

Criminal Justice and Licensing (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 24-EN. A Policy Memorandum is printed separately as SP Bill 24-PM.

Criminal Justice and Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about sentencing, offenders and defaulters; to make provision about criminal law, procedure and evidence; to make provision about criminal justice and the investigation of crime (including police functions); to amend the law relating to the licensing of certain activities by local authorities; to amend the law relating to the sale of alcohol; and for connected purposes.

5

PART 1

SENTENCING

Purposes and principles of sentencing

1 Purposes and principles of sentencing

10

(1) The purposes of sentencing are—

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and

15

(e) the making of reparation by offenders to persons affected by their offences.

(2) A court, in sentencing an offender in respect of an offence, must have regard to the purposes of sentencing.

(3) Other matters to which a court must have regard in sentencing an offender in respect of an offence include—

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- (a) the seriousness of the offence,
- (b) any information before the court about the effect of the offence on any person (other than the offender),
- (c) the range of sentences available to the court in dealing with the offence,
- (d) the desirability of ensuring consistency in sentencing in respect of the same type of offence,

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(e) any information before the court about the circumstances and attitude of the offender (including, for example, information about the matters specified in subsection (4)).

(4) Those matters are—

- 5 (a) any other offences committed by the offender,
 (b) any change in the offender’s behaviour or attitude as a result of previous sentences imposed in respect of any other offence,
 (c) the offender’s family circumstances,
 (d) the level of risk which the offender poses to the public,
 10 (e) the offender’s willingness to reform.

(5) Subsections (2) and (3) do not apply—

- (a) in relation to an offender aged under 18 at the time of the offence,
 (b) in relation to the imposition of a sentence in respect of an offence so far as the sentence for that offence is fixed by law,
 15 (c) in relation to the making of—
 (i) a compulsion order under section 57A of the 1995 Act,
 (ii) a guardianship order under section 58(1A) of that Act,
 (iii) a restriction order under section 59 of that Act,
 (iv) a hospital direction under section 59A of that Act, or
 20 (v) an intervention order under section 60B of that Act.

(6) In this Part, “sentence” includes any order or disposal which a court may make in dealing with an offender in respect of an offence, but does not include an order for committal in default of payment of any sum of money or for contempt of court; and “sentencing” is to be construed accordingly.

25 **2 Relationship between section 1 and other law**

- (1) Where, under a provision of any enactment, the matters to which a court must or must not have regard in sentencing an offender in respect of an offence are inconsistent with those to which the court must have regard under section 1, the court need not comply with section 1 to that extent.
- 30 (2) Where the matters to which a court must have regard under section 1 in sentencing an offender in respect of an offence are inconsistent with the sentencing guidelines, the court need not comply with section 1 to that extent.
- (3) Where the matters to which a court must have regard under section 1 in sentencing an offender in respect of an offence are inconsistent with those to which the court must or must not have regard by virtue of any rule of law, the court need not comply with the rule of law to that extent.
- 35 (4) Otherwise, section 1 does not affect any other duty or power imposed or conferred on a court to take account of or have regard to (or not to take account of or have regard to) any matter in sentencing an offender in respect of an offence.

The Scottish Sentencing Council

3 The Scottish Sentencing Council

- (1) There is established a body corporate to be known as the “Scottish Sentencing Council” (referred to in this Part as the “Council”).
- 5 (2) Schedule 1 makes further provision about the Council.

4 The Council’s objectives

The Council must, in carrying out its functions, seek to—

- (a) promote consistency in sentencing practice,
- (b) assist the development of policy in relation to sentencing,
- 10 (c) promote greater awareness and understanding of sentencing policy and practice.

5 Sentencing guidelines

- (1) The function of the Council is to prepare and publish guidelines relating to the sentencing of offenders.
- (2) Such guidelines are to be known as “sentencing guidelines”.
- 15 (3) Sentencing guidelines may in particular relate to—
- (a) the principles and purposes of sentencing,
- (b) sentencing levels,
- (c) the particular types of sentence that are appropriate for particular types of offence or offender,
- 20 (d) the circumstances in which the guidelines may be departed from.
- (4) Sentencing guidelines may be general in nature or may relate to a particular category of offence or offender or a particular matter relating to sentencing.
- (5) The Council must include in any sentencing guidelines—
- 25 (a) an assessment of the costs and benefits to which the implementation of the guidelines would be likely to give rise,
- (b) an assessment of the likely effect of the guidelines on—
- (i) the number of persons detained in prisons or other institutions,
- (ii) the number of persons serving sentences in the community, and
- (iii) the criminal justice system generally.
- 30 (6) The Council must specify in any sentencing guidelines the date on which the guidelines take effect.
- (7) Different dates may be specified in relation to different provisions of the guidelines.
- (8) The Council—
- (a) must from time to time review any sentencing guidelines published by it, and
- 35 (b) may publish revised guidelines.
- (9) This section applies to any revised guidelines as it applies to sentencing guidelines.

6 Procedure for publication and review of sentencing guidelines

- (1) The Council must, before publishing any sentencing guidelines or revised sentencing guidelines—
- (a) publish a draft of the proposed guidelines, and
 - (b) consult the following persons about the draft—
 - (i) the Scottish Ministers,
 - (ii) the Lord Advocate,
 - (iii) such other persons as the Council considers appropriate.
- (2) The draft must include the assessments referred to in section 5(5).
- (3) The Council must, in finalising the sentencing guidelines or revised sentencing guidelines, have regard to any comments made on the draft following publication and consultation under subsection (1).

7 Effect of sentencing guidelines

- (1) A court (whether at first instance or on appeal) must—
- (a) in sentencing an offender in respect of an offence, have regard to any sentencing guidelines which are applicable in relation to the case,
 - (b) in carrying out any other function relating to the sentencing of offenders, have regard to any sentencing guidelines applicable to the carrying out of the function.
- (2) If the court decides not to follow the guidelines, it must state the reasons for its decision.
- (3) The sentencing guidelines to which the court must have regard under subsection (1) are those applicable to the case at the time the court is sentencing the offender or, as the case may be, carrying out the function.
- (4) Subsection (5) applies where, on appeal in any case, the High Court of Justiciary passes another sentence under one of the following provisions of the 1995 Act—
- (a) section 118(3),
 - (b) section 118(4)(b),
 - (c) section 118(4A)(b),
 - (d) section 118(4A)(c)(ii),
 - (e) section 189(1)(b).
- (5) The sentencing guidelines which the High Court must have regard to under subsection (1) in passing that other sentence are those applicable to the case at the time it is passed.
- (6) A revision of the sentencing guidelines after an offender is sentenced in respect of an offence is not a ground for the referral of the case to the High Court of Justiciary under section 194B of the 1995 Act (references to the High Court of cases dealt with on indictment).
- (7) In section 108 of the 1995 Act (Lord Advocate's right of appeal against disposal where conviction on indictment), after subsection (2) insert—

“(2A) In deciding whether to appeal under subsection (1) in any case, the Lord Advocate must have regard to any sentencing guidelines which are applicable in relation to the case.”.

- 5 (8) In section 175 of the 1995 Act (prosecutor’s right of appeal against disposal in summary proceedings), after subsection (4B) insert—

“(4C) In deciding whether to appeal under subsection (4) in any case, the prosecutor must have regard to any sentencing guidelines which are applicable in relation to the case.”.

8 **Ministers’ power to request that guidelines be published or reviewed**

- 10 (1) The Scottish Ministers may request that the Council consider publishing or reviewing sentencing guidelines on any matter.
- (2) The Council must have regard to any request made by the Scottish Ministers.
- (3) If the Council decides not to comply with a request made by the Scottish Ministers, it must provide the Scottish Ministers with reasons for its decision.

9 **High Court’s power to request review of guidelines**

- 15 (1) The High Court of Justiciary may refer sentencing guidelines to the Council and ask the Council to review them in the circumstances set out in subsection (2).
- (2) Those circumstances are where—
- 20 (a) on appeal in any case, the High Court passes another sentence under a provision of the 1995 Act mentioned in subsection (3), and—
- (b) in doing so, the High Court—
- (i) decides not to follow any relevant sentencing guidelines, or
- (ii) concludes that the guidelines do not deal, or deal adequately, with a significant issue raised by the appeal.
- 25 (3) Those provisions are—
- (a) section 118(3),
- (b) section 118(4)(b),
- (c) section 118(4A)(b),
- (d) section 118(4A)(c)(ii),
- 30 (e) section 189(1)(b).
- (4) On referring sentencing guidelines to the Council under subsection (1), the High Court must state the reasons for its decision or conclusion.
- (5) The Council must review any guidelines referred to it under subsection (1) and, in doing so, must have regard to the High Court’s reasons for its decision or conclusion.
- 35 (6) In subsection (2), “relevant sentencing guidelines” means—
- (a) any sentencing guidelines which the court whose decision is the subject of the appeal was required to have regard to in the case under appeal,

- (b) any sentencing guidelines which the High Court, in exercising its power under any of the provisions mentioned in subsection (3), was or would be required to have regard to in the case.

10 Scottish Court Service to provide sentencing information to the Council

- 5 (1) The Scottish Court Service must provide the Council with such information relating to the sentences imposed by courts as the Council may reasonably require for the purposes of its functions.
- (2) The information must be provided in such form and by such means as the Council may require.
- 10 (3) The Council must from time to time publish information about the sentences imposed by courts.

11 The Council’s power to provide information, advice etc.

- (1) The Council may—
- 15 (a) publish or otherwise disseminate information about sentencing matters,
- (b) provide advice or guidance of a general nature about such matters,
- (c) conduct research into such matters.
- (2) The Council may in particular provide advice or submit proposals about sentencing matters to the Scottish Ministers or any member of the Scottish Parliament.
- (3) The Scottish Ministers must have regard to any advice given or proposals submitted by the Council.
- 20 (4) In this section, “sentencing matters” means—
- (a) sentencing guidelines,
- (b) the practice of the courts in relation to sentencing, and
- (c) any other matter relating to sentencing.

12 Business plan

- (1) The Council must, before the submission day for each period of 3 years, prepare and submit to the Scottish Ministers a plan (a “business plan”) describing how the Council proposes to carry out its functions during the period.
- (2) The “submission day” is—
- 30 (a) for the period of 3 years beginning on the day on which this section comes into force, the day specified by order made by the Scottish Ministers,
- (b) for each succeeding period of 3 years, the first day of the period.
- (3) A business plan must—
- (a) be prepared in such form as the Scottish Ministers may direct,
- 35 (b) contain the information specified in subsection (4) and such other information as they may direct, and
- (c) be submitted by such time as they may direct.

- (4) The information referred to in subsection (3)(b) is details of the matters in relation to which the Council proposes to prepare sentencing guidelines.
- (5) The Council may include in a business plan such other information as it considers appropriate.
- 5 (6) In preparing a business plan, the Council must consult—
- (a) the Scottish Ministers,
 - (b) the Lord Advocate, and
 - (c) such other persons as it considers appropriate.
- (7) The Scottish Ministers must lay before the Scottish Parliament each business plan
10 submitted to them.
- (8) The Council must, as soon as practicable after a business plan has been laid before the Parliament, publish it in such manner as it considers appropriate.
- (9) The Council may at any time during a period covered by a business plan review the plan for the period and submit to the Scottish Ministers a revised plan.
- 15 (10) Subsections (3) to (8) apply to a revised plan as they apply to a business plan.

13 Annual report

- (1) The Council must, as soon as practicable after the end of each financial year, prepare and submit to the Scottish Ministers a report on the carrying out of its functions during the year.
- 20 (2) The report must—
- (a) be prepared in such form as the Scottish Ministers may direct,
 - (b) contain the information specified in subsection (3) and such other information as they may direct, and
 - (c) be submitted by such time as they may direct.
- 25 (3) The information referred to in subsection (2)(b) is details of—
- (a) the sentencing guidelines published or revised during the year (if any),
 - (b) any draft sentencing guidelines being consulted upon,
 - (c) requests made by the Scottish Ministers under section 8 and of the Council's response to them, and
 - 30 (d) references made by the High Court of Justiciary under section 9 and of the Council's response to them.
- (4) The Council may include in the report such other information as it considers appropriate.
- (5) The Scottish Ministers must lay before the Scottish Parliament each report submitted to
35 them.
- (6) The Council must, as soon as practicable after the report has been laid before the Parliament, publish it in such manner as it considers appropriate.

*Community payback orders***14 Community payback orders**

After section 227 of the 1995 Act insert—

*“Community payback orders***227A Community payback orders**

- (1) Where a person (the “offender”) is convicted of an offence punishable by imprisonment, the court may, instead of imposing a sentence of imprisonment, impose a community payback order in respect of the offender.
- (2) A community payback order is an order imposing one or more of the following requirements—
 - (a) a supervision requirement,
 - (b) an unpaid work or other activity requirement,
 - (c) a programme requirement,
 - (d) a residence requirement,
 - (e) a mental health treatment requirement,
 - (f) a drug treatment requirement,
 - (g) an alcohol treatment requirement.
- (3) A court must not impose a community payback order on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant the imposition of such an order.
- (4) Where an offender is convicted of an offence other than one punishable by imprisonment, the court may impose a community payback order in respect of the offender imposing—
 - (a) a level 1 unpaid work or other activity requirement, or
 - (b) such a requirement together with a supervision requirement.
- (5) A justice of the peace court may impose a community payback order under this section only if the order imposes one or more of the following requirements—
 - (a) a supervision requirement,
 - (b) an unpaid work or other activity requirement,
 - (c) a residence requirement.
- (6) Subsection (5)(b) is subject to section 227J(3).
- (7) Before making a community payback order imposing two or more requirements falling within subsection (2), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (8) The Scottish Ministers may by order made by statutory instrument amend subsection (5) so as to add to or omit requirements that may be imposed in a community payback order imposed by a justice of the peace court.

(9) An order is not to be made under subsection (8) unless a draft of the statutory instrument containing the order has been laid before and approved by resolution of the Scottish Parliament.

(10) In this section—

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“court” means the High Court, the sheriff or a justice of the peace court,

“imprisonment” includes detention,

“level 1 unpaid work or other activity requirement” has the meaning given by section 227I(4).

227B Community payback order: further provision

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(1) This section applies where a court is considering imposing a community payback order in respect of an offender.

(2) The court must not impose the order unless it has obtained, and taken account of, a report from an officer of a local authority containing such information relating to the offender as may be specified by Act of Adjournal.

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(3) The clerk of the court must give a copy of any report obtained under subsection (2) to—

(a) the offender,

(b) the offender’s solicitor (if any), and

(c) the prosecutor.

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(4) Before imposing the order, the court must explain to the offender in ordinary language—

(a) the purpose and effect of each of the requirements to be imposed by the order,

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(b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order, and

(c) where the court proposes to include in the order provision under section 227W for it to be reviewed, the arrangements for such a review.

(5) The court must not make the order unless the offender has, after the court has explained those matters, confirmed that the offender—

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(a) understands those matters, and

(b) is willing to comply with each of the requirements to be imposed by the order.

(6) Subsection (5) is subject to section 227M(7).

227C Community payback order: responsible officer

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(1) This section applies where a court imposes a community payback order in respect of an offender.

(2) The court must, in imposing the order—

(a) specify the locality in which the offender resides or will reside for the duration of the order,

(b) require the local authority within whose area that locality is situated to nominate, within five days of its receiving a copy of the order, an officer of the authority as the responsible officer for the purposes of the order,

(c) require the offender to comply with any instructions given by the responsible officer—

(i) about keeping in touch with the responsible officer, or

(ii) for the purposes of subsection (3), and

(d) if the order does not impose a residence requirement, require the offender to notify the responsible officer of any change or proposed change of address.

