

## SCHEDULE 2

### Establishment of the Sheriff Appeal Court

## PART 1

### Modification of primary legislation

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

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

- (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  - (b) in subsection (2), the words “,180 or 187” are repealed;
  - (c) in subsection (5), the words “, 179(8), 180(10), 186(4)(b), 187(9)” are repealed; and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—

#### **“Appeals etc. in the Sheriff Appeal Court: undisclosed information**

**96A.**—(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 advocacy.

(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)(2) 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.”.

---

(2) Subsection (2B) was inserted by [S.S.I. 2015/338](#), Schedule 2, paragraph 5(15)(c).