

## SCHEDULE 2

### Establishment of the Sheriff Appeal Court

## PART 1

### Modification of primary legislation

#### ***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”.
- (5) In section 156D(1) (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)(2), for “Clerk of Justiciary” in each place where it occurs substitute “clerk of the appropriate Appeal Court”; and

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

(2) Subsection (9A) was inserted by the 2007 Act, section 6(4)(b).

- (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.”.
- (8) In section 245J(3) (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;

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

- (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)(4) (issuing of a European Protection Order), after “High Court” insert “, the Sheriff Appeal Court”.

(10) In section 271V(5) (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”;
- (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 advocatation,

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

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(4) Sections 254A to 254E were inserted by [S.S.I. 2015/107](#).

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

- (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)(6)—
  - (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)(7) (power to excuse procedural irregularities on appeal), for “High Court” substitute “court hearing the appeal”.
- (20) In section 301A(8) (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) 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(9) (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

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

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

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

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

(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.”.