(3) The responsible officer is responsible for—

(a) making any arrangements necessary to enable the offender to comply with each of the requirements imposed by the order,

(b) promoting compliance with those requirements by the offender,

(c) taking such steps as may be necessary to enforce compliance with the requirements of the order or to vary or discharge any of them.

(4) References in this Act to the responsible officer are, in relation to an offender in respect of whom a community payback order has been imposed, the officer for the time being nominated in pursuance of subsection (2)(b).

(5) In reckoning the period of five days for the purposes of subsection (2)(b), no account is to be taken of Saturdays and Sundays.

227D Community payback order: offender's duties

(1) Subsection (2) applies where a community payback order has been imposed in respect of an offender.

(2) The offender must—

(a) report to the responsible officer in accordance with instructions given by that officer,

(b) if the order does not impose a residence requirement or a restricted movement requirement, notify the responsible officer without delay of—

(i) any change or proposed change of the offender's address,

(ii) the times, if any, at which the offender usually works (or carries out voluntary work) or attends school or any other educational establishment, and

(c) where the order imposes an unpaid work or other activity requirement, undertake for the number of hours specified in the requirement such work or activity as the responsible officer may instruct, and at such times as may be so instructed.

(3) Failure to comply with a duty under subsection (2) is to be treated as a failure to comply with a requirement imposed by the order.

227E Community payback order: further provision

- 5
- (1) Where a community payback order is imposed in respect of an offender, the order is to be taken for all purposes to be a sentence imposed on the offender.
- (2) On imposing a community payback order, the court must state in open court the reasons for imposing the order.
- (3) The imposition by a court of a community payback order in respect of an offender does not prevent the court from—
- 10
- (a) imposing a disqualification on the offender,
- (b) making an order for forfeiture in respect of the offence, or
- (c) ordering the offender to find caution for good behaviour.
- (4) Where a court imposes a community payback order in respect of an offender, the clerk of the court must ensure that—
- 15
- (a) a copy of the order imposing the community payback order is given to—
- (i) the offender, and
- (ii) the local authority within whose area the offender resides or will reside, and
- (b) a copy of the order and such other documents and information relating to the case as may be useful are given to the clerk of the appropriate court (unless the court imposing the order is that court).
- 20
- (5) A copy of the order imposing the community payback order may be given to the offender—
- (a) by being delivered personally to the offender, or
- (b) by being sent—
- 25
- (i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or
- (ii) by a postal service which provides for the delivery of the document to be recorded.
- (6) An order imposing a community payback order is to be in such form, or as nearly as may be in such form, as may be prescribed by Act of Adjournal.

30 **227F Requirement to avoid conflict with religious beliefs, work etc.**

- (1) In imposing a community payback order in respect of an offender, the court must ensure, so far as practicable, that any requirement imposed by the order avoids—
- 35
- (a) a conflict with the offender's religious beliefs,
- (b) interference with the times, if any, at which the offender normally works (or carries out voluntary work) or attends school or any other educational establishment.
- (2) The responsible officer must ensure, so far as practicable, that any instruction given to the offender avoids such a conflict or interference.

*Supervision requirement***227G Supervision requirement**

- 5 (1) In this Act, a “supervision requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the responsible officer, for the purpose of promoting the offender’s rehabilitation.
- 10 (2) On imposing a community payback order, the court must impose a supervision requirement if—
- (a) the offender is under 18 years of age and the court is satisfied as to the services which the local authority will provide for the offender’s support and rehabilitation in the specified period,
- (b) the court, in the order, imposes—
- 15 (i) a programme requirement,
- (ii) a residence requirement,
- (iii) a mental health requirement,
- (iv) a drug treatment requirement, or
- (v) an alcohol treatment requirement, or
- 20 (c) the order imposes two or more requirements (other than a supervision requirement).
- (3) The specified period must be at least 6 months and not more than 3 years.
- (4) In this section, the “specified period”, in relation to a supervision requirement, means the period specified in the requirement.

227H Supervision requirement: power to order payment of compensation

- 25 (1) This section applies where a court imposes a community payback order in respect of an offender which imposes a supervision requirement.
- (2) The court may also impose a requirement in the order that the offender must pay compensation for any personal injury, loss or damage caused (whether directly or indirectly) by the acts which constituted the offence in respect of which the order is imposed.
- 30 (3) The court may require the compensation to be paid in a lump sum or in instalments.
- (4) Where a requirement to pay compensation is imposed, the offender must complete payment of the compensation before the earlier of the following—
- 35 (a) the end of the period of 18 months beginning with the day on which the requirement is imposed,
- (b) the beginning of the period of 2 months ending with the date on which the period specified in the supervision requirement ends.
- 40 (5) The requirement to pay compensation and the requirement in subsection (4) are to be treated for the purposes of this Act as if they were part of the supervision requirement.

Unpaid work or other activity requirement

227I Unpaid work or other activity requirement

- 5 (1) In this Act, an “unpaid work or other activity requirement” is, in relation to an offender, a requirement that the offender must, for the specified number of hours, undertake—
- (a) unpaid work, and
- (b) another activity.
- (2) The nature of the unpaid work and other activity to be undertaken by the offender is to be determined by the responsible officer.
- 10 (3) The number of hours that may be specified in the requirement must be (in total)—
- (a) at least 20 hours, and
- (b) not more than 300 hours.
- (4) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling no more than 100 is referred to in this Act as a “level 1 unpaid work or other activity requirement”.
- (5) An unpaid work or other activity requirement which requires the work or activity to be undertaken for a number of hours totalling more than 100 is referred to in this Act as a “level 2 unpaid work or other activity requirement”.
- 20 (6) The Scottish Ministers may by order made by statutory instrument substitute another number of hours for any of the numbers of hours for the time being specified in subsections (3) to (5).
- (7) An order under subsection (6) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- 25 (8) In this section, “specified”, in relation to an unpaid work or other activity requirement, means specified in the requirement.

227J Unpaid work or other activity requirement: further provision

- 30 (1) A court may not impose an unpaid work or other activity requirement on an offender who is under 16 years of age.
- (2) A court may impose such a requirement on an offender only if the court is satisfied, after considering the report mentioned in section 227B(2), that the offender is a suitable person to undertake unpaid work in pursuance of the requirement.
- 35 (3) A justice of the peace court may impose a level 2 unpaid work or other activity requirement only if—
- (a) the Scottish Ministers by regulations made by statutory instrument so provide, and
- (b) the requirement is imposed in such circumstances and subject to such conditions as may be specified in the regulations.

- (4) Regulations are not to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before and approved by resolution of the Scottish Parliament.

227K Allocation of hours between unpaid work and other activity

- 5 (1) Subject to subsection (2), it is for the responsible officer to determine how many out of the total number of hours specified in an unpaid work or other activity requirement are to be allocated to undertaking, respectively—
- (a) unpaid work, and
 - (b) another activity.
- 10 (2) The number of hours allocated to undertaking an activity other than unpaid work must not exceed whichever is the lower of—
- (a) 30% of the total number of hours specified in the requirement, and
 - (b) 30 hours.
- 15 (3) The Scottish Ministers may by order made by statutory instrument amend subsection (2).
- (4) An order under subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

227L Time limit for completion of unpaid work or other activity

- 20 (1) The total number of hours of unpaid work and other activity that the offender is required to undertake in pursuance of an unpaid work or other activity requirement must be completed by the offender before the end of the specified period.
- (2) The “specified period” is such period beginning with the imposition of the requirement as the court may specify in the requirement.
- 25 (3) That period must not be less than—
- (a) in relation to a level 1 unpaid work or other activity requirement, 3 months,
 - (b) in relation to a level 2 unpaid work or other activity requirement, 6 months.

227M Fine defaulters

- 30 (1) This section applies where—
- (a) a fine has been imposed on an offender in respect of an offence,
 - (b) the offender fails to pay the fine or an instalment of the fine,
 - (c) the amount of the fine or the instalment does not exceed level 2 on the standard scale, and
 - (d) apart from this section, the court would have imposed a sentence of imprisonment on the offender under section 219(1) of this Act in respect of the failure to pay the fine or instalment.
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- 5
- (2) The court must, instead of imposing a sentence of imprisonment under section 219(1) of this Act, impose a community payback order on the offender imposing a level 1 unpaid work or other activity requirement.
- (3) Where the amount of the fine or the instalment does not exceed level 1 on the standard scale, the total number of hours specified in the requirement must not exceed 50.
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- (4) On completion of the hours of unpaid work and other activity specified in an unpaid work or other activity requirement imposed under this section, the fine in respect of which the requirement was imposed is discharged (or, as the case may be, the outstanding instalments of the fine are discharged).
- (5) If, after a community payback order is imposed in respect of an offender under this section, the offender pays the fine or the full amount of any outstanding instalments, the appropriate court must discharge the order.
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- (6) If, after a community payback order is imposed on an offender under this section, the offender pays part of the fine, or part of any outstanding instalments, the appropriate court must vary the order to take account of the payment.
- (7) A level 1 unpaid work or other activity requirement may be imposed on an offender under this section whether or not the offender indicates a willingness to comply with the requirement.
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- (8) Where a community payback order is imposed under subsection (2), section 227B(5) does not apply.
- (9) Subsection (2) is subject to sections 227J(1) and 227N(2), (3) and (6).
- (10) In this section, “court” does not include the High Court.

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227N Offenders subject to more than one unpaid work or other activity requirement

- (1) This section applies where—
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- (a) a court is considering imposing an unpaid work or other activity requirement in respect of an offender (referred to as the “new requirement”), and
- (b) at the time the court is considering imposing the requirement, there is already in effect one or more such requirements in respect of the same offender (each referred to as an “existing requirement”).
- (2) The court may, in imposing the new requirement, direct that it is to be concurrent with any existing requirement.
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- (3) Where the court so directs, hours of unpaid work or other activity undertaken after the new requirement is imposed count for the purposes of compliance with that requirement and the existing requirement.
- (4) Subsection (5) applies where the court does not so direct.
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- (5) The maximum number of hours which may be specified in the new requirement is 300 less the total number of hours specified in each existing requirement.

- (6) Where that maximum number is less than the minimum number of hours that can be specified by virtue of section 227I(3)(a), the court must not impose the new requirement.

227O Rules about unpaid work and other activity

- (1) The Scottish Ministers may make rules by statutory instrument for or in connection with the undertaking of unpaid work and other activities in pursuance of unpaid work or other activity requirements.
- (2) Rules under subsection (1) may in particular make provision for—
- (a) limiting the number of hours of work or other activity that an offender may be required to undertake in any one day,
 - (b) reckoning the time spent undertaking unpaid work or other activity,
 - (c) the payment to the offender of travelling or other expenses in connection with the undertaking of unpaid work or other activity,
 - (d) the keeping of records of unpaid work and other activity undertaken.
- (3) Rules under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

Programme requirement

227P Programme requirement

- (1) In this Act, a “programme requirement” is, in relation to an offender, a requirement that the offender must participate in a specified programme, at the specified place and on the specified number of days.
- (2) In this section, “programme” means a course or other planned set of activities, taking place over a period of time, and provided to individuals or groups of individuals for the purpose of addressing offending behavioural needs.
- (3) A court may impose a programme requirement on an offender only if the specified programme is one which has been recommended by an officer of a local authority as being suitable for the offender to participate in.
- (4) If an offender’s compliance with a proposed programme requirement would involve the co-operation of a person other than the offender, the court may impose the requirement only if the other person consents.
- (5) A court may not impose a programme requirement that would require an offender to participate in a specified programme after the expiry of the period specified in the supervision requirement to be imposed at the same time as the programme requirement (by virtue of section 227G(2)(b)).
- (6) Where the court imposes a programme requirement on an offender, the requirement is to be taken to include a requirement that the offender, while attending the specified programme, complies with any instructions given by or on behalf of the person in charge of the programme.
- (7) In this section, “specified”, in relation to a programme requirement, means specified in the requirement.

Residence requirement

227Q Residence requirement

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- (1) In this Act, a “residence requirement” is, in relation to an offender, a requirement that, during the specified period, the offender must reside at a specified place.
- (2) The court may, in a residence requirement, require an offender to reside at a hostel or other institution only if the hostel or institution has been recommended as a suitable place for the offender to reside in by an officer of a local authority.
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- (3) The specified period must not be longer than the period specified in the supervision requirement to be imposed at the same time as the residence requirement (by virtue of section 227G(2)(b)).
- (4) In this section, “specified”, in relation to a residence requirement, means specified in the requirement.

15 *Mental health treatment requirement*

227R Mental health treatment requirement

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- (1) In this Act, a “mental health treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both) with a view to improving the offender’s mental condition.
- (2) The treatment to which an offender may be required to submit under a mental health treatment requirement is such of the kinds of treatment described in subsection (3) as is specified; but otherwise the nature of the treatment is not to be specified.
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- (3) Those kinds of treatment are—
- (a) treatment as a resident patient in a hospital (other than a State hospital) within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”),
- 30
- (b) treatment as a non-resident patient at such institution or other place as may be specified, or
- (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist as may be specified.
- (4) A court may impose a mental health treatment requirement on an offender only if the court is satisfied—
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- (a) on the evidence of an approved medical practitioner (within the meaning of the 2003 Act), that Condition A is met,
- (b) on the written or oral evidence of the registered medical practitioner or chartered psychologist by whom or under whose direction the treatment is to be provided, that Condition B is met, and
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- (c) that Condition C is met.
- (5) Condition A is that—

- (a) the offender suffers from a mental condition,
- (b) the condition requires, and may be susceptible to, treatment, and
- (c) the condition is not such as to warrant the offender's being subject to—
 - (i) a compulsory treatment order under section 64 of the 2003 Act, or
 - (ii) a compulsion order under section 57A of this Act.

(6) Condition B is that the treatment proposed to be specified is appropriate for the offender.

(7) Condition C is that arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the hospital proposed to be specified in the requirement.

(8) The specified period must not be longer than the period specified in the supervision requirement to be imposed at the same time as the mental health treatment requirement (by virtue of section 227G(2)(b)).

(9) In this section, “specified”, in relation to a mental health treatment requirement, means specified in the requirement.

227S Mental health treatment requirements: medical evidence

(1) For the purpose of making a finding under section 227R(4)(a) or (b), a written report purporting to be signed by an approved medical practitioner may be received in evidence without the need for proof of the signature or qualifications of the practitioner.

(2) Where such a report is lodged in evidence otherwise than by or on behalf of the offender, a copy of the report must be given to—

- (a) the offender, and
- (b) the offender's solicitor (if any).

(3) The court may adjourn the case if it considers it necessary to do so to give the offender further time to consider the report.

(4) Subsection (5) applies where the offender is—

- (a) detained in a hospital under this Act, or
- (b) remanded in custody.

(5) For the purpose of calling evidence to rebut any evidence contained in a report lodged as mentioned in subsection (2), arrangements may be made by or on behalf of the offender for an examination of the offender by a registered medical practitioner.

(6) Such an examination is to be carried out in private.

227T Power to change treatment

(1) This section applies where—

- (a) a mental health treatment requirement has been imposed on an offender, and

(b) the registered medical practitioner or chartered psychologist by whom or under whose direction the offender is receiving the treatment to which the offender is required to submit in pursuance of the requirement is of the opinion mentioned in subsection (2).

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(2) That opinion is—

(a) that the offender requires, or that it would be appropriate for the offender to receive, a different kind of treatment (whether in whole or in part) from that which the offender has been receiving, or

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(b) that the treatment (whether in whole or in part) can be more appropriately given in or at a different hospital or other institution or place from that where the offender has been receiving treatment.

(3) The practitioner or, as the case may be, psychologist may make arrangements for the offender to be treated accordingly.

