



Criminal Justice (Scotland) Act 1995

CHAPTER 20

LONDON: HMSO



Criminal Justice (Scotland) Act 1995

CHAPTER 20

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Criminal Justice (Scotland) Act 1995

CHAPTER 20

An Act to amend the criminal justice system of Scotland as respects criminal proceedings, the investigation of offences, the sentences and other disposals applicable in respect of certain offences, legal aid in relation to certain appeals, and the treatment of offenders; to amend the law of Scotland in relation to confiscation of the proceeds of, and forfeiture of property used in, crime; to make further provision as respects Scotland in relation to the preparation of jury lists for the purposes of criminal and civil trials; and for connected purposes. [19th July 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

THE COURSE OF JUSTICE

Bail

1. For subsection (2) of section 1 of the Bail etc. (Scotland) Act 1980 (release on bail subject to conditions) there shall be substituted the following subsections— Bail conditions.
1980 c. 4.

“(2) In granting bail the court or, as the case may be, the Lord Advocate shall impose on the accused—

- (a) the standard conditions; and
- (b) such further conditions as the court or, as the case may be, the Lord Advocate considers necessary to secure—
 - (i) that the standard conditions are observed; and

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(ii) that the accused makes himself available for the purpose of participating in an identification parade or of enabling any print, impression or sample to be taken from him.

(2A) The standard conditions referred to in subsection (2) above are conditions that the accused—

- (a) appears at the appointed time at every diet relating to the offence with which he is charged of which he is given due notice;
- (b) does not commit an offence while on bail;
- (c) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person; and
- (d) makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence with which he is charged.”.

Breach of bail conditions.
1980 c. 4.

2.—(1) Section 3 of the Bail etc. (Scotland) Act 1980 (breach of bail conditions) shall be amended as follows.

(2) In subsection (1), after the word “shall” there shall be inserted “, subject to subsection (2A) below,”.

(3) In subsection (2)(a), for the words “£200” there shall be substituted “level 3 on the standard scale”.

(4) After subsection (2) there shall be inserted the following subsections—

“(2A) Where, and to the extent that, the failure referred to in subsection (1)(b) above consists in the accused having committed an offence while on bail (in this section referred to as “the subsequent offence”), he shall not be guilty of an offence under that subsection but, subject to subsection (2B) below, the court which sentences him for the subsequent offence shall, in determining the appropriate sentence or disposal for that offence, have regard to—

- (a) the fact that the offence was committed by him while on bail and the number of bail orders to which he was subject when the offence was committed;
- (b) any previous conviction of the accused of an offence under subsection (1)(b) above; and
- (c) the extent to which the sentence or disposal in respect of any previous conviction of the accused differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.

(2B) The court shall not, under subsection (2A) above, have regard to the fact that the subsequent offence was committed while the accused was on bail unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.

(2C) Where the maximum penalty in respect of the subsequent offence is specified by or by virtue of any enactment, that maximum penalty shall, for the purposes of the court’s determination, by virtue of subsection (2A) above, of the appropriate sentence or disposal in respect of that offence, be increased—

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- (a) where it is a fine, by the amount for the time being equivalent to level 3 on the standard scale; and
- (b) where it is a period of imprisonment—
 - (i) as respects a conviction in the High Court or the sheriff court, by 6 months; and
 - (ii) as respects a conviction in the district court, by 60 days,

notwithstanding that the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.

(2D) Where the sentence or disposal in respect of the subsequent offence is, by virtue of subsection (2A) above, different from that which the court would have imposed but for that subsection, the court shall state the extent of and the reasons for that difference.”.

3. After section 28 of the Criminal Procedure (Scotland) Act 1975 (in this Act referred to as “the 1975 Act”) there shall be inserted the following section—

“No bail for persons charged with or convicted of homicide or rape after previous conviction of such offences.

28A.—(1) Notwithstanding sections 26 to 33 and 238 of this Act, a person who in any proceedings has been charged with or convicted of—

- (a) attempted murder;
- (b) culpable homicide;
- (c) rape; or
- (d) attempted rape,

in circumstances where this section applies shall not be granted bail in those proceedings.

(2) This section applies where—

- (a) the person has previously been convicted by or before a court in any part of the United Kingdom of any offence specified in subsection (1) above or of murder or manslaughter; and
- (b) in the case of a previous conviction of culpable homicide or of manslaughter—
 - (i) he was sentenced to imprisonment or, if he was then a child or young person, to detention under any of the relevant enactments;
 - (ii) a hospital order was imposed in respect of him;
 - (iii) an order having the same effect as a hospital order was made in respect of him under section 174ZC(2)(a) of this Act; or
 - (iv) an order having equivalent effect to an order referred to in sub-paragraph (ii) or (iii) above has been made in respect of him by a court in England and Wales.

(3) This section applies whether or not an appeal is pending against conviction or sentence or both.

No bail in homicide or rape proceedings after previous conviction of such offences.
1975 c. 21.

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(4) In this section—

“conviction” includes—

(a) a finding that a person is not guilty by reason of insanity;

(b) a finding under section 174ZA(2) of this Act;

1964 c. 84.

(c) a finding under section 4A(3) of the Criminal Procedure (Insanity) Act 1964 (cases of unfitness to plead) that a person did the act or made the omission charged against him; and

(d) a conviction of an offence for which an order is made placing the offender on probation or discharging him absolutely or conditionally;

and “convicted” shall be construed accordingly; and

“the relevant enactments” means—

(a) as respects Scotland, sections 205 and 206 of this Act;

1933 c. 12.

(b) as respects England and Wales, section 53(2) of the Children and Young Persons Act 1933; and

1968 c. 34 (N.I.)

(c) as respects Northern Ireland, section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968.”

Right of
prosecutor to seek
review of grant of
bail.

4. After each of sections 30 and 299 of the 1975 Act there shall be inserted the following section as, respectively, section 30A and section 299A—

“Application by
prosecutor for
review of court’s
decision to grant
bail.

—(1) On an application by the prosecutor at any time after a court has granted bail to a person the court may, where the prosecutor puts before the court material information which was not available to it when it granted bail to that person, review its decision.

(2) On receipt of an application under subsection (1) above the court shall—

(a) intimate the application to the person granted bail;

(b) fix a diet for hearing the application and cite that person to attend the diet; and

(c) where it considers that the interests of justice so require, grant warrant to arrest that person.

(3) On hearing an application under subsection (1) above the court may—

(a) withdraw the grant of bail and remand the person in question in custody; or

(b) grant bail, or continue the grant of bail, either on the same or on different conditions.

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(4) Nothing in the foregoing provisions of this section shall affect any right of appeal against the decision of a court in relation to bail.”

5.—(1) Section 238 of the 1975 Act (admission of appellant to bail) shall be amended as follows. Bail pending appeal.

(2) In subsection (1), at the beginning there shall be inserted “Subject to subsection (1A) below,”.

(3) After subsection (1) there shall be inserted the following subsection—

“(1A) The High Court shall not admit a convicted person to bail under subsection (1) above unless—

(a) where he is the appellant and has not lodged a note of appeal in accordance with section 233(1)(a) of this Act, the application for bail states reasons why it should be granted and sets out the proposed grounds of appeal; or

(b) where the Lord Advocate is the appellant, the application for bail states reasons why it should be granted;

and, in either case, the High Court considers there to be exceptional circumstances justifying admitting the convicted person to bail.”.

Juries

6. In section 3 of the Jurors (Scotland) Act 1825 (sheriff principal to maintain lists of potential jurors)— Lists of potential jurors.
1825 c.22.

- (a) the existing provision shall become subsection (1);
- (b) in that subsection, for the word “designations” there shall be substituted “addresses”; and
- (c) after that subsection there shall be inserted the following subsections—

“(2) For the purpose of maintaining lists of potential jurors under subsection (1) above, a sheriff principal may require any person in the sheriff court district in question who appears to him to be qualified and liable to serve as a juror to provide such information, and in such form, as the Secretary of State may by order prescribe.

(3) A statutory instrument containing an order by virtue of subsection (2) above shall be subject to annulment pursuant to a resolution of either House of Parliament.

(4) Any person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(5) In proceedings against a person for an offence under subsection (4) above it is a defence to prove that he had reasonable excuse for the failure.”.

7.—(1) After subsection (5) of section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (persons excused from jury service for good reason) there shall be inserted the following subsection— Jury service.
1980 c. 55.

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“(5A) Where the clerk of court has, under subsection (5) above, excused a person from jury service in any criminal proceedings he shall, unless he considers there to be exceptional circumstances which make it inappropriate to do so, within one year of the date of that excusal cite that person to attend for jury service in criminal proceedings.”.

(2) In Schedule 1 to that Act (ineligibility for and disqualification and excusal from jury service)—

(a) in Part II (persons disqualified from jury service), at the end of paragraph (b) there shall be inserted—

“(c) in respect of jury service in any criminal proceedings, persons who are on bail in or in connection with criminal proceedings in any part of the United Kingdom.”; and

(b) in Part III (persons excusable as of right), at the end of Group D there shall be inserted—

“GROUP DD

Members of certain religious bodies

In respect of jury service in any criminal proceedings, practising members of religious societies or orders the tenets or beliefs of which are incompatible with jury service.”.

Challenges to jurors.

8. In section 130 of the 1975 Act (challenges and objections to jurors)—

(a) subsections (1) to (3) shall cease to have effect; and

(b) after subsection (3) there shall be inserted—

“(3A) Where, before a juror is sworn to serve, the parties jointly apply for him to be excused the court shall, notwithstanding that no reason is given in the application, excuse that juror from service.”.

Pre-trial procedure

Execution of warrants granted by sheriff, etc.

9. For each of sections 15 and 327 of the 1975 Act (certain warrants granted by sheriff may be executed throughout Scotland), there shall be substituted the following section—

“Warrants granted by justice may be executed throughout Scotland. . Any warrant granted by a justice may, without being backed or endorsed by any other justice, be executed throughout Scotland in the same way as it may be executed within the jurisdiction of the justice who granted it.”.

Judicial examination.

10.—(1) Section 20A of the 1975 Act (examination of accused by prosecutor before sheriff) shall be amended as follows.

(2) In subsection (1)—

(a) after the words “eliciting any” there shall be inserted “admission,”; and

(b) in paragraph (i) of the proviso to paragraph (a), for the words from “category” to the end there shall be substituted “defence”.

(3) After subsection (3) there shall be inserted the following subsection—

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“(3A) The accused shall be told by the sheriff that if he answers any question put to him at the examination under this section in such a way as to disclose an ostensible defence, the prosecutor shall be under the duty imposed by subsection (7) below.”.

(4) After subsection (6) there shall be inserted the following subsections—

“(7) Without prejudice to any rule of law, on the conclusion of an examination under this section the prosecutor shall secure the investigation, to such extent as is reasonably practicable, of any ostensible defence disclosed in the course of the examination.

(8) The duty imposed by subsection (7) above shall not apply as respects any ostensible defence which is not reasonably capable of being investigated.”.

11. After subsection (1) of section 82 of the 1975 Act (requirement to give notice of plea of special defence, etc.) there shall be inserted the following subsection—

Requirement to give notice of defence of automatism or coercion.

“(1A) Subsection (1) above shall apply to a defence of automatism or coercion as if it were a special defence.”.

12.—(1) After section 84 of the 1975 Act there shall be inserted the following section—

Agreement of evidence.

“Agreement of evidence.

84A.—(1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—

- (a) which he would, apart from this section, be seeking to prove;
- (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
- (c) in proof of which he does not wish to lead oral evidence,

and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies from the date of service of the indictment until the swearing of the jury or, where intimation is given under section 102 of this Act, the date of that intimation.”.

(2) After section 333A of that Act there shall be inserted the following section—

“Agreement of evidence.

333B.—(1) Subject to subsection (2) below, the prosecutor and the accused (or each accused if more than one) shall each identify any facts which are facts—

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- (a) which he would, apart from this section, be seeking to prove;
- (b) which he considers unlikely to be disputed by the other party (or by any of the other parties); and
- (c) in proof of which he does not wish to lead oral evidence,

and shall (without prejudice to section 16 of the Criminal Justice (Scotland) Act 1995 (procedure for proving uncontroversial evidence)) take all reasonable steps to secure the agreement of the other party (or each of the other parties) to them; and the other party (or each of the other parties) shall take all reasonable steps to reach such agreement.

(2) Subsection (1) above shall not apply in relation to proceedings as respects which the accused (or any of the accused if more than one) is not legally represented.

(3) The duty under subsection (1) above applies from the date on which the accused pleads not guilty until the swearing of the first witness or, where the accused tenders a plea of guilty at any time before the first witness is sworn, the date when he does so.”

First and preliminary diets in solemn proceedings.

13.—(1) In section 75 of the 1975 Act (notice of trial diet), after the word “at” there shall be inserted—

- “(a) where the case is to be tried in the sheriff court, a first diet not less than 15 clear days after the service of the indictment and not less than 10 clear days before the trial diet; and
- (b)”.

(2) After section 75 of that Act there shall be inserted the following section—

“First diet.

75A.—(1) At a first diet the court shall, so far as is reasonably practicable, ascertain whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
- (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.

(2) In addition to the matters mentioned in subsection (1) above the court shall, at a first diet, consider any matter mentioned in subsection (3) below of which a party has, not less than two clear days before the first diet, given notice to the court and to the other parties.

(3) The matters referred to in subsection (2) above are—

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- (a) that the party intends to raise a matter relating to the competency or relevancy of the indictment or to raise an objection such as is mentioned in section 108(1) of this Act;
- (b) that he intends to submit a plea in bar of trial or to apply for separation or conjunction of charges or trials or to raise a preliminary objection under section 67 of this Act or to make an application under section 151(2) of this Act;
- (c) that there are documents the truth of the contents of which ought in his view to be admitted, or that there is any other matter which in his view ought to be agreed; and
- (d) that there is some other matter which could in his opinion be resolved with advantage before the trial.

(4) At a first diet the court may ask the prosecutor and the accused any question in connection with any matter which it is required to ascertain or consider under subsection (1) or (2) above.

(5) The accused shall attend a first diet of which he has been given notice and the court may, if he fails to do so, grant a warrant to apprehend him.

(6) A first diet may proceed notwithstanding the absence of the accused.

(7) The accused shall, at the first diet, be required to state how he pleads to the indictment, and section 103 of this Act shall apply where he tenders a plea of guilty.

(8) Where at a first diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and

(b) may fix a further first diet.

(9) Subject to subsection (8) above, the court may, if it considers it appropriate to do so, adjourn a first diet.

(10) In this section “the court” means the sheriff court.”.

(3) In section 76 of that Act (preliminary diet)—

(a) in subsection (1)—

(i) after the words “where a party” there shall be inserted “to a case which is to be tried in the High Court”; and

(ii) for the words “court before which the trial is to take place” there shall be substituted “High Court”; and

(b) after subsection (6) there shall be inserted the following subsections—

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“(6A) At a preliminary diet the court shall, in addition to disposing of any matter specified in a notice given under subsection (1) above or referred to in subsection (3) above, ascertain, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular—

- (a) the state of preparation of the prosecutor and of the accused with respect to their cases; and
- (b) the extent to which the prosecutor and the accused have complied with the duty under section 84A(1) of this Act.

(6B) At a preliminary diet the court may ask the prosecutor and the accused any question in connection with any matter specified in a notice under subsection (1) above or referred to in subsection (3) above or which it is required to ascertain under subsection (6A) above.

(6C) Where at a preliminary diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
- (b) may fix a further preliminary diet.

(6D) Subject to subsection (6C) above, the court may, if it considers it appropriate to do so, adjourn a preliminary diet.”.

(4) In section 76A(1) of that Act (appeal in connection with preliminary diet), for the words “preliminary diet” there shall be substituted “first diet or a preliminary diet, other than a decision to adjourn the diet or to postpone the trial diet”.

Intermediate diet
in summary
proceedings.

14.—(1) Section 337A of the 1975 Act (intermediate diet) shall be amended as follows.

(2) In subsection (1)—

- (a) after the word “ascertaining” there shall be inserted “, so far as is reasonably practicable, whether the case is likely to proceed to trial on the date assigned as the trial diet and, in particular”;
- (b) the word “and” immediately following paragraph (a) shall cease to have effect; and
- (c) after paragraph (b) there shall be inserted—
“; and
(c) the extent to which the prosecutor and the accused have complied with the duty under section 333B(1) of this Act.”.

(3) After subsection (1) there shall be inserted the following subsections—

“(1A) Where at an intermediate diet the court concludes that the case is unlikely to proceed to trial on the date assigned for the trial diet, the court—

- (a) shall, unless having regard to previous proceedings in the case it considers it inappropriate to do so, postpone the trial diet; and
- (b) may fix a further intermediate diet.

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(1B) Subject to subsection (1A) above, the court may, if it considers it appropriate to do so, adjourn an intermediate diet.”.

(4) At the end of subsection (3) there shall be inserted—

“unless—

- (a) he is legally represented; and
- (b) the court considers that there are exceptional circumstances justifying him not attending.

(4) The foregoing provisions of this section shall have effect as respects any court prescribed by the Secretary of State by order, in relation to proceedings commenced after such date as may be so prescribed, with the following modifications—

- (a) in subsection (1), for the word “may” there shall be substituted “shall, subject to subsection (1C) below,”; and
- (b) after subsection (1B) there shall be inserted the following subsections—

“(1C) If, on a joint application by the prosecutor and the accused made at any time before the commencement of the intermediate diet, the court considers it inappropriate to have such a diet, the duty under subsection (1) above shall not apply and the court shall discharge any such diet already fixed.

(1D) The court may consider an application under subsection (1C) above without hearing the parties.”.

(5) An order under subsection (5) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

Delay in trial

15. In section 101 of the 1975 Act (prevention of delay in trials), after subsection (1) there shall be inserted the following subsection—

“(1A) In calculating the period of 12 months specified in subsection (1) above there shall be left out of account any period during which the accused is detained, other than while serving a sentence of imprisonment or detention, in any other part of the United Kingdom or in any of the Channel Islands or the Isle of Man in any prison or other institution or place mentioned in subsection (1) or (1A) of section 29 of the Criminal Justice Act 1961 (transfer of prisoners for certain judicial purposes).”.

Calculation of specified period where accused detained outside Scotland.

1961 c. 39.

Evidence

16.—(1) This section applies where, in any criminal proceedings, a party (in this section referred to as “the first party”) considers that facts which that party would otherwise be seeking to prove are unlikely to be disputed by the other parties to the proceedings.

Uncontroversial evidence.

(2) Where this section applies, the first party may prepare and sign a statement—

- (a) specifying the facts concerned; or

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(b) referring to such facts as set out in a document annexed to the statement,

and shall, not less than 14 days before the trial diet, serve a copy of the statement and any such document on every other party.

(3) Unless any other party serves on the first party, not more than seven days after the date of service of the copy on him under subsection (2) above or by such later time as the court may in special circumstances allow, a notice that he challenges any fact specified or referred to in the statement, the facts so specified or referred to shall be deemed to have been conclusively proved.

(4) Where a notice is served under subsection (3) above, the facts specified or referred to in the statement shall be deemed to have been conclusively proved only in so far as unchallenged in the notice.

(5) Subsections (3) and (4) above shall not preclude a party from leading evidence of circumstances relevant to, or other evidence in explanation of, any fact specified or referred to in the statement.

(6) Notwithstanding subsections (3) and (4) above, the court—

(a) may, on the application of any party, where it is satisfied that there are special circumstances; and

(b) shall, on the joint application of all the parties,

direct that the presumptions in those subsections shall not apply in relation to such fact specified or referred to in the statement as is specified in the direction.

(7) An application under subsection (6) above may be made at any time after the commencement of the trial and before the commencement of the prosecutor's address to the court on the evidence.

(8) Where the court makes a direction under subsection (6) above it shall, unless all the parties otherwise agree, adjourn the trial and may, without prejudice to sections 149 and 350 of the 1975 Act, permit any party to lead evidence as to any such fact as is specified in the direction, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of that Act has not been given.

(9) A copy of a statement or a notice required, under this section, to be served on any party shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served such copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

Exceptions to the rule that hearsay evidence is inadmissible.

17.—(1) Subject to the following provisions of this section, evidence of a statement made by a person otherwise than while giving oral evidence in court in criminal proceedings shall be admissible in those proceedings as evidence of any matter contained in the statement where the judge is satisfied—

(a) that the person who made the statement will not give evidence in the proceedings of such matter for any of the reasons mentioned in subsection (2) below;

(b) that evidence of the matter would be admissible in the proceedings if that person gave direct oral evidence of it;

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- (c) that the person who made the statement would have been, at the time the statement was made, a competent witness in such proceedings; and
- (d) that there is evidence which would entitle a jury properly directed, or in summary proceedings would entitle the judge, to find that the statement was made and that either—
 - (i) it is contained in a document; or
 - (ii) a person who gave oral evidence in the proceedings as to the statement has direct personal knowledge of the making of the statement.

(2) The reasons referred to in paragraph (a) of subsection (1) above are that the person who made the statement—

- (a) is dead or is, by reason of his bodily or mental condition, unfit or unable to give evidence in any competent manner;
- (b) is named and otherwise sufficiently identified, but is outwith the United Kingdom and it is not reasonably practicable to secure his attendance at the trial or to obtain his evidence in any other competent manner;
- (c) is named and otherwise sufficiently identified, but cannot be found and all reasonable steps which, in the circumstances, could have been taken to find him have been so taken;
- (d) having been authorised to do so by virtue of a ruling of the court in the proceedings that he is entitled to refuse to give evidence in connection with the subject matter of the statement on the grounds that such evidence might incriminate him, refuses to give such evidence; or
- (e) is called as a witness and either—
 - (i) refuses to take the oath or affirmation; or
 - (ii) having been sworn as a witness and directed by the judge to give evidence in connection with the subject matter of the statement refuses to do so,

and in the application of this paragraph to a child, the reference to a witness refusing to take the oath or affirmation or, as the case may be, to having been sworn shall be construed as a reference to a child who has refused to accept an admonition to tell the truth or, having been so admonished, refuses to give evidence as mentioned above.

(3) Evidence of a statement shall not be admissible by virtue of subsection (1) above where the judge is satisfied that the occurrence of any of the circumstances mentioned in paragraphs (a) to (e) of subsection (2) above, by virtue of which the statement would otherwise be admissible, is caused by—

- (a) the person in support of whose case the evidence would be given; or
- (b) any other person acting on his behalf,

for the purpose of securing that the person who made the statement does not give evidence for the purposes of the proceedings either at all or in connection with the subject matter of the statement.

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(4) Where in any proceedings evidence of a statement made by any person is admitted by reference to any of the reasons mentioned in paragraphs (a) to (c) and (e)(i) of subsection (2) above—

- (a) any evidence which, if that person had given evidence in connection with the subject matter of the statement, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may be given of any matter which, if that person had given evidence in connection with the subject matter of the statement, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made in whatever manner some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

(5) Subject to subsection (6) below, where a party intends to apply to have evidence of a statement admitted by virtue of subsection (1) above he shall, before the trial diet, give notice in writing of—

- (a) that fact;
- (b) the witnesses and productions to be adduced in connection with such evidence; and
- (c) such other matters as may be prescribed by Act of Adjournal,

to every other party to the proceedings and, for the purposes of this subsection, such evidence may be led notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of the 1975 Act has not been given.

(6) A party shall not be required to give notice as mentioned in subsection (5) above where—

- (a) the grounds for seeking to have evidence of a statement admitted are as mentioned in paragraph (d) or (e) of subsection (2) above; or
- (b) he satisfies the judge that there was good reason for not giving such notice.

(7) If no other party to the proceedings objects to the admission of evidence of a statement by virtue subsection (1) above, the evidence shall be admitted without the judge requiring to be satisfied as mentioned in that subsection.

(8) For the purposes of the determination of any matter upon which the judge is required to be satisfied under subsection (1) above—

- (a) except to the extent that any other party to the proceedings challenges them and insists in such challenge, it shall be presumed that the circumstances are as stated by the party seeking to introduce evidence of the statement; and
- (b) where such a challenge is insisted in, the judge shall determine the matter on the balance of probabilities, and he may draw any reasonable inference—
 - (i) from the circumstances in which the statement was made or otherwise came into being; or

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(ii) from any other circumstances, including, where the statement is contained in a document, the form and contents of the document.

(9) Where evidence of a statement has been admitted by virtue of subsection (1) above on the application of one party to the proceedings, without prejudice to anything in any enactment or rule of law, the judge may permit any party to lead additional evidence of such description as the judge may specify, notwithstanding that a witness or production concerned is not included in any list lodged by the parties and that the notice required by sections 81 and 82(2) of the 1975 Act has not been given.

(10) Any reference in subsections (5), (6) and (9) above to evidence shall include a reference to evidence led in connection with any determination required to be made for the purposes of subsection (1) above.

18.—(1) Subject to the following provisions of this section, where a witness gives evidence in criminal proceedings, any prior statement made by the witness shall be admissible as evidence of any matter stated in it of which direct oral evidence by him would be admissible if given in the course of those proceedings.

Admissibility of
prior statements
of witnesses.

(2) A prior statement shall not be admissible under this section unless—

- (a) the statement is contained in a document;
- (b) the witness, in the course of giving evidence, indicates that the statement was made by him and that he adopts it as his evidence; and
- (c) at the time the statement was made, the person who made it would have been a competent witness in the proceedings.

(3) For the purposes of this section, any reference to a prior statement is a reference to a prior statement which, but for the provisions of this section, would not be admissible as evidence of any matter stated in it.

(4) Subsections (2) and (3) above do not apply to a prior statement—

- (a) contained in a precognition on oath; or
- (b) made in other proceedings, whether criminal or civil and whether taking place in the United Kingdom or elsewhere,

and, for the purposes of this section, any such statement shall not be admissible unless it is sufficiently authenticated.

19.—(1) Subject to the following provisions of this section, nothing in sections 17 and 18 of this Act shall apply to a statement made by the accused.

Statements by
accused.

(2) Evidence of a statement made by an accused shall be admissible by virtue of the said section 17 at the instance of another accused in the same proceedings as evidence in relation to that other accused.

(3) For the purposes of subsection (2) above, the first mentioned accused shall be deemed—

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- (a) where he does not give evidence in the proceedings, to be a witness refusing to give evidence in connection with the subject matter of the statement as mentioned in paragraph (e) of subsection (2) of the said section 17; and
- (b) to have been, at the time the statement was made, a competent witness in the proceedings.

(4) Evidence of a statement shall not be admissible as mentioned in subsection (2) above unless the accused at whose instance it is sought to be admitted has given notice of his intention to do so as mentioned in subsection (5) of the said section 17; but subsection (6) of that section shall not apply in the case of notice required to be given by virtue of this subsection.

Construction of sections 17, 18 and 19.

20.—(1) For the purposes of sections 17, 18 and 19 of this Act, a “statement” includes—

- (a) any representation, however made or expressed, of fact or opinion; and
- (b) any part of a statement,

but does not include a statement in a precognition other than a precognition on oath.

(2) For the purposes of the said sections 17, 18 and 19 a statement is contained in a document where the person who makes it—

- (a) makes the statement in the document personally;
- (b) makes a statement which is, with or without his knowledge, embodied in a document by whatever means or by any person who has direct personal knowledge of the making of the statement; or
- (c) approves a document as embodying the statement.

(3) In the said sections 17, 18 and 19—

“criminal proceedings” include any hearing by the sheriff under section 42 of the Social Work (Scotland) Act 1968 of an application for a finding as to whether grounds for the referral of a child’s case to a children’s hearing are established, in so far as the application relates to the commission of an offence by the child;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, negative, tape, disc or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

“film” includes a microfilm;

“made” includes allegedly made.

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(4) Nothing in the said sections 17, 18 and 19 shall prejudice the admissibility of a statement made by a person other than in the course of giving oral evidence in court which is admissible otherwise than by virtue of those sections.

(5) Nothing in the said sections 17, 18 and 19 shall apply to—

- (a) proceedings commenced; or
- (b) where the proceedings consist of an application to the sheriff by virtue of section 42(2)(c) of the Social Work (Scotland) Act 1968 c. 49, an application made,

before those sections come into force; and for the purposes of paragraph (a) above, solemn proceedings are commenced when the indictment is served.

21.—(1) Evidence as to the characteristics and composition of any biological material deriving from human beings or animals shall, in any criminal proceedings, be admissible notwithstanding that neither the material nor a sample of it is lodged as a production. Evidence of biological material.

(2) A party wishing to lead such evidence as is referred to in subsection (1) above shall, where neither the material nor a sample of it is lodged as a production, make the material or a sample of it available for inspection by the other party unless the material constitutes a hazard to health or has been destroyed in the process of analysis.

22.—(1) Section 26 of and Schedule 1 to the Criminal Justice (Scotland) Act 1980 (routine evidence) shall be amended as follows. Routine evidence. 1980 c.62.

(2) After subsection (1) there shall be inserted the following subsections—

“(1A) The Secretary of State may by order—

- (a) amend or repeal the entry in Schedule 1 to this Act in respect of any enactment; or
- (b) insert in that Schedule an entry in respect of a further enactment.

(1B) An order under subsection (1A) above may make such transitional, incidental or supplementary provision as the Secretary of State considers necessary or expedient in connection with the coming into force of the order.”

(3) In subsection (2), the word “summary” and the words from “In the foregoing” to the end of the subsection shall cease to have effect.

(4) After that subsection there shall be inserted the following subsection—

“(2A) A forensic scientist is authorised for the purposes of subsection (2) above if—

- (a) he is authorised for those purposes by the Secretary of State; or
- (b) he—

(i) is a constable or is employed by a police authority under section 9 of the Police (Scotland) Act 1967; 1967 c. 77.

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(ii) possesses such qualifications and experience as the Secretary of State may for the purposes of that subsection by order prescribe; and

(iii) is authorised for those purposes by the chief constable of the police force maintained for the police area of that authority.”.

(5) In subsection (3)—

(a) for the words “the prosecution” there shall be substituted “the prosecutor or the accused”;

(b) in paragraph (a)—

(i) for the words “accused” there shall be substituted “other party”; and

(ii) for the word “his” there shall be substituted “the”; and

(c) in paragraph (b)—

(i) for the word “accused” where it first occurs there shall be substituted “other party”;

(ii) for the words from “less” to “trial” in the second place where it occurs there shall be substituted “more than seven days after the date of service of the copy on him under paragraph (a) above or by such later time”; and

(iii) for the words “prosecutor that the accused” there shall be substituted “first party that he”.

(6) In subsection (4), after the word “accused” where it first occurs there shall be inserted “or the prosecutor”.

(7) After subsection (4) there shall be inserted the following subsection—

“(4A) Where, following service of a notice under subsection (3)(b) above, evidence is given in relation to a report referred to in subsection (2) above by both of the forensic scientists purporting to have signed the report, the evidence of those forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.”.

(8) In subsection (5), the words “under summary procedure” shall cease to have effect.

(9) After subsection (7) there shall be inserted the following subsections—

“(7A) Where, following service of a notice by the accused under subsection (7) above, evidence is given in relation to an autopsy or forensic science report by both of the pathologists or forensic scientists purporting to have signed the report, the evidence of those pathologists or forensic scientists shall be sufficient evidence of any fact (or conclusion as to fact) contained in the report.

(7B) An order made under subsection (1A) or (2A)(b)(ii) above shall be made by statutory instrument.

(7C) No order shall be made under subsection (1A) above unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

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(7D) A statutory instrument containing an order under subsection (2A)(b)(ii) above shall be subject to annulment pursuant to a resolution of either House of Parliament.”

(10) Schedule 1 shall be amended in accordance with Schedule 1 to this Act.

23. In section 84 of the 1975 Act (proof as to productions)—

- (a) after the word “prove” there shall be inserted “(a)”;
- (b) after the word “police” in the second place where it occurs there shall be inserted—
 - “; or
 - (b) that the production examined by him is that taken possession of by the procurator fiscal or the police,”; and
- (c) at the end there shall be inserted the words “or, as the case may be, that it is that taken possession of as aforesaid”.

Proof of custody of productions.

24.—(1) In section 141 of the 1975 Act (accused competent witness for defence in solemn proceedings)—

- (a) in subsection (1), in paragraph (f)(ii) of the proviso—
 - (i) after the word “character” where it first occurs there shall be inserted “or impugning the character of the complainer”; and
 - (ii) after the word “prosecution” in the second place where it occurs there shall be inserted “or of the complainer”; and
- (b) after that subsection there shall be inserted the following subsections—

Evidence of criminal record and character of accused.

“(1A) In a case to which sub-paragraph (ii) of paragraph (f) of the proviso to subsection (1) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that paragraph only if the court, on the application of the prosecutor, permits him to do so.

(1B) An application under subsection (1A) above shall be made in the course of the trial but in the absence of the jury.

(1C) In subsection (1) above, references to the complainer include references to a victim who is deceased.”

(2) After section 141 of that Act there shall be inserted the following section—

“Evidence of criminal record and character of accused.

141ZA.—(1) This section applies where—

- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
- (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.

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(2) Where this section applies the court may, without prejudice to section 149 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character, notwithstanding that a witness or production concerned is not included in any list lodged by the prosecutor and that the notice required by sections 81 and 82(2) of this Act has not been given.

(3) An application under subsection (2) above shall be made in the course of the trial but in the absence of the jury.

(4) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.

(3) In section 160 of that Act (laying of previous convictions before jury), for subsection (2) there shall be substituted the following subsection—

“(2) Nothing in subsection (1) above shall prevent the prosecutor—

- (a) asking the accused questions tending to show that he has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 141 of this Act; or
- (b) leading evidence of previous convictions where it is competent to do so—
 - (i) as evidence in support of a substantive charge; or
 - (ii) under section 141ZA of this Act.”.

(4) In section 346 of that Act (accused competent witness for defence in summary proceedings)—

- (a) in subsection (1), in paragraph (f)(ii) of the proviso—
 - (i) after the word “character” where it first occurs there shall be inserted “or impugning the character of the complainer”; and
 - (ii) after the word “prosecution” in the second place where it occurs there shall be inserted “or of the complainer”; and
- (b) after that subsection there shall be inserted the following subsections—

“(1A) In a case to which sub-paragraph (ii) of paragraph (f) of the proviso to subsection (1) above applies, the prosecutor shall be entitled to ask the accused a question of a kind specified in that paragraph only if the court, on the application of the prosecutor, permits him to do so.

