

SCHEDULE 2

Establishment of the Sheriff Appeal Court

PART 1

Modification of primary legislation

Animal Health Act 1981

1.—(1) Section 28E of the Animal Health Act 1981(1) (deliberate infection: deprivation orders) is amended as follows.

(2) In subsection (11), for “High Court of Justiciary” substitute “appropriate Appeal Court”.

(3) After subsection (11) insert—

“(11A) In subsection (11), “appropriate Appeal Court” means—

- (a) in the case of an appeal against an order made following summary conviction, the Sheriff Appeal Court; and
- (b) in the case of an appeal against an order made following conviction on indictment, the High Court of Justiciary.”.

Road Traffic Offenders Act 1988

2.—(1) Section 41 of the Road Traffic Offenders Act 1988(2) (power of High Court of Justiciary to suspend disqualification) is amended as follows.

(2) In subsection (2)—

- (a) the words “to the High Court of Justiciary” are repealed; and
- (b) after “the court” where it first occurs insert “hearing the appeal”.

(3) After subsection (2) insert—

“(2A) Where the court hearing the appeal is the Sheriff Appeal Court, the reference in subsection (2) to a single judge of the court is a reference to an Appeal Sheriff.”.

(4) In subsection (3), for “High Court” substitute “court hearing the appeal”.

(5) The title of that section becomes “Power of appellate courts in Scotland to suspend disqualification.”.

Dangerous Dogs Act 1991

3.—(1) Section 4 of the Dangerous Dogs Act 1991(3) (destruction and disqualification orders) is amended as follows.

(2) In subsection (9)—

- (a) in paragraph (a), for “High Court of Justiciary” substitute “appropriate Appeal Court”; and
- (b) after paragraph (a) insert—

“(aa) In paragraph (a), “appropriate Appeal Court” means—

(1) 1981 c.22; section 28E was inserted by the Animal Health and Welfare (Scotland) Act 2006 (asp 11), section 10.

(2) 1988 c.53.

(3) 1991 c.65. Section 4 was amended by paragraph 2(3) of schedule 1 to the Control of Dogs (Scotland) Act 2010 (asp 9).

- (i) in the case of an appeal against an order made following summary conviction, the Sheriff Appeal Court; and
- (ii) in the case of an appeal against an order made following conviction on indictment, the High Court of Justiciary.”.

Proceeds of Crime (Scotland) Act 1995

4.—(1) Section 27 of the Proceeds of Crime (Scotland) Act 1995(4) (appeal against court decision under section 25(1) or 26(1)) is amended as follows.

(2) In each of subsections (1) and (3), for “High Court of Justiciary” substitute “appropriate Appeal Court”.

(3) In subsection (1), for “High Court” substitute “appropriate Appeal Court”.

(4) After subsection (3) insert—

“(4) In this section, “appropriate Appeal Court” means—

- (a) in the case of an appeal under this section against the refusal or grant of an application in summary proceedings, the Sheriff Appeal Court; and
- (b) in the case of an appeal under this section against the refusal or grant of an application in proceedings on indictment, the High Court of Justiciary.”.

Criminal Procedure (Scotland) Act 1995

5.—(1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 62 (appeal by accused not criminally responsible or unfit for trial)—

(a) in each of subsections (1), (2), (5) and (6), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”; and

(b) after subsection (7) insert—

“(8) In this section, “appropriate Appeal Court” means—

- (a) in the case of an appeal under subsection (1) against a finding or refusal, or an order made, in proceedings on indictment, the High Court;
- (b) in the case of an appeal under subsection (1) against a finding or refusal, or an order made, in summary proceedings, the Sheriff Appeal Court.”.

(3) In section 63 (appeal by prosecutor where accused found not criminally responsible or unfit for trial)—

(a) in each of subsections (1), (2), (4) and (5), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”; and

(b) after subsection (6) insert—

“(7) In this section, “appropriate Appeal Court” means—

- (a) in the case of an appeal under subsection (1) against a finding or an acquittal made in proceedings on indictment, the High Court;
- (b) in the case of an appeal under subsection (1) against a finding or an acquittal made in summary proceedings, the Sheriff Appeal Court.”.