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(4) Subject to subsection (5), the treatment provided under the arrangements must be of a kind which could have been specified in the mental health treatment requirement.

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(5) The arrangements may provide for the offender to receive treatment (in whole or in part) as a resident patient in an institution or place even though it is one that could not have been specified for that purpose in the mental health treatment requirement.

(6) Arrangements may be made under subsection (3) only if—

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(a) the offender and the responsible officer agree to the arrangements,

(b) the treatment will be given by or under the direction of a registered medical practitioner or chartered psychologist who has agreed to accept the offender as a patient, and

(c) where the treatment requires the offender to be a resident patient, the offender will be received as such.

(7) Where arrangements are made under subsection (3)—

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(a) the responsible officer must notify the court of the arrangements, and

(b) the treatment provided under the arrangements is to be taken to be treatment to which the offender is required to submit under the mental health treatment requirement.

Drug treatment requirement

227U Drug treatment requirement

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(1) In this Act, a “drug treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to reducing or eliminating the offender’s dependency on, or propensity to misuse, drugs.

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(2) The treatment to which an offender may be required to submit under a drug treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

- (3) Those kinds of treatment are—
- (a) treatment as a resident in such institution or other place as is specified,
 - (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified.

5 (4) The specified person must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

(5) The specified period must not be longer than the period specified in the supervision requirement to be imposed at the same time as the drug treatment requirement (by virtue of section 227G(2)(b)).

10 (6) A court may impose a drug treatment requirement on an offender only if the court is satisfied that—

- (a) the offender is dependent on, or has a propensity to misuse, any controlled drug (as defined in section 2(1)(a) of the Misuse of Drugs Act 1971 (c.38)),

- (b) the dependency or propensity requires, and may be susceptible to, treatment, and

- (c) arrangements have been made for the proposed treatment including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender's reception in the institution or other place to be specified.

20 (7) In this section, “specified”, in relation to a drug treatment requirement, means specified in the requirement.

Alcohol treatment requirement

227V Alcohol treatment requirement

25 (1) In this Act, an “alcohol treatment requirement” is, in relation to an offender, a requirement that the offender must submit, during the specified period, to treatment by or under the direction of a specified person with a view to the reduction or elimination of the offender's dependency on alcohol.

30 (2) The treatment to which an offender may be required to submit under an alcohol treatment requirement is such of the kinds of treatment described in subsection (3) as is specified (but otherwise the nature of the treatment is not to be specified).

(3) Those kinds of treatment are—

- (a) treatment as a resident in such institution or other place as is specified,

- (b) treatment as a non-resident at such institution or other place, and at such intervals, as is specified,

- (c) treatment by or under the direction of such person as is specified.

40 (4) The person specified under subsection (1) or (3)(c) must be a person who has the necessary qualifications or experience in relation to the treatment to be provided.

- (5) The specified period must not be longer than the period specified in the supervision requirement to be imposed at the same time as the alcohol treatment requirement (by virtue of section 227G(2)(b)).
- (6) A court may impose an alcohol treatment requirement on an offender only if the court is satisfied that—
- (a) the offender is dependent on alcohol,
 - (b) the dependency requires, and may be susceptible to, treatment, and
 - (c) arrangements have been, or can be, made for the proposed treatment, including, where the treatment is to be of the kind mentioned in subsection (3)(a), arrangements for the offender’s reception in the institution or other place to be specified.
- (7) In this section, “specified”, in relation to an alcohol treatment requirement, means specified in the requirement.

Community payback orders: review, variation etc.

227W Periodic review of community payback orders

- (1) On imposing a community payback order in respect of an offender, the court may include in the order provision for the order to be reviewed at such time or times as may be specified in the order.
- (2) A review carried out in pursuance of such provision is referred to in this section as a “progress review”.
- (3) A progress review may be carried out by the court which imposed the community payback order or by the appropriate court.
- (4) A progress review is to be carried out in such manner as the court carrying out the review may determine.
- (5) Before each progress review, the responsible officer must give the court a written report on the offender’s compliance with the requirements imposed by the community payback order in the period to which the review relates.
- (6) The offender must attend each progress review.
- (7) If the offender fails to attend a progress review, the court may—
- (a) issue a citation requiring the offender’s attendance, or
 - (b) issue a warrant for the offender’s arrest.
- (8) The unified citation provisions apply in relation to a citation under subsection (7)(a) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (9) On conclusion of a progress review in respect of a community payback order, the court may vary, revoke or discharge the order in accordance with section 227Y.

227X Applications to vary, revoke and discharge community payback orders

- (1) The appropriate court may, on the application of either of the persons mentioned in subsection (2), vary, revoke or discharge a community payback order in accordance with section 227Y.

- (2) Those persons are—
- (a) the offender in respect of whom the order was imposed,
 - (b) the responsible officer in relation to the offender.

227Y Variation, revocation and discharge: court's powers

- 5 (1) This section applies where a court proposes to vary, revoke or discharge a community payback order under section 227W(9) or 227X(1).
- (2) The court may vary, revoke or discharge the order only if satisfied that it is in the interests of justice to do so having regard to circumstances which have arisen since the order was imposed.
- 10 (3) In varying an order, the court may, in particular—
- (a) add to the requirements imposed by the order,
 - (b) revoke or discharge any requirement imposed by the order,
 - (c) vary any requirement imposed by the order.
- (4) In varying a requirement imposed by the order, the court may, in particular—
- 15 (a) extend or shorten any period or other time limit specified in the requirement,
- (b) in the case of an unpaid work or other activity requirement, increase or decrease the total number of hours specified in the requirement,
- 20 (c) in the case of a supervision requirement containing a requirement to pay compensation under section 227H, vary the amount of compensation or any instalment.
- (5) The court may not, under subsection (4)(a), extend any period or time limit so as to extend it beyond the maximum period or limit that could have been specified in the requirement when it was imposed.
- 25 (6) The court may not, under subsection (4)(b), increase the total number of hours beyond the maximum that could have been specified in the requirement when it was imposed.
- (7) Where the court varies a restricted movement requirement imposed in a community payback order, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- 30 (8) Where the court revokes a community payback order, the court may deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed.
- 35 (9) Where the court proposes to vary, revoke or discharge the order otherwise than on the application of the offender, the court must issue a citation to the offender requiring the offender to appear before the court (except where the offender is required to appear by section 227W(6)).
- 40 (10) If the offender fails to appear as required by the citation, the court may issue a warrant for the arrest of the offender.

- (11) The unified citation provisions apply in relation to a citation under subsection (9) as they apply in relation to a citation under section 216(3)(a) of this Act.

227Z Variation of community payback orders: further provision

- 5 (1) This section applies where a court is considering varying a community payback order in respect of an offender.

- (2) The court must not make the variation unless it has obtained, and taken account of, a report from the responsible officer containing such information relating to the offender as may be specified by Act of Adjournal.

- 10 (3) The clerk of the court must give a copy of any report obtained under subsection (2) to—

- (a) the offender,
(b) the offender's solicitor (if any).

- (4) Before making the variation, the court must explain to the offender in ordinary language—

- 15 (a) the purpose and effect of each of the requirements to be imposed by the order as proposed to be varied,

- (b) the consequences which may follow if the offender fails to comply with any of the requirements imposed by the order as proposed to be varied, and

- 20 (c) where the court proposes to include in the order as proposed to be varied provision under section 227W for it to be reviewed, or to vary any such provision already included in the order, the arrangements for such a review.

- 25 (5) The court must not make the variation unless the offender has, after the court has explained those matters, confirmed that the offender—

- (a) understands those matters, and
(b) is willing to comply with each of the requirements to be imposed by the order as proposed to be amended.

- (6) Where the variation would impose a new requirement—

- 30 (a) the court must not make the variation if the new requirement is not a requirement that could have been imposed in the order when it was made,

- 35 (b) if the new requirement is one which could have been so imposed, the court must, before making the variation take whatever steps the court would have been required to take before imposing the requirement had it been imposed in the order when it was made.

- 40 (7) Where the variation would vary any requirement imposed by the order, the court must not make the variation if the requirement as proposed to be varied could not have been imposed, or imposed in that way, in the order when it was made.

227ZA Change of offender’s residence to new local authority area

- (1) The section applies where—
- (a) the offender in respect of whom a community payback order is in force proposes to change, or has changed, residence to a locality (“the new locality”) situated in the area of a different local authority from that in which the locality currently specified in the order is situated, and
 - (b) an application is made to the appropriate court under section 227X(1) for the order to be varied so as to specify the new local authority area in which the offender resides or will reside.
- (2) The court may vary the order as proposed in the application only if satisfied that arrangements have been, or can be, made in the local authority area in which the new locality is situated for the offender to comply with the requirements of the order.
- (3) Where the court varies the order as proposed in the application, the court must also vary the order so as to require the local authority for the area in which the new locality is situated to nominate an officer of the authority to be the responsible officer for the purposes of the order.

*Breach of community payback order***227ZB Breach of community payback order**

- (1) This section applies where it appears to the appropriate court that an offender in respect of whom a community payback order has been imposed has failed to comply with a requirement imposed in the order.
- (2) The court may—
- (a) issue a warrant for the offender’s arrest, or
 - (b) issue a citation to the offender requiring the offender to appear before the court.
- (3) If the offender fails to appear as required by a citation issued under subsection (2)(b), the court may issue a warrant for the arrest of the offender.
- (4) The unified citation provisions apply in relation to a citation under subsection (2)(b) as they apply in relation to a citation under section 216(3)(a) of this Act.
- (5) If the court is satisfied that the offender has failed without reasonable excuse to comply with a requirement imposed by the order, the court may—
- (a) impose on the offender a fine not exceeding level 3 on the standard scale,
 - (b) revoke the order and deal with the offender in respect of the offence in relation to which the order was imposed as it could have dealt with the offender had the order not been imposed, or
 - (c) vary the order so as to impose a new requirement, vary any requirement imposed by the order or discharge any requirement imposed by the order.
- (6) The requirements which the court may impose under subsection (5)(c) include a restricted movement requirement.

- (7) If the court imposes a restricted movement requirement, the court must also vary the order so as to impose a supervision requirement, unless a supervision requirement is already imposed by the order.
- (8) Where the court varies the order so as to impose a restricted movement requirement, the court must give a copy of the order making the variation to the person responsible for monitoring the offender's compliance with the requirement.
- (9) The period for which the restricted movement requirement is in effect must not exceed whichever is the lesser of—
- (a) the period for which the supervision requirement has effect, and
 - (b) the period of 12 months.
- (10) If during the period for which the restricted movement requirement is in effect it appears to the person responsible for monitoring the offender's compliance with the requirement that the offender has failed to comply with the requirement, the person must report the matter to the offender's responsible officer.
- (11) On receiving a report under subsection (10), the responsible officer must report the matter to the court.
- (12) The Scottish Ministers may by regulations made by statutory instrument substitute for the number of months for the time being specified in subsection (9)(b) another number of months.
- (13) Regulations are not to be made under subsection (12) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.

227ZC Breach of community payback order: further provision

- (1) Subsection (2) applies where the court, under paragraph (b) of subsection (5) of section 227ZB, revokes a community payback order imposing only a level 1 unpaid work or other activity requirement.
- (2) In dealing with the offender as mentioned in that paragraph, the court may not impose a sentence of imprisonment for a term exceeding—
- (a) in the case of a justice of the peace court, 20 days,
 - (b) in any other case, 30 days.
- (3) Evidence of one witness is sufficient for the purpose of establishing that an offender has failed without reasonable excuse to comply with a requirement imposed by a community payback order.
- (4) Subsection (5) applies in relation to a community payback order imposing a supervision requirement containing a requirement to pay compensation under section 227H.
- (5) A document bearing to be a certificate signed by the clerk of the appropriate court and stating that the compensation, or an instalment of the compensation, has not been paid as required by the requirement is sufficient evidence that the offender has failed to comply with the requirement.

- (6) The appropriate court may, for the purpose of considering whether an offender has failed to comply with a requirement imposed by a community payback order, require the responsible officer to provide a report on the offender's compliance with the requirement.

227ZD Restricted movement requirement

- (1) In this Act, a “restricted movement requirement” is, in relation to an offender, a requirement restricting the offender's movements to such extent as is specified.
- (2) A restricted movement requirement may in particular require the offender—
- (a) to be in a specified place at a specified time or during specified periods, or
- (b) not to be in a specified place, or a specified class of place, at a specified time or during specified periods.
- (3) A restricted movement requirement may not require the offender to be at any place for periods totalling more than 12 hours in any one day.
- (4) A restricted movement requirement—
- (a) takes effect from the specified day, and
- (b) has effect for such period of not more than 12 months as is specified.
- (5) A court imposing a restricted movement requirement must specify in it—
- (a) the method by which the offender's compliance with the requirement is to be monitored, and
- (b) the person who is to be responsible for monitoring that compliance.
- (6) The Scottish Ministers may by regulations made by statutory instrument substitute—
- (a) for the number of hours for the time being specified in subsection (3) another number of hours,
- (b) for the number of months for the time being specified in subsection (4)(b) another number of months.
- (7) Regulations are not to be made under subsection (6) unless a draft of the statutory instrument containing the regulations has been laid before and approved by resolution of the Scottish Parliament.
- (8) In this section, “specified”, in relation to a restricted movement requirement, means specified in the requirement.

227ZE Restricted movement requirements: further provision

- (1) A court may not impose a restricted movement requirement requiring the offender to be, or not to be, in a specified place unless it is satisfied that the offender's compliance with the requirement can be monitored by the method specified in the requirement.
- (2) Before imposing a restricted movement requirement requiring the offender to be in a specified place, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the place is situated on—

- (a) the place, and
 - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the place.
- (3) The court may, before imposing the requirement, hear the officer who prepared the report.

227ZF Variation of restricted movement requirement

- (1) This section applies where—
- (a) a community payback order which is in force in respect of an offender imposes a restricted movement requirement requiring the offender to be at a particular place specified in the requirement for any period, and
 - (b) an application is made to the appropriate court under section 227X for the requirement to be varied so as to require the offender to be at a different place (“the new place”).
- (2) Before making the variation proposed in the application, the appropriate court must obtain and consider a report by an officer of the local authority in whose area the new place is situated on—
- (a) the new place, and
 - (b) the attitude of any person (other than the offender) likely to be affected by the enforced presence of the offender at the new place.
- (3) The court may, before making the variation proposed in the application, hear the officer who prepared the report.

227ZG Remote monitoring

Section 245C of this Act, and regulations made under that section, apply in relation to the imposition of, and compliance with, restricted movement requirements as they apply in relation to the imposition of, and compliance with, restriction of liberty orders.

227ZH Restricted movement requirements: Scottish Ministers’ functions

- (1) The Scottish Ministers may by regulations made by statutory instrument prescribe—
- (a) which courts, or class or classes of courts, may impose restricted movement requirements,
 - (b) the method or methods of monitoring compliance with a restricted movement requirement which may be specified in such a requirement,
 - (c) the class or classes of offender in respect of whom such a requirement may be imposed.
- (2) Regulations under subsection (1) may make different provision about the matters mentioned in paragraphs (b) and (c) of that subsection in relation to different courts or classes of court.
- (3) Regulations under subsection (1) are subject to annulment in pursuance of a resolution of the Scottish Parliament.