(1B) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.

(5) After section 346 of that Act there shall be inserted the following section—

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“Evidence of criminal record and character of accused.

346ZA.—(1) This section applies where—

- (a) evidence is led by the defence, or the defence asks questions of a witness for the prosecution, with a view to establishing the accused’s good character or impugning the character of the prosecutor, of any witness for the prosecution or of the complainer; or
- (b) the nature or conduct of the defence is such as to tend to establish the accused’s good character or to involve imputations on the character of the prosecutor, of any witness for the prosecution or of the complainer.

(2) Where this section applies the court may, without prejudice to section 350 of this Act, on the application of the prosecutor, permit the prosecutor to lead evidence that the accused has committed, or has been convicted of, or has been charged with, offences other than that for which he is being tried, or is of bad character.

(3) In subsection (1) above, references to the complainer include references to a victim who is deceased.”.

(6) In section 357 of that Act (laying of previous convictions before court), in subsection (5), for the words from “evidence” where it first occurs to the end there shall be substituted “the prosecutor—

- (a) asking the accused questions tending to show that the accused has been convicted of an offence other than that with which he is charged, where he is entitled to do so under section 346 of this Act; or
- (b) leading evidence of previous convictions where it is competent to do so—
 - (i) as evidence in support of a substantive charge; or
 - (ii) under section 346ZA of this Act.”.

25.—(1) For the purposes of any criminal proceedings, evidence given by an authorised forensic scientist, either orally or in a report purporting to be signed by him, that a substance which satisfies either of the conditions specified in subsection (2) below is—

- (a) a particular controlled drug or medicinal product; or
- (b) a particular product which is listed in the British Pharmacopoeia as containing a particular controlled drug or medicinal product,

shall, subject to subsection (3) below, be sufficient evidence of that fact notwithstanding that no analysis of the substance has been carried out.

(2) Those conditions are—

- (a) that the substance is in a sealed container bearing a label identifying the contents of the container; or
- (b) that the substance has a characteristic appearance having regard to its size, shape, colour and manufacturer’s mark.

(3) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”)—

Evidence as to controlled drugs and medicinal products.

PART I

(a) a notice to that effect; and

(b) where the evidence is contained in a report, a copy of the report, and if the second party serves on the first party, not more than seven days after the date of service of the notice on him, a notice that he does not accept the evidence as to the identity of the substance, subsection (1) above shall not apply in relation to that evidence.

(4) A notice or copy report served in accordance with subsection (3) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the notice or copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(5) In this section—

1971 c. 38.

“controlled drug” has the same meaning as in the Misuse of Drugs Act 1971; and

1968 c. 67.

“medicinal product” has the same meaning as in the Medicines Act 1968.

Evidence as to time and place of video surveillance recordings.

26.—(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by a person responsible for the operation of a video surveillance system and certifying—

(a) the location of the camera;

(b) the nature and extent of the person’s responsibility for the system; and

(c) that visual images recorded on a particular video tape are images, recorded by the system, of events which occurred at a place specified in the certificate at a time and date so specified,

shall, subject to subsection (2) below, be sufficient evidence of the matters contained in the certificate.

(2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

(4) In this section, “video surveillance system” means apparatus consisting of a camera mounted in a fixed position and associated equipment for transmitting and recording visual images of events occurring in any place.

Evidence in relation to fingerprints.

27.—(1) For the purposes of any criminal proceedings, a certificate purporting to be signed by two constables and certifying that the fingerprints produced thereon were taken from a person designated in the

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certificate at a time, date and place specified therein shall, subject to subsection (2) below, be sufficient evidence of the facts contained in the certificate.

(2) A party proposing to rely on subsection (1) above (“the first party”) shall, not less than 14 days before the trial diet, serve on the other party (“the second party”) a copy of the certificate and, if the second party serves on the first party, not more than seven days after the date of service of the copy certificate on him, a notice that he does not accept the evidence contained in the certificate, subsection (1) above shall not apply in relation to that evidence.

(3) A copy certificate or notice served in accordance with subsection (2) above shall be served in such manner as may be prescribed by Act of Adjournal; and a written execution purporting to be signed by the person who served the copy or notice together with, where appropriate, the relevant post office receipt shall be sufficient evidence of such service.

28.—(1) In section 141A(2) of the 1975 Act (sexual offences in relation to which restrictions on admissible evidence apply)—

Evidence in relation to sexual offences.

(a) after paragraph (b) there shall be inserted the following paragraph—

“(ba) clandestine injury to women;”;

(b) after sub-paragraph (i) of paragraph (g) there shall be inserted the following sub-paragraphs—

“(ia) section 2A (incest);

(ib) section 2B (unlawful sexual intercourse with stepchild);

(ic) section 2C (unlawful sexual intercourse of person in position of trust with child under 16);”;

(c) after sub-paragraph (iv) of that paragraph there shall be inserted the following sub-paragraph—

“(iva) section 7 (gross indecency between males)”.

(2) In section 346A(2) of that Act (corresponding provision in relation to summary proceedings)—

(a) after paragraph (b) there shall be inserted the following paragraph—

“(ba) clandestine injury to women;”;

(b) after sub-paragraph (i) of paragraph (f) there shall be inserted the following sub-paragraphs—

“(ia) section 2A (incest);

(ib) section 2B (unlawful sexual intercourse with stepchild);

(ic) section 2C (unlawful sexual intercourse of person in position of trust with child under 16);”;

(c) after sub-paragraph (iv) of that paragraph there shall be inserted the following sub-paragraph—

“(iva) section 7 (gross indecency between males)”.

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Proof of previous convictions.

29.—(1) In section 162 of the 1975 Act (admissibility and proof of extract convictions in solemn proceedings), after subsection (3) there shall be inserted the following subsections—

“(4) Without prejudice to subsections (1) to (3) above, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

- (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and
- (b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(5) A copy of a conviction or extract conviction served under subsection (4) above shall be served on the accused in such manner as may be prescribed by Act of Adjournment, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.”.

(2) In section 357 of that Act (previous convictions in summary proceedings), after subsection (5) there shall be inserted the following subsections—

“(6) Without prejudice to subsections (1) to (3) above, where proof of a previous conviction is competent in support of a substantive charge, any such conviction or an extract of it shall, if—

- (a) it purports to relate to the accused and to be signed by the clerk of court having custody of the record containing the conviction; and
- (b) a copy of it has been served on the accused not less than 14 days before the trial diet,

be sufficient evidence of the application of the conviction to the accused unless, within seven days of the date of service of the copy on him, he serves notice on the prosecutor that he denies that it applies to him.

(7) A copy of a conviction or extract conviction served under subsection (6) above shall be served on the accused in such manner as may be prescribed by Act of Adjournment, and a written execution purporting to be signed by the person who served the copy together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of the copy.”.

The trial

Death, illness or absence of trial judge.

30.—(1) Section 128 of the 1975 Act (death or illness of judge in solemn proceedings) shall be amended in accordance with subsections (2) and (3) below.

(2) For subsection (1) of that section there shall be substituted the following subsections—

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“(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, the clerk of court may convene the court (if necessary) and—

- (a) in a case where no evidence has been led, adjourn the diet and any other diet appointed for that sitting to—
 - (i) a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
 - (ii) a later sitting not more than two months after the date of the adjournment; or
- (b) in a case where evidence has been led—
 - (i) adjourn the diet and any other diet appointed for that sitting to a time later the same day, or a date not more than seven days later, when he believes a judge will be available; or
 - (ii) with the consent of the parties, desert the diet pro loco et tempore.

(1A) Where a diet has been adjourned under sub-paragraph (i) of either paragraph (a) or paragraph (b) of subsection (1) above the clerk of court may, where the conditions of that subsection continue to be satisfied, further adjourn the diet under that sub-paragraph; but the total period of such adjournments shall not exceed seven days.

(1B) Where a diet has been adjourned under subsection (1)(b)(i) above the court may, at the adjourned diet—

- (a) further adjourn the diet; or
- (b) desert the diet pro loco et tempore.”.

(3) In subsection (2) of that section, for the words “(1)(c)” there shall be substituted “(1)(b)(ii) or (1B)(b)”.

(4) After section 331A of that Act there shall be inserted the following section—

“Death, illness
or absence of
judge.

331B.—(1) Where the court is unable to proceed owing to the death, illness or absence of the presiding judge, it shall be lawful for the clerk of court—

- (a) where the diet has not been called, to convene the court and adjourn the diet;
- (b) where the diet has been called but no evidence has been led, to adjourn the diet; and
- (c) where the diet has been called and evidence has been led—
 - (i) with the agreement of the parties, to desert the diet pro loco et tempore; or
 - (ii) to adjourn the diet.

(2) Where, under subsection (1)(c)(i) above, a diet has been deserted pro loco et tempore, any new prosecution charging the accused with the same or any similar offence arising out of the same facts shall be brought within two

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months of the date on which the diet was deserted notwithstanding that any other time limit for the commencement of such prosecution has elapsed.

(3) For the purposes of subsection (2) above, a new prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.”.

Removal of accused from court.

31. After section 337A of the 1975 Act there shall be inserted the following section—

“Removal of accused from court.

337B.—(1) Without prejudice to section 338 of this Act, and subject to subsection (2) below, no part of a trial shall take place outwith the presence of the accused.

(2) If during the course of his trial an accused so misconducts himself that in the view of the court a proper trial cannot take place unless he is removed, the court may order—

- (a) that he is removed from the court for so long as his conduct makes it necessary; and
- (b) that the trial proceeds in his absence,

but if he is not legally represented the court shall appoint counsel or a solicitor to represent his interests during such absence.”.

Comment by prosecutor on accused’s failure to give evidence.

32. Sections 141(1)(b) (prosecutor may not comment on failure of accused to give evidence in solemn proceedings) and 346(1)(b) (corresponding provision in relation to summary proceedings) of the 1975 Act shall cease to have effect.

Conviction and sentence

Sentence following guilty plea.

33. After each of sections 217 and 430 of the 1975 Act there shall be inserted the following section as, respectively, section 217A and section 430A—

“Sentence following guilty plea.

. In determining what sentence to pass on, or what other disposal or order to make in relation to, an offender who has pled guilty to an offence, a court may take into account—

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which that indication was given.”.

Sentencing guidelines.

34.—(1) After section 254 of the 1975 Act there shall be inserted the following section—

“Sentencing guidelines.

254A.—(1) In disposing of an appeal under section 228(1)(b), (bb), (bc), (bd) or (c) or 228A of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any

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similar case.

(2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.”

(2) After section 455 of the 1975 Act there shall be inserted the following section—

“Sentencing guidelines.

455A.—(1) In disposing of an appeal under section 442(1)(a)(ii), (ia) or (iii), (b)(ii) or (c) of this Act the High Court may, without prejudice to any other power in that regard, pronounce an opinion on the sentence or other disposal or order which is appropriate in any similar case.

(2) Without prejudice to any rule of law, a court in passing sentence shall have regard to any relevant opinion pronounced under subsection (1) above.”

35.—(1) Section 62 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (supervised attendance orders) shall be amended in accordance with subsections (2) to (7) below.

Supervised attendance orders.
1990 c. 40.

(2) In subsection (1), at the end there shall be inserted the words “and shall, subject to paragraph 1 of Schedule 6 to this Act, make such an order where subsection (3A) below applies”.

(3) In subsection (2)—

(a) for the words “with the consent” there shall be substituted “in respect”;

(b) in paragraph (a), for the words “time, being 10, 20, 30, 40, 50 or 60 hours” there shall be substituted “period, being a period of not less than 10 hours and not more than—

(i) where the amount of the fine, part or instalment which the offender has failed to pay does not exceed level 1 on the standard scale, 50 hours; and

(ii) in any other case, 100 hours”; and

(c) in paragraph (b), for the word “time” there shall be substituted “period”.

(4) In subsection (3)(a), for the word “16” there shall be substituted “18”.

(5) After subsection (3) there shall be inserted the following subsections—

“(3A) This subsection applies where—

(a) the court is a court prescribed for the purposes of this subsection by order made by the Secretary of State;

(b) the offender is of or over 18 years of age and is not serving a sentence of imprisonment;

(c) having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, but for this section, would have imposed on him a period of imprisonment under section 407(1)(b) of the Criminal Procedure (Scotland) Act 1975 (power of court to impose imprisonment for non-payment of fine); and

1975 c. 21.

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(d) the fine, or as the case may be, the part or instalment, is of an amount not exceeding level 2 on the standard scale.

(3B) An order under subsection (3A)(a) above shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(6) After subsection (4) there shall be inserted the following subsection—

1975 c. 21.

“(4A) The coming into force of a supervised attendance order shall have the effect of discharging the fine referred to in subsection (3)(b) or (3A)(c) above or, as the case may be, section 412A(3)(a) or 412B(1) of the Criminal Procedure (Scotland) Act 1975.”.

(7) In subsection (6), the following definition shall be inserted in the appropriate place in alphabetical order—

““imprisonment” includes detention;”.

(8) In Schedule 6 to that Act of 1990 (further provisions with respect to supervised attendance orders)—

(a) in paragraph 1(1)(a), after the word “persons” there shall be inserted “of a class which includes the offender”;

(b) in paragraph 4(2)(a), for the words from “as” to “made” in the second place where it occurs there shall be substituted—

“not exceeding—

(i) in the case of a sheriff court, three months; and

(ii) in the case of a district court, 60 days,

as the court considers appropriate;” and

(c) in paragraph 5(1)(d), for the words from “as” to “made” in the second place where it occurs there shall be substituted—

“not exceeding—

(i) in the case of a sheriff court, three months; and

(ii) in the case of a district court, 60 days,

as the court considers appropriate;”.

(9) In section 194(2) of the 1975 Act, after the entry in respect of section 411 there shall be inserted—

“section 412A (supervised attendance orders in place of fines for 16 and 17 year olds);

section 412B (supervised attendance orders where court allows further time to pay;”.

1990 c. 40.

(10) In section 407(1)(b) of that Act (imprisonment for non-payment of fine), after the word “may” there shall be inserted “, subject to section 62(1) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,”.

(11) After section 412 of that Act there shall be inserted the following sections—

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“Supervised attendance orders

Supervised
attendance
orders in place
of fines for 16
and 17 year olds.

412A.—(1) This section applies where a person of 16 or 17 years of age is convicted of an offence by a court of summary jurisdiction and the court considers that, but for this section, the appropriate sentence is a fine.

(2) Where this section applies, the court shall determine the amount of the fine and shall consider whether the person is likely to pay a fine of that amount within 28 days.

(3) If the court considers that the person is likely to pay the fine as mentioned in subsection (2) above, it shall—

(a) impose the fine; and

(b) subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), make a supervised attendance order in default of payment of the fine within 28 days.

(4) A supervised attendance order made under subsection (3)(b) above—

(a) shall come into force on such date, not earlier than 28 days after the making of the order, as may be specified in the order, unless the person pays the fine within that period;

(b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.

(5) Where, before the coming into force of a supervised attendance order made under subsection (3)(b) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(6) If the court considers that the person is not likely to pay the fine as mentioned in subsection (2) above, it shall, subject to paragraph 1 of Schedule 6 to the 1990 Act, make a supervised attendance order in respect of that person.

(7) Sections 395A to 398, 400 to 404 and 407 of this Act shall not apply in respect of a person to whom this section applies.

(8) For the purposes of any appeal or review, a supervised attendance order made under this section is a sentence.

(9) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.

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Supervised attendance orders where court allows further time to pay fine.
1990 c. 40.

412B.—(1) Where a court, on an application to it under section 397(1) of this Act, allows a person further time for payment of a fine or instalments thereof it may, in addition, subject to paragraph 1 of Schedule 6 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (“the 1990 Act”), impose a supervised attendance order in default of payment of the fine or any instalment of it on the due date.

(2) A supervised attendance order made under subsection (1) above —

- (a) shall, if the person fails to pay the fine or any instalment of it on the due date, come into force on the day after the due date; and
- (b) shall, for the purposes of Schedule 6 to the 1990 Act, be deemed to be made on the date when it comes into force.

(3) Where, before the coming into force of a supervised attendance order under subsection (1) above, the person pays part of the fine, the period specified in the order shall be reduced by the proportion which the part of the fine paid bears to the whole fine, the resulting figure being rounded up or down to the nearest 10 hours; but this subsection shall not operate to reduce the period to less than 10 hours.

(4) In this section “supervised attendance order” means an order made in accordance with section 62(2), (5) and (6) of the 1990 Act.”.

Supervised release orders: requirement for local authority report.

36. After subsection (1) of section 212A of the 1975 Act (supervised release orders) there shall be inserted the following subsection—

“(1A) A court shall, before making an order under subsection (1) above, consider a report by a relevant officer of a local authority about the offender and his circumstances and, if the court thinks it necessary, hear that officer.”.

Offences committed by persons under supervision etc.: provision of local authority report.
1968 c.49.

37.—(1) After section 179 of the 1975 Act there shall be inserted the following section—

“Offence committed by person under supervision etc.: provision of local authority report.

179A. Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

- (a) the circumstances of the offence; and
- (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.”.

(2) After section 380 of that Act there shall be inserted the following section—

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“Offence committed by person under supervision etc.: provision of local authority report.

380A.—(1) Where a person specified in section 27(1)(b)(i) to (vi) of the Social Work (Scotland) Act 1968 commits an offence, the court shall not dispose of the case without obtaining from the local authority in whose area the person resides a report as to—

- (a) the circumstances of the offence; and
- (b) the character of the offender, including his behaviour while under the supervision, or as the case may be subject to the order, so specified in relation to him.

(2) In subsection (1) above, “the court” does not include a district court.”.

38.—(1) In section 183(5A) of the 1975 Act (probation order)—

- (a) after the word “where” there shall be inserted “an offender has been convicted of an offence punishable by imprisonment and”; and
- (b) in paragraph (a), the words “has committed an offence punishable by imprisonment and” shall cease to have effect.

Probation orders to be made only after conviction.

(2) For paragraph (b) of subsection (2) of each of sections 186 and 387 of that Act (failure to comply with requirement of probation orders) there shall be substituted the following paragraph—

“(b) sentence the offender for the offence for which the order was made;”.

(3) In section 384 of that Act (probation)—

- (a) in subsection (1)—
 - (i) for the words “charged before a court of summary jurisdiction with” there shall be substituted “convicted of”;
 - (ii) the words from “and”, where it first occurs, to “offence”, in the third place where it occurs, shall cease to have effect; and
 - (iii) for the words from “, without” to “applies),” there shall be substituted “instead of sentencing him”;
- (b) in subsection (5A)—
 - (i) after the word “where” there shall be inserted “an offender has been convicted of an offence punishable by imprisonment and”; and
 - (ii) in paragraph (a), the words “has committed an offence punishable by imprisonment and” shall cease to have effect; and
- (c) in subsection (6), the words “convicted of and” shall cease to have effect.

39.—(1) In each of sections 184 and 385 of the 1975 Act (probation orders requiring treatment for mental condition)—

- (a) in subsection (1), after the word “practitioner”, in the second place where it occurs, there shall be inserted “or chartered psychologist”; and

Probation orders requiring treatment for mental condition.

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- (b) in each of subsections (2)(c), (5) and (5B)(b), after the word “practitioner” there shall be inserted “or chartered psychologist”.

(2) In section 462(1) of that Act (interpretation), at the appropriate place, there shall be inserted the following definition—

““chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists;”.

Sentence for offence committed while subject to requirement to perform unpaid work.

40.—(1) After subsection (2) of section 187 of the 1975 Act (commission of further offence while on probation) there shall be inserted the following subsections—

“(3) Where—

- (a) a court has, under section 183(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
 (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and
 (b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”.

(2) After subsection (2) of section 388 of that Act (commission of further offence while on probation) there shall be inserted the following subsections—

“(3) Where—

- (a) a court has, under section 384(5A) of this Act, included in a probation order a requirement that an offender shall perform unpaid work; and
 (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (4) below,

the court which sentences him for the offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(4) The circumstances referred to in subsection (3) above are that the offence was committed—

- (a) during the period that the offender was subject to a requirement to perform unpaid work or within the period of three months following the expiry of that period; and

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(b) in any place where the unpaid work was being or had previously been performed.

(5) The court shall not, under subsection (3) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (4) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”

(3) After section 5 of the Community Service by Offenders (Scotland) Act 1978 there shall be inserted the following section—

“Commission of offence while community service order in force.

5A.—(1) Where—

- (a) a court has made a community service order under section 1(1) of this Act in respect of an offender; and
- (b) the offender is convicted of an offence committed in the circumstances mentioned in subsection (2) below,

the court which sentences him for that offence shall, in determining the appropriate sentence for that offence, have regard to the fact that the offence was committed in those circumstances.

(2) The circumstances referred to in subsection (1) above are that the offence was committed—

- (a) during the period when the community service order was in force or within the period of three months following the expiry of that order; and
- (b) in any place where unpaid work under the order was being or had previously been performed.

(3) The court shall not, under subsection (1) above, have regard to the fact that the offence was committed in the circumstances mentioned in subsection (2) above unless that fact is libelled in the indictment or, as the case may be, specified in the complaint.”

41. After section 439 of the 1975 Act there shall be inserted the following section—

“Amendment of records of conviction and sentence in summary proceedings.

439A.—(1) Without prejudice to section 439 of this Act, where, on an application in accordance with subsection (2) below, the High Court is satisfied that a record of conviction or sentence in summary proceedings inaccurately records the identity of any person, it may authorise the clerk of the court which convicted or, as the case may be, sentenced the person to correct the record.

(2) An application under subsection (1) above shall be made after the determination of the summary prosecution and may be made by any party to the summary proceedings or any other person having an interest in the correction of the alleged inaccuracy.

(3) The High Court shall order intimation of an application under subsection (1) above to such persons as it considers appropriate and shall not determine the application without affording to the parties to the

Amendment of records of conviction and sentence in summary proceedings.

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summary proceedings and to any other person having an interest in the correction of the alleged inaccuracy an opportunity to be heard.

(4) The power of the High Court under this section may be exercised by a single judge of the High Court in the same manner as it may be exercised by the High Court, and subject to the same provisions.”.

Appeals

Leave to appeal.

42.—(1) In section 228(1) of the 1975 Act (right of appeal), after the word “may” there shall be inserted “, with leave granted in accordance with section 230A of this Act,”.

(2) After section 230 of that Act there shall be inserted the following section—

“Leave to appeal.

230A.—(1) The decision whether to grant leave to appeal for the purposes of section 228(1) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

(a) the note of appeal lodged under section 233(1)(a) of this Act;

(b) in a case to which section 236 of this Act applies, the certified copy or, as the case may be, the record of the proceedings at the trial;

(c) where the judge who presided at the trial furnishes a report under section 236A of this Act, that report; and

(d) where, by virtue of section 275(1) of this Act, a transcript of the charge to the jury of the judge who presided at the trial is delivered to the Clerk of Justiciary, that transcript.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

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(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

(a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.”.

(3) After subsection (3) of section 233 of that Act (restriction on arguing ground not in note of appeal) there shall be inserted the following subsection—

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“(3A) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 230A of this Act.”.

(4) In section 442(1)(a) of that Act (right of appeal), after the word “may” there shall be inserted “, with leave granted in accordance with section 442ZA or, as the case may be, 453AA of this Act,”.

(5) After section 442 of that Act there shall be inserted the following section—

“Leave to appeal against conviction etc. 442ZA.—(1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(i) or (iii) of this Act shall be made by a judge of the High Court who shall—

- (a) if he considers that the documents mentioned in subsection (2) below disclose arguable grounds of appeal, grant leave to appeal and make such comments in writing as he considers appropriate; and
- (b) in any other case—
 - (i) refuse leave to appeal and give reasons in writing for the refusal; and
 - (ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) The documents referred to in subsection (1) above are—

- (a) the stated case lodged under subsection (4) of section 448 of this Act; and
- (b) the documents transmitted to the Clerk of Justiciary under subsection (3)(b) of that section.

(3) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (4) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(4) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (10) below, apply to the High Court for leave to appeal.

(5) In deciding an application under subsection (4) above the High Court shall—

- (a) if, after considering the documents mentioned in subsection (2) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal and make such comments in writing as the court considers appropriate; and
- (b) in any other case—

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(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(6) Consideration whether to grant leave to appeal under subsection (1) or (5) above shall take place in chambers without the parties being present.

(7) Comments in writing made under subsection (1)(a) or (5)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the stated case) on the basis of which leave to appeal is granted.

(8) Where the arguable grounds of appeal are specified by virtue of subsection (7) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the stated case but not so specified.

(9) Any application by the appellant for the leave of the High Court under subsection (8) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.

(10) The Clerk of Justiciary shall forthwith intimate—

(a) a decision under subsection (1) or (5) above; and

(b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.”.

(6) After subsection (3) of section 452 of that Act (restriction on arguing ground not in stated case) there shall be inserted the following subsection—

“(3A) Subsection (3) above shall not apply as respects any ground of appeal specified as an arguable ground of appeal by virtue of subsection (7) of section 442ZA of this Act.”.

(7) After section 453A of that Act there shall be inserted the following section—

“Leave to appeal against sentence.

453AA.—(1) The decision whether to grant leave to appeal for the purposes of section 442(1)(a)(ii) or (iia) of this Act shall be made by a judge of the High Court who shall—

(a) if he considers that the note of appeal and other documents sent to the Clerk of Justiciary under section 453B(4)(a) of this Act disclose arguable grounds of appeal, grant leave to appeal; and

(b) in any other case—

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(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(2) A warrant granted under subsection (1)(b)(ii) above shall not take effect until the expiry of the period of 14 days mentioned in subsection (3) below without an application to the High Court for leave to appeal having been lodged by the appellant under that subsection.

(3) Where leave to appeal is refused under subsection (1) above the appellant may, within 14 days of intimation under subsection (9) below, apply to the High Court for leave to appeal.

(4) In deciding an application under subsection (3) above the High Court shall—

(a) if, after considering the note of appeal and other documents mentioned in subsection (1) above and the reasons for the refusal, the court is of the opinion that there are arguable grounds of appeal, grant leave to appeal; and

(b) in any other case—

(i) refuse leave to appeal and give reasons in writing for the refusal; and

(ii) where the appellant is on bail and the sentence imposed on his conviction is one of imprisonment, grant a warrant to apprehend and imprison him.

(5) Consideration whether to grant leave to appeal under subsection (1) or (4) above shall take place in chambers without the parties being present.

(6) Comments in writing made under subsection (1)(a) or (4)(a) above may, without prejudice to the generality of that provision, specify the arguable grounds of appeal (whether or not they are contained in the note of appeal) on the basis of which leave to appeal is granted.

(7) Where the arguable grounds of appeal are specified by virtue of subsection (6) above it shall not, except by leave of the High Court on cause shown, be competent for the appellant to found any aspect of his appeal on any ground of appeal contained in the note of appeal but not so specified.

(8) Any application by the appellant for the leave of the High Court under subsection (7) above—

(a) shall be made not less than seven days before the date fixed for the hearing of the appeal; and

(b) shall, not less than seven days before that date, be intimated by the appellant to the Crown Agent.

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- (9) The Clerk of Justiciary shall forthwith intimate—
- (a) a decision under subsection (1) or (4) above; and
 - (b) in the case of a refusal of leave to appeal, the reasons for the decision,

to the appellant or his solicitor and to the Crown Agent.”.

43.—(1) In section 245 of the 1975 Act (quorum of High Court in relation to appeals)—

Reduction in quorum of High Court for appeals against sentence etc.

- (a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”; and
- (b) after subsection (1) there shall be inserted the following subsection—

“(1A) For the purpose of hearing and determining any appeal under section 228(1)(b), (bb), (bc) or (bd) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.”.

(2) After section 451 of that Act there shall be inserted the following section—

“Quorum of High Court in relation to appeals.

451A.—(1) For the purpose of hearing and determining any appeal under this Part of this Act, or any proceeding connected therewith, three of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and the determination of any question under this Part of this Act by the court shall be according to the votes of the majority of the members of the court sitting, including the presiding judge, and each judge so sitting shall be entitled to pronounce a separate opinion.

(2) For the purpose of hearing and determining appeals under section 442(1)(a)(ii) or (iia) of this Act, or any proceeding connected therewith, two of the Lords Commissioners of Justiciary shall be a quorum of the High Court, and each judge shall be entitled to pronounce a separate opinion; but where the two Lords Commissioners of Justiciary are unable to reach agreement on the disposal of the appeal, or where they consider it appropriate, the appeal shall be heard and determined in accordance with subsection (1) above.”.

44.—(1) Without prejudice to sections 236A and 453B(3)(b) of the 1975 Act, the High Court may, in relation to any appeal—

Trial judge's report.

- (a) under section 228(1), 228A or 442(1) of the 1975 Act;
- (b) by way of bill of suspension or advocation; or

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(c) by way of petition to the nobile officium,

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 Justiciary a report in writing giving the judge's opinion on the case generally or in relation to any particular matter specified in the order.

(2) The Clerk of Justiciary shall send a copy of a report provided under subsection (1) above to the convicted person or his solicitor, the Crown Agent and, in relation to cases referred under section 263(1) of the 1975 Act, the Secretary of State.

(3) Subject to subsection (2) above, the report of the judge 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.

(4) Expressions used in this section and in the 1975 Act have the same meaning in this section as in that Act.

Extension of certain time limits with respect to appeals.

45.—(1) In section 451(2) of the 1975 Act (power of sheriff principal to extend certain time limits with respect to appeal by stated case), for the words from “taken” to “the sheriff” there shall be substituted “taken—

- (a) is temporarily absent from duty for any cause;
- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

the sheriff”.

(2) In the proviso to subsection (4) of section 453B of that Act (power of sheriff principal to extend time limit with respect to appeal against sentence), for the words from “judge” to “extend” there shall be substituted “judge—

- (a) is temporarily absent from duty for any cause;
- (b) is a temporary sheriff; or
- (c) is a justice of the peace,

extend”.

New prosecution for same or similar offence.

46.—(1) In section 255 of the 1975 Act (supplementary provisions where High Court authorises new prosecution)—

- (a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”;
- (b) after subsection (1) there shall be inserted the following subsections—

“(1A) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

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(1C) The indictment in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.”; and

(c) after subsection (4) there shall be inserted the following subsections—

“(5) On granting authority under section 254(1)(c) of this Act to bring a new prosecution, the High Court shall, after giving the parties an opportunity of being heard, order the detention of the accused person in custody or admit him to bail.

(6) Subsections (2)(b) and (4) to (6) of section 101 of this Act (prevention of delay in trials) shall apply to an accused person who is detained under subsection (5) above as they apply to an accused person detained by virtue of being committed until liberated in due course of law.”.

(2) In section 452B of the 1975 Act (corresponding provision in relation to summary proceedings)—

(a) at the beginning of subsection (1) there shall be inserted “Subject to subsection (1A) below,”;

(b) after subsection (1) there shall be inserted the following subsections—

“(1A) In a new prosecution under this section the accused shall not be charged with an offence more serious than that of which he was convicted in the earlier proceedings.

(1B) In proceedings in a new prosecution under this section it shall, subject to subsection (1C) below, be competent for either party to lead any evidence which it was competent for him to lead in the earlier proceedings.

(1C) The complaint in a new prosecution under this section shall identify any matters as respects which the prosecutor intends to lead evidence by virtue of subsection (1B) above which would not have been competent but for that subsection.”; and

(c) after subsection (4) there shall be inserted the following subsection—

“(5) On granting authority under section 452A(1)(d) of this Act to bring a new prosecution, the High Court may, after giving the parties an opportunity of being heard, order the detention of the accused person in custody; but an accused person may not be detained by virtue of this subsection for a period of more than 40 days.”.

Mental disorder and criminal proceedings

47.—(1) For subsection (1) of section 174 of the 1975 Act (finding of insanity in bar of trial in solemn proceedings) there shall be substituted the following subsections—

Insanity in bar of trial.

“(1) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged on indictment with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (1A) below—

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- (a) make a finding to that effect and state the reasons for that finding;
- (b) discharge the trial diet and order that a diet (in this Act referred to as an “an examination of facts”) be held under section 174ZA of this Act; and
- (c) remand the person in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; and
 - (ii) that a hospital is available for his admission and suitable for his detention,
 make an order (in this section referred to as a “temporary hospital order”) committing him to that hospital until the conclusion of the examination of facts.

(1A) Subsection (1) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet *pro loco et tempore*.

(1B) The court may, before making a finding under subsection (1) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

(1C) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

- (a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;
- (b) in any other case, the court may—
 - (i) confirm or vary the order; or
 - (ii) revoke the order and make such other order, under subsection (1)(c) above or any other provision of this Part of this Act, as the court considers appropriate.”.

(2) For subsection (2) of section 375 of the 1975 Act (finding of insanity in bar of trial in summary proceedings) there shall be substituted the following subsections—

“(2) Where the court is satisfied, on the written or oral evidence of two medical practitioners, that a person charged summarily in the sheriff court with the commission of an offence is insane so that his trial cannot proceed or, if it has commenced, cannot continue, the court shall, subject to subsection (2A) below—

- (a) make a finding to that effect and state the reasons for that finding;
- (b) discharge the trial diet and order that a diet (in this Act referred to as an “examination of facts”) be held in accordance with section 375ZA of this Act; and

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(c) remand the person in custody or on bail or, where the court is satisfied—

(i) on the written or oral evidence of two medical practitioners, that he is suffering from mental disorder of a nature or degree which warrants his admission to hospital under Part V of the Mental Health (Scotland) Act 1984; and

(ii) that a hospital is available for his admission and suitable for his detention,
make an order (in this section referred to as a “temporary hospital order”) committing him to that hospital until the conclusion of the examination of facts.

(2A) Subsection (2) above is without prejudice to the power of the court, on an application by the prosecutor, to desert the diet *pro loco et tempore*.

(2B) The court may, before making a finding under subsection (2) above as to the insanity of a person, adjourn the case in order that investigation of his mental condition may be carried out.

(2C) The court which made a temporary hospital order may, at any time while the order is in force, review the order on the ground that there has been a change of circumstances since the order was made and, on such review—

(a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may remand him in custody or on bail;

(b) in any other case, the court may—

(i) confirm or vary the order; or

(ii) revoke the order and make such other order, under subsection (2)(c) above or any other provision of this Part of this Act, as the court considers appropriate.”.