(4) In section 147(3) (appeal against grant or refusal of any application to extend the period mentioned in section 147(1)), for “High Court” substitute “Sheriff Appeal Court”.

(4) 1995 c.43.

- (5) In section 156D(5) (appeals in respect of orders under section 156A(1))—
- (a) in subsection (1), for “High Court” substitute “Sheriff Appeal Court”;
 - (b) in subsection (4), for “High Court or any Lord Commissioner of Justiciary” substitute “Sheriff Appeal Court or any Appeal Sheriff”; and
 - (c) in subsection (5), for “High Court or, as the case may be, the Lord Commissioner of Justiciary” substitute “Sheriff Appeal Court or, as the case may be, Appeal Sheriff”.
- (6) In section 200 (remand for inquiry into physical or mental condition)—
- (a) in subsection (9), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”;
 - (b) in subsection (9A)(b), for “Clerk of Justiciary” in each place where it occurs substitute “clerk of the appropriate Appeal Court”; and
 - (c) after subsection (11) insert—
 - “(12) In this section—
 - “appropriate Appeal Court” means—
 - (a) in the case of an appeal under subsection (9) against a decision of the High Court, that Court;
 - (b) in the case of an appeal under subsection (9) against a decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court; and - “the clerk of the appropriate Appeal Court” means—
 - (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary;
 - (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.”.
- (7) In section 201 (power of court to adjourn case before sentence)—
- (a) in subsection (4), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”;
 - (b) in subsection (5)(b), for “Clerk of Justiciary” in each place where it occurs substitute “clerk of the appropriate Appeal Court”; and
 - (c) after subsection (5) insert—
 - “(6) In this section—
 - “appropriate Appeal Court” means—
 - (a) in the case of an appeal under subsection (4) against a decision of the High Court, that Court;
 - (b) in the case of an appeal under subsection (4) against a decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court; and - “the clerk of the appropriate Appeal Court” means—
 - (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary;
 - (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.”.

(5) Section 156D was inserted by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (“the 2007 Act”), section 16.

(8) In section 245J(6) (breach of certain orders: adjourning hearing and remanding in custody etc.)—

- (a) in subsection (5), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”;
- (b) in subsection (6)(b), for “Clerk of Justiciary” in each place where it occurs substitute “clerk of the appropriate Appeal Court”; and
- (c) after subsection (6) insert—

“(7) In this section—

“appropriate Appeal Court” means—

- (a) in the case of an appeal under subsection (4) against a decision of the High Court, that Court;
- (b) in the case of an appeal under subsection (4) against a decision of a sheriff (whether in solemn or summary proceedings) or a JP court, the Sheriff Appeal Court; and

“the clerk of the appropriate Appeal Court” means—

- (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary;
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.”.

(9) In section 254B(7)(7) (issuing of a European Protection Order), after “High Court” insert “, the Sheriff Appeal Court”.

(10) In section 271V(8) (appeals)—

- (a) in each of subsections (1) and (4)(b), for “High Court” substitute “appropriate Appeal Court”; and
- (b) after subsection (5) insert—

“(6) In this section, “appropriate Appeal Court” means—

- (a) in the case of an appeal under this section against a decision made in proceedings on indictment, the High Court;
- (b) in the case of an appeal under this section against a decision made in summary proceedings, the Sheriff Appeal Court.”.

(11) In section 271W (appeal against the making of a witness anonymity order), in each of subsections (1)(b) and (2) for “High Court” substitute “court hearing the appeal”.

(12) In section 271X (appeal against the refusal to make a witness anonymity order), in each of subsections (1)(b) and (2) for “High Court” substitute “court hearing the appeal”.

(13) In section 271Y (appeal against a variation of a witness anonymity order), in each of subsections (1)(b), (2) and (3) for “High Court” substitute “court hearing the appeal”.

(14) In section 271Z (appeal against a refusal to vary or discharge a witness anonymity order), in each of subsections (1)(b), (2) and (3) for “High Court” substitute “court hearing the appeal”.

