

2008 No. 42 (C. 4)

CRIMINAL LAW

**The Criminal Proceedings etc. (Reform) (Scotland) Act 2007
(Commencement No. 3 and Savings) Order 2008**

Made - - - -

19th February 2008

The Scottish Ministers make the following Order in exercise of the powers conferred by section 84(1) and (2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007(a).

Citation

1. This Order may be cited as the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 3 and Savings) Order 2008.

Interpretation

2. In this Order—

“the 2007 Act” means the Criminal Proceedings etc. (Reform) (Scotland) Act 2007; and

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(b).

Commencement

3.—(1) The provisions of the 2007 Act specified in column 1 of the Schedule to this Order, the subject matter being specified in column 2, come into force on 10th March 2008.

(2) The coming into force of the provisions listed in the Schedule to this Order are subject to—

(a) the savings in articles 4 to 6; and

(b) any exceptions or limitations on extent specified in that Schedule.

(3) Where a particular purpose or area is specified in relation to any provision in column 1 of the Schedule to this Order, that provision shall come into force on 10th March 2008 for that purpose or in that area only.

Savings relating to liberation on undertaking

4.—(1) The provisions of section 7 of the 2007 Act which are commenced by this Order(c) shall not apply for the purposes of any undertaking entered into under sections 21 or 22 of the 1995 Act before 10th March 2008.

(a) 2007 asp 6.

(b) 1995 c.46.

(c) Section 7(2)(c) of the 2007 Act was commenced on 10th December 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Order 2007 (S.S.I. 2007/479) (as amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Amendment Order 2007 (S.S.I. 2007/527)). Article 5 of S.S.I. 2007/479 makes transitional provision in respect of that section. The remainder of section 7 (except section 7(2)(g)) is commenced by this Order.

(2) Without prejudice to the generality of paragraph (1), “purposes” shall include any proceedings relating to any such undertaking.

Savings relating to disclosure of convictions

5. The provisions of section 12 of the 2007 Act which are commenced by this Order (being the provisions which insert section 166A into the 1995 Act)(a) shall only apply where the offence which the court is deciding the disposal of was committed on or after 10th March 2008.

Savings relating to fixed penalty offers

6. Sections 50(1), 52, 53 and 54 of the 2007 Act shall not apply to any conditional offer (under section 302 of the 1995 Act) made before 10th March 2008.

St Andrew’s House,
Edinburgh
19th February 2008

KENNY MACASKILL
A member of the Scottish Executive

(a) Section 12(1) was commenced on 10th December 2007 by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Order 2007 (S.S.I. 2007/479) (as amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 2 and Transitional Provisions and Savings) Amendment Order 2007 (S.S.I. 2007/527)). This section amended section 166 (previous convictions: summary proceedings) of the 1995 Act. Section 12(2) of the 2007 Act was commenced on the 10th December 2007 by the same Order in so far as it inserted section 166B (charges which disclose convictions) into the 1995 Act.

SCHEDULE

Article 3

PROVISIONS COMING INTO FORCE ON 10TH MARCH 2008

<i>Column 1</i> <i>(provisions of the 2007 Act)</i>	<i>Column 2</i> <i>(subject matter)</i>
Section 7, in so far as not already commenced, except for section 7(2)(g)	Liberation on undertaking
Section 11	Pre-trial time limits
Section 12 in so far as not already commenced	Disclosure of convictions
Section 16	Obstructive witnesses
Section 17	Prosecution of companies etc.
Section 22	Transfer of proceedings
Section 23	Time bar for transferred and related cases
Section 28	Proceedings against bodies corporate
Section 31	Petition proceedings outwith sheriffdom
Section 49	Compensation orders
Section 50	Fixed penalty and compensation offers
Section 52	Setting aside of offers and orders
Section 53	Disclosure of previous offers
Section 54	Time bar where offer made
Section 55, except for the purposes of any relevant penalty which requires to be paid in any district court	Fines enforcement officers and their functions
Section 59(1), (3), (4), (5), (7), in so far as not already commenced, but only for the Sheriffdom of Lothian and Borders	Establishing JP Courts
Section 59(6), (8) and (9) in so far as not already commenced	Establishing JP Courts
Section 61	Administration of JP courts