48. After subsection (3) of section 375 of the 1975 Act (insanity in bar of trial) there shall be inserted the following subsection—

Insanity as ground of acquittal in summary proceedings.

“(3A) Where, in the case of any person charged summarily in the sheriff court, evidence is brought before the court that the person was insane at the time of doing the act or making the omission constituting the offence with which he is charged and the person is acquitted, the court shall state whether the person was insane at that time and, if so, whether he was acquitted on that ground.”.

49.—(1) After section 174 of the 1975 Act there shall be inserted the following sections—

Examination of facts.

“Examination of facts.

174ZA.—(1) At an examination of facts ordered under section 174(1)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

(a) beyond reasonable doubt, as respects any charge on indictment in respect of which the accused

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was being or was to be tried, that he did the act or made the omission constituting the offence; and

(b) on the balance of probabilities, that there are no grounds for acquitting him.

(2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

(3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.

(4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.

(5) Where it appears to the court that it is not practicable or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.

(6) Subject to the provisions of this section, section 174ZB of this Act and any Act of Adjournal, the rules of evidence and procedure and the powers of the court shall, in respect of an examination of facts, be as nearly as possible those applicable in respect of a trial.

(7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—

(a) commences when the indictment is called; and

(b) concludes when the court—

(i) acquits the person under subsection (3) above;

(ii) makes an order under subsection (2) of section 174ZC of this Act; or

(iii) decides, under paragraph (e) of that subsection, not to make an order.

174ZB.—(1) An examination of facts ordered under section 174(1)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.

(2) A warrant for citation of an accused and witnesses under section 69 of this Act shall be sufficient warrant for citation to an examination of facts.

(3) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

Examination of facts: supplementary provisions.

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(4) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the indictment in priority to other such charges.

(5) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts *pro loco et tempore* as respects either the whole indictment or any charge therein.

(6) Where, and to the extent that, an examination of facts has, under subsection (5) above, been deserted *pro loco et tempore*, the Lord Advocate may, at any time, raise and insist in a new indictment notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(7) If, in a case where a court has made a finding under subsection (2) of section 174ZA above, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section, any order made under section 174ZC(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(8) For the purposes of subsection (7) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.”.

(2) After section 375 of the 1975 Act there shall be inserted the following sections—

“Examination of facts.

375ZA.—(1) At an examination of facts ordered under section 375(2)(b) of this Act the court shall, on the basis of the evidence (if any) already given in the trial and such evidence, or further evidence, as may be led by either party, determine whether it is satisfied—

- (a) beyond reasonable doubt, as respects any charge in a complaint in respect of which the accused was being or was to be tried, that he did the act or made the omission constituting the offence; and
- (b) on the balance of probabilities, that there are no grounds for acquitting him.

(2) Where the court is satisfied as mentioned in subsection (1) above, it shall make a finding to that effect.

(3) Where the court is not so satisfied it shall, subject to subsection (4) below, acquit the person of the charge.

(4) Where, as respects a person acquitted under subsection (3) above, the court is satisfied as to the matter mentioned in subsection (1)(a) above but it appears to the court that the person was insane at the time of doing the act or making the omission constituting the offence, the court shall state whether the acquittal is on the ground of such insanity.

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(5) Where it appears to the court that it is not practicable or appropriate for the accused to attend an examination of facts the court may, if no objection is taken by or on behalf of the accused, order that the examination of facts shall proceed in his absence.

(6) Subject to the provisions of this section, section 375ZB of this Act and any Act of Adjournal, the rules of evidence and procedure and the powers of the court in respect of an examination of facts shall be as nearly as possible those applicable in respect of a trial.

(7) For the purposes of the application to an examination of facts of the rules and powers mentioned in subsection (6) above, an examination of facts—

(a) commences when the diet is called; and

(b) concludes when the court—

(i) acquits the person under subsection (3) above;

(ii) makes an order under subsection (2) of section 375ZC of this Act; or

(iii) decides, under paragraph (e) of that subsection, not to make an order.

Examination of facts: supplementary provisions.

375ZB.—(1) An examination of facts ordered under section 375(2)(b) of this Act may, where the order is made at the trial diet, be held immediately following the making of the order and, where it is so held, the citation of the accused and any witness to the trial diet shall be a valid citation to the examination of facts.

(2) Where an accused person is not legally represented at an examination of facts the court shall appoint counsel or a solicitor to represent his interests.

(3) The court may, on the motion of the prosecutor and after hearing the accused, order that the examination of facts shall proceed in relation to a particular charge, or particular charges, in the complaint in priority to other such charges.

(4) The court may, on the motion of the prosecutor and after hearing the accused, at any time desert the examination of facts pro loco et tempore as respects the whole complaint or any charge in the complaint.

(5) Where, and to the extent that, an examination of facts has, under subsection (4) above, been deserted pro loco et tempore, the prosecutor may, at any time, raise a fresh libel notwithstanding any time limit which would otherwise apply in respect of prosecution of the alleged offence.

(6) If, in a case where a court has made a finding under subsection (2) of section 375ZA of this Act, a person is subsequently charged, whether on indictment or on a complaint, with an offence arising out of the same act or omission as is referred to in subsection (1) of that section,

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any order made under section 375ZC(2) of this Act shall, with effect from the commencement of the later proceedings, cease to have effect.

(7) For the purposes of subsection (6) above, the later proceedings are commenced when the indictment or, as the case may be, the complaint is served.”.

50.—(1) After section 174ZB of the 1975 Act (inserted by section 49(1) of this Act) there shall be inserted the following section—

“Disposal of case where accused found to be insane.

174ZC.—(1) This section applies where—

- (a) a person is, by virtue of section 174(2) or 174ZA(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or
- (b) following an examination of facts under section 174ZA, a court makes a finding under subsection (2) of that section.

(2) Subject to subsection (3) below, where this section applies the court may, as it thinks fit—

- (a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
- (b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;
- (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
- (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 5A to this Act); or
- (e) make no order.

(3) Where the offence with which the person was charged is murder, the court shall make orders under both paragraphs (a) and (b) of subsection (2) above in respect of that person.

(4) Sections 175(1) and (3) to (6) and 176 to 178 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.”.

Disposal of case where accused found to be insane.

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(2) After section 375ZB of the 1975 Act (inserted by section 49(2) of this Act) there shall be inserted the following section—

“Disposal of case where accused found to be insane.

375ZC.—(1) This section applies where—

- (a) a person is, by virtue of section 375(3A) or 375ZA(3) of this Act, acquitted on the ground of his insanity at the time of the act or omission; or
- (b) following an examination of facts under section 375ZA, a court makes a finding under subsection (2) of that section.

(2) Where this section applies the court may, as it thinks fit—

- (a) make an order (which shall have the same effect as a hospital order) that the person be detained in such hospital as the court may specify;
- (b) in addition to making an order under paragraph (a) above, make an order (which shall have the same effect as a restriction order) that the person shall, without limit of time, be subject to the special restrictions set out in section 62(1) of the Mental Health (Scotland) Act 1984;
- (c) make an order (which shall have the same effect as a guardianship order) placing the person under the guardianship of a local authority or of a person approved by a local authority;
- (d) make a supervision and treatment order (within the meaning of paragraph 1(1) of Schedule 5A to this Act); or
- (e) make no order.

(3) Sections 376(1) and (6) to (9) and 377 to 379 of this Act shall have effect in relation to the making, terms and effect of an order under paragraph (a), (b) or (c) of subsection (2) above as those provisions have effect in relation to the making, terms and effect of, respectively, a hospital order, a restriction order and a guardianship order as respects a person convicted of an offence, other than an offence the sentence for which is fixed by law, punishable by imprisonment.”.

(3) The Schedule set out in Schedule 2 to this Act (which makes provision as respects supervision and treatment orders) shall be inserted in the 1975 Act as Schedule 5A to that Act.

Appeal by accused in case involving insanity.

51.—(1) After section 174ZC of the 1975 Act (inserted by section 50(1) of this Act) there shall be inserted the following section—

“Appeal by accused in case involving insanity.

174ZD.—(1) A person may appeal to the High Court against—

- (a) a finding made under section 174(1) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;

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- (b) a finding under section 174ZA(2) of this Act; or
 - (c) an order made under section 174ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c), of that subsection, not later than 28 days after the conclusion of the examination of facts;
 - (iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 174(2) or 174ZA(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;
 - (iv) in the case of an appeal under that paragraph against an order made on a finding under section 174ZA(2), not later than 14 days after the conclusion of the examination of facts,or within such longer period as the High Court may, on cause shown, allow.
- (3) Subsections (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.
- (4) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.
- (5) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (6) In disposing of an appeal under subsection (1) above the High Court may—
- (a) affirm the decision of the court of first instance;
 - (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (7) Section 280 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.”

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(2) After section 375ZC of that Act (inserted by section 50(2) of this Act) there shall be inserted the following section—

“Appeal by accused in case involving insanity.

375ZD.—(1) A person may appeal to the High Court against—

- (a) a finding made under section 375(2) of this Act that he is insane so that his trial cannot proceed or continue, or the refusal of the court to make such a finding;
- (b) a finding under section 375ZA(2) of this Act; or
- (c) an order made under section 375ZC(2) of this Act.

(2) An appeal under subsection (1) above shall be—

- (a) in writing; and
- (b) lodged—

(i) in the case of an appeal under paragraph (a) of that subsection, not later than seven days after the date of the finding or refusal which is the subject of the appeal;

(ii) in the case of an appeal under paragraph (b), or both paragraphs (b) and (c), of that subsection, not later than 28 days after the conclusion of the examination of facts;

(iii) in the case of an appeal under paragraph (c) of that subsection against an order made on an acquittal, by virtue of section 375(3A) or 375ZA(3) of this Act, on the ground of insanity at the time of the act or omission, not later than 14 days after the date of the acquittal;

(iv) in the case of an appeal under that paragraph against an order made on a finding under section 375ZA(2), not later than 14 days after the conclusion of the examination of facts,

or within such longer period as the High Court may, on cause shown, allow.

(3) Where an appeal is taken under subsection (1) above, the period from the date on which the appeal was lodged until it is withdrawn or disposed of shall not count towards any time limit applying in respect of the case.

(4) An appellant in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(5) In disposing of an appeal under subsection (1) above the High Court may—

- (a) affirm the decision of the court of first instance;

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- (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
 - (c) remit the case to that court with such directions in the matter as the High Court thinks fit.
- (6) Section 443 of this Act shall not apply in relation to any order as respects which a person has a right of appeal under subsection (1)(c) above.”.

52.—(1) After section 174ZD of the 1975 Act (inserted by section 51(1) of this Act) there shall be inserted the following section—

Appeal by
prosecutor in case
involving insanity.

“Appeal by Lord
Advocate in case
involving
insanity.

174ZE.—(1) The Lord Advocate may appeal to the High Court on a point of law against—

- (a) a finding under subsection (1) of section 174 of this Act that an accused is insane so that his trial cannot proceed or continue;
 - (b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (2) of that section;
 - (c) an acquittal under section 174ZA(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or
 - (d) any order made under section 174ZC(2) of this Act.
- (2) An appeal under subsection (1) above shall be—
- (a) in writing; and
 - (b) lodged—
 - (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,
 or within such longer period as the High Court may, on cause shown, allow.
- (3) Subsection (1)(a) and (2)(b)(i) above are without prejudice to section 76A(1) of this Act.
- (4) A respondent in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.
- (5) In disposing of an appeal under subsection (1) above the High Court may—
- (a) affirm the decision of the court of first instance;

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- (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
- (c) remit the case to that court with such directions in the matter as the High Court thinks fit.”.

(2) After section 375ZD of that Act (inserted by section 51(2) of this Act) there shall be inserted the following section—

“Appeal by prosecutor in case involving insanity.

375ZE.—(1) The prosecutor may appeal to the High Court on a point of law against—

- (a) a finding under subsection (2) of section 375 of this Act that an accused is insane so that his trial cannot proceed or continue;
- (b) an acquittal on the ground of insanity at the time of the act or omission by virtue of subsection (3A) of that section;
- (c) an acquittal under section 375ZA(3) of this Act (whether or not on the ground of insanity at the time of the act or omission); or
- (d) any order made under section 375ZC(2) of this Act.

(2) An appeal under subsection (1) above shall be—

- (a) in writing; and
- (b) lodged—
 - (i) in the case of an appeal under paragraph (a) or (b) of that subsection, not later than seven days after the finding or, as the case may be, the acquittal which is the subject of the appeal;
 - (ii) in the case of an appeal under paragraph (c) or (d) of that subsection, not later than seven days after the conclusion of the examination of facts,
 or within such longer period as the High Court may, on cause shown, allow.

(3) A respondent in an appeal under this section shall be entitled to be present at the hearing of the appeal unless the High Court determines that his presence is not practicable or appropriate.

(4) In disposing of an appeal under subsection (1) above the High Court may—

- (a) affirm the decision of the court of first instance;
- (b) make any other finding or order which that court could have made at the time when it made the finding or order which is the subject of the appeal; or
- (c) remit the case to that court with such directions in the matter as the High Court thinks fit.”.

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53. In each of sections 25 and 330 of the 1975 Act (power of court to commit to hospital person suffering from mental disorder), after subsection (4) there shall be inserted the following subsections—

Review of committal of mentally disordered accused to hospital.

“(5) Without prejudice to subsection (3) above, the court may review an order under subsection (1) above on the ground that there has been a change of circumstances since the order was made and, on such review—

- (a) where the court considers that such an order is no longer required in relation to a person, it shall revoke the order and may deal with him in such way mentioned in subsection (3) above as the court thinks appropriate;
- (b) in any other case, the court may—
 - (i) confirm or vary the order; or
 - (ii) revoke the order and deal with him in such way mentioned in subsection (3) above as the court considers appropriate.

(6) Subsections (1) to (4) above shall apply to the review of an order under subsection (5) above as they apply to the making of an order under subsection (1) above.”.

54.—(1) In subsection (1) of each of sections 178 and 379 of the 1975 Act (power of court to impose restriction order in addition to hospital order), the words “either” and “or during such period as may be specified in the order” shall cease to have effect.

Restriction orders to be without limit of time.

(2) The amendments made by subsection (1) above shall not have effect in relation to any restriction order made before the coming into force of this section.

55.—(1) Each of sections 180 and 381 of the 1975 Act (remand for inquiry into physical or mental condition) shall be amended as follows.

Committal to hospital for inquiry into mental condition.

(2) In subsection (1) for the words “shall remand him in custody or on bail for” there shall be substituted—

“shall—

- (a) for the purpose of inquiry solely into his physical condition, remand him in custody or on bail;
- (b) for the purpose of inquiry into his mental condition (whether or not in addition to his physical condition), remand him in custody or on bail or, where the court is satisfied—
 - (i) on the written or oral evidence of a medical practitioner, that the person appears to be suffering from a mental disorder; and
 - (ii) that a hospital is available for his admission and suitable for his detention,
 make an order committing him to that hospital,

for”.

(3) After subsection (1) there shall be inserted the following subsections—

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“(1A) Where the court is of the opinion that a person ought to continue to be committed to hospital for the purpose of inquiry into his mental condition following the expiry of the period specified in an order for committal to hospital under paragraph (b) of subsection (1) above, the court may—

- (a) if the condition in sub-paragraph (i) of that paragraph continues to be satisfied and a suitable hospital is available for his continued detention, renew the order for such further period not exceeding three weeks as the court thinks necessary to enable a medical examination and report to be made; and
- (b) in any other case, remand the person in custody or on bail in accordance with subsection (1) above.

(1B) An order under subsection (1A)(a) above may, unless objection is made by or on behalf of the person to whom it relates, be made in his absence.

(1C) Where, before the expiry of the period specified in an order for committal to hospital under subsection (1)(b) above, the court considers, on an application made to it, that committal to hospital is no longer required in relation to the person, the court shall revoke the order and may make such other order, under subsection (1)(a) above or any other provision of this Part of this Act, as the court considers appropriate.”

(4) In subsection (4), after the word “section” there shall be inserted “to remand in custody or on bail”.

(5) After subsection (4) there shall be inserted the following subsection—

“(4A) On making an order of committal to hospital under subsection (1)(b) above the court shall send to the hospital specified in the order a statement of the reasons for which the court is of the opinion that an inquiry ought to be made into the mental condition of the person to whom it relates, and of any information before the court about his mental condition.”

(6) In subsection (5)—

- (a) after the word “imposed” there shall be inserted “, and a person committed to hospital under this section may appeal against the order of committal,”;
- (b) after the word “remand” there shall be inserted “or, as the case may be, committal”; and
- (c) at the end of paragraph (b) there shall be inserted—
“; or
(c) in the case of an appeal against an order of committal to hospital, revoke the order and remand the person in custody.”

(7) After subsection (5) there shall be inserted the following subsections—

“(6) The court may, on cause shown, vary an order for committal to hospital under subsection (1)(b) above by substituting another hospital for the hospital specified in the order.

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(7) Subsection (1)(b) above shall apply to the variation of an order under subsection (6) above as it applies to the making of an order for committal to hospital.”

Miscellaneous

56.—(1) There shall be established a body, to be known as the Criminal Courts Rules Council (in this section referred to as “the Council”) which shall have the functions conferred on it by subsection (9) below.

Criminal Courts
Rules Council.

(2) The Council shall consist of—

- (a) the Lord Justice General, the Lord Justice Clerk and the Clerk of Justiciary;
- (b) a further Lord Commissioner of Justiciary appointed by the Lord Justice General;
- (c) the following persons appointed by the Lord Justice General after such consultation as he considers appropriate—
 - (i) two sheriffs;
 - (ii) two members of the Faculty of Advocates;
 - (iii) two solicitors;
 - (iv) one sheriff clerk; and
 - (v) one person appearing to him to have a knowledge of the procedures and practices of the district court;
- (d) two persons appointed by the Lord Justice General after consultation with the Lord Advocate, at least one of whom must be a procurator fiscal;
- (e) two persons appointed by the Lord Justice General after consultation with the Secretary of State, at least one of whom must be a person appearing to the Lord Justice General to have—
 - (i) a knowledge of the procedures and practices of the courts exercising criminal jurisdiction in Scotland; and
 - (ii) an awareness of the interests of victims of crime and of witnesses in criminal proceedings; and
- (f) any persons appointed under subsection (3) below.

(3) The Lord Justice General may appoint not more than two further persons, and the Secretary of State may appoint one person, to membership of the Council.

(4) The chairman of the Council shall be the Lord Justice General or such other member of the Council, being a Lord Commissioner of Justiciary, as the Lord Justice General may nominate.

(5) The members of the Council appointed under paragraphs (b) to (f) of subsection (2) above shall, so long as they retain the respective qualifications (if any) mentioned in those paragraphs, hold office for three years and be eligible for reappointment.

(6) Any vacancy in the membership of the Council by reason of the death or demission of office, prior to the expiry of the period for which he was appointed, of a member appointed under any of paragraphs (b) to (f) of subsection (2) above shall be filled by the appointment by the Lord Justice General or, as the case may be, the Secretary of State, after such consultation (if any) as is required by the paragraph in question, of

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another person having the qualifications (if any) required by that paragraph, and a person so appointed shall hold office only until the expiry of that period.

(7) The Council shall meet—

- (a) at intervals of not more than 12 months; and
- (b) at any time when summoned by the chairman or by three members of the Council,

but shall, subject to the foregoing, have power to regulate the summoning of its meetings and the procedure at such meetings.

(8) At any meeting of the Council six members shall be a quorum.

(9) The functions of the Council shall be—

- (a) to keep under general review the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices); and
- (b) to consider and comment on any draft Act of Adjournal submitted to it by the High Court, which shall, in making the Act of Adjournal, take account to such extent as it considers appropriate of any comments made by the Council under this paragraph.

(10) In the discharge of its functions under subsection (9) above the Council may invite representations on any aspect of the procedures and practices of the courts exercising criminal jurisdiction in Scotland (including any matters incidental or relating to those procedures or practices) and shall consider any such representations received by it, whether or not submitted in response to such an invitation.

(11) Except where the context otherwise requires, expressions used in this section and in the 1975 Act have the same meaning in this section as in that Act.

Information for financial and other purposes.

57.—(1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—

- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or
- (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.

(2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

Prints, samples etc. in criminal investigations.
1993 c. 9.

58.—(1) Section 28 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (prints, samples etc. in criminal investigations) shall be amended in accordance with subsections (2) to (4) below.

(2) In subsection (3)—

- (a) at the beginning there shall be inserted the words “Subject to subsection (3A) below,”;

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- (b) after the words "subsection (2) above" there shall be inserted " , all samples taken under subsection (4) below and all information derived from such samples"; and
- (c) for the word "immediately" there shall be substituted "as soon as possible".

(3) After subsection (3) there shall be inserted the following subsections—

"(3A) The duty under subsection (3) above to destroy samples taken under subsection (4) below and information derived from such samples shall not apply where the destruction of the sample or the information could have the effect of destroying any sample, or any information derived therefrom, lawfully held in relation to a person other than the person from whom the sample was taken.

(3B) No sample, or information derived from a sample, retained by virtue of subsection (3A) above shall be used—

- (a) in evidence against the person from whom the sample was taken; or
- (b) for the purposes of the investigation of any offence.

(3C) The duty under subsection (3) above shall not apply where the record, sample or information in question is of the same kind as a record, a sample or, as the case may be, information lawfully held by or on behalf of any police force in relation to the person."

(4) In subsection (4)—

(a) in paragraph (a)—

- (i) after the word "body" there shall be inserted " , other than pubic hair,"; and
- (ii) for the words "or combing" there shall be substituted " , combing or plucking"; and

(b) at the end there shall be inserted the following paragraph—

"(d) from the inside of the mouth, by means of swabbing, a sample of saliva or other material".

(5) After section 28 of that Act of 1993 there shall be inserted the following sections—

"Prints, samples etc. in criminal investigations: supplementary provisions.

28A.—(1) This section applies where a person convicted of an offence—

- (a) has not, since the conviction, had a sample, print or impression taken from him; or
- (b) has (whether before or after the conviction) had a sample, print or impression taken from him but it was not suitable for the means of analysis for which it was taken or, though suitable, was insufficient (either in quantity or in quality) to enable information to be obtained by that means of analysis

(2) Where this section applies, a constable may, within the permitted period—

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- (a) take from the convicted person fingerprints, palmprints and such other prints and impressions of an external part of the body as the constable reasonably considers it appropriate to take; and
 - (b) with the authority of an officer of a rank no lower than inspector, take from the person any sample mentioned in any of paragraphs (a) to (d) of subsection (4) of section 28 of this Act by the means specified in that paragraph in relation to that sample.
- (3) A constable—
- (a) may require the convicted person to attend a police station for the purposes of subsection (2) above;
 - (b) may, where the convicted person is in legal custody within the meaning of the 1975 Act, exercise the powers conferred by subsection (2) above in relation to the person in the place where he is for the time being.
- (4) In subsection (2) above, “the permitted period” means—
- (a) in a case to which paragraph (a) of subsection (1) above applies, the period of one month beginning with the date of the conviction;
 - (b) in a case to which paragraph (b) of that subsection applies, the period of one month beginning with the date on which a constable of the police force which instructed the analysis receives written intimation that the sample, print or impression was unsuitable or, as the case may be, insufficient as mentioned in that paragraph.
- (5) A requirement under subsection (3)(a) above—
- (a) shall give the person at least seven days’ notice of the date on which he is required to attend;
 - (b) may direct him to attend at a specified time of day or between specified times of day.
- (6) Any constable may arrest without warrant a person who fails to comply with a requirement under subsection (3)(a) above.

Use of prints,
samples etc.

28B. Without prejudice to any power to do so apart from this section, prints, impressions and samples lawfully held by or on behalf of any police force or in connection with or as a result of an investigation of an offence and information derived therefrom may be checked against other such prints, impressions, samples and information.”

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- 59.** In section 2(3A) of the Criminal Justice (Scotland) Act 1980 (detention and questioning at police station)—
- (a) for the words from “he” to “be” there shall be substituted “and is”; and
 - (b) after the word “detention” there shall be inserted “, the period of six hours mentioned in subsection (2) above shall be reduced by the length of that earlier detention”.
- 60.** For subsection (1) of section 7 of the Criminal Justice (Scotland) Act 1980 (jurisdiction of district courts in relation to statutory offences) there shall be substituted the following subsections—
- “(1) Except in so far as any enactment (including this Act and an enactment passed after this Act) otherwise provides, it shall be competent for a district court to try any statutory offence which is triable summarily.
- (1A) Without prejudice to any other or wider power conferred by any enactment, it shall not be competent for a district court, as respects any statutory offence—
- (a) to impose a sentence of imprisonment for a period exceeding 60 days;
 - (b) to impose a fine of an amount exceeding level 4 on the standard scale; or
 - (c) to ordain an accused person to find caution for any period exceeding six months or to an amount exceeding level 4 on the standard scale.”.

61.—(1) Section 56 of the Criminal Justice (Scotland) Act 1987 (conditional offer of fixed penalty by procurator fiscal) shall be amended as follows.

(2) After subsection (2) there shall be inserted the following subsection—

“(2A) In this section “the appropriate fixed penalty” means such fixed penalty on the scale prescribed under subsection (7) below as the procurator fiscal thinks fit having regard to the circumstances of the case.”.

(3) In subsection (3)(b)(i), after the word “the” in the second place where it occurs there shall be inserted “appropriate”.

(4) After subsection (3) there shall be inserted the following subsection—

“(3A) A conditional offer may be made in respect of more than one relevant offence and shall, in such a case, state the amount of the appropriate fixed penalty for all the offences in respect of which it is made.”.

(5) In each of subsections (4) and (6), after the words “payment of the” there shall be inserted “appropriate”.

(6) For subsection (7) there shall be substituted the following subsections—

Calculation of period of detention at police station where person previously detained under another enactment etc.
1980 c. 62.

Jurisdiction of district court in relation to statutory offences.

Conditional offer of fixed penalty by procurator fiscal.
1987 c. 41.

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“(7) The Secretary of State shall, by order, prescribe a scale of fixed penalties for the purposes of this section, the amount of the maximum penalty on the scale being a sum not exceeding level 1 on the standard scale.

(7A) An order under subsection (7) above—

- (a) may contain provision as to the payment of fixed penalties by instalments; and
- (b) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.

(7) In subsection (8), after the words “instalment of the” there shall be inserted “appropriate”.

Time limit for summary prosecution of statutory offences.

62.—(1) Section 331 of the 1975 Act (time limit for summary prosecution of statutory offences) shall be amended as follows.

(2) In subsection (1), after the words “in respect of” there shall be inserted “any offence triable only summarily and consisting of”.

(3) Subsection (2) shall cease to have effect.

Abolition of private summary prosecutions.

63. After section 310 of the 1975 Act there shall be inserted the following section—

“Abolition of private summary prosecutions. 310A. Except where any enactment otherwise expressly provides, all prosecutions under this Part of this Act shall be brought at the instance of the procurator fiscal.”.

Legal aid in case involving insanity in bar of trial.
1986 c. 47.

64. In subsection (1) of section 22 of the Legal Aid (Scotland) Act 1986 (circumstances in which criminal legal aid automatically available), after paragraph (d) there shall be inserted the following paragraphs—

“(da) in relation to any proceedings under solemn or summary procedure whereby the court determines (whether or not on a plea by the accused person) whether he is insane so that his trial cannot proceed or continue;

1975 c. 21.

(db) in relation to an examination of facts held under section 174ZA or 375ZA of the Criminal Procedure (Scotland) Act 1975 and the disposal of the case following such examination of facts;

(dc) in relation to any appeal under section 174ZD (appeal by accused in case involving insanity) or 174ZE (appeal by Lord Advocate in case involving insanity) or section 375ZD or 375ZE (equivalent provisions as respects summary procedure) of that Act of 1975;”.

Legal aid in criminal appeals.

65.—(1) Section 25 of the Legal Aid (Scotland) Act 1986 (legal aid in criminal appeals) shall be amended in accordance with subsections (2) to (5) below.

(2) In subsection (1)—

(a) after the word “sentence” there shall be inserted “, other disposal”; and

(b) at the end there shall be inserted the words “other than an appeal in relation to which section 22(1)(dc) of this Act applies.”.

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- (3) In subsection (2)—
- (a) the words “the Board is satisfied” shall cease to have effect;
 - (b) in paragraph (a), after the word “below,” there shall be inserted “the Board is satisfied”; and
 - (c) for paragraph (b) and the preceding “and” there shall be substituted—
 - “(b) in the case of an appeal under section 228(1) or 442(1)(a) of the Criminal Procedure (Scotland) Act 1975, leave to appeal is granted; and
 - (c) in the case of an appeal under any provision of that Act other than sections 228(1) and 442(1)(a), where the applicant is the appellant, the Board is satisfied that in all the circumstances of the case it is in the interests of justice that the applicant should receive criminal legal aid.”
- (4) After subsection (2) there shall be inserted the following subsection—
- “(2A) Where the Board has refused an application for criminal legal aid on the ground that it is not satisfied as mentioned in subsection (2)(c) above the High Court may, at any time prior to the disposal of an appeal, whether or not on application made to it, notwithstanding such refusal determine that it is in the interests of justice that the applicant should receive criminal legal aid in connection with the appeal, and the Board shall forthwith make such legal aid available to him.”
- (5) For subsection (5) there shall be substituted the following subsections—
- “(5) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with consideration under section 230A, 442ZA or 453AA of the Criminal Procedure (Scotland) Act 1975 whether to grant leave to appeal as if—
- (a) in subsection (2)(a), for the words “of the appeal” there were substituted “in connection with consideration whether to grant leave to appeal”; and
 - (b) in subsection (4), after the word “is” there were inserted “, subject to leave being granted.”
- (6) Subsections (2)(a) and (c) and (2A) to (4) above shall apply to an application for criminal legal aid in connection with a petition to the nobile officium of the High Court of Justiciary (whether arising in the course of any proceedings or otherwise) as they apply for the purposes of subsection (1) above.
- (7) Subsections (2)(a), (3) and (4) above shall apply to an application for criminal legal aid in connection with a reference by the Secretary of State under section 263 of the Criminal Procedure (Scotland) Act 1975 as they apply for the purposes of subsection (1) above.”
- (6) In section 30(3) of that Act (application of section 25 of that Act to legal aid in contempt proceedings)—
- (a) before the words “Section 25” there shall be inserted “Subsections (2)(a) and (c), (2A) to (4) and (6) of”;

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- (b) for the words "it applies" there shall be substituted "they apply";
- (c) after the word "sentence" there shall be inserted ", other disposal";
- (d) after the word "application" there shall be inserted the following paragraph—
 - "(za) in subsection (2A) of that section, the reference to the High Court shall include a reference to the Court of Session;";
 - and
- (e) in paragraph (b), for the word "(5)" there shall be substituted "(6)".

Supervision and care of persons diverted from prosecution or subject to supervision requirement etc. 1968 c.49.

66. In section 27(1) of the Social Work (Scotland) Act 1968 (supervision and care of persons put on probation or released from prisons etc.)—

- (a) after paragraph (a) there shall be inserted—
 - "(aa) making available to any children's hearing such reports relating to persons aged 16 and 17 years in relation to the commission of an offence, as the hearing may require for the disposal of a case;
 - (ab) making available to any procurator fiscal or the Lord Advocate such reports as the procurator fiscal or the Lord Advocate may request in relation to persons who are charged with an offence;"; and
- (b) after sub-paragraph (iv) of paragraph (b) there shall be inserted the following sub-paragraphs—

"(v) without prejudice to sub-paragraphs (i) to (iv) above, persons in their area who are subject to a supervision and treatment order made under section 174ZC(2)(d) or 375ZC(2)(d) of the Criminal Procedure (Scotland) Act 1975; and

(vi) persons in their area aged 16 and 17 years who are subject to a supervision requirement imposed in relation to the commission of any offence by that person; and

(vii) persons in their area who are charged with, but not prosecuted for, any offence and are referred to the local authority by the procurator fiscal or the Lord Advocate; and".

1975 c.21.

Transfer of fine orders.

67.—(1) Section 403 of the 1975 Act (transfer of fine orders), shall be amended as follows.

(2) In subsection (3), at the beginning there shall be inserted the words "Subject to subsections (3A) and (3B) below,".

(3) After subsection (3) there shall be inserted the following subsections—

"(3A) Where—

- (a) the court specified in a transfer of fine order is satisfied, after inquiry, that the offender is not residing within the jurisdiction of that court; and

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(b) the clerk of that court, within 14 days of receiving the notice required by section 404(1) of this Act, sends to the clerk of the court which made the order notice to that effect, the order shall cease to have effect.

(3B) Where a transfer of fine order ceases to have effect by virtue of subsection (3A) above, the functions referred to in subsection (3) above shall again be exercisable by the court which made the order or, as the case may be, by the clerk of that court.”.

68. In section 55(2) of the Bankruptcy (Scotland) Act 1985 (effect of discharge of bankrupt on certain liabilities), after paragraph (a) there shall be inserted the following paragraphs—

Liability of bankrupt to pay fines and compensation orders.

- “(aa) any liability to pay a fine imposed in a district court;
- (ab) any liability under a compensation order within the meaning of section 58 of the Criminal Justice (Scotland) Act 1980;”.

1985 c.66.
1980 c.62.

69. For subsection (3) of section 40 of the Prisons (Scotland) Act 1989 (persons unlawfully at large) there shall be substituted the following subsection—

Child detainees unlawfully at large.
1989 c.45.

- “(3) In this section—
- (a) any reference to a person sentenced to imprisonment shall be construed as including a reference to any person sentenced or ordered to be detained under section 205, 206 or 413 of the 1975 Act;
- (b) any reference to a prison shall be construed as including a reference to a place where the person is liable to be detained under the sentence or order; and
- (c) any reference to a sentence shall be construed as including a reference to an order under section 413 of that Act.”.

PART II

PROCEEDS OF CRIME AND PROPERTY USED IN CRIME

CHAPTER I

CONFISCATION OF THE PROCEEDS OF CRIME

Confiscation orders

70.—(1) Subject to the provisions of this Chapter, where in respect of any offence to which this Chapter applies—

General provision.

- (a) the accused is convicted, whether in solemn or summary proceedings; or
- (b) in the case of summary proceedings (without proceeding to conviction) an order is made discharging him absolutely,

the court, on the application of the prosecutor, may make an order (a “confiscation order”) requiring the accused to pay such sum as the court thinks fit.