- (4) The Scottish Ministers must determine the person, or class or description of person, who may be specified in a restricted movement requirement as the person to be responsible for monitoring the offender's compliance with the requirement (referred to in this section as the "monitor").
- 5 (5) The Scottish Ministers may determine different persons, or different classes or descriptions of person, in relation to different methods of monitoring.
- (6) The Scottish Ministers must notify each court having power to impose a restricted movement requirement of their determination.
- (7) Subsection (8) applies where—
- 10 (a) the Scottish Ministers make a determination under subsection (4) changing a previous determination made by them, and
- (b) a person specified in a restricted movement requirement in effect at the date the determination takes effect as the monitor is not a person, or is not of a class or description of person, mentioned in the determination as
- 15 changed.
- (8) The appropriate court must—
- (a) vary the restricted movement requirement so as to specify a different person as the monitor,
- (b) send a copy of the requirement as varied to that person, and
- 20 (c) notify the offender of the variation.

227ZI Documentary evidence in proceedings for breach of restricted movement requirement

- (1) This section applies for the purposes of establishing in any proceedings whether an offender in respect of whom a restricted movement requirement has
- 25 been imposed has complied with the requirement.
- (2) Evidence of the presence or absence of the offender at a particular place at a particular time may be given by the production of a document or documents bearing to be—
- 30 (a) a statement automatically produced by a device specified in regulations made under section 245C of this Act, by which the offender's whereabouts were remotely monitored, and
- (b) a certificate signed by a person nominated for the purposes of this paragraph by the Scottish Ministers that the statement relates to the whereabouts of the offender at the dates and times shown in the
- 35 statement.
- (3) The statement and certificate are, when produced in evidence, sufficient evidence of the facts stated in them.
- (4) The statement and certificate are not admissible in evidence at any hearing unless a copy of them has been served on the offender before the hearing.
- 40 (5) Where it appears to any court before which the hearing is taking place that the offender has not had sufficient notice of the statement or certificate, the court may adjourn the hearing or make any order that it considers appropriate.

Local authorities: annual consultation about unpaid work

227ZJ Local authorities: annual consultations about unpaid work

- 5 (1) Each local authority must, for each year, consult prescribed persons about the nature of unpaid work and other activities to be undertaken by offenders residing in the local authority’s area in respect of whom community payback orders are imposed.
- (2) In subsection (1), “prescribed persons” means such persons, or class or classes of person, as may be prescribed by the Scottish Ministers by regulations made by statutory instrument.
- 10 (3) A statutory instrument containing regulations under subsection (2) is to be subject to annulment in pursuance of a resolution of the Scottish Parliament.

Community payback order: meaning of “the appropriate court”

227ZK Meaning of “the appropriate court”

- 15 (1) In sections 227A to 227ZI, “the appropriate court” means, in relation to a community payback order—
- (a) where the order was imposed by the High Court of Justiciary, that Court,
- (b) where the order was imposed by a sheriff, a sheriff having jurisdiction in the locality mentioned in subsection (2),
- (c) where the order was imposed by a justice of the peace court—
- 20 (i) the justice of the peace court having jurisdiction in that locality, or
- (ii) if there is no justice of the peace court having jurisdiction in that locality, a sheriff having such jurisdiction.
- (2) The locality referred to in subsection (1)(b) is the locality for the time being specified in the order imposing the community payback order under section 227C(2)(a).”.
- 25

Non-harassment orders

15 Non-harassment orders

In section 234A of the 1995 Act (non-harassment orders)—

- 30 (a) in subsection (1), for “harassment of” substitute “misconduct towards”,
- (b) in subsection (2), for “further harassment” substitute “harassment (or further harassment)”,
- (c) after subsection (2) insert—
- “(2A) The court may, for the purpose of subsection (2) above, have regard to any information given to it for that purpose by the prosecutor—
- 35 (a) about any other offence involving misconduct towards the victim—
- (i) of which the offender has been convicted, or

(ii) as regards which the offender has accepted (or has been deemed to have accepted) a fixed penalty or compensation offer under section 302(1) or 302A(1) or as regards which a work order has been made under section 303ZA(6),

5 (b) in particular, by way of—

(i) an extract of the conviction along with a copy of the complaint or indictment containing the charge to which the conviction relates, or

10 (ii) a note of the terms of the charge to which the fixed penalty offer, compensation offer or work order relates.

(2B) But the court may do so only if the court may, under section 101 or 101A (in a solemn case) or section 166 or 166A (in a summary case), have regard to the conviction or the offer or order.

15 (2C) The court must give the offender an opportunity to make representations in response to the application.”, and

(d) for subsection (7) substitute—

“(7) For the purposes of this section—

“harassment” and “conduct” are to be construed in accordance with section 8 of the Protection from Harassment Act 1997 (c.40),

20 “misconduct” includes conduct that causes alarm or distress.”.

Short sentences

16 Short periods of detention

(1) The 1995 Act is amended as follows.

(2) Section 169 (detention in precincts of court) is repealed.

25 (3) In section 206 (minimum periods of detention)—

(a) in subsection (1), for “five” substitute “15”, and

(b) subsections (2) to (6) are repealed.

17 Presumption against short periods of imprisonment or detention

(1) The 1995 Act is amended as follows.

30 (2) In section 204 (restrictions on passing sentence of imprisonment or detention), after subsection (4) insert—

“(4A) A court may pass a sentence of imprisonment for a term not exceeding 6 months on a person only where the court considers that no other method of dealing with the person is appropriate.

35 (4B) Where a court passes such a sentence, the court must—

(a) state its reasons for the opinion that no other method of dealing with the person is appropriate, and

(b) have those reasons entered in the record of the proceedings.”.

(3) In section 208 (detention of children convicted on indictment)—

(a) after subsection (1) insert—

“(1A) Where the court imposes a sentence of detention for a term not exceeding 6 months on a child, the court must—

(a) state its reasons for the opinion that no other method of dealing with the child is appropriate, and

(b) have those reasons entered in the record of the proceedings.”, and

(b) in subsection (2), after “(1)” insert “and (1A)”.

18 Amendments of Custodial Sentences and Weapons (Scotland) Act 2007

(1) The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended as follows.

(2) In section 4 (basic definitions)—

(a) in subsection (1)—

(i) the definitions of “custody-only prisoner” and “custody-only sentence” are repealed,

(ii) in the definition of “custody and community sentence” for “15 days or more” substitute “at least the prescribed period”,

(iii) after the definition of “Parole Board” insert—

““prescribed period” means such period as the Scottish Ministers may by order specify,”, and

(iv) after the definition of “punishment part” insert—

““short-term custody and community prisoner” means a person serving a short-term custody and community sentence,

“short-term custody and community sentence” means a sentence of imprisonment for an offence for a term of less than the prescribed period”, and

(b) subsection (2) is repealed.

(3) For section 5 (release of custody-only prisoners on completion of sentence) substitute—

“Short-term custody and community prisoners

5 Release of short-term custody and community prisoners

As soon as a short-term custody and community prisoner has served one-half of the prisoner’s short-term custody and community sentence the Scottish Ministers must release the prisoner on short-term community licence.”.

(4) In Chapter 3 of Part 2, in the chapter title, for “Community” substitute “Short-term community, community”.

(5) In section 29 (release on licence of certain prisoners: the supervision conditions), in subsection (2)(a)—

(a) in sub-paragraph (ii), the words from “serving” to the end are repealed,

(b) sub-paragraph (iii) is repealed,

(c) in sub-paragraphs (iv) and (v), for “person” substitute “short-term custody and community prisoner”,

- (d) in sub-paragraph (vi), for “person” substitute “short-term custody and community prisoner serving a sentence of imprisonment of 6 months or more and”, and
- (e) in sub-paragraph (vii), at the beginning insert “a short-term custody and community prisoner who is”.

5 (6) After section 29 insert—

“Short-term community licences

29A Release on short-term community licence: conditions

(1) This section applies where, by virtue of section 5, the Scottish Ministers release a prisoner on short-term community licence.

10 (2) The Scottish Ministers must include in the prisoner’s short-term community licence—

- (a) the standard conditions, and
- (b) where the prisoner falls within section 29(2), the supervision conditions.

15 (3) The Scottish Ministers may include in the prisoner’s short-term community licence—

- (a) where the prisoner does not fall within section 29(2), any of the supervision conditions,
- (b) such other conditions as they consider appropriate.

(4) The Scottish Ministers may—

- 20 (a) vary any condition mentioned in subsection (2) or (3),
- (c) cancel any condition mentioned in subsection (3),
- (b) include any further conditions in the licence.

(5) The Scottish Ministers may not cancel any condition mentioned in subsection (2).

25 (6) Before exercising any of the powers conferred by subsection (3) or (4), the Scottish Ministers must, in pursuance of arrangements established under section 46A(1), co-operate with the appropriate local authority.

30 (7) In this section, “appropriate local authority”, in relation to a short-term custody and community prisoner, means the local authority for the area in which the prisoner—

- (a) resided immediately before the imposition of the short-term custody and community sentence, or
- (b) intends to reside on release on short-term community licence.

35 (8) If, by virtue of subsection (7), two or more local authorities are the appropriate local authority in relation to a short-term custody and community prisoner, those authorities may agree that the functions conferred on them by subsection (5) and section 46A(2) may be carried out by only one of them.”.

(7) After section 46 insert—

“Assessment of conditions for short-term community licences

46A Joint arrangements between Scottish Ministers and local authorities

5 (1) The Scottish Ministers and each local authority must jointly establish arrangements for the assessment and management of the risk posed in the local authority’s area by short-term custody and community prisoners released on licence subject to the supervision conditions.

10 (2) For the purposes of assisting the Scottish Ministers in deciding whether, under section 29A(3)(a), to include any of the supervision conditions in a prisoner’s short-term community licence, the Scottish Ministers and the appropriate local authority must, during the first half of a short-term custody and community prisoner’s sentence, assess, in accordance with arrangements established under subsection (1), whether any of those conditions are appropriate.

15 (3) In this section, “appropriate local authority” is to be construed in accordance with section 29A(7) and (8).”.

(8) In section 47 (curfew licences)—

(a) in subsection (1), after “to” insert “a short-term custody and community prisoner or”,

(b) in subsection (2) for “the custody part of the prisoner’s sentence” substitute—

20 “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner’s sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner’s sentence”,

(c) after subsection (3) insert—

25 “(3A) The Scottish Ministers may release a short-term custody and community prisoner on curfew licence only—

(a) after the later of—

(i) the day on which the prisoner has served the greater of one-quarter or four weeks of the prisoner’s sentence, or

30 (ii) the day falling 166 days before the expiry of one-half of the prisoner’s sentence, and

(b) before the day falling 14 days before the expiry of one-half of the prisoner’s sentence.”,

(d) in subsection (4)—

35 (i) after “a” insert “custody and community”, and

(ii) in paragraph (a)(ii), for “135” substitute “166”, and

(e) in subsection (8), for “the custody part of the prisoner’s sentence” substitute—

40 “(a) in the case of a short-term custody and community prisoner, the first half of the prisoner’s sentence,

(b) in the case of a custody and community prisoner, the custody part of the prisoner’s sentence”.

- (9) Schedule 2 amends the Custodial Sentences and Weapons (Scotland) Act (asp 17) and the 1995 Act in consequence of amendments made by this section.

19 Early removal of certain short-term prisoners from the United Kingdom

For schedule 6 to the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (transitory amendments of the Prisoners and Criminal Proceedings (Scotland) Act 1993) substitute—

“SCHEDULE 6

(introduced by section 66(3))

TRANSITORY AMENDMENTS

1 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), that Part has effect in accordance with paragraphs 2 to 4.

2 In section 1 (release of short-term and long-term prisoners), subsection (3) has effect as if for paragraphs (a) and (b) there were substituted “must,”.

3 Section 9 (persons liable to removal from the United Kingdom) has effect as if—

(a) subsection (1) were repealed, and

(b) in subsection (3), after “section”, where it first occurs, there were inserted “and sections 9A and 9B”.

4 That Part has effect as if after section 9 there were inserted—

“9A Persons eligible for removal from the United Kingdom

(1) For the purposes of this Part, to be “eligible for removal from the United Kingdom” a person must show, to the satisfaction of the Scottish Ministers, that the condition in subsection (2) is met.

(2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 9B.

(3) The person must not be one who is liable to removal from the United Kingdom.

9B Early removal of certain short-term prisoners from the United Kingdom

(1) Subject to subsection (2), where a short-term prisoner is liable to, or eligible for, removal from the United Kingdom, the Scottish Ministers may remove the prisoner from prison under this section at any time during the period of 180 days ending with the day on which the prisoner will have served one-half of the prisoner’s sentence.

(2) Subsection (1) does not apply in relation to a prisoner unless the prisoner has served one-quarter of the sentence.

(3) A prisoner removed from prison under this section—

(a) if liable to removal from the United Kingdom, is so removed only for the purpose of enabling the Secretary of State to remove the prisoner from the United Kingdom under powers conferred by—

(i) Schedule 2 or 3 to the Immigration Act 1971 (c.77), or

(ii) section 10 of the Immigration and Asylum Act 1999 (c.33),

(b) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and

(c) in either case, so long as remaining in the United Kingdom, remains liable to be detained in pursuance of the prisoner's sentence until the prisoner has served one-half of the sentence.

(4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Scottish Ministers under section 1(1), 1AA or 3 is exercisable in relation to the prisoner as if the prisoner were in prison.

(5) The Scottish Ministers may by order amend the number of days for the time being specified in subsection (1).

(6) A statutory instrument containing an order under subsection (5) may not be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

9C Re-entry into United Kingdom of prisoner removed from prison early

(1) This section applies in relation to a person (referred to in this section as "the removed person") who, after being removed from prison under section 9B, has been removed from the United Kingdom before serving one-half of the sentence.

(2) Where the removed person re-enters the United Kingdom at any time before the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B), the person is liable to be detained in pursuance of the person's sentence until the earlier of the following—

(a) the date of the expiry of the outstanding custodial period,

(b) the date on which the person would have served the person's sentence in full (but for the person's removal from prison under section 9B).

(3) In the case of a person liable to be detained under subsection (2), the duty to release the person under section 1(1) or 1AA(1) applies only after the expiry of the outstanding custodial period.

(4) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 40 of the Prisons (Scotland) Act 1989 (c.45) (persons unlawfully at large) to be unlawfully at large.

(5) Subsection (2) does not prevent—

- (a) the further removal from prison under section 9B(1) of a person falling within that subsection, or
- (b) the further removal from the United Kingdom of such a person.

(6) In this section, the “outstanding custodial period” means, in relation to a removed person, a period of time equal to the period beginning with the date of removal from the United Kingdom and ending with the date on which the person would, but for the removal, have served one-half of the sentence.”.

5
10
5 Until the coming into force of the repeal by this Act of Part 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c.9), paragraph (c) of section 24 of the International Criminal Court (Scotland) Act 2001 (asp 13) (limited disapplication of certain provisions relating to sentences) has effect as if—

- (a) after “9” there were inserted “, 9A, 9B, 9C”, and
- (b) after “transfer” there were inserted “, removal”.

15 *Other sentencing measures*

20 Reports about supervised persons

- (1) Section 203 of the 1995 Act (reports) is amended as follows.
- (2) In subsection (3), for the words from “the offender” to the end substitute—
 - “ (a) the offender,
 - 20 (b) the offender’s solicitor (if any), and
 - (c) the prosecutor.”.

21 Extended sentences for certain sexual offences

In section 210A of the 1995 Act (extended sentences for sex and violent offenders)—

- (a) in subsection (10), at the end of the definition of “sexual offence” add—

25 “(xxviii) an offence (other than one mentioned in the preceding paragraphs) where the court determines for the purposes of this paragraph that there was a significant sexual aspect to the offender’s behaviour in committing the offence;”, and

- (b) after subsection (11) add—

30 “(12) An extended sentence may be passed by reference to paragraph (xxviii) only if the offender is or is to become, by virtue of Schedule 3 to the Sexual Offences Act 2003 (c.42), subject to the notification requirements of Part 2 of that Act.”.