<i>Column 1 (provisions of the 2007 Act)</i>	<i>Column 2 (subject matter)</i>
Section 62, in so far as not already commenced, but only for the Sheriffdom of Lothian and Borders	Area and territorial jurisdiction of JP courts
Section 63 except section 63(2)	Constitution and powers etc. of JP courts
Section 68(4) and (5), but only for the Sheriffdom of Lothian and Borders	Conditions of Office
Section 74, but only for the Sheriffdom of Lothian and Borders	Appointment of stipendiary magistrates
Section 75, but only for the Sheriffdom of Lothian and Borders	Stipendiary magistrates: further provision
Section 77(2) and (3), but only for the Sheriffdom of Lothian and Borders	Records and validity of appointment etc.
Section 77(5), but only for the Sheriffdom of Lothian and Borders	Records and validity of appointment etc.
Section 80 for the purpose of bringing into force the following paragraphs of the schedule	Modification of enactments
Schedule, paragraph 2	Modification of the Public Records (Scotland) Act 1937(a)
Schedule, paragraph 4, but only for the Sheriffdom of Lothian and Borders	Modification of the Education (Scotland) Act 1980(b)
Schedule, paragraph 7, but only for the Sheriffdom of Lothian and Borders	Modification of the Road Traffic Offenders Act 1988(c)
Schedule, paragraph 8	Modification of the Environmental Protection Act 1990(d)
Schedule, paragraph 9(1) to (6), but only for the Sheriffdom of Lothian and Borders	Modification of the 1995 Act
Schedule, paragraph 10	Modification of the 1995 Act
Schedule, paragraph 11	Modification of the 1995 Act
Schedule, paragraph 20, except for paragraph 20(1)(b)(ii) and 20(3)(b)	Modification of the 1995 Act

(a) 1937 c.43.

(b) 1980 c.44.

(c) 1988 c.53. Paragraphs 7(a) and (d) of the Schedule to the 2007 Act were amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Powers of District and JP Courts) Order 2007 (S.I. 2007/3480) to take account of amendments made to the Road Traffic Offenders Act 1988 by that Order.

(d) 1990 c.43.

<i>Column 1 (provisions of the 2007 Act)</i>	<i>Column 2 (subject matter)</i>
Schedule, paragraph 20(1)(b)(ii), except for the purposes of any fines or expenses which require to be paid to the clerk of any district court	Modification of the 1995 Act
Schedule, paragraph 20(3)(b), but only for the Sheriffdom of Lothian and Borders	Modification of the 1995 Act
Schedule, paragraph 22, but only for the Sheriffdom of Lothian and Borders	Modification of the 1995 Act
Schedule, paragraph 25(a) and (d), but only for the Sheriffdom of Lothian and Borders	Modification of the 1995 Act
Schedule, paragraph 25(c)	Modification of the 1995 Act
Schedule, paragraph 26, but only for the Sheriffdom of Lothian and Borders	Modification of the 1995 Act
Schedule, paragraph 27, in so far as not already commenced, but only for the Sheriffdom of Lothian and Borders	Modification of the Bail, Judicial Appointments etc. (Scotland) Act 2000(a)
Schedule, paragraph 30(a), but only for the Sheriffdom of Lothian and Borders	Modification of the Criminal Justice (Scotland) Act 2003(b)
Schedule, paragraph 31	Modification of the Dog Fouling (Scotland) Act 2003(c)
Schedule, paragraph 32(a)	Modification of the Antisocial Behaviour etc. (Scotland) Act 2004(d)
Schedule, paragraph 32(b) and (c), but only for the Sheriffdom of Lothian and Borders	Modification of the Antisocial Behaviour etc. (Scotland) Act 2004
Schedule, paragraphs 33(1) and (2), but only for the Sheriffdom of Lothian and Borders and except for the purposes of any statutory instrument made under the 2007 Act	Enactments generally: references to district court and justices of the peace

(a) 2000 asp 9.
(b) 2003 asp 7.
(c) 2003 asp 12.
(d) 2004 asp 8.

EXPLANATORY NOTE

(This note is not part of the Order)

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22nd February 2007.

Article 3 of this Order brings into force various sections of the 2007 Act on 10th March 2008. The sections coming into force on that date together with the relevant subject matter are listed in the Schedule to the Order.

Some provisions of the 2007 Act are commenced for a limited purpose or are commenced subject to exceptions. For example, section 55 is commenced subject to an exception: it does not apply to relevant penalties which are to be paid in any district courts. It is not competent, therefore, for a district court to grant an enforcement order, and Fines Enforcement Officers (“FEOs”) will not be able to exercise functions in respect of such penalties. FEOs will however be able to deal with penalties which are payable in newly established JP courts (and, of course, the sheriff courts, which also have functions in relation to the enforcement of fines imposed in the High Court of Justiciary). Orders to be made under part 4 (JP Courts and JPs) of the 2007 Act will eventually lead to the disestablishment of all district courts in Scotland and to the establishment of JP courts in their place.

Several sections of the Act and paragraphs of the schedule to the Act are commenced only in the Sheriffdom of Lothian and Borders. Commencement of these sections go hand-in-hand with the establishment of JP Courts (and the associated disestablishment of district courts) in that Sheriffdom. The Justice of the Peace Courts (Sheriffdom of Lothian and Borders) etc. Order 2008 (S.S.I. 2008/31) makes provision as to the establishment and disestablishment of those courts. Similar such Orders will be made in relation to the other five sheriffdoms to roll-out the establishment of JP courts across the country.

Article 4 of the Order makes savings in respect of the application of section 7 of the 2007 Act. Section 7 amends sections 21 (schedule 1 offences: power of constable to take offender into custody) and 22 (liberation by police) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Those amendments bring about changes to the system which allows the police to release suspected offenders from custody on the undertaking that they will appear in court on a specified day. The effect of article 4 is that these amendments will not apply in respect of undertakings which have been entered into prior to 10th March 2008.