(2) This Chapter applies to any offence which has been prosecuted—

- (a) on indictment; or

- (b) on summary complaint if the offence is punishable by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period longer than 3 months or by both such fine and imprisonment,

but it does not apply to an offence to which section 1 of the 1987 Act (offences relating to drug trafficking) relates or to an offence under Part III of the 1989 Act (financial assistance for terrorism).

(3) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the accused.

(4) The court may make a confiscation order against an accused only if it is satisfied that he has benefited from the commission of the offence concerned.

(5) The sum which a confiscation order requires an accused to pay must not exceed the lesser of—

(a) the amount of the benefit—

- (i) from the commission of the offence; or
(ii) where section 71(4) of this Act applies, from the commission of the offence and any other offence to which this Chapter applies; or

(b) the amount that might be realised at the time the order is made.

(6) Any application under this section shall be made—

- (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the accused is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
(b) in summary proceedings, following the conviction of the accused.

(7) For the purposes of any appeal or review, a confiscation order is a sentence.

Benefit from
commission of
offence.

71.—(1) For the purposes of this Chapter, an accused shall be held to have benefited from the commission of an offence if in connection with its commission he has obtained, directly or indirectly, any property or other economic advantage.

(2) Subject to subsection (4) below, in determining whether an accused has benefited from the commission of an offence and, if he has, the amount referred to in section 70(5)(a)(i) of this Act, the court may make the following assumptions, except in so far as he proves either of them, on the balance of probabilities, to be incorrect—

- (a) that any property or other economic advantage which has been obtained by him since the relevant date has been obtained in connection with the commission of the offence; and
(b) that any expenditure by him since the relevant date was met out of property or other economic advantage obtained in connection with the commission of the offence.

(3) In subsection (2) above “the relevant date” means—

- (a) the date of the offence; or
(b) if the offence is found to have been committed over a period of time, the date occurring at the beginning of that period.

(4) Where—

- (a) the application for the confiscation order has been made in respect of two or more offences; or
- (b) during the relevant period the accused has been convicted of at least one other offence to which this Chapter applies, being an offence committed after the coming into force of this Chapter,

the court may, in determining the amount referred to in section 70(5)(a)(ii) of this Act, make the assumptions set out in subsection (5) below, except in so far as the accused proves either of those assumptions, on the balance of probabilities, to be incorrect.

(5) Those assumptions are—

- (a) that any property or economic advantage which has been obtained by the accused during the relevant period has been obtained in connection with the commission of an offence to which this Chapter applies; and
- (b) that any expenditure by him during the relevant period was met out of property or other economic advantage obtained in connection with the commission of such an offence.

(6) In subsections (4) and (5) above, “the relevant period” means the period of six years ending with the date on which proceedings were instituted against the accused for the offence in respect of which the application for the confiscation order has been made.

(7) In this Part of this Act, “property” means any property wherever situated, whether heritable or moveable or whether corporeal or incorporeal.

72.—(1) In this Part of this Act “realisable property” means, subject to subsection (2) below—

Realisable
property.

- (a) the whole estate wherever situated of a person—
 - (i) against whom proceedings have been instituted for an offence to which this Chapter applies; or
 - (ii) in respect of whom a restraint order has been made by virtue of section 95(3) of this Act;
- (b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made a gift caught by this Chapter;
- (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
- (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.

(2) Property is not realisable if—

- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
- (b) a suspended forfeiture order is in force in respect of the property; or
- (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.

1980 c. 62.

(3) Subject to section 73(4) of this Act, for the purposes of this Chapter, the amount that might be realised at the time a confiscation order is made in respect of a person is the total value at that time of all his realisable property, and of all gifts caught by this Chapter which have been made by him, less any amount due by him at that time in respect of any compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 made before the confiscation order.

(4) In assessing the value of realisable property (other than money) of a person in respect of whom it proposes to make a confiscation order, the court shall have regard to the likely market value of the property at the date on which the order would be made; but it may also have regard to any security or real burden which would require to be discharged in realising the property or to any other factors which might reduce the amount recoverable by such realisation.

(5) In assessing the value of realisable property of a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of paragraph 1 or 2 of Schedule 4 to this Act.

(6) In subsection (4) above, "money" includes cheques, banknotes, postal orders, money orders and foreign currency.

Gifts.

73.—(1) A gift is caught by this Chapter if—

- (a) it was made by the accused in contemplation of, or after, the commission of the offence or, if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings mentioned in section 72(1)(a)(i) of this Act for the time being relate; or
- (b) where subsection (4) of section 71 of this Act applies, it was made by the accused within the relevant period within the meaning of subsection (6) of that section.

(2) In assessing the value of a gift caught by this Chapter, the court shall, subject to subsections (3) to (5) below, take it to be the greater of—

- (a) the value of the gift when received adjusted to take account of subsequent changes in the value of money; or
- (b) both of the following—
 - (i) the likely market value, on the date on which the confiscation order is to be made, of—
 - (A) the gift, if retained; or
 - (B) where the recipient of the gift retains only part of it, the retained part, and any property or part of any property which, directly or indirectly, represents the gift; or
 - (C) where the recipient of the gift retains no part of it, any property or part of any property which, directly or indirectly, represents the gift; and
 - (ii) the value of any other property and any other economic advantage which by reason of the making of the gift the recipient of the gift has obtained, directly or indirectly,

prior to the date on which the confiscation order is to be made, adjusted to take account of subsequent changes in the value of money.

(3) The circumstances in which the accused is to be treated as making a gift include those where he transfers an interest in property to another person directly or indirectly for a consideration the value of which is significantly less than the value of that interest at the time of transfer; and in those circumstances the value of the gift shall be the difference between the value of that consideration and the value of that interest at the time of transfer adjusted to take account of subsequent changes in the value of money.

(4) Where a gift caught by this Chapter was in the form of money and the recipient of the gift shows that, on the balance of probabilities, the money or any of it has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or such part of it as has not been so used shall be taken to be the face value of the money or, as the case may be, unused amount of the money; and in this subsection, "money" includes cheques, banknotes, postal orders, money orders and foreign currency.

(5) The court may, notwithstanding the foregoing provisions of this section, disregard the amount (or part of the amount) of a gift caught by this Chapter if it considers it improbable that such amount (or part) could be realised.

(6) At any time before the realisation of property which is or represents a gift caught by this Chapter, the recipient of the gift may apply to the court for an order under this subsection, and, if the court is satisfied, on the balance of probabilities—

- (a) that the person received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or, if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
- (b) that he was not associated with the giver in the commission of the offence; and
- (c) that he would suffer hardship if the application were not granted,

it may make an order declaring that the gift or a part of the gift shall not be caught by this Chapter and that the property or part of the property of the recipient of the gift shall not be, or shall cease to be, realisable for the purposes of this Chapter and, if a confiscation order has already been made, varying that order accordingly, where necessary.

(7) An appeal shall lie to the High Court at the instance of—

- (a) the applicant against the refusal;
- (b) the prosecutor against the granting,

of an application under subsection (6) above, and the High Court in determining such an appeal may make such order as could have been made by the court on an application under subsection (6) above.

(8) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.

74.—(1) If the court decides to make a confiscation order, it shall determine the amount to be payable thereunder before making any decision as to—

- (a) imposing a fine on the accused;
- (b) making any order involving any payment by him.

(2) Where a court makes a confiscation order against an accused in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any other payment by him,

but subject to that, the court shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the accused.

(3) No enactment restricting the power of a court which deals with an accused in a particular way from dealing with him also in any other way shall, by reason only of the making of a confiscation order (or the postponement of a decision as regards making such an order), have the effect of restricting the court in dealing with the accused in any way it considers appropriate in respect of an offence.

1980 c. 62.

(4) Where a court makes both a confiscation order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same person in the same proceedings in relation to the same offence and the offence involves the misappropriation of property, it shall direct that the compensation shall be paid first out of any sums applied towards the satisfaction of the confiscation order.

Statements
relevant to
making
confiscation
orders.

75.—(1) Where the prosecutor applies for the making of a confiscation order, the prosecutor may lodge with the clerk of court a statement as to any matters relevant—

- (a) to determining whether the accused has benefited from the commission of the offence; or
- (b) to an assessment of the value of the accused's benefit for the purposes of section 70(5)(a) of this Act.

(2) Without prejudice to section 150 (or as the case may be section 354) of the 1975 Act, if the accused accepts to any extent any allegation in the statement lodged under subsection (1) above, the court may, for the purpose of such determination or assessment as is mentioned in paragraph (a) or (b) of that subsection, treat his acceptance as conclusive of the matters to which it relates.

(3) Where—

- (a) a statement is lodged under subsection (1) above; and
- (b) the court is satisfied that a copy of that statement has been served on the accused,

the court may require the accused to indicate, within such period as the court may specify, to what extent he accepts each allegation in the statement and, in so far as he does not accept any such allegation, to indicate the basis of such non-acceptance.

(4) If the accused fails in any respect to comply with a requirement under subsection (3) above, he may be treated for the purposes of this section as accepting every allegation in the statement apart from any allegation in respect of which he has complied with the requirement.

(5) Without prejudice to section 150 (or as the case may be section 354) of the 1975 Act, where—

- (a) there is lodged with the clerk of court by the accused a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) the prosecutor accepts to any extent any allegation in the statement,

the court may, for the purposes of that determination, treat that acceptance as conclusive of the matters to which it relates.

(6) Without prejudice to section 76(1) of this Act, where—

- (a) any allegation in the statement lodged under subsection (1) above is challenged by the accused, or
- (b) the basis of the non-acceptance by the accused of any such allegation is challenged by the prosecutor,

the court shall consider the matters being challenged at a hearing.

(7) Where the judge presiding at a hearing held under subsection (6) above is not the trial judge he may, on the application of either party, if he considers that it would be in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.

76.—(1) If the court considers that it has some, but not sufficient, relevant information for the purpose of enabling it to come to a decision as to whether to make a confiscation order or that it does not have sufficient relevant information to enable it to come to a decision as to the amount to be payable under the confiscation order, it may, subject as the case may be to subsection (6) or (10) below, postpone that decision for a period not exceeding 6 months after the date of conviction for the purpose of enabling further information to be obtained.

Postponed
confiscation
orders.

(2) Without prejudice to sections 179 and 219 (or as the case may be sections 380 and 432) of the 1975 Act, the court may, notwithstanding postponement under subsection (1) above and subject to subsection (3) below, proceed, on the prosecutor's motion therefor, to sentence or to otherwise deal with the accused in respect of the conviction.

(3) Where the court proceeds as mentioned in subsection (2) above—

- (a) no fine shall be imposed on the accused; and
- (b) no order shall be made involving any other payment by him,

in relation to the conviction before the decision whether to make a confiscation order is taken.

(4) Where in the case of conviction on indictment a decision has been postponed under subsection (1) above for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of the 1975 Act not within 2 weeks of the final determination of the proceedings but within 2 weeks of—

- (a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;
- (b) in any other case, the day on which such sentence is passed in open court.

(5) Notwithstanding any appeal of which intimation has been given by virtue of subsection (4) above, a person may appeal under section 228 of the 1975 Act against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.

(6) If during the period of postponement intimation is given by virtue of subsection (4) above by the person, the High Court may, on the application of the prosecutor, extend that period to a date up to 3 months after the date of disposal of the appeal.

(7) This subsection applies where in the case of summary conviction a decision has been postponed under subsection (1) above for a period.

(8) Where subsection (7) above applies and the offender appeals under section 442 of the 1975 Act against conviction or against both conviction and any sentence passed during the period of postponement—

- (a) his application for a stated case shall be made not within one week of the final determination of the proceedings but within one week of the day mentioned in paragraph (a) or (b) of subsection (4) above;
- (b) his draft stated case shall be prepared and issued not within 3 weeks of the final determination of the proceedings but within 3 weeks of the said day.

(9) Where subsection (7) above applies, then, notwithstanding any appeal against conviction or sentence or both the offender may appeal under section 442(1)(a)(ii), and the prosecutor may appeal under section 442(1)(b)(ii), of the 1975 Act against any confiscation order or against any other sentence passed, after the period of postponement, in respect of the conviction.

(10) Where subsection (7) above applies, then, if during the period of postponement the offender applies for a stated case or lodges a note of appeal, the High Court may, on the application of the prosecutor, extend the period of postponement to a date up to 3 months after the date of disposal of the appeal.

Increase in benefit
or realisable
property.

77.—(1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the benefit for the purposes of section 70(5)(a) of this Act, or the amount that might be realised, is greater than—

- (a) the benefit; or, as the case may be,
- (b) the amount that might be realised,

which was taken into account when the order was made.

(2) The considerations by reference to which the court may be satisfied as mentioned in subsection (1) above shall include—

- (a) the benefit was greater than was taken into account when the confiscation order was made or has increased in value since the confiscation order was made; or

- (b) further benefit has been obtained since the confiscation order was made; or
- (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or
- (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
- (e) that the amount, or part of the amount, of a gift which was disregarded under section 73(5) of this Act could now be realised.

(3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.

(4) Where this section applies, and notwithstanding that any matters in relation to the making of the confiscation order are, by virtue of section 75(2) or (5) of this Act, to be treated as conclusive—

- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the benefit or the amount that might be realised; and
- (b) if the earlier confiscation order has not been satisfied then the court, in making the new confiscation order, shall recall the earlier order and may take into account the amount unpaid (including any interest payable by virtue of section 81(1) of this Act) under the earlier order.

(5) Section 75 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has applied for the making of a confiscation order under section 70 of this Act.

(6) The assumptions mentioned in section 71(2) and (5) of this Act shall not apply for the purposes of this section.

78.—(1) This section applies where the court which made a confiscation order is satisfied on the balance of probabilities, on an application made to it by the accused or the prosecutor, that the value of the realisable property is inadequate to meet any amount unpaid (including any interest payable by virtue of section 81(1) of this Act) under the confiscation order.

Realisable property inadequate to meet payments under confiscation order.

(2) When considering whether the value of the realisable property is inadequate the court—

- (a) shall, unless already taken into account under section 72(5) of this Act, take into account the extent to which property of a person whose estate has been sequestrated or who has been adjudged bankrupt is or has been included in the bankrupt's estate for the purposes of the Bankruptcy (Scotland) Act 1985 or Part IX of the Insolvency Act 1986; and
- (b) may disregard any inadequacy which appears to it to be attributable, wholly or partly, to anything done by the accused for the purpose of protecting the realisable property from realisation.

1985 c. 66.

1986 c. 45.

(3) Where this section applies, the court shall recall the confiscation order and make a new confiscation order for the payment of such sum of a lesser amount than that for which the original order was made which appears to the court to be appropriate having regard to—

- (a) the value of the realisable property as determined under subsection (1) above; and
- (b) any amount paid in pursuance of the original order.

(4) Section 75 of this Act shall, subject to any necessary modifications, apply in relation to an application under this section as it applies where the prosecutor has applied for the making of a confiscation order under section 70 of this Act.

Confiscation orders where proceeds of crime discovered at later date.

79.—(1) This section applies where no confiscation order has been made in relation to an offence under section 70 or 76 of this Act.

(2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—

- (a) that a person convicted of an offence to which this Chapter applies has benefited in connection with the commission of the offence concerned;
- (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 70 of this Act was or could have been made was not available to the prosecutor,

it may make a confiscation order in relation to that person.

(3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event not later than 6 years after the date when the person was convicted of the offence.

(4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—

- (a) any order involving any payment by the offender;
- (b) any suspended forfeiture order or an order for forfeiture under any other enactment made in respect of the offender,

which forms part of the sentence already imposed for the offence concerned.

(5) Sections 70(3) and 74(1), (2) and (4) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.

(6) Section 75 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 70 of this Act.

(7) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender, the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.

(8) The assumptions mentioned in section 71(2) and (5) of this Act shall not apply for the purposes of this section.

(9) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 70 of this Act.

80.—(1) Sections 196 and 203, or sections 402 and 412, of the 1975 Act and the provisions of that Act specified in subsection (2) below (or those provisions as applied by section 194 of that Act) shall, subject to the qualifications mentioned in subsection (2) below, apply in relation to confiscation orders as they apply in relation to fines; and section 91 of the Magistrates’ Courts Act 1980 and Article 96 of the Magistrates’ Courts (Northern Ireland) Order 1981 (provisions relating to transfer of fines from Scotland etc.) shall be construed accordingly.

Application of provisions relating to fines to enforcement of confiscation orders.
1980 c. 43.
S.I. 1981/1675
(N.I. 26).

(2) The provisions mentioned in subsection (1) above are—

- (a) section 396, provided that any allowance under that section of time (or further time) for payment shall be without prejudice to the exercise by any administrator appointed in relation to the confiscation order of his powers and duties under this Act; and the court may, pending such exercise, postpone any decision as to refusing or allowing time (or further time) for payment;
- (b) section 397, subject to the like proviso as in paragraph (a) above;
- (c) section 398, but as if subsection (1)—
 - (i) gave the prosecutor an opportunity to be heard at any enquiry thereunder; and
 - (ii) applied whether the offender was in prison or not;
- (d) section 399, provided that any order of payment by instalments shall be without prejudice to such exercise as is mentioned in paragraph (a) above;
- (e) section 400;
- (f) section 401(2) and (3);
- (g) section 403;
- (h) section 404;
- (i) section 406;
- (j) section 407, provided that—
 - (i) where a court imposes a period of imprisonment both in respect of a fine and of a confiscation order the amounts in respect of which the period is imposed shall, for the purposes of subsection (1A) of that section, be aggregated; and
 - (ii) before imposing a period of imprisonment to which there is a liability by virtue of that section the court shall, if an administrator has been appointed in relation to the confiscation order, require a report from him as to whether and in what way he is likely to exercise his powers and duties under this Act and shall take that report into account; and the court may, pending such exercise, postpone any decision as to such imposition;
- (k) section 408;

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1989 c. 45.

- (l) section 409, except that the reference in subsection (1) of that section to the person paying a sum to the governor of the prison under conditions prescribed by rules made under the Prisons (Scotland) Act 1989 shall be construed as including a reference to an administrator appointed in relation to the confiscation order making such payment under this Act in respect of the person;
- (m) section 411, provided that an order of recovery by civil diligence shall not be made under the section where an administrator is appointed in relation to the confiscation order;
- (n) Schedule 7.

(3) Where a court, by virtue of subsection (1) above, orders the sum due under a confiscation order to be recovered by civil diligence under section 411 of the 1975 Act, any arrestment executed by a prosecutor under subsection (2) of section 99 of this Act shall be deemed to have been executed by the court as if that subsection authorised such execution.

(4) Where in any proceedings a confiscation order has been made as regards a person and a period of imprisonment or detention is imposed on him in default of payment of its amount (or as the case may be of an instalment thereof), that period shall run from the expiry of any other period of imprisonment or detention (not being one of life imprisonment or detention for life) imposed on him in the proceedings.

(5) The reference in subsection (4) above to “any other period of imprisonment or detention imposed” includes (without prejudice to the generality of the expression) a reference to such a period on default of payment of a fine (or instalment thereof); but only where that default had occurred before the warrant for imprisonment is issued for the default in relation to the order.

Interest on sums
unpaid under
confiscation
orders.

81.—(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid (whether forthwith on the making of the order or at a time specified under section 396(1) of the 1975 Act) that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The sheriff may, on the application of the prosecutor, increase the term of imprisonment or detention fixed in respect of the confiscation order under section 396(2) of the 1975 Act if the effect of subsection (1) above is to increase the maximum period applicable in relation to the order under section 407(1A) of the 1975 Act.

(3) The rate of interest under subsection (1) above shall be the rate payable under a decree of the Court of Session.

*Exercise of powers*Exercise of powers
by court or
administrator.

82.—(1) This section applies to the powers as regards realisable property conferred on the court by sections 94, 95, 97, 98 and 99 of and paragraphs 1, 4 and 12 of Schedule 3 to this Act in relation to confiscation orders and on an administrator by that Schedule.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any confiscation order that may

be made in the case of a person mentioned in section 72(1)(a) of this Act, the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person by virtue only of having received a gift made directly or indirectly by the accused which is caught by this Chapter, the powers shall be exercised with a view to realising no more than the value of the gift as assessed under subsection (2), (3) or (4) of section 73 of this Act.

(4) The powers shall be exercised with a view to allowing any person other than a person mentioned in section 72(1)(a) of this Act or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Crown.

(6) In exercising those powers, no account shall be taken of any obligations of such a person or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Compensation

83.—(1) Subject to subsection (3) below, if proceedings are instituted against a person for an offence to which this Chapter applies and either— Compensation.

- (a) the proceedings do not result in his conviction for any such offence, or
- (b) where he is convicted of one or more such offences—
 - (i) the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted); or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to do so.

(2) Subsection (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of subsection (3) below.

(3) The court shall not order compensation to be paid under subsection (1) above in any case unless satisfied—

- (a) that there has been some serious default on the part of a person concerned in the investigation of the offence or offences concerned, being a person mentioned in subsection (5) below, and that, but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered loss or damage in consequence of anything done in relation to the property under section 94, 95, 97, 98, 99 or 108 of or Schedule 3 to this Act.

(4) The amount of compensation to be paid under this section shall be such as the court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid, where the person in default was—

- (a) a constable of a police force within the meaning of the Police (Scotland) Act 1967, by the police authority or joint police board for the police area for which that force is maintained;
- (b) a constable other than is mentioned in paragraph (a) above, but with the powers of such a constable, by the body under whose authority he acts;
- (c) a procurator fiscal or was acting on behalf of the Lord Advocate, by the Lord Advocate;
- (d) a person commissioned by the Commissioners of Customs and Excise, by those Commissioners; and
- (e) an officer of the Commissioners of Inland Revenue, by those Commissioners.

(6) An application for compensation under this section shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made; and subsection (6) of section 95 of this Act shall apply for the purpose of determining when proceedings are concluded for the purposes of this subsection as it applies for the purposes of that section.

(7) In this section, “the court” means the Court of Session or the sheriff exercising his civil jurisdiction.

1994 c. 39. (8) Until the date on which paragraph 71 of Schedule 13 to the Local Government etc. (Scotland) Act 1994 comes into force, the reference in subsection (5)(a) above to a joint police board shall be construed as a reference to a joint police committee.

Investigations and disclosure of information

Order to make material available.

84.—(1) The procurator fiscal may, for the purpose of an investigation into whether a person has benefited from the commission of an offence to which this Chapter applies and as to the amount of that benefit, apply to the sheriff for an order under subsection (2) below in relation to particular material or material of a particular description.

(2) If on such an application the sheriff is satisfied that the conditions in subsection (4) below are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a constable for him to take away; or
- (b) give a constable access to it,

within such period as the order may specify.

This subsection is subject to section 86(11) of this Act.

(3) The period to be specified in an order under subsection (2) above shall be seven days unless it appears to the sheriff that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from the commission of an offence to which this Chapter applies;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates—

- (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard—
- (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of the material holds it,
- that the material should be produced or that access to it should be given.
- (5) Where the sheriff makes an order under subsection (2)(b) above in relation to material on any premises he may, on the application of the procurator fiscal, order any person who appears to him to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.
- (6) An application under subsection (1) or (5) above may be made *ex parte* in chambers.
- (7) Provision may be made by rules of court as to—
- (a) the discharge and variation of orders under this section, and
 - (b) proceedings relating to such orders.
- (8) Where the material to which an application under this section relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) above shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under subsection (2)(b) above shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (9) An order under subsection (2) above—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of an authorised government department;
- and in this subsection “authorised government department” means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947.
- (10) In this section—
- (a) “items subject to legal privilege” and “premises” have the same meanings as in section 40 of the Criminal Justice (Scotland) Act 1987; and

1947 c. 44.

1987 c. 41.

- (b) references to a person benefiting from the commission of an offence to which this Chapter applies, in relation to conduct which is not such an offence but which would have been if it had occurred in Scotland, shall be construed in accordance with section 71 of this Act as if that conduct had so occurred.

Authority for search.

85.—(1) The procurator fiscal may, for the purpose of an investigation into whether a person has benefited from the commission of an offence to which this Chapter applies and as to the amount of that benefit, apply to the sheriff for a warrant under this section in relation to specified premises.

(2) On such application the sheriff may issue a warrant authorising a constable to enter and search the premises if the sheriff is satisfied—

- (a) that an order made under section 84 of this Act in relation to material on the premises has not been complied with; or
 (b) that the conditions in subsection (3) below are fulfilled; or
 (c) that the conditions in subsection (4) below are fulfilled.

(3) The conditions referred to in subsection (2)(b) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from the commission of an offence to which this Chapter applies; and
 (b) that the conditions in section 84(4)(b) and (c) of this Act are fulfilled in relation to any material on the premises; and
 (c) that it would not be appropriate to make an order under that section in relation to the material because—
 (i) it is not practicable to communicate with any person entitled to produce the material; or
 (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.

(4) The conditions referred to in subsection (2)(c) above are—

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from the commission of an offence to which this Chapter applies; and
 (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person, or to the question whether that person has so benefited or the amount of that benefit, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
 (c) that—
 (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 (ii) entry to the premises will not be granted unless a warrant is produced; or

(iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

(5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(6) Subsection (10) of section 84 of this Act shall apply for the purposes of this section as it applies for the purposes of that section.

86.—(1) Subject to subsection (4) below, the Court of Session may on an application by the Lord Advocate order any material mentioned in subsection (3) below which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

Disclosure of
information held
by government
departments.

(2) The power to make an order under subsection (1) above is exercisable if—

- (a) the powers conferred on the Court by section 94(1)(a) of this Act are exercisable by virtue of section 95(2) of this Act; or
- (b) those powers are exercisable by virtue of section 95(3) of this Act and the Court has made a restraint order which has not been recalled.

(3) The material referred to in subsection (1) above is any material which—

- (a) has been submitted to an officer of an authorised government department by a person who holds, or has at any time held, realisable property;
- (b) has been made by an officer of an authorised government department in relation to such a person; or
- (c) is correspondence which passed between an officer of an authorised government department and such a person;

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) above shall not require the production of any material unless it appears to the Court of Session that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by section 94(1)(a) of or paragraph 1 or 12 of Schedule 3 to this Act or on an administrator appointed under paragraph 1(1) of that Schedule.

(5) The Court may by order authorise the disclosure to such an administrator of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

PART II
CHAPTER I

(6) Material disclosed in pursuance of an order under subsection (5) above may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under Part II of this Act of the administrator or the High Court.

(7) The Court of Session may by order authorise the disclosure to a person mentioned in subsection (8) below of any material produced under subsection (1) above or any part of such material; but the Court shall not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court; and
- (b) it appears to the Court that the material is likely to be of substantial value in exercising functions relating to the investigation of crime.

(8) The persons referred to in subsection (7) above are—

- (a) a constable;
- (b) the Lord Advocate or any procurator fiscal; and
- (c) an officer within the meaning of the Customs and Excise Management Act 1979.

1979 c. 2.

(9) Material disclosed in pursuance of an order under subsection (7) above may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of crime or whether any person has benefited from the commission of an offence to which this Chapter applies or the amount of that benefit.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under subsection (1) above and, in the case of material in the possession of an authorised government department, an order under section 84(2) of this Act may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with such order; and any such order shall be served as if the proceedings were civil proceedings against the department.

(12) Where any requirement is included in any order by virtue of subsection (11) above, the person on whom the order is served—

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1) above, shall report the reasons for the failure to the Court of Session,

and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a) above.

(13) In this section "authorised government department" means a government department which is an authorised department for the purposes of the Crown Proceedings Act 1947; and subsection (10) of section 84 of this Act shall apply for the purposes of this section as it applies for the purposes of that section.

1947 c. 44.

CHAPTER II

FORFEITURE OF PROPERTY USED IN CRIME

87.—(1) This section applies where in respect of any offence—

- (a) the accused is convicted, whether in solemn or summary proceedings; or
- (b) in the case of summary proceedings, (without proceeding to conviction) an order is made discharging him absolutely.

Suspended
forfeiture order.

(2) Where this section applies, the court may, if it is satisfied on the application of the prosecutor that any property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—

- (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
- (b) was intended to be used for that purpose,

make an order (a "suspended forfeiture order") in respect of that property.

(3) Any application under this section shall be made—

- (a) in proceedings on indictment, when the prosecutor moves for sentence or if the accused is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
- (b) in summary proceedings, following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.

(4) If the prosecutor knows or reasonably suspects the identity of a person (other than the accused) as being the owner of, or otherwise having an interest in, the property to which the suspended forfeiture order relates, he shall intimate that fact to the court on making the application and the order shall name that person as a person having an interest or suspected of having an interest in the property.

(5) Any reference in this Chapter to facilitating the commission of an offence shall include a reference to the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(6) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (2)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.

(7) Subject to subsection (8) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making a suspended forfeiture order in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.

(8) Subsection (7) shall not apply—

- (a) if the enactment concerned expressly excludes the application of this section; or
- (b) to any property which has been used or has been intended to be used as mentioned in subsection (2)(a) or (b) above in relation to the offence of which the accused has been convicted, if the

enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.

1980 c. 62.

(9) Where the court makes both a suspended forfeiture order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same accused in the same proceedings, it may order that, in the event of the property subject to the suspended forfeiture order being forfeited under section 90 of this Act, the proceeds of sale of that property shall be first directed towards satisfaction of the compensation order.

(10) As soon as may be after a suspended forfeiture order has been made, the prosecutor—

- (a) shall notify in writing any person named in the order in pursuance of subsection (4) above that the order has been made, and that the person so notified may be entitled to apply to the court for—
 - (i) the order to be recalled under section 91 of this Act; or
 - (ii) a direction under section 92 of this Act; and
- (b) if the property in respect of which the order has been made includes heritable property in Scotland, shall cause a certified copy of the order to be recorded in the General Register of Sasines or as the case may be registered in the Land Register of Scotland; and
- (c) if the court directs him to do so, shall insert a notice in the Edinburgh Gazette or in such other newspaper or journal as appears to the court to be appropriate specifying the terms of the suspended forfeiture order.

(11) Any property in respect of which a suspended forfeiture order is made shall be taken into the possession of or placed under the control of the clerk of court until—

- (a) the order is recalled; or
- (b) the property is forfeited to the Crown and disposed of under section 90 of this Act or forfeited to another person under that section.

(12) For the purposes of any appeal or review a suspended forfeiture order is a sentence.

(13) Where, in disposing of an appeal, the High Court makes an order the effect of which is to release from liability to forfeiture any heritable property in Scotland in respect of which a suspended forfeiture order was made, the prosecutor shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the order of the court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

(14) In this section “the court” does not include a district court, whether or not constituted by a stipendiary magistrate.

Forfeiture: district court.

88.—(1) Where, in respect of any offence tried in the district court, the accused is convicted or (without proceeding to conviction) an order is made discharging him absolutely the court may, if it is satisfied on the

application of the prosecutor that any moveable property which was at the time of the offence or of the accused's apprehension in his ownership or possession or under his control—

- (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or
- (b) was intended to be used for that purpose,

order that the property shall be forfeited to and vest in the Crown or such other person as the court may direct.

(2) Any application under subsection (1) above shall be made following upon the conviction of the accused or, as the case may be, the finding that he committed the offence with which he was charged.

(3) Where, by itself, the use of property constitutes an offence in whole or in part, that property shall be regarded for the purpose of subsection (1)(a) above as used for the purpose of committing the offence, unless the enactment which created the offence expressly excludes the application of this section.

(4) Subject to subsection (5) below, where the accused is convicted of an offence under any enactment, the court shall not be precluded from making an order under subsection (1) above in respect of any property by reason only that the property would not be liable to forfeiture under that enactment.

(5) Subsection (4) above shall not apply—

- (a) if the enactment concerned expressly excludes the application of this section; or
- (b) to any property which has been used or has been intended to be used as mentioned in subsection (1)(a) or (b) above in relation to the offence of which the accused has been convicted, if the enactment concerned specifies the category of property which is to be liable to forfeiture thereunder, and the category so specified does not include the category of property which has been used or has been intended to be used as aforesaid.

(6) Where the court makes—

- (a) an order under subsection (1) above that property shall be forfeited to the Crown; and
- (b) a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980,

1980 c. 62.

against the same accused in the same proceedings, it may order that the proceeds of sale of the property forfeited by virtue of subsection (1) above shall be first directed towards satisfaction of the compensation order.

(7) For the purposes of any appeal or review an order under subsection (1) above is a sentence.

(8) In this section "the court" means the district court.

89.—(1) Where—

- (a) the sheriff is satisfied, on an application being made to him by the prosecutor—

- (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence; and

Warrant to search
for and seize
property.

- (ii) that there is reasonable cause to believe that property specified in the application is to be found in a place or in premises specified in the application; and
- (b) it appears to him that there are reasonable grounds for thinking that in the event of the person being convicted of the offence a suspended forfeiture order might be made in relation to the property,

he may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.

(2) Where a court has made a suspended forfeiture order in respect of any property, if it is satisfied on the application of the prosecutor—

- (a) that there is reasonable cause to believe that the property is to be found in any place or premises; and
- (b) that admission to the place or premises has been refused or that it is reasonably believed that such admission will be refused,

it may grant a warrant authorising a person named therein to enter and search the place or premises and seize the property.

(3) An application for a warrant under subsection (2) above may be made at the same time as an application for a suspended forfeiture order.

Forfeiture of
property subject
to suspended
forfeiture order.

90.—(1) Subject to the following provisions of this section, property in respect of which a suspended forfeiture order has been made shall be forfeited to and vest in the Crown, or such other person as the court may direct, as follows—

- (a) heritable property situated in Scotland shall be forfeited at the end of the period of six months commencing with the date on which a certified copy of the suspended forfeiture order is recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland;
- (b) heritable property situated outside Scotland shall be forfeited at the end of the period of six months commencing with the date of the making of the suspended forfeiture order;
- (c) moveable property shall be forfeited at the end of the period of 60 days commencing with the date of the making of the suspended forfeiture order.

(2) Notwithstanding subsection (1)(c) above, moveable property which is certified by the prosecutor as being—

- (a) of a perishable or dangerous nature;
- (b) of no commercial value; or

(c) property which cannot lawfully be sold, supplied or possessed, shall be forfeited immediately after the making of the suspended forfeiture order.