22 Effect of probation and absolute discharge

- (1) In section 1(4) of the Rehabilitation of Offenders Act 1974 (c.53) (construction of references in Act to “conviction”), for “section 9 of the Criminal Justice (Scotland) Act 1949” substitute “section 247 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.
35
- (2) In section 49(6) of the 1982 Act (offences relating to dangerous and annoying creatures: power to order disposal of creature), the words “or makes a probation order in relation to him” are repealed.

(3) In section 58(3) of the 1982 Act (convicted thief in possession: power to order forfeiture of tools etc.)—

(a) the words “or makes a probation order in relation to him” are repealed, and

(b) for the words from “discharged absolutely” to the end substitute “, as the case may be, discharged absolutely.”.

(4) In section 96 of the 2005 Act (exclusion orders: supplementary provision), after subsection (2) insert—

“(2A) For the purposes of section 94, section 247(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a violent offence within the meaning of section 94.”.

(5) In section 129 of the 2005 Act (relevant and foreign offences), after subsection (4) add—

“(5) For the purposes of the provisions of this Act specified in subsection (6), section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c.46) (convictions deemed not to be convictions where offender placed on probation or discharged absolutely) does not apply to a conviction for a relevant offence.

(6) Those provisions are—

(a) section 21(4),

(b) section 23(6),

(c) section 24,

(d) section 33(6),

(e) sections 41 to 44,

(f) section 73(3),

(g) section 75,

(h) sections 80 to 83,

(i) section 89(4) and (5),

(j) subsection (3) of this section, and

(k) section 130.”.

23 Offences aggravated by racial or religious prejudice

(1) In section 96 of the Crime and Disorder Act 1998 (c.37) (racially aggravated offences), for subsection (5) substitute—

“(5) The court must—

(a) state on conviction that the offence was racially aggravated,

(b) record the conviction in a way that shows that the offence was so aggravated,

(c) take the aggravation into account in determining the appropriate sentence, and

(d) state—

- (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
- (ii) otherwise, the reasons for there being no such difference.”.

- 5 (2) In section 74 of the Criminal Justice (Scotland) Act 2003 (asp 7) (offences aggravated by religious prejudice)—
- (a) after subsection (2) insert—
 - “(2A) It is immaterial whether or not the offender’s malice and ill-will is also based (to any extent) on any other factor.”,
 - 10 (b) subsections (3) and (4) are repealed, and
 - (c) after subsection (4) insert—
 - “(4A) The court must—
 - (a) state on conviction that the offence was aggravated by religious prejudice,
 - 15 (b) record the conviction in a way that shows that the offence was so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - 20 (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.”.

24 **Voluntary intoxication by alcohol: effect in sentencing**

- 25 (1) Subsection (2) applies in relation to an offender who was, at the time of the offence, under the influence of alcohol as a result of having voluntarily consumed alcohol.
- (2) A court, in sentencing the offender in respect of the offence, must not take that fact into account by way of mitigation.

PART 2

CRIMINAL LAW

Serious organised crime

25 **Involvement in serious organised crime**

- (1) A person who agrees with at least one other person to become involved in serious organised crime commits an offence.
- 35 (2) For the purposes of this section and sections 26 to 28—
- “serious organised crime” means crime involving two or more persons acting together for the principal purpose of committing or conspiring to commit a serious offence or a series of serious offences, and

“serious offence” means an indictable offence—

- (a) committed with the intention of securing a material benefit for any person, or
- (b) which is an act of serious violence committed with the intention of securing such a benefit in the future.

(3) A person guilty of an offence under subsection (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

26 Offences aggravated by connection with serious organised crime

(1) This subsection applies where it is—

- (a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with serious organised crime, and
- (b) proved that the offence is so aggravated.

(2) An offence is aggravated by a connection with serious organised crime if the person committing the offence is motivated (wholly or partly) by the objective of committing or conspiring to commit serious organised crime.

(3) It is immaterial whether or not in committing the offence the person in fact enables the person or another person to commit serious organised crime.

(4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with serious organised crime.

(5) Where subsection (1) applies, the court must—

- (a) state on conviction that the offence is aggravated by a connection with serious organised crime,
- (b) record the conviction in a way that shows that the offence was so aggravated,
- (c) take the aggravation into account in determining the appropriate sentence, and
- (d) state—
 - (i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.

27 Directing serious organised crime

(1) A person commits an offence by directing another person—

- (a) to commit a serious offence,
- (b) to commit an offence aggravated by a connection with serious organised crime under section 26.

(2) A person commits an offence by directing another person to direct a further person to commit an offence mentioned in subsection (1).

- (3) For the purposes of subsections (1) and (2), a person directs another person to commit an offence if the person—
- (a) does something, or a series of things, to direct the person to commit the offence,
 - (b) intends that the thing or things done will persuade the person to commit the offence, and
 - (c) intends that the thing or things done will—
 - (i) result in a person committing serious organised crime, or
 - (ii) enable a person to commit serious organised crime.
- (4) For the purposes of subsection (3)(b) and (c), the intention of the person directing the other person may be reasonably inferred by the context in which the steps taken to direct the person were taken.
- (5) The person directing the other person commits an offence under subsection (1) whether or not the other person in fact commits—
- (a) a serious offence, or
 - (b) an offence aggravated by a connection with serious organised crime under section 26.
- (6) Any direction by means of a message (however communicated) is to be treated as done in Scotland if the message is sent or received in Scotland.
- (7) In this section “directing” a person to commit an offence includes inciting the person to commit the offence.
- (8) A person guilty of an offence under subsection (1) or (2) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

28 Failure to report serious organised crime

- (1) This section applies where—
- (a) a person (“the person”) knows or suspects that another person (“the other person”) has committed—
 - (i) an offence under section 25 or 27, or
 - (ii) an offence which is aggravated by a connection with serious organised crime under section 26, and
 - (b) that knowledge or suspicion originates from information obtained—
 - (i) in the course of the person’s trade, profession, business or employment, or
 - (ii) as a result of a close personal relationship between the person and the other person.
- (2) In the case of knowledge or suspicion originating from information obtained by the person as a result of a close personal relationship between the person and the other person, this section applies only where the person has derived a material benefit as a result of the commission of serious organised crime by the other person.

- (3) The person commits an offence if the person does not disclose to a constable—
- (a) the person’s knowledge or suspicion, and
 - (b) the information on which that knowledge or suspicion is based.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that the person had a reasonable excuse for not making the disclosure.
- (5) Subsection (3) does not require disclosure by a person who is a professional legal adviser (an “adviser”) of—
- (a) information which the adviser obtains in privileged circumstances, or
 - (b) knowledge or a suspicion based on information obtained in privileged circumstances.
- (6) For the purpose of subsection (5), information is obtained by an adviser in privileged circumstances if it comes to the adviser, otherwise than for the purposes of committing serious organised crime—
- (a) from a client (or from a client’s representative) in connection with the provision of legal advice by the adviser to that person,
 - (b) from a person seeking legal advice from the adviser (or from that person’s representative), or
 - (c) from a person, for the purpose of actual or contemplated legal proceedings.
- (7) The reference in subsection (3) to a constable includes a reference to a police member of the Scottish Crime and Drug Enforcement Agency.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both.

Articles banned in prison

29 Articles banned in prison

- (1) In section 41 of the Prisons (Scotland) Act 1989 (c.45) (unlawful introduction of tobacco etc. into prison)—
- (a) for subsection (1) substitute—
- “(1) A person commits an offence if without reasonable excuse the person—
- (a) brings or otherwise introduces into a prison a proscribed article (or attempts to do so),
 - (b) takes out of or otherwise removes from a prison a proscribed article (or attempts to do so).
- (1A) A person who commits an offence under this section—
- (a) where the proscribed article falls within paragraphs (b) to (f) of subsection (9A), is liable on summary conviction to imprisonment for a period not exceeding 30 days or to a fine not exceeding level 3 on the standard scale (or to both),

(b) where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), is liable to the penalties set out in section 41ZA(5).”,

(b) in subsection (2), for “the foregoing subsection” substitute “subsection (1)(a).”,

(c) in subsection (2A)—

(i) for “article mentioned in paragraphs (a) to (e) of subsection (1) above” substitute “proscribed article”, and

(ii) for “article mentioned in those paragraphs” substitute “proscribed article”,

(d) in subsection (2B)(c), for the words from “mentioned” to “that subsection)” substitute “that is a proscribed article falling within paragraph (d) to (f) of subsection (9A) (but not also within paragraph (b) or (c) of that subsection), or falling within paragraph (a) of that subsection”,

(e) in subsection (3), for “subsection (1) above” substitute “this section or section 41ZA”,

(f) after subsection (9) insert—

“(9A) In this section, a “proscribed article” is—

(a) any personal communication device,

(b) any drug,

(c) any firearm or ammunition,

(d) any offensive weapon,

(e) any article which has a blade or is sharply pointed,

(f) any article (or other article) which is a prohibited article within the meaning of rules made under section 39.

(9B) In this section, a “personal communication device” includes—

(a) a mobile telephone,

(b) any other portable electronic device that is capable of transmitting or receiving a communication of any kind,

(c) any—

(i) component part of a device mentioned in paragraph (a) or (b),

(ii) article that is designed or adapted for use with such a device.”, and

(g) in subsection (10), in the definition of “offensive weapon”, for “the Prevention of Crime Act 1953” substitute “section 47 of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

(2) After section 41 of that Act insert—

“41ZA Further provision for communication devices

(1) A person commits an offence if, knowing another person to be a prisoner, the person gives a personal communication device to the prisoner while the prisoner is inside a prison.

(2) A person commits an offence if, by means of a personal communication device, the person—

- (a) transmits, from inside a prison, a communication of any kind, or
- (b) intentionally receives, when inside a prison, a communication of any kind.

(3) A person commits an offence if, while inside a prison, the person is in possession of a personal communication device.

(4) A person who commits an offence under subsections (1) to (3) is liable to the penalties set out in subsection (5).

(5) The penalties are—

(a) on conviction on indictment, to imprisonment for a period not exceeding 2 years or to a fine (or to both),

(b) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both).

(6) In this section, “personal communication device” is to be construed in accordance with section 41(9B).

41ZB Exceptions as to communication devices

(1) No offence—

(a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or

(b) under section 41ZA(1) to (3),

is committed by a person where subsection (2) applies.

(2) This subsection applies—

(a) if (and in so far as) the act which constitutes the offence is done by the person at or in relation to a designated area at the prison, or

(b) if (and in so far as) the person is acting in circumstances to which an authorisation under subsection (8) applies.

(3) No offence—

(a) under section 41, where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or

(b) under 41ZA(2) or (3),

is committed by a prison officer (or other prison official) where subsection (4) applies.

(4) This subsection applies—

(a) if the device is one supplied to the person specifically for use in the course of the person’s official duties at the prison, or

(b) if (and in so far as) the person is acting in accordance with those duties.

(5) No offence under section 41ZA(3) is committed by a person other than a prisoner if in the circumstances there is a reasonable excuse for the possession.

- (6) The defences mentioned in subsection (7) apply in any proceedings for an offence under—
- (a) section 41(1), where the proscribed article falls within paragraph (a) of subsection (9A) (whether or not also within paragraph (f) of that subsection), or
- (b) 41ZA(1) to (3).
- (7) In relation to such an offence, it is a defence for the accused person to show that—
- (a) the person reasonably believed that the person was acting in circumstances to which an authorisation under subsection (8) applied (even though no such authorisation did apply), or
- (b) in the circumstances there was an overriding public interest which justified the person’s actions.
- (8) An authorisation under this subsection is a written authorisation that is given—
- (a) in favour of any person specified in the authorisation (or person of a specified description),
- (b) for a specified purpose, and
- (c) by—
- (i) the governor or director of a prison in relation to activities at that prison, or
- (ii) the Scottish Ministers in relation to activities at any specified prison.
- (9) A designated area referred to in subsection (2)(a) is any part of the prison, used solely or principally for an administrative or similar purpose, that is specified as such by a written designation given under this paragraph by the governor or director of the prison.
- (10) Prison officers (or other prison officials) who are Crown servants or agents do not benefit from Crown immunity in relation to an offence under—
- (a) section 41, where the proscribed article falls within paragraph (a) of subsection (9A) of that section (whether or not also within paragraph (f) of that subsection), or
- (b) section 41ZA.”.

Crossbows, knives etc.

30 Sale and hire of crossbows to persons under 18

- (1) The Crossbows Act 1987 (c.32) is amended as follows.
- (2) In section 1 (sale and letting on hire), the words from “unless” to the end are repealed.
- (3) After that section insert—

“1A Defences

- (1) It is a defence for a person charged with an offence under section 1 (referred to in this section as “the accused”) to show that—

(a) the accused believed the person to whom the crossbow or part was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be aged 18 or over, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer’s age, or

(ii) no reasonable person could have suspected from the purchaser or hirer’s appearance that the purchaser or hirer was under the age of 18.

(2) For the purposes of subsection (1)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer’s age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (3), and

(b) the document would have convinced a reasonable person.

(3) Those documents are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order made by statutory instrument prescribe.

(4) A statutory instrument containing an order under subsection (3)(c) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4) After section 3 insert—

“3A Test purchasing

(1) A person under the age of 18 who buys or hires, or attempts to buy or hire, a crossbow or a part of a crossbow does not commit an offence under section 2 or 3 if the person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 1.

(2) A chief constable may authorise a person under the age of 18 to buy or hire, or attempt to buy or hire, a crossbow or a part of a crossbow only if satisfied that all reasonable steps have been or will be taken to—

(a) ensure the person’s safety, and

(b) avoid any risk to the person’s welfare.”.

31 Sale and hire of knives and certain other articles to persons under 18

(1) Section 141A of the Criminal Justice Act 1988 (c.33) (sale of knives and certain articles with blade or point to persons under eighteen) is amended as follows.

(2) In subsection (1), after “sells” insert “or lets on hire”.

(3) In subsection (3A), after “sell” insert “or let on hire”.

(4) For subsection (4) substitute—

“(4) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—

(a) the accused believed the person to whom the article was sold or let on hire (referred to in this section as “the purchaser or hirer”) to be of or above the relevant age, and

(b) either—

(i) the accused had taken reasonable steps to establish the purchaser or hirer’s age, or

(ii) no reasonable person could have suspected from the purchaser or hirer’s appearance that the purchaser or hirer was aged under the relevant age.

(4A) For the purposes of subsection (4)(b)(i), the accused is to be treated as having taken reasonable steps to establish the purchaser or hirer’s age if and only if—

(a) the accused was shown any of the documents mentioned in subsection (4B), and

(b) the document would have convinced a reasonable person.

(4B) Those documents are any document bearing to be—

(a) a passport,

(b) a European Union photocard driving licence, or

(c) such other document, or a document of such other description, as the Scottish Ministers may by order prescribe.

(4C) In subsection (4), “the relevant age” is—

(a) in the case where the article is a knife or knife blade designed for domestic use, 16 years, and

(b) in any other case, 18 years.”.

Sexual offences

32 Certain sexual offences by non-natural persons

(1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) is amended as follows.

(2) At the end of each of the following provisions insert “or a fine or both”—

(a) subsections (4)(b) and (5)(b) of section 9 (paying for sexual services of a child),

(b) subsection (2)(b) of section 10 (causing or inciting provision by child of sexual services or child pornography),

(c) subsection (2)(b) of section 11 (controlling a child providing sexual services or involved in pornography), and

(d) subsection (2)(b) of section 12 (arranging or facilitating provision by child of sexual services or child pornography).

(3) After section 14 insert—

“14A Offences by bodies corporate etc.