(15) In section 298 (trial judge’s report)—

- (a) in subsection (1), for “sections 113 and 186(3)(b)” substitute “section 113”;
- (b) in subsection (1)(a), for “, 108A or 175(2) to (4)” substitute “or 108A”;

(6) Section 245J was inserted by the Criminal Justice (Scotland) Act 2003 (asp 7), section 48.

(7) Sections 254A to 254E were inserted by S.S.I. 2015/107.

(8) Sections 271N to 271Z were inserted by the Criminal Justice and Licensing (Scotland) Act 2010, section 90(1).

- (c) after subsection (2) insert—
- “(2A) Without prejudice to section 186(3)(b) of this Act, the Sheriff Appeal Court may, in relation to—
- (a) an appeal under section 175(2) to (4) of this Act; or
 - (b) an appeal by way of bill of suspension or advocacy,
- at any time before the appeal is finally determined order the judge who presided at the trial, passed sentence or otherwise disposed of the case to provide to the Clerk of the Sheriff Appeal Court a report in writing giving the judge’s opinion in the case generally or in relation to any particular matter specified in the order.
- (2B) The Clerk of the Sheriff Appeal Court must send a copy of the report provided under subsection (2A) above to the convicted person or their solicitor, the prosecutor and, in relation to cases referred under Part XA of this Act, the Commission.”; and
- (d) in subsection (3)—
- (i) for “subsection (2)” substitute “subsections (2) and (2B)”; and
 - (ii) after “High Court” insert “or the Sheriff Appeal Court (as the case may be)”.
- (16) In section 298A (intimation of bills and of petitions to the nobile officium)(9)—
- (a) in subsection (1)—
 - (i) the word “or” immediately after paragraph (b) is repealed;
 - (ii) in paragraph (c), after “High Court” insert “or the Sheriff Appeal Court”;
 - (b) in subsection (4)—
 - (i) the word “or” immediately after paragraph (b) is repealed;
 - (ii) in paragraph (c), after “High Court” insert “or the Sheriff Appeal Court”; and
 - (c) in subsection (9), after “Clerk of Justiciary” insert “or the Clerk of the Sheriff Appeal Court (as the case may be)”.
- (17) In section 299 (correction of entries)—
- (a) in subsection (2)—
 - (i) in paragraph (a), after “Clerk of Justiciary” insert “or the Clerk of the Sheriff Appeal Court (as the case may be)”; and
 - (ii) in paragraph (c), after “High Court” insert “or the Sheriff Appeal Court (as the case may be)”; and
 - (b) in subsection (4), for “High Court” substitute “court hearing the appeal”.
- (18) In section 300 (amendment of records of conviction and sentence in summary proceedings), in each of subsections (1) and (3), for “High Court” in each place where it occurs (other than in the expression “judge of the High Court”) substitute “Sheriff Appeal Court”.
- (19) In section 300A(2)(10) (power to excuse procedural irregularities on appeal), for “High Court” substitute “court hearing the appeal”.
- (20) In section 301A(11) (recovery of documents)—
- (a) in each of subsections (5) and (6), for “High Court” substitute “appropriate Appeal Court”; and
 - (b) after subsection (8) insert—

(9) Section 298A was inserted by the 2007 Act, section 38.

(10) Section 300A was inserted by the 2007 Act, section 40.

(11) Section 301A was inserted by the 2007 Act, section 37.

“(9) In this section, “appropriate Appeal Court” means—

- (a) in the case of an appeal under subsection (5) against a decision made in solemn proceedings, the High Court;
- (b) in the case of an appeal under subsection (5) against a decision made in summary proceedings, the Sheriff Appeal Court.”.