(3) If an application for recall or variation of the suspended forfeiture order concerned has been made under section 91 of this Act, there shall be no forfeiture of property mentioned in paragraph (a), (b) or (c) of subsection (1) above unless and until whichever is the later of the following occurs—

- (a) the application is finally disposed of in favour of the prosecutor, or

(b) the period mentioned in that paragraph has expired.

(4) Without prejudice to subsection (2) above, in the event of an appeal against conviction or sentence, there shall be no forfeiture of property until whichever is the later of the following occurs—

- (a) the appeal, if it is proceeded with, is determined in favour of the prosecutor, or
- (b) the period mentioned in paragraph (a) or, as the case may be, (b) or (c) of subsection (1) above has expired.

(5) Property which has been forfeited to the Crown under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.

(6) A certificate by the clerk of court that property was forfeited to and vested in the Crown, or another person, under this section on the date specified in the certificate shall be conclusive evidence of that fact; and, in the case of a certificate in respect of heritable property situated in Scotland, the prosecutor shall, forthwith, cause a certified copy of the certificate to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

91.—(1) The court shall, on an application being made to it under this section by a person other than the accused, make an order (a “recalling order”) recalling a suspended forfeiture order in relation to any property or an interest in property if—

Recall or variation
of suspended
forfeiture order.

- (a) it is satisfied by the applicant on the balance of probabilities that he is the owner of the property or otherwise has an interest in it; and
- (b) subsection (2) or subsection (3) below is applicable.

(2) This subsection applies if the court is not satisfied by the prosecutor that—

- (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order was made, he—
 - (i) knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and
 - (ii) did not take all the steps which were reasonable for him to take to prevent such intended use; or
- (b) where he has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, the applicant knew or ought to have known that the property had been intended to be, or had been, so used.

(3) This subsection applies if the court is satisfied as mentioned in subsection (2) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.

(4) Where a recalling order relates to heritable property situated in Scotland, the prosecutor shall, as soon as may be after—

(a) the expiry of the period within which the prosecutor may appeal under section 93(1)(b) of this Act against the making of the order without such an appeal being lodged; or

(b) where such an appeal is lodged within that period, the determination of the appeal in favour of the recalling order,

cause a certified copy of the recalling order to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

(5) Where the prosecutor believes that the person named in the suspended forfeiture order in pursuance of section 87(4) of this Act is not the owner of, or does not otherwise have an interest in, the property concerned then—

(a) if he does not know who the true owner is, or who otherwise truly has the interest, he may apply to the court under this section for an order varying the suspended forfeiture order by deleting that name from it;

(b) if he does know or reasonably suspects the identity of the true owner or the person who otherwise truly has the interest (“the correct person”), he may apply to the court under this section for an order varying the suspended forfeiture order by substituting the name of the correct person for that of the person so named.

(6) Where no person is named in the suspended forfeiture order in pursuance of section 87(4) of this Act but the prosecutor later comes to believe that a person is, or may be, the owner of, or otherwise has or may have an interest in, the property concerned, he may apply to the court for an order varying the suspended forfeiture order by naming that person as a person having or being suspected of having such an interest.

(7) The court shall grant any application made in pursuance of subsection (5) or (6) above; and sections 87(10) and 90 of this Act shall apply in relation to an order varying a suspended forfeiture order in accordance with an application under subsection (5) or (6) above as they apply in relation to a suspended forfeiture order.

(8) An application under this section may be made at any time before the property concerned is forfeited to the Crown or another person under section 90 of this Act.

(9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.

(10) In this section “the court” means the court which made the suspended forfeiture order.

Property wrongly
forfeited: return
or compensation.

92.—(1) Where the court, on an application being made to it by a person other than the accused—

(a) is satisfied by the applicant on the balance of probabilities that in relation to any property forfeited to the Crown or another person under section 90 of this Act or by virtue of an order for forfeiture made under any other enactment he was the owner of, or a person otherwise having an interest in, the property immediately before such forfeiture; and

(b) subsection (3) or (4) below is applicable,
it shall make an order under subsection (2) below.

(2) An order under this subsection shall direct the Crown or, as the case may be, the other person, if the applicant—

- (a) was the owner of the property, to return it to him if reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (5) below; or
- (b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.

(3) This subsection applies if the court is not satisfied that—

- (a) where the applicant was the owner of or otherwise had an interest in the property before the commission of the offence in connection with which the suspended forfeiture order or order for forfeiture was made, he knew or ought to have known that the property was intended to be used for the purpose of committing, or facilitating the commission of, the offence, and did not take all the steps which were reasonable for him to take to prevent such intended use; or
- (b) where the applicant has become the owner of, or has otherwise acquired an interest in, the property after the commission of the offence, he knew or ought to have known that the property had been intended to be, or had been, so used.

(4) This subsection applies if the court is satisfied as mentioned in subsection (3) above, but it appears to the court that, in all the circumstances of the case, forfeiture of the property would be excessive or inappropriate.

(5) For the purposes of subsection (2) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.

(6) An application under subsection (1) shall be made not later than three years after the date on which the property was forfeited as mentioned in subsection (1)(a) above.

(7) Where, after property has been forfeited by virtue of section 90 of this Act, the prosecutor comes to believe that the person named in the suspended forfeiture order in pursuance of section 87(4) of this Act is not the owner of, or a person otherwise having an interest in, the property concerned, then—

- (a) whether he knows who the true owner was, or who the person truly with the interest was, or not, he shall forthwith notify the court in writing of that belief; and
- (b) if he does know or reasonably suspects the identity of the person who was the true owner or who truly had the interest, he shall forthwith notify that person in writing that he may be entitled to apply to the court for a direction under this section.

(8) Where no person has been named in the suspended forfeiture order in pursuance of section 87(4) of this Act or in a variation order under section 91(5) of this Act but, after the property concerned has been

PART II
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forfeited under section 90 of this Act, the prosecutor comes to believe that a person was or might have been the owner of, or otherwise had or might have had an interest in, the property concerned, he shall forthwith notify—

- (a) the court of his belief; and
- (b) that person in writing that he may be entitled to apply to the court for a direction under this section.

(9) The court shall not be entitled in considering any application under this section to review the sentence passed, or any probation order or order of discharge made, in respect of the offence concerned otherwise than as provided by this section.

(10) In this section “the court” means the court which made the suspended forfeiture order or order for forfeiture.

Appeal against
court decision
under section
91(1) or 92(2).

93.—(1) An appeal shall lie to the High Court of Justiciary at the instance of—

- (a) the applicant against the refusal to make;
- (b) the prosecutor against the making of,

an order under section 91(1) or 92(2) of this Act, and the High Court in determining such an appeal may make such order as could have been made by the court on an application under that section.

(2) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.

(3) Where a suspended forfeiture order relating to heritable property situated in Scotland is recalled on appeal to the High Court of Justiciary, the prosecutor shall, as soon as may be after the appeal has been disposed of, cause a certified copy of the interlocutor of the Court to be recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland.

CHAPTER III

RESTRAINT ORDERS

Restraint orders.

94.—(1) The court may, on the application of the prosecutor, make an order (in this Chapter referred to as a “restraint order”) in the circumstances mentioned in—

- (a) section 95(2) or (3) of this Act interdicting—
 - (i) any person named in the order from dealing with his realisable property; or
 - (ii) that person and any person named in the order as appearing to the court to have received from him a gift caught by Chapter I of this Part from dealing with their own, or the other’s, realisable property,
(whenever that property was acquired and whether it is described in the order or not); and
- (b) section 96(1) of this Act interdicting any person named in the order from dealing with any property which is, or is liable to be, the subject of a suspended forfeiture order.

(2) A restraint order made under subsection (1)(a) above may contain conditions and exceptions to which the interdict shall be subject and in particular—

- (a) may provide for the release to the person named in the order of such reasonable living expenses as the court thinks fit; and
- (b) shall provide for the release of property in so far as it is required to meet reasonable legal expenses payable or likely to be payable in relation to proceedings—
 - (i) as regards the offence by virtue of which the restraint order has been made; or
 - (ii) as regards a confiscation order made on conviction of the offence.

(3) A restraint order shall—

- (a) be made on an *ex parte* application which shall be heard in chambers; and
- (b) without prejudice to the time when it becomes effective, be intimated to each person affected by it.

(4) For the purposes of this Chapter, dealing with property includes (without prejudice to the generality of the expression)—

- (a) making a payment to any person in reduction of the amount of a debt;
- (b) removing the property from the jurisdiction of the court; and
- (c) transferring or disposing of the property.

(5) Where the court has made a restraint order, a constable or a person commissioned by the Commissioners of Customs and Excise may, for the purpose of preventing any property subject to the order being removed from the jurisdiction of the court, seize that property.

(6) Property seized under subsection (5) above shall be dealt with in accordance with the court's directions.

(7) In this Chapter "the court" means where, as regards the criminal proceedings in question, a trial diet or a diet fixed for the purposes of section 102 of the 1975 Act is intended to be held, is being or has been held—

- (a) in the High Court of Justiciary, the Court of Session;
- (b) in the sheriff court, a sheriff of that court exercising his civil jurisdiction.

(8) The court may, where it has granted a restraint order, interdict a person not subject to that order from dealing with property affected by it while it is in force.

(9) Subsections (2)(a) and (3)(a) above shall apply in relation to subsection (8) above as they apply in relation to subsection (1) above; and subsections (1), (2), (4) and (5) of section 97 of this Act shall apply in relation to an interdict under subsection (8) above as they apply in relation to a restraint order.

(10) Without prejudice to the time when it becomes effective, an interdict under subsection (8) above shall be intimated to each person affected by it.

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CHAPTER III

Restraint orders in
relation to
realisable
property.

95.—(1) A restraint order under section 94(1)(a) of this Act may be made in the circumstances mentioned in either subsection (2) or (3) below.

(2) For the purposes of this subsection, the circumstances are—

- (a) proceedings have been instituted against an accused in Scotland for an offence to which Chapter I of this Part applies;
- (b) the proceedings have not been concluded; and
- (c) either a confiscation order has been made or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings.

(3) For the purposes of this subsection, the circumstances are that the court is satisfied that—

- (a) it is proposed to institute proceedings within 28 days against a person suspected of such an offence and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings; or
- (b) the prosecutor has made, or proposes within 28 days to make, an application under section 77 or, as the case may be, section 79 of this Act in relation to that person in respect of the offence, and it appears to the court that there are reasonable grounds for thinking that the application may be granted.

(4) Where the court has made a restraint order in the circumstances mentioned in subsection (3)(a) or (b) above and no proceedings have been instituted or application made within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.

(5) When proceedings for the offence or, as the case may be, proceedings on an application under section 77 or 79 of this Act are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.

(6) For the purposes of this section, proceedings are concluded as regards an offence where—

- (a) the trial diet is deserted simpliciter;
- (b) the accused is acquitted or, under section 101 or 331A of the 1975 Act, discharged or liberated;
- (c) the High Court of Justiciary or, as the case may be, the sheriff sentences or otherwise deals with him without making a confiscation order and without postponing a decision as regards making such an order;
- (d) after such postponement as is mentioned in paragraph (c) above, the High Court of Justiciary or, as the case may be, the sheriff decides not to make a confiscation order;
- (e) his conviction is quashed; or
- (f) a confiscation order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the accused serving imprisonment in default).

(7) For the purposes of this section, proceedings on an application under section 77 or 79 of this Act are concluded—

- (a) when the application is refused; or
- (b) where the application is granted, when a confiscation order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the accused serving imprisonment in default).

96.—(1) A restraint order may be made in respect of a person under section 94(1)(b) where—

Restraint orders in relation to forfeitable property.

- (a) proceedings have been instituted against him in Scotland for an offence;
- (b) the proceedings have not been concluded; and
- (c) a suspended forfeiture order has been made in respect of the property concerned or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a suspended forfeiture order may be made in those proceedings.

(2) A restraint order may also be made where the court is satisfied that it is proposed to institute proceedings in respect of an offence within 28 days and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a suspended forfeiture order may be made in those proceedings.

(3) Where the court has made a restraint order by virtue of subsection (2) above, and no proceedings have been instituted within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.

(4) When proceedings for the offence are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.

(5) For the purposes of this section, proceedings are concluded as regards an offence where—

- (a) the trial is deserted simpliciter;
- (b) the accused is acquitted or, under section 101 or 331A of the 1975 Act, discharged or liberated;
- (c) the High Court of Justiciary or (as the case may be) the sheriff sentences or otherwise deals with him without making a suspended forfeiture order;
- (d) his conviction is quashed;
- (e) a suspended forfeiture order made in the proceedings is recalled, or varied so as to exclude from forfeiture any property to which the restraint order relates; or
- (f) the property, or part of the property, to which the restraint order relates is forfeited.

97.—(1) Subject to subsections (2) and (3) below, the court may, at the instance of—

Variation and recall of restraint orders.

- (a) the prosecutor, at any time vary or recall a restraint order in relation to any person or to any property;
- (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.

PART II
CHAPTER III

(2) On an application made under subsection (1)(b) above by a person named in a restraint order as having received a gift caught by Chapter I of this Part, the court may recall the order in relation to that person if it is satisfied on the balance of probabilities—

- (a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
- (b) that he was not associated with the giver in the commission of the offence; and
- (c) that he would suffer hardship if the order were not recalled.

(3) Where an application has been made under subsection (1) above for the variation or recall of a restraint order, any property in relation to which the restraint order was made shall not be realised during the period beginning with the making of the application and ending with the determination of the application by the court.

(4) The court may, where it has recalled a restraint order as mentioned in subsection (1)(b) or (2) above, order that property of the person at whose instance it was recalled shall cease to be realisable or, as the case may be, liable to forfeiture.

(5) The prosecutor or any person having an interest may reclaim or appeal to the Court of Session against an interlocutor refusing, varying or recalling or refusing to vary or recall a restraint order, within such period as may be prescribed by Act of Sederunt.

(6) Where, in relation to a restraint order which is recalled, interdict has been granted under section 94(8) of this Act, the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.

Inhibition of
property affected
by restraint order
or by interdict.

98.—(1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order (whether such property generally or particular such property) grant warrant for inhibition against any person interdicted by the order or, in relation to that property, under section 94(8) of this Act; and subject to the provisions of this Part of this Act, the warrant—

- (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly; and
- (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.

1868 c.101.

(2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons.

(3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.

(4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Act in respect of that property.

(5) No inhibition executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

- (a) apply for the recall, or as the case may be restriction, of the inhibition; and
- (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.

99.—(1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

Arrestment of property affected by restraint order.

(2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.

(3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator's powers under or for the purposes of this Part of this Act in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.

100. Schedule 3 to this Act shall have effect as regards the appointment of administrators under this Part of this Act.

Administrators.

CHAPTER IV

RECIPROCAL ARRANGEMENTS FOR ENFORCEMENT OF ORDERS

101.—(1) An order to which this section applies shall, subject to this section and section 102 of this Act, have effect in the law of Scotland but shall be enforced in Scotland only in accordance with this section and that section.

Recognition and enforcement of orders made in England and Wales.

(2) A receiver's functions under or for the purposes of section 77, 80 or 81 of the 1988 Act shall, subject to this section and section 102 of this Act, have effect in the law of Scotland.

(3) If an order to which this section applies is registered under this section—

- (a) the Court of Session shall have, in relation to its enforcement, the same power;
- (b) proceedings for or with respect to its enforcement may be taken, and
- (c) proceedings for or with respect to any contravention of such an order (whether before or after such registration) may be taken,

as if the order had originally been made in that Court.

(4) Nothing in this section enables any provision of an order which empowers a receiver to do anything in Scotland under section 80(3)(a) of the 1988 Act to have effect in the law of Scotland.

(5) The orders to which this section applies are orders of the High Court—

- (a) made under section 77, 78 or 81 of the 1988 Act;
- (b) relating to the exercise by that Court of its powers under those sections; or
- (c) relating to receivers in the performance of their functions under the said section 77, 78 or 81,

but not including an order in proceedings for enforcement of any such order.

(6) References in this section to an order under section 77 of the 1988 Act include references to a discharge under section 76(4) of that Act of such an order.

(7) In this section and in section 102 of this Act, “order” means any order, direction or judgment (by whatever name called).

(8) Nothing in any order of the High Court under section 80(6) of the 1988 Act prejudices any enactment or rule of law in respect of the recording of deeds relating to heritable property in Scotland or the registration of interests in such property.

(9) In this Chapter, “High Court” means the High Court of England and Wales.

Provisions
supplementary to
section 101.

102.—(1) The Court of Session shall, on application made to it in accordance with rules of court for registration of an order to which section 101 of this Act applies, direct that the order shall, in accordance with such rules, be registered in that Court.

(2) Subsections (1) and (3) of section 101 of this Act and subsection (1) above are subject to any provision made by rules of court—

- (a) as to the manner in which and conditions subject to which that section applies are to be enforced in Scotland;
- (b) for the sisting of proceedings for enforcement of such an order;
- (c) for the modification or cancellation of the registration of such an order if the order is modified or revoked or ceases to have effect.

(3) This section and section 101 of this Act are without prejudice to any enactment or rule of law as to the effect of notice or the want of it in relation to orders of the High Court.

(4) The Court of Session shall have the like power to make an order under section 1 of the Administration of Justice (Scotland) Act 1972 (extended power to order inspection of documents etc.) in relation to proceedings brought or likely to be brought under Part VI of the 1988 Act in the High Court as if those proceedings were brought or were likely to be brought in the Court of Session. 1972 c.59.

(5) The Court of Session may, additionally, for the purpose of—

- (a) assisting the achievement in Scotland of the purposes of orders to which section 101 of this Act applies;
- (b) assisting receivers performing functions thereunder or for the purposes of section 77, 80 or 81 of the 1988 Act,

make such orders and do otherwise as seems to it appropriate.

(6) A document purporting to be a copy of an order under or for the purposes of Part VI of the 1988 Act by the High Court and to be certified as such by a proper officer of that Court shall, in Scotland, be sufficient evidence of the order.

103.—(1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 101 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—

Inhibition of Scottish property affected by order registered under section 101.

- (a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;
- (b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.

(2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons. 1868 c.101.

(3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.

(4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 77, 80 or 81 of the 1988 Act in respect of that property.

(5) No inhibition executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

- (a) apply for the recall, or as the case may be restriction, of the inhibition; and

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CHAPTER IV

- (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.

(6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 80 of the 1988 Act.

Arrestment of Scottish property affected by order registered under section 101.

104.—(1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 101 of this Act (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.

(3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 77, 80 or 81 of the 1988 Act in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the Court of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.

(5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 80 of the 1988 Act.

Enforcement of Northern Ireland orders.

105.—(1) Her Majesty may by Order in Council provide that, for the purposes of Chapter III of Part II of and Schedules 3 and 4 to this Act, this Part of this Act shall have effect as if—

- (a) references to confiscation orders included a reference to orders made by courts in Northern Ireland which appear to Her Majesty to correspond to confiscation orders;
- (b) references to offences to which Chapter I of this Part applies included a reference to any offence under the law of Northern Ireland (not being an offence to which that Chapter applies) which appears to Her Majesty to correspond to such an offence; and
- (c) such other modifications were made as may be specified in the Order in Council, being modifications which appear to Her Majesty to be requisite or desirable having regard to procedural differences which may for the time being exist between Scotland and Northern Ireland; and without prejudice to the generality of this paragraph modifications may include provision as to the

circumstances in which proceedings in Northern Ireland are to be treated for the purposes of those sections as instituted or as concluded.

(2) An Order in Council under this section may provide for the provisions mentioned in subsection (1) above to have effect in relation to anything done or to be done in Northern Ireland subject to such further modifications as may be specified in the Order.

(3) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(4) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

106.—(1) Her Majesty may by Order in Council—

(a) direct in relation to a country or territory outside the United Kingdom designated by the Order that, subject to such modifications as may be specified, Chapter I of this Part and Chapter III of this Part so far as it relates to realisable property shall apply in relation to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;

(b) make—

(i) such provision as to evidence or proof of any matter for the purposes of this section and section 107 of this Act; and

(ii) such incidental, consequential and transitional provision,

as appears to Her Majesty to be expedient.

(2) In this Chapter—

“designated country” means a country or territory designated by an Order in Council made under this section; and

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards or property or other economic advantage received in connection with an offence corresponding with or similar to an offence to which Chapter I of this Part applies or the value of such payments, property, reward or economic advantage.

(3) An Order in Council under this section may make different provision for different cases or classes of case.

(4) The power to make an Order in Council under this section includes power to modify Chapter I of this Part or Chapter III of this Part so far as it relates to realisable property in such a way as to confer power on a person to exercise a discretion.

(5) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

107.—(1) On an application made by or on behalf of the Government of a designated country, the Court of Session may register an external confiscation order made there if—

Enforcement of orders made outside United Kingdom.

Registration of external confiscation orders.

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
 - (c) it is of the opinion that enforcing the order in Scotland would not be contrary to the interests of justice.
- (2) In subsection (1) above “appeal” includes—
- (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (3) The Court of Session shall cancel the registration of an external confiscation order if it appears to the court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

Enforcement of
Scottish orders in
England and
Wales.

108.—(1) Her Majesty may by Order in Council make such provision as Her Majesty considers expedient for the purpose—

- (a) of enabling property in England and Wales which is realisable property to be used or realised for the payment of any amount payable under a confiscation order;
 - (b) of securing that, where no confiscation order has been made, property in England and Wales which is realisable property is available, in the event that such an order is so made, to be used or realised for the payment of any amount payable under it; and
 - (c) of enabling the enforcement in England and Wales of restraint orders, suspended forfeiture orders and forfeiture orders under any enactment other than the 1989 Act.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, an Order in Council under this section may—
- (a) provide that, subject to any specific conditions, such description of orders made under or for the purposes of Chapter I, II or III of this Part so far as it relates to realisable property shall have effect in the law of England and Wales;
 - (b) provide that, subject to any specified conditions, the functions of a person appointed under Schedule 3 to this Act shall have effect in the law of England and Wales;
 - (c) make provision—
 - (i) for the registration in the High Court of such descriptions of orders made under or for the purposes of Chapter I, II or III of this Part so far as it relates to realisable property as may be specified; and
 - (ii) for the High Court to have, in relation to the enforcement of orders made under or for the purposes of Chapter I, II or III of this Part so far as it so relates which are so registered, such powers as may be specified; and
 - (d) make provision as to the proof in England and Wales of orders made under or for the purposes of Chapter I, II or III of this Part so far as it so relates.

(3) In subsection (2) above “specified” means specified in an Order in Council under this section.

(4) An Order in Council under this section may amend or apply, with or without modifications, any enactment.

(5) An Order in Council under this section may contain such incidental, consequential and transitional provisions as Her Majesty considers expedient.

(6) An Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

109.—(1) Her Majesty may by Order in Council make such provision in connection with the taking of action in a designated country in consequence of the making of a restraint order, confiscation order or suspended forfeiture order under this Act or a forfeiture order under any other enactment as appears to Her Majesty to be expedient.

Order in Council as regards taking of action in designated country.

(2) Without prejudice to the generality of subsection (1) above, the provision contained in an Order in Council made under this section may include a direction that in such circumstances as may be specified proceeds arising out of action taken in a designated country with a view to satisfying a confiscation order which are retained there shall nevertheless be treated as reducing the amount payable under the confiscation order to such extent as may be specified.

(3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.

(4) Subsections (1)(b), (3) and (5) of section 106 of this Act shall apply in respect of Orders in Council under this section as they apply in respect of Orders in Council under that section.

CHAPTER V

MISCELLANEOUS AND GENERAL

110.—(1) Schedule 4 to this Act shall have effect in relation to the sequestration, bankruptcy, winding up or receivership of persons or, as the case may be, companies holding realisable or forfeitable property.

Sequestration etc. of person holding realisable or forfeitable property.

(2) In this section and in that Schedule “forfeitable property” means property which is or is liable to be the subject of a suspended forfeiture order.

111.—(1) This section applies where —

- (a) a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired by means of the benefit derived from the commission of the offence concerned; or
- (b) a person’s family home has been forfeited to the Crown under section 90 of this Act.

Disposal of family home under Chapter I or II.

(2) Where this section applies, then, before the Crown disposes of any right or interest in the person’s family home it shall—

- (a) obtain the relevant consent; or

- (b) where it is unable to do so, apply to the court for authority to carry out the disposal.

(3) On an application being made to it under subsection (2)(b) above, the court, after having regard to all the circumstances of the case including—

- (a) the needs and financial resources of the spouse or former spouse of the person concerned;
- (b) the needs and financial resources of any child of the family;
- (c) the length of the period during which the family home has been used as a residence by any of the persons referred to in paragraph (a) or (b) above,

may refuse to grant the application or may postpone the granting of the application for such period (not exceeding 12 months) as it may consider reasonable in the circumstances or may grant the application subject to such conditions as it may prescribe.

(4) Subsection (3) above shall apply—

- (a) to an action for division and sale of the family home of the person concerned; or
- (b) to an action for the purpose of obtaining vacant possession of that home,

brought by the Crown as it applies to an application under subsection (2)(b) above and, for the purposes of this subsection, any reference in the said subsection (3) to the granting of the application shall be construed as a reference to the granting of decree in the action.

(5) In this section—

“family home”, in relation to any person (in this subsection referred to as “the relevant person”) means any property in which the relevant person has or had (whether alone or in common with any other person) a right or interest, being property which is occupied as a residence by the relevant person and his or her spouse or by the relevant person’s spouse or former spouse (in any case with or without a child of the family) or by the relevant person with a child of the family;

“child of the family” includes any child or grandchild of either the relevant person or his or her spouse or former spouse, and any person who has been treated by either the relevant person or his or her spouse or former spouse as if he or she were a child of the relevant person, spouse or former spouse, whatever the age of such a child, grandchild or person may be; and

“relevant consent” means in relation to the disposal of any right or interest in a family home—

(a) in a case where the family home is occupied by the spouse or former spouse of the relevant person, the consent of the spouse or, as the case may be, of the former spouse, whether or not the family home is also occupied by the relevant person;

(b) where paragraph (a) above does not apply, in a case where the family home is occupied by the relevant person with a child of the family, the consent of the relevant person.

PART II
CHAPTER VForfeiture of
property where
accused has died.

112.—(1) This section applies where at any time after criminal proceedings have been instituted against an accused for an offence to which Chapter I of this Part applies and before the accused has been sentenced or otherwise dealt with in the proceedings he dies.

(2) The Court of Session, if it is satisfied beyond reasonable doubt on an application being made to it by the Lord Advocate—

(a) that the accused committed the offence; and

(b) that there is property—

(i) which the accused had obtained, directly or indirectly, in connection with the commission of the offence; or

(ii) which is a gift caught by Chapter I of this Part,

may, subject to subsection (5) below, make an order which shall have the effect of forfeiting that property.

(3) The Court of Session may, without prejudice to any other power available to it, at any time before the determination of the case, allow an amendment of the application under subsection (2) above if the amendment is of a type which could competently have been made in an indictment or complaint under section 123 or 335 of the 1975 Act in the criminal proceedings.

(4) An application under subsection (2) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the Lord Advocate, but, in any event, within 6 years commencing with the date of death of the accused.

(5) An application under subsection (2) above in relation to property such as is mentioned in paragraph (b)(ii) of that subsection shall be served on the recipient of the gift and, if he satisfies the Court on the balance of probabilities—

(a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or, if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and

(b) that he was not associated with the giver in the commission of the offence; and

(c) that he would suffer hardship if the application were granted,
the Court may refuse to make an order as mentioned in that subsection.

(6) Where property has been forfeited under this section, then, if the Court of Session, on an application being made to it is satisfied by the applicant on the balance of probabilities that he was the owner of, or otherwise had an interest in, the property immediately before such forfeiture, it shall make an order under subsection (7) below.

(7) An order under this subsection shall direct the Crown, if the applicant—

(a) was the owner of the property, to return it to him if it is reasonably practicable to do so or, if not, to pay compensation to him of an amount determined under subsection (8) below; or

(b) otherwise had an interest in the property, to pay compensation to him of an amount corresponding to the value of such interest.

PART II
CHAPTER V

(8) For the purposes of subsection (7) above, the amount determined under this subsection shall be an amount equal to the amount of any consideration received for the property or the value of any such consideration at the time of the disposal, or, if no consideration was received, an amount equal to the value of the property at the time of the disposal.

(9) Property which has been forfeited under this section shall be dealt with by the Crown in such manner as seems to it to be appropriate.

(10) Where a restraint order is not in force in respect of a person when he dies in the circumstances mentioned in subsection (1) above, the Court of Session may, on the application of the Lord Advocate, in so far as the property concerned is—

- (a) heritable property in Scotland, make an order inhibiting any person; and
- (b) moveable property, grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(11) Paragraphs (a) and (b) of subsection (1) and subsections (2) to (5) of section 98 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(a) above as they apply for the purposes of that section.

(12) Subsections (2) to (4) of section 99 of this Act shall, subject to any necessary modifications, apply for the purposes of subsection (10)(b) above as they apply for the purposes of that section.

(13) Proceedings under this section are civil proceedings for the purposes of section 10 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968.

1968 c. 70.

Transitional
provision,
amendment of
1987 Act, etc.

113.—(1) Where a person is charged with an offence in relation to which provision is made by Chapter I of this Part, being an offence committed before the coming into force of the said Chapter I, that Chapter shall not affect the powers of the court in the event of his being convicted of the offence.

(2) Where a person is charged with an offence committed before the coming into force of Chapter II of this Part, in the event of his being convicted of the offence, the court shall be entitled to exercise the powers conferred by section 223 or section 436 of the 1975 Act, but not the powers conferred by that Chapter.

(3) The 1987 Act shall be amended as specified in Schedule 5 to this Act.

4 & 5 Geo.5 c. 59

(4) Section 28 of the Bankruptcy Act 1914 (effect of order of discharge) shall have effect as if amounts payable under confiscation orders were debts excepted under subsection (1)(a) of that section.

1974 c. 53.

(5) In section 1(2)(a) of the Rehabilitation of Offenders Act 1974 (failure to pay fines etc. not to prevent person becoming rehabilitated) the reference to a fine or other sum adjudged to be paid by or on a conviction does not include a reference to an amount payable under a confiscation order.

1986 c. 45.

(6) Section 281(4) of the Insolvency Act 1986 (discharge of bankrupt not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

(7) Section 55(2) of the Bankruptcy (Scotland) Act 1985 (discharge of debtor not to release him from liabilities in respect of fines, etc.) shall have effect as if the reference to a fine included a reference to a confiscation order.

1985 c. 66.

114.—(1) In this Part of this Act, unless the context otherwise requires—

Interpretation of Part II.

“the 1987 Act” means the Criminal Justice (Scotland) Act 1987;

1987 c. 41.

“the 1988 Act” means the Criminal Justice Act 1988;

1988 c. 33.

“the 1989 Act” means the Prevention of Terrorism (Temporary Provisions) Act 1989;

1989 c. 4.

“accused” includes a person against whom criminal proceedings have been instituted in relation to the commission of an offence and a person convicted of an offence;

“clerk of court” includes the sheriff clerk;

“confiscation order” means an order made under section 70(1), 77(4), 78(3) or 79 of this Act;

“interest”, in relation to property, includes right;

“property” has the meaning assigned by section 71 of this Act;

“realisable property” has the meaning assigned by section 72 of this Act;

“restraint order” means an order made under section 94 of this Act;

“suspended forfeiture order” means an order made under section 87(2) of this Act.

(2) This Part of this Act shall (except where the context otherwise requires) be construed as one with the 1975 Act.

(3) For the purposes of this Part of this Act proceedings for an offence are instituted against a person—

(a) on his arrest without warrant;

(b) when he is charged with the offence without being arrested;

(c) when a warrant to arrest him is granted;

(d) when a warrant to cite him is granted;

(e) in summary proceedings, on the first calling of the case; or

(f) when a petition is intimated to him or an indictment or a complaint is served on him,

and, where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.

(4) Any reference in this Part of this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.

PART III

SUPPLEMENTARY

- Interpretation.
1975 c. 21. **115.** In this Act, “the 1975 Act” means the Criminal Procedure (Scotland) Act 1975.
- Expenses. **116.** There shall be paid out of money provided by Parliament—
- (a) any amount payable—
 - (i) as compensation under section 83 or 92 of this Act; or
 - (ii) under paragraph 6 of Schedule 3 to this Act in respect of remuneration or expenses of administrators;
 - (b) any administrative expenses incurred by the Secretary of State or the Lord Advocate under this Act; and
 - (c) any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- Minor and consequential amendments and repeals. **117.**—(1) The enactments mentioned in Schedule 6 to this Act shall have effect subject to the amendments there specified, being minor amendments and amendments consequential on the foregoing provisions of this Act.
- (2) The enactments mentioned in Schedule 7 to this Act (which include enactments which are spent) are hereby repealed to the extent specified in the third column of that Schedule.
- Short title, commencement and extent. **118.**—(1) This Act may be cited as the Criminal Justice (Scotland) Act 1995.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for different areas or different purposes.
- (3) An order under subsection (2) above may make such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with any provision brought into force by the order.
- (4) Subject to subsections (5) to (7) below, this Act extends only to Scotland.
- (5) Section 110 of and Schedule 4 to this Act extend to England and Wales as well as to Scotland.
- (6) Section 108 of this Act extends only to England and Wales.
- (7) The amendment or repeal of any enactment by Schedule 6 or 7 to this Act has the same extent as the enactment amended or repealed.

SCHEDULES

SCHEDULE 1

Section 22.

CERTIFICATES AS TO PROOF OF CERTAIN MATTERS

1. Schedule 1 to the Criminal Justice (Scotland) Act 1980 (which makes provision as regards the sufficiency of evidence by certificate in certain routine matters) shall be amended as follows. 1980 c.62.

2. Before the entry relating to the Wireless Telegraphy Act 1949 there shall be inserted—

<p>“THE PARKS REGULATION ACTS 1872 to 1974</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>That, on a date specified in the certificate—</p> <p>(a) copies of regulations made under those Acts, prohibiting such activity as may be so specified, were displayed at a location so specified;</p> <p>(b) in so far as those regulations prohibited persons from carrying out a specified activity in the park without written permission, such permission had not been given to a person so specified.”</p>
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3. After the entry relating to the Wireless Telegraphy Act 1949 there shall be inserted—

<p>“THE BUILDING (SCOTLAND) ACT 1959 (c. 24) Section 6(1) (prohibition of construction, demolition or change of use of building without warrant).</p>	<p>An officer of a local authority authorised to do so by the authority.</p>	<p>In relation to a building specified in the certificate, that on a date so specified, there had not been obtained a warrant under section 6 of that Act for construction, demolition or, as the case may be, change of use.</p>
<p>Section 9(5) (offence of occupying or using a building before certificate of completion issued).</p>	<p>An officer of a local authority authorised to do so by the authority.</p>	<p>That, on a date specified in the certificate—</p> <p>(a) a certificate of completion under section 9 of that Act had not been issued in respect of a building so specified; and</p>

SCH. 1

(b) written permission for occupation or use of the building so specified, had not been granted under subsection (6) of that section by the local authority.”.