(1) Subsection (2) applies where an offence under sections 10 to 12 committed—

(a) by a body corporate, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a director, manager, secretary or other similar officer of the body corporate, or

5 (ii) purports to act in any such capacity,

(b) by a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is a partner, or

(ii) purports to act in that capacity,

10 (c) by an unincorporated association other than a Scottish partnership, is committed with the consent or connivance of, or is attributable to any neglect on the part of, a person who—

(i) is concerned in the management or control of the association, or

(ii) purports to act in the capacity of a person so concerned.

15 (2) The individual (as well as the body corporate, Scottish partnership or, as the case may be, unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

20 (3) Where the affairs of a body corporate are managed by its members, this section applies in relation to acts and defaults of a member in connection with the member's function of management as if the member were a director of the body corporate.”

33 Indecent images of children

(1) In the 1982 Act—

(a) in section 52 (indecent photographs etc. of children)—

25 (i) in subsection (2C)(b), for “a pseudo-photograph” substitute “an indecent pseudo-photograph”,

(ii) after subsection (8) add—

30 “(9) In this section, references to a photograph also include a tracing or other image, whether made by electronic or other means (of whatever nature), which is not itself a photograph or pseudo-photograph but which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both).

(10) And subsection (2B) applies in relation to such an image as it applies in relation to a pseudo-photograph.”, and

35 (b) in section 52A (possession of indecent photographs of children), in subsection (4), for “and (8)” substitute “and (8) to (10)”.

(2) In Schedule 1 to the 1995 Act (offences against children under the age of 17 years to which special provisions apply), in paragraph 2B, after “photograph” insert “or pseudo-photograph”.

40 (3) In Schedule 3 to the Sexual Offences Act 2003 (c.42) (list of sexual offences for the purposes of Part 2)—

(a) in paragraph 44, for the words from “the” where it third occurs to the end substitute—

“(a) the prohibited goods included indecent photographs or pseudo-photographs of persons under 16 and the offender—

(i) was 18 or over, or

(ii) is or has been sentenced in respect of the offence to imprisonment for a term of at least 12 months, or

(b) in imposing sentence or otherwise disposing of the case, the court determines that it is appropriate that the offender be regarded, for the purposes of Part 2 of this Act, as a person who has committed an offence under this paragraph.”.

(b) in paragraph 97(b), for “and (8)” substitute “and (8) to (10)”.

34 Extreme pornography

(1) In section 51 of the 1982 Act (obscene material)—

(a) for subsection (3) substitute—

“(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment—

(i) in a case where the obscene material is or includes an extreme pornographic image, to imprisonment for a period not exceeding 5 years or to a fine or to both, or

(ii) in any other case, to imprisonment for a period not exceeding 3 years or to a fine or to both.”, and

(b) in subsection (8)—

(i) before the definition of “material” insert—

““extreme pornographic image” is to be construed in accordance with section 51A;”, and

(ii) the definition of “prescribed sum” is repealed.

(2) After section 51 of that Act insert—

“51A Extreme pornography

(1) A person who is in possession of an extreme pornographic image is guilty of an offence under this section.

(2) An extreme pornographic image is an image which is all of the following—

(a) obscene,

(b) pornographic,

(c) extreme.

(3) An image is pornographic if it is of such a nature that it must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question of whether the image is pornographic is to be determined by reference to—

(a) the image itself (and any sounds accompanying it), and

(b) where the series of images (and any sounds accompanying them) is such as to be capable of providing a context for the image, its context within the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been made solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic (even if it may have been found to be pornographic where taken by itself).

(6) An image is extreme if it depicts, in an explicit and realistic way any of the following—

(a) an act which takes or threatens a person's life,

(b) an act which results, or is likely to result, in a person's severe injury,

(c) rape or other non-consensual penetrative sexual activity,

(d) sexual activity involving (directly or indirectly) a human corpse,

(e) an act which involves sexual activity between a person and an animal (or the carcase of an animal).

(7) In determining whether (as found in the person's possession) an image depicts an act mentioned in subsection (6), reference may be had to—

(a) how the image is or was described (whether the description is part of the image itself or otherwise),

(b) any sounds accompanying the image,

(c) where the image forms an integral part of a narrative constituted by a series of images, the context provided by that narrative.

(8) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,

(b) on conviction on indictment, to imprisonment for a period not exceeding 3 years or to a fine or to both.

(9) In this section, an "image" is—

(a) a moving or still image (made by any means), or

(b) data (stored by any means) which is capable of conversion into such an image.

51B Extreme pornography: excluded images

(1) An offence is not committed under section 51A if the image is an excluded image.

(2) An “excluded image” is an image which is all or part of a classified work.

(3) An image is not an excluded image where—

(a) it has been extracted from a classified work, and

(b) it must be reasonably be assumed to have been extracted (whether with or without other images) from the work solely or principally for the purpose of sexual arousal.

(4) In determining whether (as found in the person’s possession) the image was extracted from the work for the purpose mentioned in subsection (3)(b), reference may be had to—

(a) how the image was stored,

(b) how the image is or was described (whether the description is part of the image itself or otherwise),

(c) any sounds accompanying the image,

(d) where the image forms an integral part of a narrative constituted by a series of images, the context provided by that narrative.

(5) In this section and section 51C—

“classified work” means a video work in respect of which a classification certificate has been issued by a designated authority,

“classification certificate” and “video work” have the same meanings as in the Video Recordings Act 1984 (c.39),

“designated authority” means an authority which has been designated by the Secretary of State under section 4 of that Act,

“extract” includes an extract of a single image,

“image” and “extreme pornographic image” are to be construed in accordance with section 51A.

51C Extreme pornography: defences

(1) Where a person (“A”) is charged with an offence under section 51A, it is a defence for A to prove one or more of the matters mentioned in subsection (2).

(2) The matters are—

(a) that A had a legitimate reason for being in possession of the image concerned,

(b) that A had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image,

(c) that A—

(i) was sent the image concerned without any prior request having been made by or on behalf of A, and

(ii) did not keep it for an unreasonable time.

- (3) Where A is charged with an offence under section 51A, it is a defence for A to prove that—
- (a) A directly participated in the act depicted, and
 - (b) subsection (4) applies.
- (4) This subsection applies—
- (a) in the case of an image which depicts an act described in subsection (6)(a) of that section, if the act depicted did not actually take or threaten a person’s life,
 - (b) in the case of an image which depicts an act described in subsection (6)(b) of that section, if the act depicted did not actually result in (nor was it actually likely to result in) a person’s severe injury,
 - (c) in the case of an image which depicts an act described in subsection (6)(c) of that section, if the act depicted did not actually involve non-consensual activity,
 - (d) in the case of an image which depicts an act described in subsection (6)(d) of that section, if what is depicted as a human corpse was not in fact a corpse,
 - (e) in the case of an image which depicts an act described in subsection (6)(e) of that section, if what is depicted as an animal (or the carcass of an animal) was not in fact an animal (or a carcass).
- (5) The defence under subsection (3) is not available if A shows, gives or offers for sale the image to any person who was not also a direct participant in the act depicted.”.

People trafficking

35 People trafficking

- (1) In section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.)—
- (a) in subsection (1)(a)—
 - (i) after “arrival in” insert “or the entry into”,
 - (ii) after “such arrival” insert “or entry”,
 - (b) for subsection (4) substitute—

“(4) Subsection (1) applies to anything done in or outwith the United Kingdom.”,
 - (c) for subsection (5) substitute—

“(5) A person may be proceeded against, indicted, tried and punished for any offence to which this section applies—

 - (a) in any sheriff court district in which the person is apprehended or is in custody, or
 - (b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed in that district).”, and

(d) subsection (6) is repealed.

(2) In the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19)—

(a) in section 4 (trafficking people for exploitation), in subsection (1), after “arrival in” insert “, or the entry into,” and

(b) in section 5 (section 4: supplemental)—

(i) subsections (1) and (2) are repealed, and

(ii) after subsection (2) insert—

“(2A) Subsections (1) to (3) of section 4 apply to anything done in or outwith the United Kingdom.

(2B) A person may be proceeded against, indicted, tried and punished for any offence to which section 4 applies—

(a) in any sheriff court district in which the person is apprehended or is in custody, or

(b) in such sheriff court district as the Lord Advocate may determine,

as if the offence had been committed in that district (and the offence is, for all purposes incidental to or consequential on trial or punishment, to be deemed to have been committed in that district).

(2C) In subsection (2B), “sheriff court district” is to be construed in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995 (c.46) (interpretation).”.

Fraud and embezzlement

36 Alternative charges for fraud and embezzlement

In Schedule 3 to the 1995 Act (indictments and complaints), after paragraph 8(3) insert—

“(3A) Under an indictment or a complaint for breach of trust and embezzlement, an accused may be convicted of falsehood, fraud and wilful imposition.

(3B) Under an indictment or a complaint for falsehood, fraud and wilful imposition, an accused may be convicted of breach of trust and embezzlement.”.

Conspiracy

37 Conspiracy to commit offences outwith Scotland

(1) The title of section 11A of the 1995 Act becomes “Conspiracy to commit offences outwith Scotland”.

(2) In that section—

(a) in subsection (1), for “in a country or territory outside the United Kingdom” substitute “outwith Scotland”,

(b) in subsection (3)—

(i) for “the law in force in the country or territory where the act or other event was intended to take place” substitute “the relevant law”, and

(ii) for “the law in force in the country or territory” where it second occurs substitute “that law”, and

(c) after subsection (3) insert—

“(3A) In subsection (3) above, “the relevant law” is—

(a) if the act or event was intended to take place in another part of the United Kingdom, the law in force in that part,

(b) if the act or event was intended to take place in a country or territory outwith the United Kingdom, the law in force in that country or territory.”.

PART 3

CRIMINAL PROCEDURE

Children

38 Prosecution of children

(1) The 1995 Act is amended as follows.

(2) After section 41 insert—

“41A Prosecution of children under 12

(1) A child under the age of 12 years may not be prosecuted for an offence.

(2) A person aged 12 years or more may not be prosecuted for an offence which was committed at a time when the person was under the age of 12 years.”.

(3) In section 42 (prosecution of children), in subsection (1)—

(a) for “No child under the age of 16 years shall” substitute “A child aged 12 years or more but under 16 years may not”,

(b) for “his instance” substitute “the instance of the Lord Advocate”, and

(c) for “a child under the age of 16 years” substitute “such a child”.

(4) In section 234AA (antisocial behaviour order), in subsection (2), paragraph (b) is repealed.

Offences: liability of partners

39 Offences: liability of partners

(1) A partner of a partnership (other than a limited liability partnership) is guilty of a corporate offence where—

(a) the partnership is guilty of the corporate offence, and

(b) it is proved that the corporate offence—

(i) was committed with the consent or connivance of the partner (whether alone or among others), or

(ii) was attributable to the neglect of the partner (whether alone or among others).

- (2) In subsection (1), a “corporate offence” is an offence in relation to which an enactment has the effect that where—
- (a) a body corporate is guilty of the offence, and
 - (b) it is proved that the offence—
 - (i) was committed with the consent or connivance of a director (whether alone or among others), or
 - (ii) was attributable to the neglect of a director (whether alone or among others),
 the director (as well as the body corporate) is guilty of the offence.
- (3) Subsection (1) does not apply in relation to a corporate offence if an enactment (other than subsection (1)) makes provision in relation to the offence having the same effect as that subsection.

Witness statements

40 Witness statements

- (1) This section applies where—
- (a) in the course of a criminal investigation, a witness makes a statement in relation to the matter to which the investigation relates,
 - (b) the statement is contained in a document, and
 - (c) the witness is likely to be cited to give evidence in criminal proceedings arising from the matter.
- (2) Before the witness gives evidence in the criminal proceedings, the prosecutor may—
- (a) give the witness a copy of the statement, or
 - (b) make the statement available for inspection by the witness at all reasonable hours.
- (3) Section 262 of the 1995 Act (interpretation of certain expressions for purposes of sections 259 to 261A of that Act) applies for the purposes of this section as it applies for the purposes of section 261A of that Act except that for the purposes of this section “statement” does not include a victim statement.

Police liberation

41 Breach of undertaking

After section 22 of the 1995 Act insert—

“22ZA Offences where undertaking breached

- (1) A person who without reasonable excuse breaches an undertaking given by the person under section 22—
- (a) by reason of failing to appear at court as required under subsection (1C)(a) of section 22, or
 - (b) by reason of failing to comply with a condition imposed under subsection (1D) of that section,
- is guilty of an offence.

- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to—
- (a) a fine not exceeding level 3 on the standard scale, and
 - (b) imprisonment for a period—
 - (i) where conviction is in the JP court, not exceeding 60 days,
 - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (3) Despite subsection (1)(b), where (and to the extent that) the person breaches the undertaking by reason of committing an offence while subject to the undertaking—
- (a) the person is not guilty of an offence under that subsection, and
 - (b) subsection (4) applies instead.
- (4) The court, in determining the sentence for the subsequent offence, must have regard to—
- (a) the fact that the subsequent offence was committed in breach of the undertaking,
 - (b) the number of undertakings to which the person was subject when that offence was committed,
 - (c) any previous conviction of the person of an offence under subsection (1)(b),
 - (d) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of this subsection, from that which the court would have imposed but for this subsection.
- (5) Subsections (3)(b) and (4) apply only if the fact that the subsequent offence was committed while the person was subject to an undertaking is specified in the complaint or indictment.
- (6) In this section and section 22ZB, “the subsequent offence” is the offence committed by a person while the person is subject to an undertaking.

22ZB Evidential and procedural provision

- (1) In any proceedings in relation to an offence under section 22ZA(1), the fact that a person—
- (a) breached an undertaking given by the person under section 22 by reason of failing to appear at court as required under subsection (1C)(a) of that section, or
 - (b) was subject to any particular condition imposed under subsection (1D) of that section,
- is, unless challenged by preliminary objection before the person’s plea is recorded, to be held as admitted.
- (2) In any proceedings in relation to an offence under section 22ZA(1) or (as the case may be) the subsequent offence—

- (a) something in writing, purporting to be an undertaking given by a person under section 22 (and bearing to be signed and certified), is sufficient evidence of the terms of the undertaking so given,
- (b) a document purporting to be a notice (or copy of a notice) effected under subsection (1F) of that section is sufficient evidence of the terms of the notice,
- (c) an undertaking whose terms are modified under paragraph (b) of that subsection is to be regarded as if given in the terms as so modified.
- (3) The fact that the subsequent offence was committed while the person was subject to an undertaking is to be held as admitted, unless challenged—
- (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
- (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of this Act.
- (4) Where the maximum penalty in respect of the subsequent offence is specified by (or by virtue of) any enactment, that maximum penalty is, for the purposes of the court's determination of the appropriate sentence or disposal in respect of that offence, increased—
- (a) where it is a fine, by the amount equivalent to level 3 on the standard scale, and
- (b) where it is a period of imprisonment—
- (i) as respects conviction in the JP court, by 60 days,
- (ii) as respects conviction in the sheriff court or the High Court, by 6 months,
- even if the maximum penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) A penalty under section 22ZA(2) may be imposed in addition to any other penalty which it is competent for the court to impose even if the total of penalties imposed may exceed the maximum penalty which it is competent to impose in respect of the original offence.
- (6) The reference in subsection (5) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
- (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
- (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.
- (7) Subsection (6)(b) is subject to section 204A of this Act.
- (8) The court must state—
- (a) where the sentence or disposal in respect of the subsequent offence is different from that which the court would have imposed but for section 22ZA(4), the extent of and the reasons for that difference, or

(b) otherwise, the reasons for there being no such difference.

