to the end shall cease to have effect.
- 144 Section 435 (expenses) shall cease to have effect.
- 145 In section 440 (extract sufficient warrant for imprisonment), the words “Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in” shall cease to have effect.
- 146 In section 441 (provision for court comprising more than one judge), the words from “, although” to “place,” shall cease to have effect.
- 147 In section 443A (disqualification, forfeiture etc.), after subsection (2) there shall be inserted the following subsection—
- “(3) Where, upon conviction, a fine has been imposed upon a person or a compensation order has been made against him under section 58 of the Criminal Justice (Scotland) Act 1980—
- (a) the fine or compensation order shall not be enforced against him and he shall not be liable to make any payment in respect of the fine or compensation order; and
- (b) any money paid under the compensation order shall not be paid by the clerk of court to the entitled person under section 60(1) of the Act of 1980,
- pending the determination of any appeal against conviction or sentence (or disposal or order).”.
- 148 In section 444(1)(b) (contents of application for stated case), for the words “a statement of that fact” there shall be substituted “ the ground of appeal against that sentence or disposal or order ”.
- 149 In section 446 (procedure in relation to appeal by stated case where appellant in custody)—
- (a) in subsection (4), at the end there shall be inserted the words “ or, on the application of the appellant, such earlier date as the court thinks fit, not being a date later than the date of expiry of any term or terms of imprisonment imposed subsequently to the conviction appealed against ”;

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- (b) in subsection (5)—
    - (i) after the words “person is” there shall be inserted “ in custody or ”; and
    - (ii) for the words “the term” there shall be substituted “ any term ”; and
  - (c) after subsection (5) there shall be inserted the following subsection—
    - “(6) The court shall not make an order under subsection (5) above to the effect that the sentence or, as the case may be, unexpired portion of the sentence shall run other than concurrently with the subsequently imposed term of imprisonment without first notifying the appellant of its intention to do so and considering any representations made by him or on his behalf.”.
- 150 In section 451(3) (computation of time) after the words “442(1)(a)(i)” there shall be inserted “ or (in so far as it is against conviction) (iii) ”.
- 151 (1) Section 453 (prosecutor’s consent to or application for setting aside of conviction) shall be amended as follows.
- (2) In subsection (1)—
    - (a) at the beginning there shall be inserted “ Without prejudice to section 442(1) (b) or (c) of this Act, ”;
    - (b) in paragraph (a)—
      - (i) for the words “442(1)(a)(i) or (iii)” there shall be substituted “ 442(1)(a) ”; and
      - (ii) after the word “conviction” there shall be inserted “ or sentence or, as the case may be, conviction and sentence (“sentence” being construed in this section as including disposal or order) ”; and
    - (c) in paragraph (b)—
      - (i) after the word “founded” there shall be inserted “ or the sentence imposed following such conviction ”; and
      - (ii) after the word “conviction” in the second place where it occurs there shall be inserted “ or sentence or, as the case may be, conviction and sentence ”.
  - (3) In subsection (4)—
    - (a) in paragraph (a)—
      - (i) after the word “conviction” where it first occurs, there shall be inserted “ or the sentence, or both, ”;
      - (ii) the word “and” at the end of sub-paragraph (i) shall cease to have effect;
      - (iii) at the end of sub-paragraph (ii) there shall be inserted—
        - “; and
        - (iii) where the sentence is set aside, pass another (but not more severe) sentence;”;
        - and
    - (b) in paragraph (b), after the word “conviction” there shall be inserted “ or sentence, or, as the case may be conviction and sentence, ”.
- 152 In section 453B (appeals against sentence only), after subsection (4) there shall be inserted the following subsection—

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- “(4A) Subject to subsection (4) above, the report mentioned in subsection (3)(b) above shall be available only to the High Court, the parties and, on such conditions as may be prescribed by Act of Adjournal, such other persons or classes of persons as may be so prescribed.”
- 153 In section 453D (disposal of appeal where appellant insane)—
- (a) in subsection (1)(b), for the words “and ordering” to the end there shall be substituted “and—
- (i) making, in respect of the appellant, any order mentioned in section 375ZC(2)(a) to (d) of this Act; or
- (ii) making no order.”; and
- (b) for subsection (2) there shall be substituted the following subsection—
- “(2) Subsection (3) of section 375ZC of this Act shall apply to an order made under subsection (1)(b)(i) above as it applies to an order made under subsection (2) of that section.”
- 154 In section 454(1) (convictions not to be quashed on certain grounds), the words “at the trial by the solicitor of the accused” shall cease to have effect.
- 155 Section 457 (power to make Acts of Adjournal: summary procedure) shall cease to have effect.
- 156 Before section 457A there shall be inserted the following section—

**“457ZA Acts of Adjournal.**

- (1) The High Court may by Act of Adjournal—
- (a) regulate the practice and procedure in relation to criminal procedure; and
- (b) make such rules and regulations as may be necessary or expedient to carry out the purposes and accomplish the objects of any enactment (including an enactment in this Act) in so far as it relates to criminal procedure,
- provided that no rule, regulation or provision which affects the governor or any other officer of a prison shall be made by any such Act of Adjournal except with the consent of the Secretary of State.
- (2) The High Court may by Act of Adjournal modify, amend or repeal any enactment (including an enactment in this Act) in so far as that enactment relates to matters with respect to which an Act of Adjournal may be made under subsection (1) above.”
- 157 (1) Section 462 (interpretation) shall be amended as follows.
- (2) In subsection (1)—
- (a) at the appropriate places, there shall be inserted the following definitions—
- ““examination of facts” means an examination of facts held under section 174ZA or 375ZA of this Act;”;
- ““governor” means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, the director of the prison;”;
- and

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- ““prison officer” and “officer of a prison” means, in relation to a contracted out prison within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994, a prisoner custody officer within the meaning of section 114(1) of that Act;” and
- (b) in the definition of “officer of law”, after paragraph (ii) there shall be inserted the following paragraph—
- “(ia) any person who is employed under section 9 of the Police (Scotland) Act 1967 for the assistance of the constables of a police force and who is authorised by the chief constable of that police force in relation to service and execution as mentioned above;” and
- (c) in the definition of “prosecutor”, the words “private prosecutor,” in the second place where they occur shall cease to have effect.
- (3) In subsection (6), for the words “Great Britain” there shall be substituted “ the United Kingdom ”.
- (4) Subsection (10) shall cease to have effect.
- 158 In Schedule 5 (discharge and amendment of probation orders), in paragraph 4—
- (a) after the word “practitioner” where it first occurs there shall be inserted “ or chartered psychologist ”; and
- (b) after the word “practitioner” where it second occurs there shall be inserted “ or psychologist ”.

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