4. In the entry relating to the Firearms Act 1968, for the words in column 2 there shall be substituted “As respects the matters specified in paragraph (a) of column 3, a constable or a person employed by a police authority, if the constable or person is authorised to do so by the chief constable of the police force maintained for the authority’s area; and as respects the matters specified in paragraph (b) of column 3, an officer authorised to do so by the Secretary of State.”.

5. After the entry relating to the Social Security Act 1975 there shall be inserted—

<p>“THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1975 (c. 21) Section 338(2) (offence of failure of accused to appear at diet after due notice).</p>	<p>The clerk of court.</p>	<p>That, on a date specified in the certificate, he gave a person so specified, in a manner so specified, notice of the time and place appointed for a diet so specified.”.</p>
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6. In the entry relating to the Bail etc. (Scotland) Act 1980, for the words in column 3 there shall be substituted—

“In relation to a person specified in the certificate, that—

- (a) an order granting bail under that Act was made on a date so specified by a court so specified;
- (b) the order or a condition of it so specified was in force on a date so specified;
- (c) notice of the time and place appointed for a diet so specified was given to him in a manner so specified;
- (d) as respects a diet so specified, he failed to appear.”.

SCH. 1

7. After the entry relating to the Forgery and Counterfeiting Act 1981 there shall be inserted—

<p>“THE WILDLIFE AND COUNTRYSIDE ACT 1981 (c. 69) Sections 1, 5, 6(1) to (3), 7, 8, 9(1), (2), (4) and (5), 11(1) and (2), 13(1) and (2) and 14 (certain offences relating to protection of wild animals or wild plants).</p>	<p>An officer of the appropriate authority (within the meaning of section 16(9) of that Act) authorised to do so by the authority.</p>	<p>In relation to a person specified in the certificate that, on a date so specified, he held, or as the case may be did not hold, a licence under section 16 of that Act and, where he held such a licence—</p> <p>(a) the purpose for which the licence was granted; and</p> <p>(b) the terms and conditions of the licence.”.</p>
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8. After the entry relating to the Video Recordings Act 1984 there shall be inserted the following entries—

<p>“THE ROAD TRAFFIC ACT 1988 (c.52) Section 165(3) (offence of failure to give name and address and to produce vehicle documents when required by constable).</p>	<p>A constable.</p>	<p>In relation to a person specified in the certificate, that he failed, by such date as may be so specified, to produce such documents as may be so specified at a police station so specified.</p>
<p>THE CONTROL OF POLLUTION (AMENDMENT) ACT 1989 (c.14) Section 1 (offence of transporting controlled waste without registering).</p>	<p>An officer of a regulation authority within the meaning of that Act authorised to do so by the authority.</p>	<p>In relation to a person specified in the certificate, that on a date so specified he was not a registered carrier of controlled waste within the meaning of that Act.</p>
<p>THE ENVIRONMENTAL PROTECTION ACT 1990 (c.43) Section 33(1)(a) and (b) (prohibition on harmful depositing, treatment or disposal of waste). Section 34(1)(c) (duty of care as respects transfer of waste).</p>	<p>An officer of a waste regulation authority within the meaning of that Act authorised to do so by the authority.</p>	<p>In relation to a person specified in the certificate that, on a date so specified, he held, or as the case may be he did not hold, a waste management licence.</p> <p>In relation to a person specified in the certificate, that on a date so specified he was not an authorised person within the meaning of section 34(3)(b) or (d) of that Act.”.</p>

SCH. 1

9. After the entry relating to the Social Security Administration Act 1992 there shall be inserted—

<p>“THE CRIMINAL JUSTICE AND PUBLIC ORDER ACT 1994 (c. 33) Paragraph 5 of Schedule 6 (offence of making false statements to obtain certification as prisoner custody officer).</p>	<p>An officer authorised to do so by the Secretary of State.</p>	<p>That—</p> <p>(a) on a date specified in the certificate, an application for a certificate under section 114 of that Act was received from a person so specified;</p> <p>(b) the application contained a statement so specified;</p> <p>(c) a person so specified made, on a date so specified, a statement in writing in terms so specified.”.</p>
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Section 50.

SCHEDULE 2

SUPERVISION AND TREATMENT ORDERS: SCHEDULE TO BE INSERTED IN THE 1975 ACT

“SCHEDULE 5A

SUPERVISION AND TREATMENT ORDERS

PART I

PRELIMINARY

1.—(1) In this Schedule “supervision and treatment order” means an order requiring the person in respect of whom it is made (“the supervised person”)—

- (a) to be under the supervision of a social worker who is an officer of the local authority for the area where the supervised person resides or is to reside (in this Schedule referred to as “the supervising officer”) for such period, not being more than three years, as is specified in the order;
- (b) to comply during that period with instructions given to him by the supervising officer regarding his supervision; and
- (c) to submit during that period to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

(2) The Secretary of State may by order amend sub-paragraph (1) above by substituting, for the period for the time being specified in that sub-paragraph, such period as may be specified in the order.

(3) An order under sub-paragraph (2) above may make any amendment to paragraph 8(2) below which the Secretary of State considers necessary in consequence of the order.

(4) The power of the Secretary of State to make orders under sub-paragraph (2) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

PART II

MAKING AND EFFECT OF ORDERS

Circumstances in which orders may be made

2.—(1) The court shall not make a supervision and treatment order unless it is satisfied—

- (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the person; and
- (b) on the written or oral evidence of two or more medical practitioners approved for the purposes of section 20 or 39 of the Mental Health (Scotland) Act 1984, that the mental condition of the person—
 - (i) is such as requires and may be susceptible to treatment; but
 - (ii) is not such as to warrant the making of an order under paragraph (a) of subsection (2) of section 174ZC or, as the case may be, 375ZC of this Act (whether with or without an order under paragraph (b) of that subsection) or an order under paragraph (c) of that subsection.

1984 c. 36.

(2) The court shall not make a supervision and treatment order unless it is also satisfied—

- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
- (b) that arrangements have been made for the treatment intended to be specified in the order.

(3) Subsection (2) to (4) of section 176, and subsections (2) to (4) of section 377, of this Act shall have effect with respect to proof of a person's mental condition for the purposes of sub-paragraph (1) above in solemn and summary proceedings respectively as they have effect with respect to proof of an offender's mental condition for the purposes of, respectively, sections 175(1)(a) and 376(1)(a) of this Act.

Making of orders and general requirements

3.—(1) A supervision and treatment order shall specify the local authority area in which the supervised person resides or will reside.

(2) Before making such an order, the court shall explain to the supervised person in ordinary language—

- (a) the effect of the order (including any requirements proposed to be included in the order in accordance with paragraph 5 below); and
- (b) that the sheriff court for the area in which the supervised person resides or will reside (in this Schedule referred to as "the relevant sheriff court") has power under paragraphs 6 to 8 below to review the order on the application either of the supervised person or of the supervising officer.

(3) After making such an order, the court shall forthwith give a copy of the order to—

- (a) the supervised person;
- (b) the supervising officer; and
- (c) the person in charge of any institution in which the supervised person is required by the order to reside.

(4) After making such an order, the court shall also send to the relevant sheriff court—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to that court in the exercise of its functions in relation to the order.

SCH. 2

(5) Where such an order is made, the supervised person shall comply with such instructions as he may from time to time be given by the supervising officer regarding his supervision and shall keep in touch with that officer and notify him of any change of address.

Obligatory requirements as to medical treatment

4.—(1) A supervision and treatment order shall include a requirement that the supervised person shall submit, during the period specified in the order, to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

(2) The treatment required by the order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

- (a) treatment as a non-resident patient at such institution or place as may be specified in the order; and
- (b) treatment by or under the direction of such medical practitioner as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b) above.

(3) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of a supervision and treatment order is of the opinion that part of the treatment can be better or more conveniently given at an institution or place which—

- (a) is not specified in the order; and
- (b) is one at which the treatment of the supervised person will be given by or under the direction of a medical practitioner,

he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.

(4) Where any such arrangements as are mentioned in sub-paragraph (3) above are made for the treatment of a supervised person—

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the institution or place at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision and treatment order.

Optional requirements as to residence

5.—(1) Subject to sub-paragraphs (2) to (4) below, a supervision and treatment order may include requirements as to the residence of the supervised person.

(2) Such an order may not require the supervised person to reside as a resident patient in a hospital.

(3) Before making such an order containing any such requirement, the court shall consider the home surroundings of the supervised person.

(4) Where such an order requires the supervised person to reside in any institution, the period for which he is so required to reside shall be specified in the order.

PART III

REVOCATION AND AMENDMENT OF ORDERS

Revocation of order in interests of health or welfare

6. Where a supervision and treatment order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the relevant sheriff court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

Amendment of order by reason of change of residence

7.—(1) This paragraph applies where, at any time while a supervision and treatment order is in force in respect of any person, the relevant sheriff court is satisfied that—

- (a) the supervised person proposes to change, or has changed, his residence from the area specified in the order to the area of another local authority;
- (b) a social worker who is an officer of the other local authority (“the new supervising officer”) is willing to undertake the supervision; and
- (c) the requirements of the order as respects treatment will continue to be complied with.

(2) Subject to sub-paragraph (3) below the court may, and on the application of the supervising officer shall, amend the supervision and treatment order by substituting the other area for the area specified in the order and the new supervising officer for the supervising officer specified in the order.

(3) Where a supervision and treatment order contains requirements which, in the opinion of the court, can be complied with only if the supervised person continues to reside in the area specified in the order, the court shall not amend the order under this paragraph unless it also, in accordance with paragraph 8 below, either—

- (a) cancels those requirements; or
- (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area.

Amendment of requirements of order

8.—(1) Without prejudice to the provisions of paragraph 7 above, but subject to sub-paragraph (2) below, the relevant sheriff court may, on the application of the supervised person or the supervising officer, by order amend a supervision and treatment order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

(2) The power of the court under sub-paragraph (1) above shall not include power to amend an order by extending the period specified in it beyond the end of three years from the date of the original order.

Amendment of requirements in pursuance of medical report

9.—(1) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a supervision and treatment order—

- (a) is of the opinion mentioned in sub-paragraph (2) below; or

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- (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

he shall make a report in writing to that effect to the supervising officer and that officer shall apply under paragraph 8 above to the relevant sheriff court for the variation or cancellation of the requirement.

- (2) The opinion referred to in sub-paragraph (1) above is—
- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision and treatment order;
 - (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
 - (c) that the supervised person is not susceptible to treatment; or
 - (d) that the supervised person does not require further treatment.

Supplemental

10.—(1) On the making under paragraph 6 above of an order revoking a supervision and treatment order, the sheriff clerk shall forthwith give a copy of the revoking order to the supervising officer.

(2) On receipt of a copy of the revoking order the supervising officer shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person was required by the order to reside.

11.—(1) On the making under paragraph 7 or 8 above of an order amending a supervision and treatment order, the sheriff clerk shall forthwith—

- (a) if the order amends the supervision and treatment order otherwise than by substituting a new area or a new place for the one specified in that order, give a copy of the amending order to the supervising officer;
- (b) if the order amends the supervision and treatment order in the manner excepted by paragraph (a) above, send to the new relevant sheriff court—

(i) a copy of the amending order; and

(ii) such documents and information relating to the case as he considers likely to be of assistance to that court in exercising its functions in relation to the order;

and in a case falling within paragraph (b) above, the sheriff clerk shall give a copy of the amending order to the supervising officer.

(2) On receipt of a copy of an amending order the supervising officer shall give a copy to the supervised person and to the person in charge of any institution in which the supervised person is or was required by the order to reside.

12. On the making, revocation or amendment of a supervision and treatment order the supervising officer shall give a copy of the order or, as the case may be, of the order revoking or amending it, to the Mental Welfare Commission for Scotland.”

SCHEDULE 3

Section 100.

ADMINISTRATORS

Appointment of administrators

1.—(1) On the application of the prosecutor the court may as regards property—

- (a) affected by a restraint order or a suspended forfeiture order, appoint a person to manage, or otherwise deal with, the property; or
- (b) where a suspended forfeiture order or a confiscation order has been made, appoint a person (or empower an appointee under paragraph (a) above) to realise the property,

in accordance with the court's directions and may (whether on making the appointment or from time to time) require any person having possession of the property to give possession of it to the appointee (any such appointee being in this Act referred to as an "administrator").

(2) A requirement under sub-paragraph (1) above—

- (a) subject to paragraph (b) below, may relate to the property generally or to particular such property and may be subject to such exceptions and conditions as may be specified by the court;
- (b) shall relate to property mentioned in paragraph (b) of section 72(1) of this Act only if expressly stated so to do and then only in so far as the person in whom such property is vested is named in the requirement as being subject to it.

(3) On a requirement being imposed under sub-paragraph (1) above—

- (a) the clerk of court shall forthwith notify—
 - (i) the person in respect of whom the restraint order, or as the case may be the suspended forfeiture order or confiscation order, has been made; and
 - (ii) any other person named in the requirement as being subject to it; and
- (b) any dealing of or with such person in relation to the property shall be of no effect in a question with the administrator unless whoever dealt with the person had, at the time when the dealing occurred, no knowledge of the appointment.

(4) The court, at the instance of any person having an interest, may at any time—

- (a) vary or withdraw a requirement imposed under sub-paragraph (1) above; or
- (b) without prejudice to paragraph 4 below or to the powers and duties of an administrator pending a decision under this sub-sub-paragraph, on cause shown, remove the administrator from office.

(5) On the death or resignation of the administrator, or on his removal from office under sub-paragraph (4)(b) above or paragraph 5 below, the court shall appoint a new administrator.

(6) Such of the property (if any) as was, by virtue of paragraph 2(3) below, vested in the administrator who has died, resigned or been removed shall forthwith vest in the new administrator; and any requirement imposed under sub-paragraph (1) above shall, on the person subject to the requirement being notified in writing of the appointment by the appointee, apply in relation to the appointee instead of in relation to his predecessor.

SCH. 3

(7) The administration of property by an administrator shall be deemed continuous notwithstanding any temporary vacancy in that office.

(8) Any appointment under this paragraph shall be on such conditions as to caution as the accountant of court may think fit to impose; but the premium of any bond of caution or other security thereby required of the administrator shall be treated as part of his outlays in his actings as such.

1889 c. 39.

(9) Without prejudice to paragraph 5 below, section 6 of the Judicial Factors (Scotland) Act 1889 (supervision of judicial factors) shall not apply in relation to an appointment under this section.

Functions of administrators

2.—(1) Subject to paragraph 5 below, an administrator—

(a) shall be entitled to take possession of, and if appointed (or empowered) under paragraph 1(1)(b) above where a confiscation order has been made shall as soon as practicable take possession of, the property as regards which he has been appointed and of any document which both—

(i) is in the possession or control of the person (in this paragraph referred to as “A”) in whom the property is vested (or would be vested but for an order made under sub-paragraph (3) below); and

(ii) relates to the property or to A’s assets, business or financial affairs;

(b) shall be entitled to have access to, and to copy, any document relating to the property or to A’s assets, business or financial affairs and not in such possession or control as is mentioned in paragraph (a) above;

(c) may bring, defend or continue any legal proceedings relating to the property;

(d) may borrow money in so far as it is necessary to do so to safeguard the property and may for the purposes of such borrowing create a security over any part of the property;

(e) may, if the administrator considers that to do so would be beneficial for the management or realisation of the property—

(i) carry on any business of A;

(ii) exercise any right of A as holder of securities in a company;

(iii) grant a lease of the property or take on lease any other property; or

(iv) enter into any contract, or execute any deed, as regards the property or as regards A’s business;

(f) may, where any right, option or other power forms part of A’s estate, make payments or incur liabilities with a view to—

(i) obtaining property which is the subject of; or

(ii) maintaining,

the right, option or power;

(g) may effect or maintain insurance policies as regards the property on A’s business;

(h) where he has been appointed under paragraph 1(1)(b) above may, where A has an uncompleted title to any heritable estate, complete title thereto;

Provided that completion of title in A’s name shall not validate by accretion any unperfected right in favour of any person other than the administrator;

SCH. 3

- (j) may sell, purchase or exchange property or discharge any security for an obligation due to A:

Provided that it shall be incompetent for the administrator or an associate of his (within the meaning of section 74 of the Bankruptcy (Scotland) Act 1985) to purchase any of A's property in pursuance of this paragraph; 1985 c. 66.

- (k) may claim, vote and draw dividends in the sequestration of the estate (or bankruptcy or liquidation) of a debtor of A and may accede to a voluntary trust deed for creditors of such a debtor;

- (l) may discharge any of his functions through agents or employees;

Provided that the administrator shall be personally liable to meet the fees and expenses of any such agent or employee out of such remuneration as is payable to the administrator by virtue of paragraph 6(1) and (3) below;

- (m) may take such professional advice as he may consider requisite for the proper discharge of his functions;

- (n) may at any time apply to the court for directions as regards the discharge of his functions;

- (o) may exercise any power specifically conferred on him by the court, whether such conferral was at the time of his appointment or on his subsequent application to the court in that regard; and

- (p) may do anything incidental to the above powers and duties.

- (2) Subject to the proviso to sub-paragraph (1)(j) above—

- (a) a person dealing with an administrator in good faith and for value shall not require to determine whether the administrator is acting within the powers mentioned in that subsection; and

- (b) the validity of any title shall not be challengeable by reason only of the administrator having acted outwith those powers.

(3) The exercise of a power mentioned in any of sub-paragraphs (1)(c) to (k) above shall be in A's name except where and in so far as an order made by the court under this sub-paragraph (either on its own motion or on the application of the administrator) has vested the property in the administrator (or in his predecessor in that office).

Money received by administrator

3.—(1) Subject to sub-paragraph (2) below, all money received by an administrator in the exercise of his functions shall be deposited by him, in the name (unless vested in the administrator by virtue of paragraph 2(3) above) of the holder of the property realised, in an appropriate bank or institution.

(2) The administrator may at any time retain in his hands a sum not exceeding £200 or such other sum as may be prescribed by the Secretary of State by regulations made by statutory instrument.

(3) In sub-paragraph (1) above, "appropriate bank or institution" means a bank or institution mentioned in section 2(1) of the Banking Act 1979 or for the time being specified in Schedule 1 to that Act. 1979 c. 37.

Application of proceeds of realisation and other sums

4.—(1) This paragraph applies only to an administrator appointed to realise property where a confiscation order has been made.

(2) Subject to sub-paragraph (3) below, sums in the hands of an administrator which are—

- (a) proceeds of a realisation of property under paragraph 1 above, and

SCH. 3

- (b) other property held by the person in respect of whom the confiscation order was made,

shall first be applied in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act and then shall, after such payments (if any) as the court may direct have been made out of those proceeds and sums, be applied on the person's behalf towards the satisfaction of the confiscation order.

(3) If, after the amount payable under the confiscation order has been fully paid, any such proceeds and sums remain in the hands of the administrator, he shall distribute them—

- (a) among such of those who held property which has been realised under this Act, and
(b) in such proportions,

as the court may, after giving such persons an opportunity to be heard as regards the matter, direct.

(4) The receipt of any sum by a sheriff clerk on account of an amount payable under a confiscation order shall reduce the amount so payable, but the sheriff clerk shall apply the money—

- (a) first, in payment of any expenses to the payment of which a person is entitled under paragraph 5(2) of Schedule 4 to this Act but which were not paid to him under sub-paragraph (2) above;
(b) next, in payment of the administrator's remuneration and expenses;
(c) next, in reimbursement of any sums paid by the Lord Advocate under paragraph 8(2) below;
(d) next, in accordance with any direction given by the court under section 74(4) or 79(7) of this Act,

and the balance shall be payable and recoverable (or as the case may be disposed of) under section 203 or 412 of the 1975 Act (destination of fines) as applied by section 80 of this Act.

Supervision of administrators

5.—(1) The accountant of court shall supervise the performance by administrators of the functions conferred on them by Part II of this Act; and in particular an administrator proposing to exercise functions conferred by any of paragraphs 2(1)(c) to (p) above shall first obtain the consent of the accountant of court to such exercise.

(2) If it appears to the accountant of court that an administrator has, without reasonable cause, failed to perform a duty imposed on him by any provision of section 82 of this Act or of this Schedule, he shall report the matter to the court which, after giving the administrator an opportunity to be heard as regards the matter, may remove the administrator from office, censure him or make such other order as the circumstances of the case may appear to the court to require.

Accounts and remuneration of administrator

6.—(1) The administrator shall keep such accounts in relation to his intromissions with the property as regards which he is appointed as the court may require and shall lodge these accounts with the accountant of court at such times as may be fixed by the court in that regard; and the accountant of court shall audit the accounts and issue a determination as to the amount of outlays and, on the basis mentioned in sub-paragraph (3) below, remuneration payable to the administrator in respect of those intromissions.

(2) Not later than two weeks after the issuing of a determination under sub-paragraph (1) above, the administrator or the Lord Advocate may appeal against it to the court.

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(3) The basis for determining the amount of remuneration payable to the administrator shall be the value of the work reasonably undertaken by him, regard being had to the extent of the responsibilities involved.

(4) The accountant of court may authorise the administrator to pay without taxation an account in respect of legal services incurred by the administrator.

Effect of appointment of administrator on diligence

7. Without prejudice to sections 98 and 99 of this Act—

- (a) no arrestment or poinding of property executed on or after an appointment as regards the property under paragraph 1 above shall be effectual to create a preference for the arrester or poinder and any such property so arrested or poinded, or the proceeds of sale thereof, shall be handed over to the administrator;
- (b) no poinding of the ground in respect of property on or after such appointment shall be effectual in a question with the administrator except for the interest on the debt of a secured creditor, being interest for the current half-yearly term and arrears of interest for one year immediately before the commencement of that term;
- (c) it shall be incompetent on or after such appointment for any other person to raise or insist in an adjudication against the property or to be confirmed as executor-creditor on that property; and
- (d) no inhibition on property which takes effect on or after such appointment shall be effectual to create a preference for the inhibitor in a question with the administrator.

Further provision as to administrators

8.—(1) Where an administrator takes any action—

- (a) in relation to property as regards which he has not been appointed, being action which he would be entitled to take if he had been so appointed,
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of an administrator appointed under this Schedule shall, unless in a case where a confiscation order has been made there are sums available to be applied in payment of it under paragraph 4(4)(b) above, be paid by the Lord Advocate.

(3) Any disposal of property under paragraph 1 above to a person taking in good faith shall vest the ownership of the property in that person.

Discharge of administrator

9. After an administrator has lodged his final accounts under paragraph 6(1) above, he may apply to the accountant of court to be discharged from office; and such discharge, if granted, shall have the effect of freeing him from all liability (other than liability arising from fraud) in respect of any act or omission of his in exercising the functions conferred on him by this Act.

Compensation

10.—(1) Where the court, on an application made to it by a person other than the accused or the recipient of a gift caught by Chapter I of Part II of this Act, is satisfied on the balance of probabilities that in relation to any property realised under paragraph 1 above he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an

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order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.

(2) An application under this paragraph shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.

(3) Subsection (6) of section 95 of this Act shall apply for the purpose of determining for the purposes of this paragraph whether proceedings are concluded as it applies for the purposes of that section.

Rules of court as regards accountant of court's supervision etc of administrators

1988 c. 36.

11. Without prejudice to section 5 of the Court of Session Act 1988 (power to regulate procedure etc. by Act of Sederunt), provision may be made by rules of court as regards (or as regards any matter incidental to) the accountant of court's powers and duties under Part II of this Act in relation to the functions of administrators.

Power to facilitate realisation

12.—(1) Without prejudice to any enactment or rule of law in respect of the recording of deeds relating to heritable property or the registration of interests therein, the court, to facilitate realisation under paragraph 1 above, may—

(a) order any person (in this paragraph referred to as "A") holding an interest in property, not being such person (in this paragraph referred to as "B") as is mentioned in paragraph (a) or (b) of section 72(1) or section 87 of this Act, to make such payment to an administrator appointed to realise estate comprising an interest of B in that property as the court may direct and may, subject to such payment being made—

(i) authorise the administrator to transfer B's interest to A or to discharge it in favour of A; or

(ii) itself by order transfer or discharge B's interest; or

(b) by order—

(i) transfer A's interest to B; or

(ii) discharge it in favour of B,

on the administrator making such payment to A out of that estate in respect of A's interest as the court may direct.

(2) The court may make such incidental provision in relation to any exercise of powers conferred on it by sub-paragraph (1) above as it considers appropriate; but it shall not exercise those powers without giving such persons as hold an interest in the property reasonable opportunity to make representations to it in that regard.

SCHEDULE 4

Section 110.

SEQUESTRATION ETC. OF PERSONS HOLDING REALISABLE OR FORFEITABLE PROPERTY

Sequestration of person holding realisable or forfeitable property

1.—(1) Where the estate of a person who holds realisable or forfeitable property is sequestrated—

- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph,

is excluded from the debtor's estate for the purposes of that Act.

(2) Where an award of sequestration has been made, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to—

- (a) property comprised in the whole estate of the debtor (within the meaning of section 31(8) of the 1985 Act); or
- (b) any income of the debtor which has been ordered, under subsection (2) of section 32 of that Act, to be paid to the permanent trustee or any estate which, under subsection (10) of section 31 of that Act or subsection (6) of the said section 32 of that Act, vests in the permanent trustee,

and it shall not be competent to submit a claim in relation to the confiscation order to the permanent trustee in accordance with section 48 of that Act.

(3) Nothing in the 1985 Act shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.

(4) Where, during the period before sequestration is awarded, an interim trustee stands appointed under section 2(5) of the 1985 Act and any property in the debtor's estate is subject to a restraint order, the powers conferred on the interim trustee by virtue of that Act do not apply to property for the time being subject to the restraint order.

(5) Where the estate of a person is sequestrated and he has directly or indirectly made a gift caught by Chapter I of Part II of this Act—

- (a) no decree shall, at any time when proceedings as regards an offence to which Chapter I of Part II of this Act applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be granted under section 34 or 36 of the 1985 Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
- (b) any decree granted under either of the said sections 34 and 36 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

(6) In any case in which, notwithstanding the coming into force of the 1985 Act, the Bankruptcy (Scotland) Act 1913 applies to a sequestration, subparagraph (2) above shall have effect as if for paragraphs (a) and (b) thereof there were substituted the following paragraphs—

1913 c. 20.

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“(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
 (b) any income of the bankrupt which has been ordered, under subsection (2) of section 98 of that Act, to be paid to the trustee or any estate which, under subsection (1) of that section, vests in the trustee,”
 and sub-paragraph (3) above shall have effect as if, for the reference in it to the 1985 Act, there were substituted a reference to the said Act of 1913.

Bankruptcy in England and Wales of person holding realisable or forfeitable property

2.—(1) Where a person who holds realisable or forfeitable property is adjudged bankrupt—

- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph,

1986 c. 45.

is excluded from the bankrupt's estate for the purposes of Part IX of the Insolvency Act 1986.

(2) Where a person has been adjudged bankrupt, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to—

- (a) property for the time being comprised in the bankrupt's estate for the purposes of the said Part IX;
- (b) property in respect of which his trustee in bankruptcy may (without leave of the court) serve a notice under section 307, 308 or 308A of the Insolvency Act 1986 (after-acquired property and tools, clothes, etc. exceeding value of reasonable replacement and certain tenancies); and
- (c) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 280(2)(c) of the Insolvency Act 1986.

(3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.

(4) Where, in the case of a debtor, an interim receiver stands appointed under section 286 of the Insolvency Act 1986 and any property of the debtor is subject to a restraint order the powers conferred on the receiver by virtue of that Act do not apply to property for the time being subject to the restraint order.

(5) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by Chapter I of Part II of this Act—

1988 c. 33.

- (a) no order shall, at any time when proceedings for an offence to which Part VI of the Criminal Justice Act 1988 applies have been instituted against him and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 339 or 423 of the Insolvency Act 1986 (avoidance of certain transactions) in respect of the making of the gift, and
- (b) any order made under either of those sections after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.

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(6) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before the date on which the Insolvency Act 1986 came into force, sub-paragraphs (2) to (5) above have effect with the following modifications— 1986 c. 45.

- (a) for references to the bankrupt's estate for the purposes of Part IX of that Act there are substituted references to the property of the bankrupt for the purposes of the Bankruptcy Act 1914; 1914 c.59.
- (b) for references to the said Act of 1986 and to sections 280(2)(c), 286, 339, and 423 of that Act there are respectively substituted references to the said Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
- (c) the references in subsection (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the said Act of 1914, and
- (d) subsection (2)(b) is omitted.

Winding up of company holding realisable or forfeitable property

3.—(1) Where realisable or forfeitable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to—

- (a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to any realisable or forfeitable property held by the company in relation to which the functions of the liquidator are exercisable—

- (a) so as to inhibit the liquidator from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Insolvency Act 1986 shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred.

(4) For the purposes of the application of Parts IV and V of the Insolvency Act 1986 (winding up of registered companies and winding up of unregistered companies) to a company which the court has jurisdiction to wind up, a person is not a creditor in so far as any sum due to him by the company is due in respect of a confiscation order (whether under this Act or under and within the meaning of section 2 of the Drug Trafficking Act 1994 or section 1 of the 1987 Act or any corresponding provision in Northern Ireland). 1994 c. 37.

(5) Where an order for the winding up of a company has been made or a resolution has been passed by a company for its voluntary winding up and before the relevant time the company has directly or indirectly made a gift caught by Chapter I of Part II of this Act—

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1986 c. 45.

- (a) no order or, as the case may be, decree shall, at any time when proceedings as regards an offence to which that Chapter applies have been instituted against the company and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 238 or 239 of the Insolvency Act 1986 (transactions at an undervalue and preferences) or granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
- (b) any order made under either of the said sections 242 and 243 or decree granted under either of the said sections 242 or 243 after the conclusion of the proceedings shall take into account any realisation under Part II of this Act of property held by the person to whom the gift was made.

(6) In this paragraph—

“company” means any company which may be wound up under the Insolvency Act 1986; and

“the relevant time” means—

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

1985 c. 6.

(7) In any case in which a winding up of a company commenced, or is treated as having commenced, before the date on which the Insolvency Act 1986 came into force, sub-paragraphs (2) to (6) above have effect with the substitution for references to that Act of references to the Companies Act 1985.

Property subject to floating charge

4.—(1) Where any property held subject to a floating charge by a company is realisable or forfeitable property and a receiver has been appointed by, or on the application of, the holder of the charge, the powers of the receiver in relation to the property so held shall not be exercisable in relation to—

- (a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the such appointment; and
- (b) any proceeds of property realised by virtue of paragraph 1 of Schedule 3 to this Act for the time being in the hands of an administrator appointed under that paragraph.

(2) Where, in the case of a company, such an appointment has been made, the powers conferred on the court by sections 94 to 99 and 101 to 104 of this Act or on an administrator appointed under paragraph 1 of the said Schedule 3 shall not be exercised in relation to any realisable property held by the company in relation to which the powers of the receiver are exercisable—

- (a) so as to inhibit the receiver from exercising his powers for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the receiver) properly incurred in the exercise of the receiver's powers in respect of the property.

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(3) Nothing in the Insolvency Act 1986, shall be taken as restricting, or enabling the restriction of, the exercise of the powers so conferred. 1986 c. 45.

(4) In this paragraph—

“company” has the same meaning as in paragraph 3 above; and

“floating charge” includes a floating charge within the meaning given by section 462 of the Companies Act 1985 (power of incorporated company to create floating charge). 1985 c. 6.

(5) In any case in which a receiver was appointed as is mentioned in sub-paragraph (1) above before the date on which the Insolvency Act 1986 came into force, sub-paragraphs (2) to (4) above have effect with the substitution for references to that Act of references to the Companies Act 1985.

Insolvency practitioners dealing with property subject to restraint order

5.—(1) Without prejudice to the generality of any enactment contained in the Insolvency Act 1986 or in the 1985 Act, where—

- (a) any person acting as an insolvency practitioner seizes or disposes of any property in relation to which his functions are, because that property is for the time being subject to a restraint order, not exercisable; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of a court order or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the insolvency practitioner's negligence; and the insolvency practitioner shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, sequestration or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his actings in connection with those proceedings.

(2) Any person who, acting as an insolvency practitioner, incurs expenses—

- (a) in respect of such realisable property as is mentioned in sub-paragraph (1)(a) above and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such realisable property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under sub-paragraph (1) above) to payment of those expenses under paragraph 4(2) or (4)(a) of Schedule 3 to this Act.

(3) In the foregoing provisions of this paragraph, the expression “acting as an insolvency practitioner” shall be construed in accordance with section 388 (interpretation) of the said Act of 1986 except that for the purposes of such construction the reference in subsection (2)(a) of that section to a permanent or interim trustee in a sequestration shall be taken to include a reference to a trustee in a sequestration and subsection (5) of that section shall be disregarded; and the expression shall also comprehend the official receiver acting as receiver or manager of the property.

Interpretation

6.—(1) In this Schedule “the 1985 Act” means the Bankruptcy (Scotland) Act 1985. 1985 c. 66.

(2) References in this Schedule to the conclusion of proceedings, except for the purposes of paragraph 2(5) above, shall be construed—

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- (a) as regards property subject to a restraint order under section 94(1)(a) of this Act, in accordance with section 95(6) of this Act; and
 - (b) as regards property subject to a restraint order under section 94(1)(b) of this Act, in accordance with section 96(5) of this Act.
- (3) References in this Schedule to property held by a person include a reference to property vested in the interim or permanent trustee in his sequestration or in his trustee in bankruptcy or liquidation.

Section 113(3).

SCHEDULE 5

AMENDMENTS TO THE CRIMINAL JUSTICE (SCOTLAND) ACT 1987 RELATING TO
PART II

1987 c. 41.