(9) A court which finds a person guilty of an offence under section 22ZA(1) may remit that person for sentence in respect of that offence to any court which is considering the original offence.

5 (10) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under section 22ZA(1).

(11) In this section, “the original offence” is the offence in relation to which an undertaking is given.”.

10

Bail

42 Bail review applications

(1) The 1995 Act is amended as follows.

(2) In section 30 (bail review)—

(a) for subsection (2A) substitute—

15 “(2A) On receipt of an application under subsection (2), the court must—

(a) intimate the application to the prosecutor, and

(b) before determining the application, give the prosecutor an opportunity to be heard.

20 (2AA) Despite subsection (2A)(b), the court may grant the application without having heard the prosecutor if the prosecutor consents.”, and

(b) in subsection (2C), in paragraph (b), for “heard” substitute “determined”.

(3) In section 31 (bail review on prosecutor’s application)—

(a) after subsection (2), insert—

25 “(2ZA) Despite subsection (2)(b), the court may grant the application without fixing a hearing if the person granted bail consents.”, and

(b) in subsection (3), the word “hearing” is repealed.

43 Bail condition for identification procedures etc.

In section 24 of the 1995 Act (bail and bail conditions)—

30 (a) in paragraph (b) of subsection (4), sub-paragraph (ii) and the word “and” immediately preceding it are repealed,

(b) in subsection (5), after paragraph (ca) insert—

“(cb) whenever reasonably instructed by a constable to do so—

(i) participates in an identification parade or other identification procedure; and

35 (ii) allows any print, impression or sample to be taken from the accused;”.

*Prosecution on indictment***44 Prosecution on indictment: Scottish Law Officers**

- (1) The 1995 Act is amended as follows.
- (2) In section 64 (prosecution on indictment), in subsection (1), for “in name” substitute “at the instance”.
- (3) In subsection 287 (demission of office by Lord Advocate)—
- (a) in subsection (1)—
- (i) for “by a Lord Advocate” substitute “at the instance of Her Majesty’s Advocate”, and
- (ii) for “his” where it first occurs substitute “the holder of the office of Lord Advocate”,
- (b) in subsection (2)—
- (i) for “in name” substitute “at the instance”, and
- (ii) the words “then in office” are repealed,
- (c) after subsection (2), insert—
- “(2A) Any such indictments in proceedings at the instance of the Solicitor General may be signed by the Solicitor General.
- (2B) Subsection (2C) applies during any period when the offices of Lord Advocate and Solicitor General are both vacant as a result of the deaths of the holders of those offices.
- (2C) It is lawful to indict accused persons at the instance of Her Majesty’s Advocate.”, and
- (d) in subsection (4)—
- (i) after “Advocate” insert “or Solicitor General”,
- (ii) in paragraph (b), for “in the name” substitute “raised at the instance”, and
- (iii) after that paragraph, insert—
- “(c) by virtue of subsection (2C) above, is raised at the instance of Her Majesty’s Advocate”.
- (4) In Schedule 2, the words “A.F.R. (*name of Lord Advocate*),” are repealed.

*Transfer of justice of the peace court cases***45 Transfer of justice of the peace court cases**

After section 137C of the 1995 Act insert—

“137CA Transfer of JP court proceedings within sheriffdom

- (1) Subsection (2) applies—
- (a) where the accused person has been cited in summary proceedings to attend a diet of a JP court, or
- (b) if the accused person has not been cited to such a diet, where summary proceedings against the accused have been commenced in a JP court.

- (2) The prosecutor may apply to a justice for an order for the transfer of the proceedings to another JP court in the sheriffdom (and for adjournment to a diet of that court).
- (3) On an application under subsection (2), the justice may make the order sought.
- 5 (4) In this section and sections 137CB and 137CC, “justice” does not include the sheriff.

137CB Transfer of JP court proceedings outwith sheriffdom

- 10 (1) Subsection (2) applies where the clerk of a JP court informs the prosecutor that, because of exceptional circumstances which could not reasonably have been foreseen, it is not practicable for the JP court or any other JP court in the sheriffdom to proceed with some or all of the summary cases due to call at a diet.
- 15 (2) The prosecutor shall as soon as practicable apply to the sheriff principal for an order for the transfer of the proceedings to a JP court in another sheriffdom (and for adjournment to a diet of that court).
- (3) Subsection (4) applies where—
 - (a) either—
 - 20 (i) the accused person has been cited in summary proceedings to attend a diet of a JP court, or
 - (ii) if the accused person has not been cited to such a diet, summary proceedings against the accused have been commenced in a JP court, and
 - (b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.
- 25 (4) The prosecutor may apply to a justice for an order for the transfer of the proceedings to a JP court in the other sheriffdom (and for adjournment to a diet of that court).
- (5) Subsection (6) applies where—
 - 30 (a) the prosecutor intends to take summary proceedings against an accused person in a JP court, and
 - (b) there are also summary proceedings against the accused person in a JP court in another sheriffdom.
- (6) The prosecutor may apply to a justice for an order for authority for the proceedings to be taken at a JP court in the other sheriffdom.
- 35 (7) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.
- (8) On an application under subsection (4) or (6), the justice is to make the order sought if—
 - 40 (a) the justice considers that it would be expedient for the different cases involved to be dealt with by the same court, and
 - (b) a justice of the other sheriffdom consents.

(9) On the application of the prosecutor, the sheriff principal who has made an order under subsection (7) may, with the consent of the sheriff principal of the other sheriffdom—

- (a) revoke the order, or
- (b) vary it so as to restrict its effect.

(10) On the application of the prosecutor, the justice who has made an order under subsection (8) (or another justice of the same sheriffdom) may, with the consent of a justice of the other sheriffdom—

- (a) revoke the order, or
- (b) vary it so as to restrict its effect.

137CC Custody cases: initiating JP court proceedings outwith sheriffdom

(1) Subsection (2) applies where the prosecutor believes—

- (a) that, because of exceptional circumstances (and without an order under subsection (3)), it is likely that there would be an unusually high number of accused persons appearing from custody for the first calling of cases in summary prosecutions in the JP courts in the sheriffdom, and
- (b) that it would not be practicable for those courts to deal with all the cases involved.

(2) The prosecutor may apply to the sheriff principal for an order authorising summary proceedings against some or all of the accused persons to be—

- (a) taken at a JP court in another sheriffdom, and
- (b) maintained—
 - (i) at that JP court, or
 - (ii) at any of the JP courts referred to in subsection (1) as may at the first calling of the case be appointed for further proceedings.

(3) On an application under subsection (2), the sheriff principal may make the order sought with the consent of the sheriff principal of the other sheriffdom.

(4) An order under subsection (3) may be made by reference to a particular period or particular circumstances.”.

Additions to complaint

46 Additional charge where bail etc. breached

(1) In section 27 of the 1995 Act (breach of bail conditions: offences), after subsection (8) insert—

“(8A) At any time before the trial of an accused in summary proceedings for the original offence, it is competent to amend the complaint to include an additional charge of an offence under this section.”.

(2) In section 150 of that Act (failure of accused to appear), for subsection (10) substitute—

“(10) At any time before the trial in the prosecution in which the failure to appear occurred, it is competent to amend the complaint to include an additional charge of an offence under subsection (8).”.

Remand and committal of children

47 Remand and committal of children and young persons

- (1) Section 51 of the 1995 Act (remand and committal of children and young persons) is amended in accordance with subsections (2) and (3).
- 5 (2) The following provisions are repealed—
- (a) in subsection (1)—
 - (i) in paragraph (a) the words from “but” to “applies”, and
 - (ii) paragraph (bb),
 - (b) in subsection (2A), the words “Subject to subsection (4) below”,
 - 10 (c) subsections (3) and (4), and
 - (d) in subsection (4A), the words “or subsection (4) above”.
- (3) In subsection (5), for “(1)(aa), (b)(ii), (bb)(ii) or (3)(b)” substitute “(1)(aa) or (b)(ii)”.
- (4) In section 23 of the Criminal Justice (Scotland) Act 2003 (asp 7) (remand and committal of children and young persons), subsections (6) and (7) are repealed.

Prosecution of organisations

48 Meaning of “organisation”

In section 307(1) of the 1995 Act (interpretation), after the definition of “order for lifelong restriction”, insert—

““organisation” means—

- (a) a body corporate;
- (b) an unincorporated association;
- (c) a partnership;
- (d) a body of trustees;
- (e) a government department;
- 25 (f) a part of the Scottish Administration;
- (g) any other entity which is not an individual;”.

49 Proceedings on indictment against organisations

- (1) The title of section 70 of the 1995 Act (proceedings against bodies corporate) is amended by substituting “organisations” for “bodies corporate”.
- 30 (2) Section 70 of that Act is amended as follows.
- (3) In subsection (1), for “a body corporate” substitute “an organisation”.
- (4) For subsection (2) substitute—
- “ (2) The indictment may be served by delivery of a copy of the indictment together with notice to appear at—
 - 35 (a) in the case of a body of trustees—

- (i) the dwelling-house or place of business of any of the trustees, or
- (ii) if the solicitor of the body of trustees is known, the place of business of the solicitor,

(b) in the case of any other organisation, the registered office or, if there is no registered office or the registered office is not in the United Kingdom, at the principal place of business in the United Kingdom of the organisation.”.

(5) In subsection (3)—

(a) for “the registered office or principal place of business of the body corporate” substitute “any place”, and

(b) for “the registered office or place of business” substitute “that place”.

(6) In subsection (4)—

(a) for “A body corporate” substitute “An organisation”, and

(b) the words “of the body corporate” are repealed.

(7) In subsection (5), for “body corporate” in both places that expression occurs substitute “organisation”.

(8) In subsection (5A)(a), for “body corporate” substitute “organisation”. and

(9) In subsection (6)—

(a) for “a body corporate” substitute “an organisation”, and

(b) for “the body corporate” substitute “the organisation”.

(10) In subsection (7), for “a body corporate” substitute “an organisation”.

(11) In subsection (8), for paragraph (c) substitute—

“(ba) in the case of a partnership (other than a limited liability partnership), a partner or other person in charge, or locally in charge, of the partnership’s affairs;

(bb) in the case of an unincorporated association, the secretary or other person in charge, or locally in charge, of the association’s affairs;

(c) in the case of any other organisation, an employee, officer or official of the organisation duly appointed by it for the purposes of the proceedings.”.

(12) In subsection (9), after paragraph (b) insert—

“(c) in the case of a partnership (other than a limited liability partnership), purporting to be signed by a partner;

(d) in the case of an unincorporated association, purporting to be signed by an officer of the association;

(e) in the case of a government department or a part of the Scottish Administration, purporting to be signed by a senior officer in the department or part.”.

50 Prosecution of organisations by summary procedure

(1) Section 143 of 1995 Act (prosecution of companies etc.) is amended as follows.

- (2) In subsection (1), for “a partnership, association, body corporate or body of trustees” substitute “an organisation”.
- (3) In subsection (2), for “partnership, association, body corporate or body of trustees in their” substitute “organisation in its”.
- 5 (4) In subsection (4), for “A partnership, association, body corporate or body of trustees” substitute “An organisation”.
- (5) In subsection (5)(b), for “of the partnership, association, body corporate or body of trustees” substitute “, officer or official of the organisation”.
- (6) In subsection (6), after paragraph (d) insert—
- 10 “(e) in the case of a government department or part of the Scottish Administration, purporting to be signed by a senior officer in the department or part,”.
- (7) In subsection (7)—
- 15 (a) for “a partnership, association, body corporate or body of trustees” substitute “an organisation”,
- (b) for “partnership, association, body corporate or (as the case may be) body of trustees” substitute “organisation”.

51 Manner of citation of organisations in summary proceedings

20 In section 141 of the 1995 Act (manner of citation), in subsection (2)(b), for “a partnership, association or body corporate” substitute “an organisation other than a body of trustees”.

Disclosure of convictions etc.

52 Disclosure of convictions and non-court disposals

- (1) After section 101 of the 1995 Act insert—

“101A Post-offence convictions etc.

- 25 (1) This section applies where an accused person is convicted of an offence (“offence O”) on indictment.
- (2) The court may, in deciding on the disposal of the case, have regard to—
- 30 (a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,
- (b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).
- (3) Those alternative disposals are—
- 35 (a) a—
- (i) fixed penalty under section 302(1) of this Act, or
- (ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,

(b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.

(4) The court may have regard to any such conviction or alternative disposal only if it is—

(a) specified in a notice laid before the court by the prosecutor, and

(b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).”.

(2) For section 166A of that Act substitute—

“166A Post-offence convictions etc.

(1) This section applies where an accused person is convicted of an offence (“offence O”) on summary complaint.

(2) The court may, in deciding on the disposal of the case, have regard to—

(a) any conviction in respect of the accused which occurred on or after the date of offence O but before the date of conviction in respect of that offence,

(b) any of the alternative disposals in respect of the accused that are mentioned in subsection (3).

(3) Those alternative disposals are—

(a) a—

(i) fixed penalty under section 302(1) of this Act, or

(ii) compensation offer under section 302A(1) of this Act,

that has been accepted (or deemed to have been accepted) on or after the date of offence O but before the date of conviction in respect of that offence,

(b) a work order under section 303ZA(6) of this Act that has been completed on or after the date of offence O but before the date of conviction in respect of that offence.

(4) The court may have regard to any such conviction or alternative disposal only if it is—

(a) specified in a notice laid before the court by the prosecutor, and

(b) admitted by the accused or proved by the prosecutor (on evidence adduced then or at another diet).”.

(3) In section 302 of that Act (fixed penalty: conditional offer by procurator fiscal), in subsection (2), after sub-paragraph (ii) of paragraph (e) insert—

“(ia)that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;”.

- (4) In section 302A of that Act (compensation offer by procurator fiscal), in subsection (2), after sub-paragraph (ii) of paragraph (f) insert—

“(ia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;”.

- (5) In section 303ZA of that Act (work orders), in subsection (3)—

- (a) after sub-paragraph (i) of paragraph (e) insert—

“(ia) that if a work offer is not accepted, that fact may be disclosed to the court in any proceedings for the offence to which the offer relates;”.

- (b) in sub-paragraph (ii) of that paragraph, for “the offer has been accepted” substitute “a resultant work order has been completed”.

- (c) after sub-paragraph (ii) of that paragraph insert—

“(ia) that that fact may be disclosed to the court also in any proceedings for an offence to which the alleged offender is, or is liable to become, subject at such time as the offer is accepted;”.

- (d) in sub-paragraph (iii) of that paragraph, for “work order under subsection (6) below” substitute “resultant work order”.

Appeals: time limits

53 Time limits for lodging certain appeals

- (1) The 1995 Act is amended as follows.
- (2) In section 74 (appeals in connection with preliminary diets), in subsection (2)(b), for “2” substitute “seven”.
- (3) In section 174 (appeals relating to preliminary pleas), in subsection (1), for “two” substitute “seven”.

Crown appeals

54 Submissions as to sufficiency of evidence

After section 97 of the 1995 Act insert—

“97A Submissions as to sufficiency of evidence

- (1) Immediately after the close of the whole of the evidence, the accused may make either or both of the submissions mentioned in subsection (2) in relation to an offence labelled in an indictment (the “indicted offence”).
- (2) The submissions are—
- (a) that the evidence is insufficient in law to justify the accused’s being convicted of the indicted offence or any other offence of which the accused could be convicted under the indictment (a “related offence”),
- (b) that there is no evidence to support some part of the circumstances set out in the indictment.
- (3) A submission of a kind mentioned in subsection (2) may be made after the close of the whole of the evidence only under this section.

- (4) A submission made under this section must be heard by the judge in the absence of the jury.