(21) In section 303A(12) (transfer of rights of appeal of deceased person)—

- (a) in subsection (1), for “High Court” substitute “appropriate Appeal Court”;
- (b) in subsection (2), for “Clerk of Justiciary” substitute “clerk of the appropriate Appeal Court”;
- (c) in each of subsections (2) and (4), for “Court” in each place where it occurs substitute “appropriate Appeal Court”; and
- (d) after subsection (6) insert—

“(7) In this section—

“appropriate Appeal Court” means—

- (a) in the case of an appeal proposed to be instituted or continued before the High Court, the High Court;
- (b) in the case of an appeal proposed to be instituted or continued before the Sheriff Appeal Court, the Sheriff Appeal Court; and

“the clerk of the appropriate Appeal Court” means—

- (a) in a case where the High Court is the appropriate Appeal Court, the Clerk of Justiciary;
- (b) in a case where the Sheriff Appeal Court is the appropriate Appeal Court, the Clerk of that Court.”.

Protection of Wild Mammals (Scotland) Act 2002

6. In section 9 of the Protection of Wild Mammals (Scotland) Act 2002(13) (disqualification orders), in each of subsections (8) and (9) for “High Court” substitute “Sheriff Appeal Court”.

Fur Farming (Prohibition) (Scotland) Act 2002

7. In section 2(8) of the Fur Farming (Prohibition) (Scotland) Act 2002(14) (forfeiture orders), for “High Court of Justiciary” substitute “Sheriff Appeal Court”.

Sexual Offences Act 2003

8. In section 111(d) of the Sexual Offences Act 2003(15) (appeals in relation to SOPOs and interim SOPOs: Scotland), for “High Court of Justiciary” substitute “court hearing the appeal”.

Police, Public Order and Criminal Justice (Scotland) Act 2006

9.—(1) The Police, Public Order and Criminal Justice (Scotland) Act 2006(16) is amended as follows.

(12) Section 303A was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 20.

(13) 2002 asp 6.

(14) 2002 asp 10.

(15) 2003 c.42. Subsection (d) of section 111 was inserted by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), section 17(2).

(16) 2006 asp 10.

- (2) In section 60(3) (appeals)—
 - (a) for “High Court of Justiciary” substitute “court hearing the appeal”; and
 - (b) for “High Court” substitute “court hearing the appeal”.
- (3) After section 95(4) (sentencing: consideration of undisclosed information) insert—

“(4A) Subsection (3) does not prevent disclosure by the court or the Clerk of the Sheriff Appeal Court in connection with proceedings to which section 96A applies.”.
- (4) In section 96 (appeals etc.: undisclosed information)—
 - (a) in subsection (1)(a), for “, 108A or 175(2) to (4)” substitute “or 108A”;
 - (b) in subsection (2), the words “,180 or 187” are repealed;
 - (c) in subsection (5), the words “, 179(8), 180(10), 186(4)(b), 187(9)” are repealed; and
 - (d) in subsection (8), after “this section” insert “or to section 96A”.
- (5) The title of that section becomes “Appeals etc. in the High Court: undisclosed information”.
- (6) After that section insert—

“96A Appeals etc. in the Sheriff Appeal Court: undisclosed information

- (1) This section applies to any proceedings in the Sheriff Appeal Court in relation to—
 - (a) an appeal under section 175(2) to (4) of the 1995 Act; or
 - (b) an appeal by way of bill of suspension or advocation.
- (2) In subsection (1) the reference to proceedings in the Sheriff Appeal Court includes consideration by an Appeal Sheriff whether to grant leave to appeal under section 180 or 187 of the 1995 Act.
- (3) If, under subsection (2) of section 95, the lower court in passing sentence on the offender took into account information contained in a report mentioned in that subsection, the Sheriff Appeal Court and the Clerk of the Sheriff Appeal Court—
 - (a) must not disclose the information or the existence of the report to any person other than the prosecutor, the offender and, with the offender’s agreement, the offender’s counsel or solicitor; and
 - (b) must not disclose to any person whether the sentence passed by the lower court is less than it would have passed but for the assistance given by the offender.
- (4) If, in a case not falling within subsection (3), the Sheriff Appeal Court or the Clerk of the Sheriff Appeal Court becomes aware of information contained in a report mentioned in subsection (2) of section 95 or that a court in passing sentence has, under that subsection, taken that information into account, the Sheriff Appeal Court or the Clerk of the Sheriff Appeal Court must not disclose to any person the information, the existence of the report or whether the sentence passed by the lower court on the person to whom the report relates is less than the sentence it would have passed but for the assistance given by that person.
- (5) Sections 179(8), 180(10), 186(4)(b), 187(9) and 298(2B) of the 1995 Act do not apply in a case falling within subsection (3) or (4) to the extent that they require a disclosure which, if made by the Sheriff Appeal Court or the Clerk of the Sheriff Appeal Court, would contravene the subsection in question.
- (6) Subsection (5) does not, however, operate so as to prevent any disclosure to the prosecutor; but subsection (3) or, as the case may be, subsection (4) applies to the prosecutor in relation to any such disclosure as it applies to the Sheriff Appeal Court and the Clerk of the Sheriff Appeal Court in relation to a case falling within that subsection (but not so as to prevent disclosure by the prosecutor to the Sheriff Appeal Court).