1. The Criminal Justice (Scotland) Act 1987 shall be amended as follows.
2. In section 1 (confiscation orders)—
 - (a) in subsection (1)—
 - (i) for the words from “High Court” to “pronounced)” there shall be substituted the words “High Court or sheriff court (in this section and sections 2 to 7A of this Act referred to as “the court”) of an offence to which this section relates the court, on the application of the prosecutor, may”, and in the remainder of that subsection for the word “Court” where it appears there shall be substituted the word “court”; and
 - (ii) in paragraph (b), for the word “property” where it first appears there shall be substituted the word “amount” and for the words “the value of that property” there shall be substituted the words “that amount”;
 - (b) in subsection (2), after the word “following” there shall be inserted the words “offences when prosecuted either on indictment or on summary complaint before the sheriff if the offence is punishable by a fine in excess of level 5 or by imprisonment for a period of more than 3 months or by both such fine and imprisonment”;
 - (c) after subsection (2) there shall be inserted the following subsections—

“(2A) Any application under this section shall be made—

 - (a) in proceedings on indictment, when the prosecutor moves for sentence or, if the offender is remitted for sentence under section 104 of the 1975 Act, before sentence is pronounced; and
 - (b) in summary proceedings following the conviction of the accused.

(2B) A confiscation order shall not be made unless the court orders some other disposal (including an absolute discharge) in respect of the offender.

(2C) If the court decides to make a confiscation order, it shall determine the amount to be payable thereunder before making any decision as to—

 - (a) imposing a fine on the person;
 - (b) making any order involving any other payment by him.

(2D) Where a court makes a confiscation order against an accused in any proceedings, it shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

 - (a) imposing any fine on him;

(b) making any order involving any other payment by him,
but subject to that, the court shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the accused.

(2E) Where a court makes both a confiscation order and a compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 against the same person in the same proceedings in relation to the same offence and the offence involves the misappropriation of property, it shall direct that the compensation shall be paid first out of any sums applied towards the satisfaction of the confiscation order.”;

(d) subsection (3) shall cease to have effect; and

(e) in subsection (5) for the words “High Court” and “Court” where they occur there shall be substituted the word “court”.

3. For section 2 (postponed confiscation orders) there shall be substituted the following section—

“2.—(1) If the court considers that it has some, but not sufficient, relevant information for the purpose of enabling it to come to a decision as to whether to make a confiscation order or that it does not have sufficient relevant information to enable it to come to a decision as to the amount to be payable under the confiscation order, it may, subject as the case may be to subsection (6) or (10) below, postpone that decision for a period not exceeding 6 months after the date of conviction for the purpose of enabling further information to be obtained.

(2) Without prejudice to sections 179 and 219 (or as the case may be sections 380 and 432) of the 1975 Act, the court may notwithstanding postponement under subsection (1) above and subject to subsection (3) below, proceed, on the prosecutor’s motion therefor, to sentence or to otherwise deal with the accused in respect of the conviction.

(3) Where the court proceeds as mentioned in subsection (2) above—

(a) no fine shall be imposed on the accused; and

(b) no order shall be made involving any other payment by him,

in relation to the conviction before the decision whether to make a confiscation order is taken.

(4) Where in the case of conviction on indictment a decision has been postponed under subsection (1) above for a period, any intention to appeal under section 228 of the 1975 Act against conviction or against both conviction and any sentence passed during that period in respect of the conviction, shall be intimated under section 231(1) of the 1975 Act not within 2 weeks of the final determination of the proceedings but within 2 weeks of—

(a) in the case of an appeal against conviction where there has been no such sentence, the day on which the period of postponement commences;

(b) in any other case, the day on which such sentence is passed in open court.

(5) Notwithstanding any appeal of which intimation has been given by virtue of subsection (4) above, a person may appeal under section 228 of the 1975 Act against the confiscation order (if the decision is to make one) or against any other sentence passed, after the period of postponement, in respect of the conviction.

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(6) If during the period of postponement intimation is given by virtue of subsection (4) above by the person, the High Court may, on the application of the prosecutor, extend that period to a date up to 3 months after the date of disposal of the appeal.

(7) This subsection applies where in the case of summary conviction a decision has been postponed under subsection (1) above for a period.

(8) Where subsection (7) above applies and the offender appeals under section 442 of the 1975 Act against conviction or against both conviction and any sentence passed during the period of postponement—

- (a) his application for a stated case shall be made not within one week of the final determination of the proceedings but within one week of the day mentioned in paragraph (a) or (b) of subsection (4) above;
- (b) his draft stated case shall be prepared and issued not within 3 weeks of the final determination of the proceedings but within 3 weeks of the said day.

(9) Where subsection (7) above applies, then, notwithstanding any appeal against conviction or sentence or both the offender may appeal under section 442(1)(a)(ii), and the prosecutor may appeal under section 442(1)(b)(ii), of the 1975 Act against any confiscation order or against any other sentence passed, after the period of postponement, in respect of the conviction.

(10) Where subsection (7) above applies, then, if during the period of postponement the offender applies for a stated case or lodges a note of appeal, the High Court may, on the application of the prosecutor, extend the period of postponement to a date up to 3 months after the date of disposal of the appeal.”.

4. In section 3 (assessing the proceeds of drug trafficking)—

- (a) in each of subsections (2) and (4) for the word “Court” where it appears there shall be substituted the word “court”;
- (b) at the end of paragraph (a)(ii) of subsection (2) there shall be added the words “or being served with the complaint (as the case may be)”; and
- (c) subsection (5) shall cease to have effect.

5. In section 4 (statements relating to drug trafficking)—

- (a) in each of subsections (1), (2) and (4) for the word “Court” where it appears there shall be substituted the word “court”;
- (b) in each of subsections (1) and (4) after the words “section 150” there shall be inserted the words “or, as the case may be, section 354”;
- (c) at the end there shall be added the following subsections—

“(6) Without prejudice to section 2(1) of this Act, where—

- (a) any allegation in the statement lodged under subsection (1) above is challenged by the accused; or
- (b) the basis of the non-acceptance by the accused of any such allegation is challenged by the prosecutor,

the court shall consider the matters being challenged at a hearing.

(7) Where the judge presiding at a hearing held under subsection (6) above is not the trial judge he may, on the application of either party, if he considers that it would be in the interests of justice to do so, adjourn the hearing to a date when the trial judge is available.”.

6. In section 5 (realisable property)—

(a) for subsections (1) to (3) there shall be substituted the following—

“(1) In this Part of this Act “realisable property” means, subject to subsection (2) below—

- (a) the whole estate wherever situated of a person—
 - (i) against whom proceedings have been instituted for an offence to which section 1 of this Act relates; or
 - (ii) in respect of whom a restraint order has been made by virtue of section 8(4) of this Act;
- (b) the whole estate wherever situated of a person to whom any person whose whole estate is realisable by virtue of paragraph (a) above has (directly or indirectly and whether in one transaction or in a series of transactions) made an implicative gift;
- (c) any other property in the possession or under the control of a person mentioned in paragraph (a) or (b) above; and
- (d) any income or estate vesting in a person mentioned in paragraph (a) or (b) above.

(2) Property is not realisable if—

- (a) held on trust by a person mentioned in subsection (1)(a) or (b) above for a person not so mentioned;
- (b) a suspended forfeiture order is in force in respect of the property; or
- (c) it is, for the time being, subject to a restraint order made in respect of other proceedings.

(3) For the purposes of this section proceedings for an offence are instituted against a person—

- (a) on his arrest without warrant;
- (b) when he is charged with the offence without being arrested;
- (c) when a warrant to arrest him is granted;
- (d) when a warrant to cite him is granted;
- (e) in summary proceedings, on the first calling of the case; or
- (f) when a petition is intimated to him or an indictment or a complaint is served on him,

and, where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to be instituted at the earliest of those times.”;

(b) in subsection (4)—

- (i) for the words “realisable property owned” there shall be substituted the words “his realisable property”; and
- (ii) for the words from “except that” to the end there shall be substituted “, less any amount due by him at that time in respect of any compensation order under section 58 of the Criminal Justice (Scotland) Act 1980 made before the confiscation order.”;

(c) in subsection (5)—

- (i) for the words “High Court” there shall be substituted the word “court”;
- (ii) after the words “regard to the” there shall be inserted the word “likely”;
- (iii) after paragraph (a) there shall be inserted the following paragraph—

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“(aa) of realisable property held by a person whose estate has been sequestrated, or who has been adjudged bankrupt in England and Wales or Northern Ireland, the court shall take into account the extent to which the property is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act;”;

(iv) paragraph (b) shall cease to have effect; and

(v) at the end there shall be added the words “and in this subsection, “money” includes cheques, banknotes, postal orders, money orders and foreign currency”;

(d) subsection (6) shall cease to have effect;

(e) in subsection (7)—

(i) for the word “Court” there shall be substituted the word “court”; and

(ii) the words “notwithstanding subsections (5)(b) and (6) above” shall cease to have effect;

(f) after subsection (7) there shall be inserted the following subsections—

“(7A) Where the court is satisfied, on the application of a person in receipt of an implicative gift made before or after a confiscation order has been made—

(a) that the person received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the giver was in any way concerned in drug trafficking; and

(b) that he is not, and has never been, associated with the giver in drug trafficking; and

(c) that he would suffer hardship if the application were not granted, it may make an order declaring that the gift or a part of the gift shall not be an implicative gift and that the property or part of the property of the recipient of the gift shall not be, or shall cease to be, realisable for the purposes of this Part of this Act and, if a confiscation order has already been made, varying that order accordingly, where necessary.

(7B) An appeal shall lie to the High Court at the instance of—

(a) the applicant against the refusal;

(b) the prosecutor against the granting,

of an application under subsection (7A) above.

(7C) The procedure in an appeal under this section shall be the same as the procedure in an appeal against sentence.”; and

(g) subsection (8) shall cease to have effect.

7. In section 6 (implicative gifts)—

(a) in subsection (1), in paragraph (a) for the words “the warrant to arrest and commit was granted” there shall be substituted the words “the proceedings were commenced within the meaning of section 5(3) of this Act”;

(b) for subsections (2) and (3) there shall be substituted the following—

“(2) In assessing the value of an implicative gift, the court shall, subject to subsections (3) and (3A) below, take it to be the greater of—

(a) the value of the gift when received adjusted to take account of subsequent changes in the value of money; or

(b) both of the following—

(i) the likely market value, on the date on which the confiscation order is to be made, of—

- (A) the gift, if retained; or
 - (B) where the recipient of the gift retains only part of it, the retained part, and any property or part of any property which, directly or indirectly, represents the gift; or
 - (C) where the recipient of the gift retains no part of it, any property or part of any property which, directly or indirectly, represents the gift; and
- (ii) the value of any other property and any other economic advantage which by reason of the making of the gift the recipient of the gift has obtained, directly or indirectly, prior to the date on which the confiscation order is to be made, adjusted to take account of subsequent changes in the value of money.

(3) The circumstances in which the accused is to be treated as making a gift include those where he transfers an interest in property to another person directly or indirectly for a consideration the value of which is significantly less than the value of that interest at the time of transfer; and in those circumstances the value of the gift shall be the difference between the value of that consideration and the value of that interest at the time of transfer adjusted to take account of subsequent changes in the value of money.

(3A) Where an implicative gift was in the form of money and the recipient of the gift shows that, on the balance of probabilities, the money or any of it has not been used to purchase goods or services or to earn interest or any other return, the value of the gift or such part of it as has not been so used shall be taken to be the face value of the money or, as the case may be, unused amount of the money.

(3B) In subsection (3A) above, “money” includes cheques, banknotes, postal orders, money orders and foreign currency.”; and

(c) subsections (4) and (5) shall cease to have effect.

8. After section 6 (implicative gifts) there shall be inserted the following sections—

“Increase in value of proceeds of drug trafficking or realisable property. 6A.—(1) This section applies where the court which made a confiscation order is satisfied, on an application made by the prosecutor, that at the time the application is made the value of the proceeds of the person’s drug trafficking, or the amount that might be realised, is greater than—

- (a) the value of the proceeds of the person’s drug trafficking; or, as the case may be,
 - (b) the amount that might be realised,
- which was taken into account when the order was made.

(2) The considerations by reference to which to court may be satisfied as mentioned in subsection (1) above shall include—

- (a) the value of the proceeds of the person’s drug trafficking was greater than was taken into account when the confiscation order was made or has increased since the order was made; or
- (b) further proceeds of drug trafficking have been obtained since the confiscation order was made; or
- (c) the value of realisable property was greater than was taken into account when the confiscation order was made; or

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- (d) any realisable property taken into account at the time when the confiscation order was made has subsequently increased in value; or
- (e) the amount, or part of the amount, of a gift which was disregarded under section 5(7) of this Act could now be realised.

(3) An application under subsection (1) above shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.

(4) Where this section applies—

- (a) the court may make a new confiscation order for the payment of such sum as appears to the court to be appropriate having regard to what is now shown to be the value of the proceeds of drug trafficking or the amount that might be realised; and
- (b) if the earlier confiscation order has not been satisfied, then the court, in making the new confiscation order, shall recall the earlier order and may take into account the amount unpaid (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the earlier order.

(5) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.

(6) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.

Confiscation orders where proceeds of crime discovered at later date.

6B.—(1) This section applies where no confiscation order has been made in relation to an offence under section 1 or 2 of this Act.

(2) Where the court, on an application made to it by the prosecutor under this section, is satisfied—

- (a) that a person convicted of an offence to which this Part of this Act relates was in receipt of the proceeds of drug trafficking in respect of that offence;
- (b) that the information necessary to enable a confiscation order to be made on the date on which an application under section 1 of this Act was or could have been made was not available to the prosecutor,

it may make a confiscation order in relation to that person.

(3) An application under this section shall be made as soon as is reasonably practicable after the relevant information becomes available to the prosecutor but in any event within 6 years commencing with the date when the person was convicted of the offence.

(4) In determining the sum to be payable under a confiscation order made in pursuance of this section, the court shall take into account—

- (a) any order involving any payment by the offender;

(b) any order under section 87 of the Criminal Justice (Scotland) Act 1995 or an order for forfeiture under any other enactment made in respect of the offender, which forms part of the sentence already imposed for the offence concerned.

(5) In determining such sum the court may take into account any payment or other reward received by the offender on or after the date of conviction, but only if the prosecutor satisfies the court that it was received by the offender in connection with drug trafficking carried on by the offender or another on or before that date.

(6) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.

(7) Section 1(2B), (2C), (2D) and (2E) of this Act shall not apply in relation to a confiscation order made in pursuance of this section.

(8) The assumptions mentioned in section 3(2) of this Act shall not apply for the purposes of this section.

(9) Where the court makes a confiscation order in pursuance of this section and a compensation order has been made under section 58 of the Criminal Justice (Scotland) Act 1980 in respect of misappropriation of property by the offender, the court shall direct that compensation shall first be paid out of any sums applied towards the satisfaction of the confiscation order to the extent of any sums outstanding in respect of the compensation order.

(10) In this section “the court” means the court which had jurisdiction in respect of the offence concerned to make a confiscation order under section 1 of this Act.”.

9. In section 7 (application of provisions relating to fines to enforcement of confiscation orders)—

(a) in subsection (1)—

(i) after “203” there shall be inserted the words “or, as the case may be, 402 and 412”;

(ii) for the words from “as applied” to “below shall” there shall be substituted the words “the provisions of that Act specified in subsection (2) below (or those provisions as applied by section 194 of that Act) shall”;

(b) in subsection (2)—

(i) in the entry relating to section 398, at the end there shall be inserted the words “but as if subsection (1)—

(a) gave the prosecutor an opportunity to be heard at any enquiry thereunder; and

(b) applied whether the offender was in prison or not;”;

(ii) in the entry relating to section 411, the words “except the proviso to subsection (3)” shall cease to have effect;

(c) after subsection (2) there shall be inserted the following subsection—

“(2A) Where a court, by virtue of subsection (1) above, orders the sum due under a confiscation order to be recovered by civil diligence under section 411 of the Criminal Procedure (Scotland) Act 1975, any arrestment

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executed by a prosecutor under subsection (2) of section 11A of this Act shall be deemed to have been executed by the court as if that subsection authorised such execution.”.

10. After section 7 (application of provisions relating to fines to enforcement of confiscation orders) there shall be inserted the following section—

“Disposal of family home.

7A. Section 111 of the Criminal Justice (Scotland) Act 1995 shall apply in respect of a person’s family home if a confiscation order has been made in relation to that person as it applies in respect of a person’s family home if a confiscation order has been made in relation to that person under section 70(1) of that Act but as if for subsection (1) there were substituted the following subsection—

“(1) This section applies where a confiscation order has been made in relation to any person and the prosecutor has not satisfied the court that the person’s interest in his family home has been acquired by means of the proceeds of drug trafficking.”.

11. For sections 8 (cases in which restraint orders may be made) and 9 (restraint orders) there shall be substituted the following sections—

“Restraint orders.

8.—(1) The court may, on the application of the prosecutor, make an order (in this Part of this Act referred to as a “restraint order”) in the circumstances mentioned in either subsection (3) or (4) below interdicting—

- (a) any person named in the order from dealing with his realisable property; or
- (b) that person and any person named in the order as appearing to the court to have received from him an implicative gift from dealing with their own, or the other’s, realisable property,

(whenever that property was acquired and whether it is described in the order or not).

(2) A restraint order may contain conditions and exceptions to which the interdict shall be subject and in particular—

- (a) may make provision for the release to the person named in the order of such reasonable living expenses as the court thinks fit; and
- (b) shall provide for the release of property in so far as it is required to meet reasonable legal expenses payable or likely to be payable in relation to proceedings—
 - (i) as regards the offence by virtue of which the restraint order has been made; or
 - (ii) as regards a confiscation order made on conviction of the offence.

(3) For the purposes of this subsection, the circumstances are—

- (a) proceedings have been instituted against an accused in Scotland for an offence to which section 1 of this Act relates;
- (b) the proceedings have not been concluded; and

- (c) either a confiscation order has been made or it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings.
- (4) For the purposes of this subsection, the circumstances are that the court is satisfied that—
- (a) it is proposed to institute proceedings within 28 days against a person suspected of such an offence and it appears to the court that, in the event of his conviction of the offence, there are reasonable grounds for thinking that a confiscation order may be made in those proceedings; or
- (b) the prosecutor has made, or proposes within 28 days to make, an application under section 6A or, as the case may be, section 6B of this Act in relation to that person in respect of the offence and it appears to the court that there are reasonable grounds for thinking that the application may be granted.
- (5) Where the court has made a restraint order in the circumstances mentioned in subsection (4)(a) or (b) above and no proceedings have been instituted or application made within 28 days as mentioned in that subsection, the prosecutor shall forthwith apply to the court for the recall of the order and the court shall grant the application.
- (6) When proceedings for the offence or, as the case may be, proceedings on an application under section 6A or 6B of this Act are concluded, the prosecutor shall forthwith apply to the court for recall of the order and the court shall grant the application.
- (7) A restraint order shall—
- (a) be made on an *ex parte* application which shall be heard in chambers; and
- (b) without prejudice to the time when it becomes effective, be intimated to each person affected by it.
- (8) For the purposes of this Part of this Act, dealing with property includes (without prejudice to the generality of the expression)—
- (a) making a payment to any person in reduction of the amount of a debt;
- (b) removing the property from the jurisdiction of the court; and
- (c) transferring or disposing of the property.
- (9) In this section and sections 9 to 12 of this Act, “the court” means where, as regards the criminal proceedings in question, a trial diet or a diet fixed for the purposes of section 102 of the 1975 Act is intended to be held, is being or has been held—
- (a) in the High Court of Justiciary, the Court of Session;
- (b) in the sheriff court, a sheriff of that court exercising his civil jurisdiction.
- (10) For the purposes of this section, proceedings on an application under section 6A or 6B of this Act are concluded—
- (a) when the application is refused; or

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- (b) where the application is granted, when a confiscation order made in the proceedings is satisfied (whether by payment of the amount due under the order or by the accused serving imprisonment in default).

(11) References in this section to the institution of proceedings for an offence against a person shall be construed in accordance with section 5(3) of this Act.

Variation and recall of restraint orders.

9.—(1) Subject to subsections (2) and (3) below, the court may, at the instance of—

- (a) the prosecutor, at any time vary or recall a restraint order in relation to any person or to any property;
- (b) any person having an interest, at any time vary or recall a restraint order in relation to the person or to any property.

(2) On an application made under subsection (1)(b) above of a person named in a restraint order as having received an implicative gift, the court may recall the order in relation to that person if it is satisfied on the balance of probabilities—

- (a) that he received the gift not knowing, not suspecting and not having reasonable grounds to suspect that the gift was made in contemplation of, or after, the commission of the offence or if more than one, in contemplation of any of the offences or after the commission of the earlier or the earliest of the offences to which the proceedings for the time being relate; and
- (b) that he was not associated with the giver in the commission of the offence; and
- (c) that he would suffer hardship if the order were not recalled.

(3) Where an application has been made under subsection (1) above for the variation or recall of a restraint order, any property in relation to which the restraint order was made shall not be realised during the period beginning with the making of the application and ending with the determination of the application by the court.

(4) The court may, where it has recalled a restraint order as mentioned in subsection (1)(b) or (2) above, order that property of the person at whose instance it was recalled shall cease to be realisable.

(5) The prosecutor or any person having an interest may reclaim or appeal to the Court of Session against an interlocutor refusing, varying or recalling or refusing to vary or recall a restraint order, within such period as may be prescribed by act of sederunt.

(6) Where, in relation to a restraint order which is recalled, interdict has been granted under section 12(1) of this Act, the clerk of court shall, on the restraint order being recalled, forthwith so inform each person so interdicted.”

12. In section 11 (inhibition and arrestment of property affected by restraint order or by interdict under section 12)—

- (a) in subsection (1), in paragraph (ii), the words “where granted under subsection (1)(a) above,” shall cease to have effect;
- (b) in subsection (2), for the words “(1)(a)” there shall be substituted “(1)”;

- (c) in subsections (4) and (5), the words “or arrestment”, in each place where they occur, shall cease to have effect; and
- (d) subsection (6) shall cease to have effect.

13. After section 11 there shall be inserted the following section—

“Arrestment of property affected by restraint order. 11A.—(1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.

(3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Part of this Act in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”.

14. In section 12 (interdict of person not subject to a restraint order)—

(a) in subsection (1)—

(i) for the words “Court of Session” there shall be substituted the word “court”; and

(ii) the words from “and the clerk of court” to the end shall cease to have effect;

(b) for subsection (2) there shall be substituted the following subsection—

“(2) Subsections (2)(a) and (7)(a) of section 8 of this Act shall apply in relation to an interdict under subsection (1) above as they apply in relation to a restraint order; and subsections (1), (2), (4) and (5) of section 9 thereof shall apply in relation to subsection (1) above as they apply in relation to subsection (1) of the said section 9.”; and

(c) for subsection (3) there shall be substituted the following—

“(3) Without prejudice to the time when it becomes effective, an interdict under subsection (1) above shall be intimated to every person affected by it.”.

15. In section 13 (administrators)—

(a) for the words “Lord Advocate” there shall be substituted the word “prosecutor”;

(b) for the words “Court of Session” where they appear there shall be substituted the word “court”; and

(c) for the word “Court” where it appears other than as mentioned in paragraph (b) above there shall be substituted the word “court”.

16. In section 14 (functions of administrators)—

(a) in subsection (1)—

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- (i) in paragraph (c) the words from “and, without” to the end of the paragraph shall cease to have effect;
 - (ii) in the proviso to paragraph (j) after the words “of his” there shall be inserted the words “(within the meaning of section 74 of the 1985 Act)”; and
 - (iii) in paragraphs (n) and (o) for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”; and
- (b) in subsection (3), for the words “Court of Session” there shall be substituted the word “court”.
17. In section 16 (application of proceeds of realisation and other sums)—
- (a) in subsections (1) and (2) for the words “Court of Session” where they occur there shall be substituted the word “court”;
 - (b) in subsection (1) for the words “such expenses as are payable” there shall be substituted the words “any expenses to the payment of which a person is entitled”; and
 - (c) in subsection (3)—
 - (i) after paragraph (c) there shall be inserted the following paragraph—
 - “(d) next, in accordance with any direction given by the court under section 1(2E) or 6B(9) of this Act,”;
 - (ii) for the words “of the 1975 Act (fines payable to H.M. Exchequer)” there shall be substituted the words “or 412 of the 1975 Act (destination of fines)”.
18. In section 17 (supervision of administrators), in subsection (2), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.
19. In section 18 (accounts and remuneration of administrator), for the words “Court of Session” and “Court” where they occur there shall be substituted the word “court”.
20. In section 19 (effect of appointment under section 13 of that Act on diligence) for the words “section 11” there shall be substituted “sections 11 and 11A”.
21. In section 20 (further provision as to administrators), at the end there shall be added the following subsection—
- “(3) Any disposal of property under section 13 of this Act to a person taking in good faith shall vest the ownership of the property in that person.”.
22. In section 23 (exercise of powers by Court of Session or administrator)—
- (a) for the words “Court of Session” where they appear there shall be substituted the word “court”;
 - (b) in subsection (1) for the words “11(1) to (5)” there shall be substituted “9, 11, 11A”;
 - (c) in subsection (3) for the words from “, so far as” to the end there shall be substituted “be exercised with a view to realising no more than the value of the gift as assessed in pursuance of section 6(2), (3) or (3A) of this Act”;

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- (d) in subsection (6) the words from “and without” to “family” and the words “(other than an obligation having priority, within the meaning of section 5(8) of this Act)” shall cease to have effect; and
- (e) in subsection (7) for the words from “and” to “11(6)” there shall be substituted “28, 28A and 28B”.

23. In section 24 (power to facilitate realisation), for the words “Court of Session” there shall be substituted the word “court” and thereafter for the word “Court” where it appears there shall be substituted the word “court”.

24. For section 25 (variation of confiscation order), there shall be substituted the following section—

“Realisable property inadequate to meet payments under confiscation order.

25.—(1) This section applies where the court which made a confiscation order is satisfied on the balance of probabilities, on an application made to it by the offender or the prosecutor, that the value of the realisable property is inadequate to meet any outstanding amount payable (including any interest payable by virtue of section 15(1) of the Criminal Justice (International Co-operation) Act 1990) under the confiscation order.

(2) When considering whether the value of the realisable property is inadequate the court—

- (a) shall, unless already taken into account under section 5(5)(aa) of this Act, take into account the extent to which property held by a person whose estate has been sequestrated or who has been adjudged bankrupt is subject to, as the case may be, sequestration or bankruptcy procedure by virtue of section 33 or 34 of this Act; and
- (b) may disregard any inadequacy which appears to it to be attributable, wholly or partly, to anything done by the offender for the purpose of protecting the realisable property from realisation.

(3) Where this section applies, the court shall recall the confiscation order and make a new confiscation order for the payment of such sum of a lesser amount than that for which the original order was made which appears to the court to be appropriate having regard to—

- (a) the value of the realisable property as determined under subsection (1) above; and
- (b) any amount paid in pursuance of the original order.

(4) Section 4 of this Act shall, subject to any necessary modifications, apply in relation to the making of a new confiscation order in pursuance of this section as it applies where the prosecutor has moved for a confiscation order under section 1 of this Act.”.

25. In section 26 (compensation)—

(a) in subsection (1)—

(i) for paragraph (b) there shall be substituted the following paragraph—

“(b) where he is convicted of one or more such offences—

- (i) the conviction or convictions concerned are quashed (and no conviction for any such offence is substituted); or
- (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned.”;

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(ii) for the words "Court of Session" there shall be substituted the word "court"; and

(iii) for the words from "; but this subsection" to the end there shall be substituted the words "if, having regard to all the circumstances, it considers it appropriate to do so.";

(b) after subsection (1) there shall be inserted the following—

"(1A) Subsection (1) above is without prejudice to any right which may otherwise exist to institute proceedings in respect of delictual liability disclosed by such circumstances as are mentioned in paragraphs (a) and (b) of subsection (2) below.";

(c) in subsections (2) and (3) for the words "Court of Session" where they occur there shall be substituted the word "court";

(d) in subsection (2)(b)—

(i) the word "substantial" shall cease to have effect; and

(ii) for the word "11" there shall be substituted "9, 11, 11A";

(e) in subsection (4)—

(i) for the words "this section" there shall be substituted the words "subsection (1) above";

(ii) after paragraph (c) the word "and" shall cease to have effect; and

(iii) at the end there shall be added "; and

(e) an officer of the Commissioners of Inland Revenue, by those Commissioners."; and

(f) after subsection (4) there shall be added the following subsections—

"(5) Where the court, on an application made to it by a person other than the accused or the recipient of an implicative gift is satisfied on the balance of probabilities that in relation to any property realised under section 13 of this Act he was the owner of, or a person otherwise having an interest in, the property immediately before such realisation, it shall make an order directing the Crown to pay to that person compensation of an amount equal to the consideration received for the property or, as the case may be, interest or the value of any such consideration at the time of such realisation, or, if no consideration was received, an amount equal to the value of the property or interest at the time of the realisation.

(6) An application for compensation under this section shall be made not later than three years after the conclusion of the proceedings in respect of which the confiscation order was made.".

26. After section 28 (provisions supplementary to section 27), there shall be inserted the following sections—

"Inhibition of Scottish property affected by order registered under section 27.

28A.—(1) On the application of the Lord Advocate, the Court of Session may in respect of heritable realisable property in Scotland affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property) grant warrant for inhibition against any person with an interest in that property; and the warrant—

(a) shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly;

(b) shall have the effect of letters of inhibition and shall forthwith be registered by the Lord Advocate in the Register of Inhibitions and Adjudications.

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(2) Section 155 of the Titles to Land Consolidation (Scotland) Act 1868 (effective date of inhibition) shall apply in relation to an inhibition for which warrant has been granted under subsection (1) above as that section applies to an inhibition by separate letters or contained in a summons.

(3) In the application of section 158 of that Act of 1868 (recall of inhibition) to such an inhibition as is mentioned in subsection (2) above, references in that section to a particular Lord Ordinary shall be construed as references to any Lord Ordinary.

(4) The fact that an inhibition has been executed under subsection (1) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.

(5) No inhibition executed under subsection (1) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for the inhibition has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall—

- (a) apply for the recall, or as the case may be restriction, of the inhibition; and
- (b) ensure that the recall, or restriction, of an inhibition on such application is reflected in the Register of Inhibitions and Adjudications.

(6) Any power of the Court of Session to recall, loose or restrict inhibitions shall, in relation to an order containing an inhibition under subsection (1) above and without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.

Arrestment of
Scottish property
affected by order
registered under
section 27.

28B.—(1) On the application of the Lord Advocate, the Court of Session may, in respect of moveable property affected by a restraint order registered under section 27 of this Act (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(2) A warrant under subsection (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the Lord Advocate against the person and may be executed, recalled, loosed or restricted accordingly.

(3) The fact that an arrestment has been executed under subsection (2) above in respect of property shall not prejudice the exercise of a receiver's powers under or for the purposes of section 26, 29 or 30 of the Drug Trafficking Act 1994 in respect of that property.

(4) No arrestment executed under subsection (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has ceased to have effect in respect of that property; and the Lord Advocate shall apply to the Court of Session for an order recalling, or as the case may be, restricting the arrestment accordingly.

(5) Any power of the Court of Session to recall, loose or restrict arrestments shall, in relation to an arrestment proceeding upon a warrant under subsection (1) above and

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without prejudice to any other consideration lawfully applying to the exercise of the power, be exercised with a view to achieving the purposes specified in section 31 of the Drug Trafficking Act 1994.”.

27. In section 30 (enforcement of other external orders)—

- (a) in subsection (1), paragraph (b)(i) and paragraph (c) and the word “and” immediately preceding paragraph (c) shall cease to have effect; and
- (b) in subsection (2), in the definition of “external confiscation order” after the word “rewards” there shall be inserted the words “or property or other economic advantage”.

28. In section 32 (Orders in Council as regards taking action in designated country)—

- (a) in subsection (2), for the words “(9)(a), (10), (11) and (12)” there shall be substituted the words “(1)(b)(ii) and (iii), (3) and (5)”;
- (b) after subsection (2) there shall be inserted the following subsection—
 - “(3) An Order in Council under this section may amend or apply, with or without modifications, any enactment.”.

29. In section 33 (sequestration of person holding realisable property)—

- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
 - “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the date of sequestration (within the meaning of section 12(4) of the 1985 Act) and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before such date of sequestration;”;
- (b) in subsection (2)—
 - (i) for the words “Court of Session” there shall be substituted the word “court”; and
 - (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.

30. In section 34 (bankruptcy in England and Wales of person holding realisable property)—

- (a) in subsection (1), for paragraph (a) there shall be substituted the following paragraph—
 - “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the order adjudging him bankrupt and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the order adjudging him bankrupt was made;”;
- (b) in subsection (2)—
 - (i) for the words “Court of Session” there shall be substituted the word “court”; and
 - (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.

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31. In section 35 (winding up company holding realisable property)—
- (a) in subsection (1), for paragraph (a) there shall be substituted the following—
- “(a) property, other than heritable property situated in Scotland, for the time being subject to a restraint order made before the relevant time and heritable property situated in Scotland for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the relevant time;”;
- (b) in subsection (2)—
- (i) for the words “Court of Session” there shall be substituted the word “court”; and
- (ii) for the words from “sections 8” to “27 and 28” there shall be substituted the words “sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”; and
- (c) after subsection (4) there shall be inserted the following subsection—
- “(4A) Where an order for the winding up of a company has been made or a resolution has been passed by a company for its voluntary winding up and before the relevant time the company has directly or indirectly made an implicative gift—
- (a) no order or, as the case may be, decree shall, at any time when proceedings as regards an offence to which section 1 of this Act relates have been instituted against the company and have not been concluded or when property of the person to whom the gift was made is subject to a restraint order, be made under section 238 or 239 of the Insolvency Act 1986 (transactions at an undervalue and preferences) or granted under section 242 or 243 of that Act (gratuitous alienations and unfair preferences) in respect of the making of the gift; and
- (b) any order made under either of the said sections 238 or 239 or decree granted under either of the said sections 242 and 243 after the conclusion of the proceedings shall take into account any realisation under this Act of property held by the person to whom the gift was made.”.
32. In section 36 (property subject to floating charge)—
- (a) in subsection (1) for paragraph (a) there shall be substituted the following paragraph—
- “(a) so much of it, not being heritable property situated in Scotland, as is for the time being subject to a restraint order made before the appointment of the receiver and so much of it, being heritable property situated in Scotland, as is for the time being subject to a restraint order recorded in the General Register of Sasines or, as the case may be, registered in the Land Register of Scotland before the such appointment;”;
- (b) in subsection (2) for the words for the words from “Court of Session” to “16 and 24” there shall be substituted the words “court by sections 8, 9, 11 to 13, 16 and 24 and on the Court of Session by sections 27, 28, 28A and 28B”.
33. After section 37 (insolvency practitioners dealing with property subject to restraint order), there shall be inserted the following section—

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“Forfeiture of property where accused has died

Forfeiture of
property where
accused has died.