Article 5 of the Order makes savings in respect of the application of section 12 of the 2007 Act. Section 12(2) makes provision in relation to the disclosure of convictions in criminal proceedings by inserting two new sections into the 1995 Act: sections 166A (post-offence convictions) and 166B (charges which disclose convictions). Section 166B was commenced on 10th December 2007 (along with section 12(1) of the 2007 Act, which amends section 166 (previous convictions: summary proceedings) of the 1995 Act). Section 166A is commenced by this Order.

Section 166A provides that where a court is dealing with a conviction (“the first conviction”), it may take account of any conviction(s) acquired by the accused between the date of the offence which led to the first conviction and the date of the first conviction. The effect of the savings provision at article 5 is that section 166A will apply only where the offence which led to the first conviction was committed on or after 10th March 2008.

Article 6 makes savings in respect of the application of sections 50 (fixed penalty and compensation offers), 52 (setting aside of offers and orders), 53 (disclosure of previous offers) and 54 (time bar where offer made) of the 2007 Act. Those sections make provision in relation to the offering and imposition of alternatives to prosecution, also known as, direct measures. Section 302 (fixed penalty: conditional offer by procurator fiscal) of the 1995 Act is amended by this provision. The effect of article 6 is that offers made (under section 302 of the 1995 Act) prior to

10th March 2008 will continue to be administered in terms of the law as it stood at the time that the offer was made.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2007 Act have been brought into force by commencement orders made before the date of this Order.

<i>Provision</i>	<i>Purpose</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Sections 1 to 6, 7(2)(c), 8 to 10, 12(1)		10th December 2007	2007/479 (as amended by 2007/527)
Section 12(2)(partially)	To bring section 166B of the 1995 Act into force	10th December 2007	2007/479 (as amended by 2007/527)
Sections 13 to 15, 18 to 21, 24 to 27, 30, 32 to 34		10th December 2007	2007/479 (as amended by 2007/527)
Sections 35 and 36		23rd April 2007	2007/250
Sections 37 to 40		10th December 2007	2007/479 (as amended by 2007/527)
Section 41(1) (partially)	To bring section 303B(6) of the 1995 Act into force	10th December 2007	2007/479 (as amended by 2007/527)
Section 41(2) (partially)	To bring sections 308A(2) to (4) of the 1995 Act into force	10th December 2007	2007/479 (as amended by 2007/527)
Section 43		10th December 2007	2007/479 (as amended by 2007/527)
Section 44(2)		23rd April 2007	2007/250
Sections 44 (in so far as not already commenced), 45, 47 to 48		10th December 2007	2007/479 (as amended by 2007/527)
Section 56		23rd April 2007	2007/250
Sections 57 and 58		10th December 2007	2007/479 (as amended by 2007/527)

<i>Provision</i>	<i>Purpose</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 59 (partially)	To enable orders to be made under section 59(2) of the 2007 Act	10th December 2007	2007/479 (as amended by 2007/527)
Section 60		10th December 2007	2007/479 (as amended by 2007/527)
Section 62(4) to (7) (except as they apply to stipendiary magistrates)		10th December 2007	2007/479 (as amended by 2007/527)
Sections 64 to 66		10th December 2007	2007/479 (as amended by 2007/527)
Sections 67(5) and (6)		23rd April 2007	2007/250
Section 67 (in so far as not already commenced), 68 (except subsections (4) and (5))		10th December 2007	2007/479 (as amended by 2007/527)
Section 69		23rd April 2007	2007/250
Sections 70 to 73, 76, 77(1) and (4)		10th December 2007	2007/479 (as amended by 2007/527)
Section 78 and 79		23rd April 2007	2007/250
Section 80 (partially)	To bring into force certain paragraphs of the schedule to the 2007 Act.	23rd April 2007 and 10th December 2007	2007/250 and 2007/479 (as amended by 2007/527)
Section 81 to 83		22nd February 2007	On Royal Assent
Schedule, paragraph 1 and 5		10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraph 6		23rd April 2007	2007/250

<i>Provision</i>	<i>Purpose</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Schedule, paragraph 9(7)	For application to justices of the peace only	10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraphs 12 to 15		10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraph 16(1)		23rd April 2007	2007/250
Schedule, paragraph 16(2) to 16(6)		10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraphs 17, 18(1) and (4)		10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraphs 18(2) and (3), 19		23rd April 2007	2007/250
Schedule, paragraphs 21, 23, 24, 25(b), 27(a)		10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraph 27(c) (partially)	To repeal paragraph 2 of the Bail, Judicial, Appointments etc. (Scotland) Act 2000	10th December 2007	2007/479 (as amended by 2007/527)
Schedule, paragraphs 28, 29, 33(3) and (4)		10th December 2007	2007/479 (as amended by 2007/527)

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