(7) Subsections (2) to (5) of section 93 apply to proceedings referred to in subsection (1) of this section as they apply to proceedings referred to in subsection (1) of that section.”.

Animal Health and Welfare (Scotland) Act 2006

10. In section 43(2) of the Animal Health and Welfare (Scotland) Act 2006⁽¹⁷⁾ (appeals against orders), for “High Court of Justiciary” substitute “Sheriff Appeal Court”.

Animal Welfare Act 2006

11. In section 49(2) of the Animal Welfare Act 2006⁽¹⁸⁾ (appeals against deprivation orders and seizure orders), for “High Court of Justiciary” substitute “Sheriff Appeal Court”.

Control of Dogs (Scotland) Act 2010

12.—(1) The Control of Dogs (Scotland) Act 2010⁽¹⁹⁾ is amended as follows.

(2) In section 5(8) (failure to comply with dog control notice), for “High Court” substitute “Sheriff Appeal Court”.

(3) In section 11(4) (disqualification from owning or keeping dog: further provision), for “High Court” substitute “Sheriff Appeal Court”.

Criminal Justice and Licensing (Scotland) Act 2010

13.—(1) Section 153 of the Criminal Justice and Licensing (Scotland) Act 2010⁽²⁰⁾ (appeals) is amended as follows.

(2) In each of subsections (1) to (5), for “High Court” in each place where it occurs substitute “appropriate Appeal Court”.

(3) In subsection (10), after the definition of “appellant” insert—

““appropriate Appeal Court” means—

- (a) in the case of an appeal under this section in proceedings on indictment, the High Court,
- (b) in the case of an appeal under this section in summary proceedings, the Sheriff Appeal Court.”.

Terrorism Prevention and Investigation Measures Act 2011

14.—(1) Schedule 3 to the Terrorism Prevention and Investigation Measures Act 2011⁽²¹⁾ (appeals against convictions) is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (b), the words “or summary conviction” are repealed;
- (b) the word “or” immediately after sub-paragraph (c) is repealed; and
- (c) after that sub-paragraph insert—

“(ca) in the case of a summary conviction in Scotland, to the Sheriff Appeal Court; or”.

(17) 2006 asp 11.

(18) 2006 c.45.

(19) 2010 asp 9.

(20) 2010 asp 13.

(21) 2011 c.23.

(3) In paragraph 4(4), for “High Court of Justiciary” where it first occurs substitute “Sheriff Appeal Court”.

Counter-Terrorism and Security Act 2015

15.—(1) Schedule 4 to the Counter-Terrorism and Security Act 2015(**22**) (temporary exclusion orders: appeals against convictions) is amended as follows.

(2) In paragraph 2—

- (a) in sub-paragraph (b), the words “or summary conviction” are repealed;
- (b) the word “or” immediately after sub-paragraph (c) is repealed; and
- (c) after that sub-paragraph insert—

“(ca) in the case of a summary conviction in Scotland, to the Sheriff Appeal Court; or”.

(3) In paragraph 4(4), for “High Court of Justiciary” where it first occurs substitute “Sheriff Appeal Court”.