37A.—(1) Section 112 of the Criminal Justice (Scotland) Act 1995 shall, subject to any necessary modifications, apply in respect of an offence to which Part I of this Act relates as it applies to an offence to which Chapter I of Part II of that Act applies.

(2) Without prejudice to subsection (1) above, in the application of subsection (2) of that section, in paragraph (b)(i) for the words “in connection with the commission of the offence” there shall be substituted the words “in connection with drug trafficking”.

34. In section 41(2) (disclosure of information held by government departments)—

- (a) in paragraph (a), for the words “paragraph (a) thereof” there shall be substituted “subsection (3) of that section”;
- (b) in paragraph (b), for the words “paragraph (b) of subsection (1)” there shall be substituted “subsection (4)”;
- (c) the words from the end of paragraph (b) to the end of the subsection shall cease to have effect.

35. In section 44(1) (offences relating to controlled drugs: fines), for the words “the proviso to subsection (1)” there shall be substituted “subsection (3)(a)”.

36. In section 47 (interpretation of Part I)—

- (a) in subsection (1)—
 - (i) the definition of “associate” shall cease to have effect;
 - (ii) for the definition of “confiscation order” there shall be substituted the following definition—

“confiscation order” means an order under section 1(1), 6A, 6B or 25 of this Act;”;
 - (iii) after the definition of “confiscation order” there shall be inserted the following definition—

“the court” means—

 - (a) for the purpose of sections 1 to 7A, the High Court of Justiciary or sheriff court;
 - (b) for the purposes of sections 8 to 26 and 33 to 37, the Court of Session or the sheriff court;”;
- (b) in subsection (5), in each of paragraphs (c) and (d) after the words “High Court” there shall be inserted the words “or, as the case may be, the sheriff”; and
- (c) at the end there shall be added the following subsection—

“(6) Any reference in this Part of this Act to a conviction of an offence includes a reference to a finding that the offence has been committed.”.

SCHEDULE 6

Section 117.

MINOR AND CONSEQUENTIAL AMENDMENTS

PART I

AMENDMENTS RELATING TO PART I

The Criminal Procedure (Scotland) Act 1887 (c. 35)

1. Section 3 of and Schedules D (form of execution of citation of witnesses), E (form of execution of citation of jurors), N (form of notice of further diet) and O (form of notice of postponed second diet) to the Criminal Procedure (Scotland) Act 1887 shall cease to have effect.

The Criminal Justice (Scotland) Act 1949 (c. 94)

2. Schedule 7 to the Criminal Justice (Scotland) Act 1949 (forms of notices to accused in proceedings on indictment) shall cease to have effect.

The Summary Jurisdiction (Scotland) Act 1954 (c. 48)

3. Parts I and III to VI of Schedule 2 (forms of procedure) and Schedule 3 (table of fees) to the Summary Jurisdiction (Scotland) Act 1954 shall cease to have effect.

The Backing of Warrants (Republic of Ireland) Act 1965 (c.45)

4. In section 8(1)(b) of the Backing of Warrants (Republic of Ireland) Act 1965 (rules of court), for the words "457(a)" there shall be substituted "457ZA".

The Criminal Justice Act 1967 (c. 80)

5. In section 69(2) of the Criminal Justice Act 1967 (extension of enactments relating to persons sentenced to imprisonment or detention to young offenders), the words "section 40 of the Prisons (Scotland) Act 1989" shall cease to have effect.

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—

“Warrants for search and apprehension to be signed by judge.

15A. 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.”.

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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;”.

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;”; and
- (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—

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

42.—(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—

“Common law and statutory offences in same indictment.

48A. It shall be competent to include in one indictment both common law and statutory charges.

Description of offence in words of statute or order.

48B. 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—

“Proceedings
under the
Merchant
Shipping Acts.

60A. 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—

“(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—

“Number of jurors to be returned for trial.

85. 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”.

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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—

“Transfer of
sheriff court
solemn
proceedings.

114A.—(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—

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

125. 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—

“(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.”.

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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.

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—

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“(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)—

(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 libelled 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)—

- (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

Caution. 182A. 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

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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.

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—

“Convictions not to be quashed on certain grounds. 254B. 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;

(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—

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“(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)”;
- (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)”.

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)”;

(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 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”.

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

“Right of accused to have access to solicitor. 305.—(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;”.

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.”.

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.

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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—

"Evidence of the accused. 347. 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
 - (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”.

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141. In section 413(1) (detention of children in residential care)—

- (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”;

(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)”;

(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)”;

(c) in paragraph (b)—

(i) after the word “founded” there shall be inserted “or the sentence imposed following such conviction”;

(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,”;

(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—

“(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.”.

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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—

“Acts of
Adjournal.

457ZA.—(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;”;

““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;”;

(b) in the definition of “officer of law”, after paragraph (ii) there shall be inserted the following paragraph—

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“(iia) 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”.

The Sexual Offences (Scotland) Act 1976 (c. 67)

159. In section 4 of the Sexual Offences (Scotland) Act 1976 (unlawful sexual intercourse with girl between 13 and 16)—

(a) in the proviso to subsection (1), the words “on indictment” shall cease to have effect; and

(b) after subsection (2) there shall be inserted the following subsection—

“(3) For the purposes of the proviso to subsection (1) above, a prosecution shall be deemed to commence on the date on which a warrant to apprehend or to cite the accused is granted, if such warrant is executed without undue delay.”.

The Community Service by Offenders (Scotland) Act 1978 (c. 49)

160. The Community Service by Offenders (Scotland) Act 1978 shall be amended as follows.

161. In section 2 (offender to be provided with copy order)—

(a) in subsection (3)(a), after the word “give” there shall be inserted “, or send by registered post or the recorded delivery service,”; and

(b) after subsection (3) there shall be inserted the following subsection—

“(4) Where a copy of a community service order has, under subsection (3)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the 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.”.

162. In section 4(1) (failure to comply with requirements of community service orders), for the words “evidence on oath” there shall be substituted “information”.

The Criminal Justice (Scotland) Act 1980 (c. 62)

163. In section 26(4) of the Criminal Justice (Scotland) Act 1980 (service of certificates, reports etc.)—

(a) for the words “either of those subsections” there shall be substituted “that subsection”;

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- (b) for the words from “may”, where it second 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
- (c) for the words from “a post” to “letter” there shall be substituted “the relevant post office receipt”.

The Mental Health (Scotland) Act 1984 (c. 36)

164. The Mental Health (Scotland) Act 1984 shall be amended as follows.

165. In section 67(1) (application of sections 63 to 66 to certain persons treated as restricted patients)—

- (a) paragraph (a)(ii) and the preceding “or”; and
- (b) the words from “or the order” to the end,

shall cease to have effect.

166. In section 69(3) (persons ordered to be kept in custody during Her Majesty’s pleasure), for the words from “an order” to the end there shall be substituted “a hospital order together with a restriction order”.

167. In section 71(7)(a) (removal to hospital of persons serving sentences of imprisonment etc.), for the words “or 255” there shall be substituted “, 174ZC, 254, 375, 375ZC or 453D”.

168. In section 73(1) (transfer order to cease to have effect where proceedings dropped or case disposed of)—

- (a) after the word “section” in the third place where it occurs there shall be inserted “174ZC”; and
- (b) after “178,” there shall be inserted “375ZC,”.

169. In section 125(4) interpretation)—

- (a) after “174,” there shall be inserted “174ZC,”; and
- (b) after “375,” there shall be inserted “375ZC,”.

The Criminal Justice (Scotland) Act 1987 (c. 41)

170. In section 60(3) of the Criminal Justice (Scotland) Act 1987 (service of documents relating to police interview)—

- (a) for the words from “may” 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”.

The Road Traffic Offenders Act 1988 (c. 53)

171. In section 19 of the Road Traffic Offenders Act 1988 (evidence of disqualification in Scotland)—

- (a) the existing provision shall become subsection (1);
- (b) in that subsection for the words “less than six days before his trial” there shall be substituted “more than seven days after the date of service of the copy”; and
- (c) after that subsection there shall be inserted—

“(2) A copy of a conviction or extract conviction served on the accused under subsection (1) above shall be served in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served such copy conviction or extract conviction together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.”.

172. In section 20 of that Act (admissibility of certain evidence regarding speeding offences etc.), after subsection (8) there shall be inserted the following subsection—

“(8A) As respects proceedings in Scotland, a copy of a document served on a person under subsection (8) above shall be served in such manner as may be prescribed by Act of Adjournal, and a written execution purporting to be signed by the person who served such copy document together with, where appropriate, the relevant post office receipt shall be sufficient evidence of service of such a copy.”.

173. In sections 31(2) (court may take account of particulars endorsed on licence) and 32(6) (court may take account of extract from licensing records) of that Act—

- (a) for the words “sections 31(5) and” there shall be substituted “section”; and
- (b) the words “penalties and” shall cease to have effect.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40)

174. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 shall be amended as follows.

175. In section 56 (evidence of children through television link in criminal trials)—

- (a) in subsection (1), after the word “been” there shall be inserted “or is likely to be”; and
- (b) in subsection (2)—
 - (i) the word “and” immediately following paragraph (a) shall cease to have effect; and
 - (ii) after paragraph (b) there shall be inserted “; and
- (c) the views of the child.”.

176. In section 58 (prior identification of accused by child witness), the words “cited to give evidence in a trial” shall cease to have effect.

177. In Schedule 6 (supervised attendance orders)—

- (a) in paragraph 2—
 - (i) in sub-paragraph (3)(a), after the word “give” there shall be inserted “, or send by registered post or by the recorded delivery service,”; and
 - (ii) after sub-paragraph (3) there shall be inserted the following sub-paragraph—

“(4) Where a copy of a supervised attendance order has, under sub-paragraph (3)(a) above, been sent by registered post or by the recorded delivery service, an acknowledgement or certificate of delivery of a letter containing the 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.”; and

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- (b) in paragraph 4(1) (failure to comply with supervised attendance orders), for the words “evidence on oath” there shall be substituted “information”.

The Criminal Justice Act 1991 (c. 53)

178. In Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders), in paragraph 6(5)(a)(i), for the words “evidence on oath” there shall be substituted “information”.

The Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9)

179.—(1) The Prisoners and Criminal Proceedings (Scotland) Act 1993 shall be amended as follows.

(2) In section 11(3)(b) (duration of licence), for the words from “the” in the second place where it occurs to the end there shall be substituted—

“there has elapsed—

(i) a period (reckoned from the date on which he was ordered to be returned to prison under or by virtue of subsection (2)(a) of that section) equal in length to the period between the date on which the new offence was committed and the date on which he would (but for his release) have served the original sentence in full; or

(ii) subject to subsection (4) below, a total period equal in length to the period for which he was so ordered to be returned to prison together with, so far as not concurrent with that period, any term of imprisonment to which he was sentenced in respect of the new offence,

whichever results in the later date.

(4) In subsection (3)(b) above, “the original sentence” and “the new offence” have the same meanings as in section 16 of this Act.”.

(3) For section 16(7) (application of early release provisions where further offence committed by released prisoner) there shall be substituted the following subsection—

“(7) Where an order under subsection (2) or (4) above is made in respect of a person released on licence—

(a) the making of the order shall have the effect of revoking the licence; and

(b) if the sentence comprising—

(i) the period for which the person is ordered to be returned to prison; and

(ii) so far as not concurrent with that period, any term of imprisonment to which he is sentenced in respect of the new offence,

is six months or more but less than four years, section 1(1) of this Act shall apply in respect of that sentence as if for the word “unconditionally” there were substituted the words “on licence”.

(4) In section 18(1) (breach of supervised release order), for the words from the beginning to “by” where it second occurs, there shall be substituted “Where it appears to the court which imposed a supervised release order on a person, on information from”.

(5) In section 28(3) (destruction of prints and impressions), the words “or 384(1) (probation)” shall cease to have effect.

(6) In section 33 (evidence of children on commission)—

(a) in subsection (1), the words from the beginning to “and” where it first occurs shall cease to have effect; and

(b) after subsection (3) there shall be inserted the following subsection—

“(4) Subsections (2) to (4), (5A) and (6) of section 32 of the 1980 Act (evidence by letter of request or on commission) shall apply to an application under subsection (1) above and evidence taken by a commissioner appointed under that subsection as those subsections apply to an application under subsection (1) of that section and evidence taken by a commissioner appointed on such an application.”.

(7) In section 34 (concealment by screen of accused from child giving evidence), after the word “been” there shall be inserted “or is likely to be”.

(8) In Schedule 3 (documentary evidence in criminal proceedings), in paragraph 6(4), for the words “after the close of that party’s evidence and” there shall be substituted “at any time”.

PART II

AMENDMENTS RELATING TO PART II

The Trade Marks Act 1938 (c.22)

180. In section 58B of the Trade Marks Act 1938 (delivery up of offending goods and material), in subsection (6) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

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

181.—(1) The Criminal Procedure (Scotland) Act 1975 shall be amended as follows.

(2) Sections 223 and 436 (forfeiture of property) shall cease to have effect.

(3) In section 231 (intimation of intention of appeal)—

(a) in subsection (1) after “1987” there shall be inserted the words “and section 76(4) of the Criminal Justice (Scotland) Act 1995”; and

(b) in subsection (5) after “1987” there shall be inserted the words “and subsection (4) of section 76 of the said Act of 1995” and for the words “that section” there shall be substituted the words “the said section 2 or 76”.

(4) In section 444 (manner and time of appeal), in subsection (1) at the beginning there shall be inserted the words “Subject to section 76(8) of the Criminal Justice (Scotland) Act 1995,”.

The Community Service by Offenders (Scotland) Act 1978 (c.49)

182. In section 1(7) of the Community Service by Offenders (Scotland) Act 1978 (making of community service orders not to restrict making of certain other orders), at the end there shall be added the following paragraph—

“(d) making a suspended forfeiture order under section 87 of the Criminal Justice (Scotland) Act 1995 in respect of the offence.”.

The Civil Jurisdiction and Judgments Act 1982 (c.27)

183. In subsection (4A) of section 18 of the Civil Jurisdiction and Judgments Act 1982 (enforcement of U.K. judgments in other parts of U.K.)—

(a) after the words “Court of Session” there shall be inserted the words “or by the sheriff”; and

(b) at the end there shall be added “or Part II of the Criminal Justice (Scotland) Act 1995”.

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The Telecommunications Act 1984 (c.12)

184. In Schedule 3 to the Telecommunications Act 1984 (penalties and mode of trial under the Wireless Telegraphy Act 1949), in paragraph 3(b) for the words “sections 223 and 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Bankruptcy (Scotland) Act 1985 (c. 66)

185.—(1) The Bankruptcy (Scotland) Act 1985 shall be amended as follows.

(2) In section 5(4) (meaning of qualified creditor), for the words “or by section 2(9) of the Drug Trafficking Act 1994” there shall be substituted the words “by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995”.

(3) In section 7(1) (meaning of apparent insolvency), in the definition of “confiscation order”, for the words “or by section 2(9) of the said Act of 1994” there shall be substituted the words “by section 2(9) of the Drug Trafficking Act 1994 or by section 114(1) of the Criminal Justice (Scotland) Act 1995”.

The Criminal Justice Act 1988 (c.33)

186.—(1) The Criminal Justice Act 1988 shall be amended as follows.

(2) In section 74(2)(c) (meaning of realisable property) after the word “property)” there shall be inserted the words “or Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders)”.

(3) In section 77 (restraint orders)—

(a) in subsection (10) for the words “the High Court has made a restraint order” there shall be substituted the words “a restraint order has been made” and at the end of that subsection there shall be added the words—

“In this subsection, the reference to a restraint order includes a reference to a restraint order within the meaning of Part II of the Criminal Justice (Scotland) Act 1995 and, in relation to such an order, “realisable property” has the same meaning as in that Part”; and

(b) in subsection (11), for the words “court’s directions” there shall be substituted the words “directions of the court which made the order”.

(4) In section 89(2)(b) (compensation), for the words “an order under this Part of this Act” there shall be substituted the following paragraphs—

“(i) an order under this Part of this Act; or

(ii) an order of the Court of Session under section 101, 102, 103 or 104 of the Criminal Justice (Scotland) Act 1995.”

(5) Sections 90 (recognition and enforcement of orders in Scotland), 91 (supplementary provision to section 90), 92 (inhibition and arrestment of property in Scotland), 93 (proof in Scotland of High Court orders) and 95 (enforcement of Northern Ireland order in Scotland) shall cease to have effect.

(6) In section 93E (applications of provisions relating to money laundering and other offences to Scotland), after the word “summarily)” there shall be inserted the words “or an offence punishable on summary conviction by a fine of an amount greater than the amount corresponding to level 5 on the standard scale or by imprisonment for a period exceeding 3 months or by both such fine and imprisonment”.

The Copyright, Designs and Patents Act 1988 (c.48)

187.—(1) The Copyright, Designs and Patents Act 1988 shall be amended as follows.

(2) In section 108(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

(3) In section 199(6) (order for delivery up in criminal proceedings) for the words “section 223 or 436 of the Criminal Procedure (Scotland) Act 1975” there shall be substituted the words “Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Road Traffic Offenders Act 1988 (c.53)

188. After section 33 of the Road Traffic Offenders Act 1988 (fine and imprisonment), there shall be inserted the following section—

“Forfeiture of vehicles:
Scotland.

33A.—(1) Where a person commits an offence to which this subsection applies by—

- (a) driving, attempting to drive, or being in charge of a vehicle; or
- (b) failing to comply with a requirement made under section 7 of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive or being in charge of a vehicle, or
- (c) failing, as the driver of a vehicle, to comply with subsections (2) and (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident),

the court may, on an application under this subsection make an order forfeiting the vehicle concerned; and any vehicle forfeited under this subsection shall be disposed of as the court may direct.

(2) Subsection (1) above applies—

- (a) to an offence under the Road Traffic Act 1988 which is punishable with imprisonment; and
- (b) to an offence of culpable homicide.

(3) An application under subsection (1) above shall be at the instance of the prosecutor made when he moves for sentence or (if the person has been remitted for sentence under section 104 of the Criminal Procedure (Scotland) Act 1975) made before sentence is pronounced.

(4) Where—

- (a) the court is satisfied, on an application under this subsection by the prosecutor—
 - (i) that proceedings have been, or are likely to be, instituted against a person in Scotland for an offence to which subsection (1) above applies allegedly committed in the manner specified in paragraph (a), (b) or (c) of that subsection; and
 - (ii) that there is reasonable cause to believe that a vehicle specified in the application is to be found in a place or in premises so specified; and

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- (b) it appears to the court that there are reasonable grounds for thinking that in the event of the person being convicted of the offence an order under subsection (1) above might be made in relation to the vehicle,

the court may grant a warrant authorising a person named therein to enter and search the place or premises and seize the vehicle.

(5) Where the court has made an order under subsection (1) above for the forfeiture of a vehicle, the court or any justice may, if satisfied on evidence on oath—

- (a) that there is reasonable cause to believe that the vehicle is to be found in any place or premises; and
 (b) that admission to the place or premises has been refused or that a refusal of such admission is apprehended,

issue a warrant of search which may be executed according to law.

(6) In relation to summary proceedings, the reference in subsection (5) above to a justice includes a reference to the sheriff and to a magistrate.

(7) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 shall not apply in respect of a vehicle in relation to which this section applies.

(8) This section extends to Scotland only.”.

The Prevention of Terrorism (Temporary Provisions) Act 1989 (c.4)

189.—(1) Schedule 4 to the Prevention of Terrorism (Temporary Provisions) Act 1989 (forfeiture orders) shall be amended as follows.

(2) In paragraph 16—

- (a) in sub-paragraph (1), paragraph (b) shall cease to have effect;
 (b) in sub-paragraph (2)(b), the words “where granted under sub-paragraph (1)(a) above,” shall cease to have effect; and
 (c) in sub-paragraphs (5) and (6), the words “or arrestment”, in each place where they occur, shall cease to have effect.

(3) After paragraph 16 there shall be inserted the following paragraph—

“16A.—(1) On the application of the prosecutor, the court may, in respect of moveable property affected by a restraint order (whether such property generally or particular such property), grant warrant for arrestment if the property would be arrestable if the person entitled to it were a debtor.

(2) A warrant under sub-paragraph (1) above shall have effect as if granted on the dependence of an action for debt at the instance of the prosecutor against the person and may be executed, recalled, loosed or restricted accordingly.

(3) The fact that an arrestment has been executed under sub-paragraph (2) above in respect of property shall not prejudice the exercise of an administrator’s powers under or for the purposes of this Part of this Schedule in respect of that property.

(4) No arrestment executed under sub-paragraph (2) above shall have effect once, or in so far as, the restraint order affecting the property in respect of which the warrant for such arrestment has been granted has

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ceased to have effect in respect of that property; and the prosecutor shall apply to the court for an order recalling, or as the case may be, restricting the arrestment accordingly.”

(4) In paragraph 19 (enforcement in Scotland of orders made elsewhere in the British Isles)—

- (a) in sub-paragraph (5), for the words “and 16” there shall be substituted “, 16 and (subject to sub-paragraph (5A) below) 16A”; and
- (b) after sub-paragraph (5) there shall be inserted the following sub-paragraph—

“(5A) In its application by virtue of sub-paragraph (5) above paragraph 16A above shall have effect with the following modifications—

- (a) for the references to the prosecutor there shall be substituted references to the Lord Advocate; and
- (b) for the references to the court there shall be substituted references to the Court of Session.”

The Criminal Justice (International Co-operation) Act 1990 (c.5)

190.—(1) In section 9(6) of the Criminal Justice (International Co-operation) Act 1990 (enforcement of overseas forfeiture orders), for the words from “or an” to the end there shall be substituted the words “an offence to which Part VI of the Criminal Justice Act 1988 applies, an offence to which Chapter I of Part II of the Criminal Justice (Scotland) Act 1995 applies or an offence in respect of which a suspended forfeiture order may be made under section 87 of the said Act of 1995.”

(2) In section 15(3) of that Act (interest on sums unpaid under confiscation orders), for the words “applicable to an award of damages in” there shall be substituted “payable under a decree of”.

(3) Section 17 (increase in realisable property: Scotland) of that Act shall cease to have effect.

The Northern Ireland (Emergency Provisions) Act 1991 (c.24)

191. In section 50(2) of the Northern Ireland (Emergency Provisions) Act 1991 (realisable property, value and gifts), for paragraph (e) there shall be substituted the following paragraph—

“(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995”.

The Road Traffic Act 1991 (c.40)

192. Section 37 of the Road Traffic Act 1991 (forfeiture of vehicles: Scotland) shall cease to have effect.

The Drug Trafficking Act 1994 (c. 37)

193.—(1) The Drug Trafficking Act 1994 shall be amended as follows.

(2) In section 4(7) (assessing the proceeds of drug trafficking), after paragraph (b) there shall be inserted—

“; or

(c) Part II of the Criminal Justice (Scotland) Act 1995.”

(3) In section 6(3) (meaning of realisable property), after paragraph (d) there shall be inserted the following paragraph—

“(e) Chapter II of Part II of the Criminal Justice (Scotland) Act 1995 (suspended forfeiture orders);”

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(4) In section 18(2)(b)(ii) (compensation), for the words from “11” to “28” there shall be substituted “27, 28, 28A or 28B”.

(5) In section 26(10) (restraint orders), after the words “1987” there shall be inserted “or Part II of the Criminal Justice (Scotland) Act 1995”.

Section 117.

SCHEDULE 7

REPEALS

PART I

REPEALS RELATING TO PART I

Chapter	Short title	Extent of repeal
1887 c. 35.	The Criminal Procedure (Scotland) Act 1887.	Section 3. Schedule D. Schedule E. Schedule N. Schedule O.
1949 c. 94.	The Criminal Justice (Scotland) Act 1949.	Schedule 7.
1954 c. 48.	The Summary Jurisdiction (Scotland) Act 1954.	In Schedule 2, Parts I and III to VI. Schedule 3.
1967 c.80.	The Criminal Justice Act 1967.	In section 69(2), the words “, section 40 of the Prisons (Scotland) Act 1989”.
1975 c. 21.	The Criminal Procedure (Scotland) Act 1975.	Section 14(3). Section 20(2). In section 26(3), the words “or justice”. In section 33, in subsection (1), the words from “or where” to “application,”; and in subsection (2), the words “by telegraph”. Section 62. In section 68, 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”. In section 69, the words from “and” in the third place where it occurs to “Act” in the fourth place where it occurs, and the words from “The executions” to the end. In section 73(1), the words from “, unless” to the end. In section 100, in subsection (1), the words from “but” to the end; and

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Chapter	Short title	Extent of repeal
		<p>subsections (2) and (3). Section 110. In section 124, the proviso. In section 127(2), the words “Schedule N to the Criminal Procedure (Scotland) Act 1887 or in”.</p> <p>Section 130(1) to (3). Section 132(2). In section 140A(1)(b), the words “were the offence charged the only offence so charged”.</p> <p>Section 141(1)(b). Section 144. Section 145(4). Section 146. In section 150(1), the words “, where the accused is legally represented,”.</p> <p>In section 153, subsection (1) and, in subsection (3)(b)(ii), the words from “as” to the end.</p> <p>In section 156, in subsection (1)(b), the words from “, as” to the end; and subsections (4) and (5). In section 157, 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 subsection (2). Section 159(1) and (3). Section 160(3). Section 163. In section 174, subsections (3) and (4). In section 178(1), the words “either” and “or during such period as may be specified in the order”.</p> <p>In section 183, in subsection (5A)(a), the words “has committed an offence punishable by imprisonment and”; and in subsection (7) the words “to the probationer”.</p> <p>In section 186(1), the words “on oath”.</p> <p>Section 190. In section 191(4), the words “placed on probation or” and “probation order or”.</p>

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Chapter	Short title	Extent of repeal
		<p>In section 192, the words from “(other than” to “Act)” and the proviso.</p> <p>In section 196(1), the proviso.</p> <p>Section 225.</p> <p>Section 226.</p> <p>Section 227.</p> <p>In section 235, the words from “but in regard” to the end.</p> <p>Section 236C.</p> <p>Section 237.</p> <p>In section 238, 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”.</p> <p>In section 239, in subsection (1), the words from “and” in the second place where it occurs to the end; and subsection (2).</p> <p>In section 240, the words from “except” where it first occurs to the end.</p> <p>Section 246.</p> <p>Section 256.</p> <p>Section 259.</p> <p>Section 265(3) and (5).</p> <p>In section 270, 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; in subsection (3), the words from “(or in the case” to “note of appeal)”; and in subsection (4), the words from “(or in the case” to “note of appeal)”.</p> <p>Section 272.</p> <p>Section 273.</p> <p>Section 276.</p> <p>In section 277, in subsection (2), the words “section 236C”, “section 237”, “section 246”, “section 259”, “section 272” and “section 273”.</p> <p>Section 282.</p> <p>Section 289D(1A)(d).</p> <p>In section 296, in subsections (1) and (2), the words “sitting summarily” in each place</p>

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Chapter	Short title	Extent of repeal
		<p>where they occur.</p> <p>In section 300(4), the words from “, or where” to “96 hours,”.</p> <p>In section 309(1), the words “Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.</p> <p>In section 310, the words “Part I of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.</p> <p>In section 311, in subsection (1), the words from “in” where it first occurs to the end; and subsections (4) and (5).</p> <p>Section 313.</p> <p>In section 314(1)(d), the words “or interim order”.</p> <p>In section 315(2), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”.</p> <p>In section 318(2), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 and the corresponding forms contained in”.</p> <p>In section 319(1), the words “other than a witness”.</p> <p>In section 321, in subsection (1), the words “Part IV of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in”; and in subsection (3), the words “either by way of trial or by way of remit to another court”.</p> <p>Section 323(3).</p> <p>Section 331(2).</p> <p>In section 335(1), the words “penalty or”.</p> <p>Section 336.</p> <p>In section 337A(1), the word “and” immediately following paragraph (a).</p> <p>In section 344(1), the words “or to produce documents in his possession when required by the court,”.</p> <p>Section 345.</p> <p>Section 346(1)(b).</p> <p>In section 354(1), the proviso.</p>

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Chapter	Short title	Extent of repeal
		<p>Section 356(1) and (3).</p> <p>In section 357, 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"; and subsection (4).</p> <p>Section 360.</p> <p>In section 360A, in subsection (1)(b), the words from "as" to the end; and subsection (2).</p> <p>Section 366(2).</p> <p>Section 376(2).</p> <p>In section 379(1), the words "either" and "or during such period as may be specified in the order".</p> <p>In section 384, in subsection (1), the words from "and", where it first occurs, to "offence" in the third place where it occurs; in subsection (5A)(a), the words "has committed an offence punishable by imprisonment and"; in subsection (6), the words "convicted of and"; and in subsection (7) the words "to the probationer".</p> <p>In section 387(1), the words "on oath".</p> <p>Section 391.</p> <p>In section 392, in subsection (4), the words "placed on probation or"; and in subsection (5), the words "placed on probation or" and "probation order or".</p> <p>In section 393, the words from "(other than" to "Act)" and the proviso.</p> <p>In section 396(7), the words "subject to any rules under this Part of this Act".</p> <p>In section 402, the proviso.</p> <p>In section 406, the words "damages or expenses,".</p> <p>In section 413(1), the words from "and shall" to the end.</p> <p>In section 430(1), the words "Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in".</p>

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Chapter	Short title	Extent of repeal
		<p>In section 432(1), the words from "and", where it second occurs, to the end.</p> <p>Section 435.</p> <p>In section 440, the words "Part V of Schedule 2 to the Summary Jurisdiction (Scotland) Act 1954 or in".</p> <p>In section 441, the words from ", although" to "place,".</p> <p>In section 453(4)(a)(i), the word "and".</p> <p>In section 454(1), the words "at the trial by the solicitor of the accused".</p> <p>Section 457.</p> <p>In section 462, in subsection (1), in the definition of "prosecutor", the words "private prosecutor," in the second place where they occur; and subsection (10).</p> <p>Schedule 3.</p>
1976 c.67.	The Sexual Offences (Scotland) Act 1976.	In section 4(1), in the proviso, the words "on indictment".
1980 c. 62.	The Criminal Justice (Scotland) Act 1980.	<p>In section 26, in subsection (2), the word "summary" and the words from "In the foregoing" to the end; in subsection (4), the words from "or of a conviction" to "(8) below,"; and in subsection (5), the words "under summary procedure".</p> <p>In Schedule 4, paragraph 20.</p>
1984 c.36.	The Mental Health (Scotland) Act 1984.	In section 67(1), paragraph (a)(ii) and the preceding "or", and the words from "or the order" to the end.
1986 c. 36.	The Incest and Related Offences (Scotland) Act 1986.	In Schedule 1, paragraph 2.
1986 c. 47.	The Legal Aid (Scotland) Act 1986.	In section 25(2), the words "the Board is satisfied".
1988 c. 53.	The Road Traffic Offenders Act 1988.	<p>In section 31(2), the words "penalties and".</p> <p>In section 32(6), the words "penalties and".</p>
1990 c. 40.	The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.	In section 56(2), the word "and" immediately following paragraph (a).

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Chapter	Short title	Extent of repeal
1993 c. 9.	The Prisoners and Criminal Proceedings (Scotland) Act 1993.	In section 58, the words "cited to give evidence in a trial". In section 28(3), the words "or 384(1) (probation)". In section 33(1), the words from the beginning to "and" where it first occurs. In Schedule 5, paragraph 1(25)(a)(ii), (b)(i) and (c)(i), (26) and (28).
1994 c. 33.	The Criminal Justice and Public Order Act 1994.	In Schedule 10, paragraph 47.

PART II

REPEALS RELATING TO PART II

Chapter	Short title	Extent of repeal
1975 c.21.	The Criminal Procedure (Scotland) Act 1975.	Section 223. Section 436.
1987 c.41.	The Criminal Justice (Scotland) Act 1987.	Section 1(3). Section 3(5). In section 5, in subsection (5), paragraph (b); subsection (6); in subsection (7) the words "notwithstanding subsections (5)(b) and (6) above"; and subsection (8). In section 6, subsections (4) and (5). In section 7(2), in the entry relating to section 411, the words "except the proviso to subsection (3)". In section 11, in subsection (1), in paragraph (ii), the words "where granted under subsection (1)(a) above,"; in subsections (4) and (5), the words "or arrestment" in each place where they occur; and subsection (6). In section 12, in subsection (1), the words from "and the clerk of court" to the end. In section 14(1)(c) the words from "and, without" to the end of the paragraph. In section 23(6) the words from "and without" to "family" and the words

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Chapter	Short title	Extent of repeal
		<p>“(other than an obligation having priority, within the meaning of section 5(8) of this Act)”.</p> <p>In section 26, in subsection (2)(b), the word “substantial”; and in subsection (4), after paragraph (c) the word “and”.</p> <p>In section 30, in subsection (1), paragraphs (b)(i) and (c) and the word “and” immediately preceding paragraph (c).</p> <p>In section 41(2), the words from the end of paragraph (b) to the end of the subsection.</p> <p>In section 47(1) the definition of “associate”.</p>
1988 c.33.	The Criminal Justice Act 1988.	Sections 90 to 93. Section 95.
1989 c.4.	The Prevention of Terrorism (Temporary Provisions) Act 1989.	In Schedule 4, in paragraph 16, sub-paragraph (1)(b); in sub-paragraph (2)(b) the words “where granted under sub-paragraph (1)(a) above,”; and in sub-paragraphs (5) and (6), the words “or arrestment”, in each place where they occur.
1990 c.5.	The Criminal Justice (International Co-operation) Act 1990.	Section 17.
1991 c.40.	The Road Traffic Act 1991.	Section 37.

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