97B Acquittals etc. on section 97A(2)(a) submissions

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(a).
- (2) If the judge is satisfied that the evidence is insufficient in law to justify the accused's being convicted of the indicted offence, then—
- (a) where the judge is satisfied that the evidence is also insufficient in law to justify the accused's being convicted of a related offence—
- (i) the judge must acquit the accused of the indicted offence, and
- (ii) the trial is to proceed only in respect of any other offence libelled in the indictment,
- (b) where the judge is satisfied that the evidence is sufficient in law to justify the accused's being convicted of a related offence, the judge must direct the prosecutor to amend the indictment accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
- (a) the judge must reject the submission, and
- (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the clerk of court.
- (6) In this section, “indicted offence” and “related offence” have the same meanings as in section 97A.

97C Directions etc. on section 97A(2)(b) submissions

- (1) This section applies where the accused makes a submission of the kind mentioned in section 97A(2)(b).
- (2) If the judge is satisfied that there is no evidence to support some part of the circumstances set out in the indictment, the judge must direct the prosecutor to amend the indictment accordingly.
- (3) If the judge is not satisfied as is mentioned in subsection (2)—
- (a) the judge must reject the submission, and
- (b) the trial is to proceed as if the submission had not been made.
- (4) The judge may make a decision under this section only after hearing both (or all) parties.
- (5) An amendment made by virtue of this section must be sufficiently authenticated by the initials of the clerk of court.”.

55 Prosecutor's right of appeal

After section 107 of the 1995 Act insert—

“107A Prosecutor’s right of appeal: decisions on section 97 and 97A submissions

- (1) The prosecutor may appeal to the High Court against—
- (a) an acquittal under section 97 or 97B(2)(a), or
 - (b) a direction under section 97B(2)(b) or 97C(2).
- (2) If an appeal is brought under subsection (1)(a), the High Court may—
- (a) make an order under section 4(2) of the Contempt of Court Act 1981 (c.49) (which gives a court power, in some circumstances, to order that publication of certain reports be postponed) as if proceedings for the offence of which the person was acquitted were pending or imminent,
 - (b) exceptionally and after giving the parties an opportunity of being heard, order the detention of the person in custody or admit him to bail.

107B Prosecutor’s right of appeal: decisions on admissibility of evidence

- (1) The prosecutor may appeal to the High Court against a finding, made after the jury is empanelled and before the close of the evidence for the prosecution, that evidence that the prosecution seeks to lead is inadmissible.
- (2) The appeal may be made only with the leave of the court of first instance, granted—
- (a) on the motion of the prosecutor, or
 - (b) on that court’s initiative.
- (3) Any motion for leave to appeal must be made before the close of the case for the prosecution.
- (4) In determining whether to grant leave to appeal the court must consider—
- (a) whether there are arguable grounds of appeal, and
 - (b) what effect the finding has on the strength of the prosecutor’s case.
- (5) If an appeal is brought under subsection (1) against a finding in relation to evidence in the prosecution of an offence of which the accused has been acquitted, the High Court may—
- (a) make an order under section 4(2) of the Contempt of Court Act 1981 (c.49) (which gives a court power, in some circumstances, to order that publication of certain reports be postponed) as if proceedings for the offence of which the person was acquitted were pending or imminent,
 - (b) exceptionally and after giving the parties an opportunity of being heard, order the detention of the person in custody or admit him to bail.

107C Appeals under section 107A and 107B: general provisions

- (1) In an appeal brought under section 107A or 107B the High Court may review not only the acquittal, direction or finding appealed against but also any direction, finding, decision, determination or ruling in the proceedings at first instance if it has a bearing on the acquittal, direction or finding appealed against.

- (2) The test to be applied by the High Court in reviewing the acquittal, direction or finding appealed against is whether it was wrong in law.

107D Expedited appeals

- (1) Subsection (2) applies where—

- 5 (a) an appeal is brought under section 107A or leave to appeal is granted by the court under section 107B, and
(b) the court is able to obtain confirmation from the Keeper of the Rolls that it would be practicable for the appeal to be heard and determined during an adjournment of the trial diet.

- 10 (2) The court must inform both parties of that fact and, after hearing them, must decide whether or not the appeal is to be heard and determined during such an adjournment.

- (3) An appeal brought under section 107A or 107B which is heard and determined during such an adjournment is referred to in this Act as an “expedited appeal”.

- 15 (4) If the court decides that the appeal is to be an expedited appeal the court must, pending the outcome of the appeal—

- (a) adjourn the trial diet, and
(b) where the appeal is against an acquittal, suspend the effect of the acquittal.

- 20 (5) Where the court cannot obtain from the Keeper of the Rolls confirmation of the kind mentioned in subsection (1)(b), the court must inform the parties of that fact.

- 25 (6) Where the High Court in an expedited appeal determines that an acquittal of an offence libelled in the indictment was wrong in law it must quash the acquittal and direct that the trial is to proceed in respect of the offence.

107E Other appeals under section 107A or 107B: appeal against acquittal

- (1) This section applies where—

- 30 (a) an appeal brought under section 107A or 107B is not an expedited appeal,
(b) the appeal is against an acquittal, and
(c) the High Court determines that the acquittal was wrong in law.

- (2) The court must quash the acquittal.

- 35 (3) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.

- (4) If—

- 40 (a) no motion is made under subsection (3), or

(b) the High Court does not grant a motion made under that subsection, the High Court must in disposing of the appeal acquit the accused of the offence libelled in the indictment.

107F Other appeals under section 107A or 107B: appeal against directions etc.

(1) This section applies where—

(a) an appeal brought under section 107A or 107B is not an expedited appeal, and

(b) the appeal is not against an acquittal.

(2) The court of first instance must desert the diet *pro loco et tempore* in relation to any offence to which the appeal relates.

(3) The trial is to proceed only if another offence of which the accused has not been acquitted and to which the appeal does not relate is libelled in the indictment.

(4) If the prosecutor seeks leave to bring a new prosecution charging the accused with the same offence as that libelled in the indictment, or a similar offence arising out of the same facts as the offence libelled in the indictment, the High Court must grant the prosecutor authority to do so in accordance with section 119, unless the court considers that it would be contrary to the interests of justice to do so.”.

56 Power of High Court in appeal under section 107A of 1995 Act

In section 104(1) of the 1995 Act (which makes provision as regards the power of the High Court in appeals under section 106(1) or 108 of that Act), after “106(1)” insert “, 107A, 107B”.

57 Further amendment of 1995 Act

(1) In section 110(1) of the 1995 Act (note of appeal), after paragraph (b), add—

“(c) within 7 days after an appeal is brought under section 107A(1), the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused’s solicitor,

(d) within 7 days after leave to appeal under section 107B(1) is granted, the prosecutor may, except in the case of an expedited appeal, lodge such a note with the Clerk of Justiciary, who must send a copy to the judge and to the accused or to the accused’s solicitor,

(e) in the case of an expedited appeal, as soon as practicable after the decision as to hearing and determining the case is made under section 107D(2), the prosecutor may—

(i) lodge such a note with the Clerk of Justiciary, and

(ii) provide a copy to the judge and to the accused or to the accused’s solicitor.”.

(2) In section 113(1) of that Act (judge’s report), after “under” insert “any of paragraphs (a) to (d) of”.

(3) After section 113 of that Act insert—

“113A Judge’s observations in expedited appeal

(1) On receiving a note of appeal given under section 110(1)(e), the judge who presided at the trial may give the Clerk of Justiciary any written observations that the judge thinks fit on—

- (a) the case generally,
- (b) the grounds contained in the note of appeal.

(2) The High Court may hear and determine the appeal without any such written observations.

(3) If written observations are given under subsection (1), the Clerk of Justiciary must give a copy of them to—

- (a) the accused or the accused’s solicitor, and
- (b) the prosecutor.

(4) The written observations of the judge are available only to—

- (a) the High Court,
- (b) the parties, and
- (c) any other person or classes of person prescribed by Act of Adjournal, in accordance with any conditions prescribed by Act of Adjournal.”.

(4) In section 119 of that Act (provision where High Court authorises new prosecution)—

(a) in each of subsections (1) and (10), after “118(1)(c)” insert “or 107E(3) or 107F(4)”,

(b) for subsection (2), substitute—

“(2) In a new prosecution under this section—

- (a) where authority for the prosecution is granted under section 118(1)(c), the accused must not be charged with an offence more serious than that of which the accused was convicted in the earlier proceedings,
- (b) where authority for the prosecution is granted under section 107E(3), the accused must not be charged with an offence more serious than that of which the accused was acquitted in the earlier proceedings,
- (c) where authority for the prosecution is granted under section 107F(4), the accused must not be charged with an offence more serious than that originally libelled in the indictment in the earlier proceedings.”.

(c) after subsection (2) insert—

“(2A) In a new prosecution under this section brought by virtue of section 107F(4), the circumstances set out in the indictment are not to be inconsistent with any direction given under section 97B(2)(b) or 97C(2) in the proceedings which gave rise to the appeal in question unless the High Court, in disposing of that appeal, determined that the direction was wrong in law.”, and

(d) in subsection (9), after “setting aside the verdict” insert “or under section 107E(3) or 107F(4) granting authority to bring a new prosecution”.

Retention and use of samples etc.

58 Retention of samples etc.

- (1) The 1995 Act is amended as follows.
- (2) In section 18(7A) (meaning of “relevant physical data” for purposes of certain provisions of 1995 Act), for “19 and” substitute “18A to”.
- (3) In section 18A (retention of samples)—
- (a) in subsection (1)—
 - (i) after “to” insert “relevant physical data taken or provided under subsection (2) of section 18 and to”, and
 - (ii) for “section 18 of this Act” substitute “that section”,
 - (b) in subsection (2), after “whom” insert “the relevant physical data was taken or by whom it was provided or, as the case may be, from whom”,
 - (c) in subsection (3), after “the”, where it first occurs, insert “relevant physical data,”
 - (d) in subsection (10), after “the”, where it fourth occurs, insert “relevant physical data,”, and
 - (e) in subsection (11), in paragraph (a) of the definition of “the relevant chief constable”, after “who” insert “took the relevant physical data or to whom it was provided or who”.

59 Retention of samples etc. from children referred to children’s hearings

- (1) After section 18A of the 1995 Act insert—

“18B Retention of samples etc.: children referred to children’s hearings

- (1) This section applies to—
- (a) relevant physical data taken from or provided by a child under section 18(2); and
 - (b) any sample, or any information derived from a sample, taken from a child under section 18(6) or (6A),
- where the first condition, and the second, third or fourth condition, are satisfied.
- (2) The first condition is that the child’s case has been referred to a children’s hearing under section 65(1) of the Children (Scotland) Act 1995 (c.36) (the “Children Act”).
- (3) The second condition is that—
- (a) a ground of the referral is that the child has committed an offence mentioned in subsection (6) (a “relevant offence”);
 - (b) both the child and the relevant person in relation to the child accept, under section 65(5) or (6) of the Children Act, the ground of referral; and
 - (c) no application to the sheriff under section 65(7) or (9) of that Act is made in relation to that ground.
- (4) The third condition is that—

-
- (a) a ground of the referral is that the child has committed a relevant offence;
- (b) the sheriff, on an application under section 65(7) or (9) of the Children Act—
- 5 (i) deems, under section 68(8) of the Children Act; or
- (ii) finds, under section 68(10) of that Act, the ground of referral to be established; and
- (c) no application to the sheriff under section 85(1) of that Act is made in relation to that ground.
- 10 (5) The fourth condition is that the sheriff, on an application under section 85(1) of the Children Act—
- (a) is satisfied, under section 85(6)(b) of that Act, that a ground of referral which constitutes a relevant offence is established; or
- (b) finds, under section 85(7)(b) of that Act, that—
- 15 (i) a ground of referral, which was not stated in the original application under section 65(7) or (9) of that Act, is established; and
- (ii) that ground constitutes a relevant offence.
- (6) A relevant offence is such relevant sexual offence or relevant violent offence as the Scottish Ministers may by order made by statutory instrument prescribe.
- 20 (7) Subject to section 18C(5) and (6), the relevant physical data, sample or the information must be destroyed no later than the destruction date.
- (8) The destruction date is—
- (a) the date of expiry of the period of 3 years following—
- 25 (i) where the second condition is satisfied, the date on which the ground of referral was accepted as mentioned in that condition;
- (ii) where the third condition is satisfied, the date on which the ground of referral was established as mentioned in that condition;
- 30 (iii) where the ground of referral is established as mentioned in paragraph (a) of the fourth condition, the date on which that ground was established under section 68(8) or, as the case may be, (10) of the Children Act; or
- (iv) where the ground of referral is established as mentioned in paragraph (b) of the fourth condition, the date on which that
- 35 ground was established as mentioned in that paragraph; or
- (b) such later date as an order under section 18C(1) may specify.
- (9) No statutory instrument containing an order under subsection (6) may be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- 40 (10) In this section—
- “relevant person” has the same meaning as in section 93(2) of the Children Act;

“relevant sexual offence” and “relevant violent offence” have the same meanings as in section 19A(6) and include any attempt, conspiracy or incitement to commit such an offence.

18C Retention of samples etc. relating to children: appeals

- 5 (1) On a summary application made by the relevant chief constable within the period of 3 months before the destruction date the sheriff may, if satisfied that there are reasonable grounds for doing so, make an order amending, or further amending, the destruction date.
- 10 (2) An application under subsection (1) may be made to any sheriff—
- (a) in whose sheriffdom the child mentioned in section 18B(1) resides;
 - (b) in whose sheriffdom that child is believed by the applicant to be; or
 - (c) to whose sheriffdom that child is believed by the applicant to be intending to come.
- 15 (3) An order under subsection (1) must not specify a destruction date more than 2 years later than the previous destruction date.
- (4) The decision of the sheriff on an application under subsection (1) may be appealed to the sheriff principal within 21 days of the decision.
- (5) The sheriff principal’s decision on an appeal under subsection (4) is final.
- (6) Section 18B(7) does not apply where—
- 20 (a) an application under subsection (1) has been made but has not been determined;
- (b) the period within which an appeal may be brought under subsection (4) against a decision to refuse an application has not expired; or
- 25 (c) such an appeal has been brought but has not been withdrawn or finally determined.
- (7) Where—
- (a) the period within which an appeal referred to in subsection (6)(b) may be brought has expired without such an appeal being brought;
 - (b) such an appeal is brought and is withdrawn or finally determined against the appellant; or
 - (c) an appeal brought under subsection (4) against a decision to grant an application is determined in favour of the appellant,
- the relevant physical data, sample or information must be destroyed as soon as practicable after the expiry, withdrawal or, as the case may be, determination.
- 35 (8) In this section—
- “destruction date” has the meaning given by section 18B(8); and
 - “relevant chief constable” has the same meaning as in section 18A(11), with the modification that references to the person referred to in subsection (2) of that section are references to the child referred to in section 18B(1).”.
- 40

- (2) In section 18 of the 1995 Act (prints, samples etc. in criminal investigations), in subsection (3), after “subsection (4) below” insert “and to sections 18A to 18C”.

60 Use of samples etc.

- (1) After section 19B of the 1995 Act insert—

“19C Sections 18 and 19 to 19AA: use of samples etc.

- (1) This section applies to—

- (a) relevant physical data, or any information derived from relevant physical data, taken or provided under section 18(2), 19(2)(a), 19A(2)(a) or 19AA(3)(a),
- (b) a sample, or any information derived from a sample, taken under section 18(6) or (6A), 19(2)(b) or (c), 19A(2)(b) or (c) or 19AA(3)(b) or (c),
- (c) relevant physical data, a sample or an impression taken from a person—
 - (i) by virtue of any power of search,
 - (ii) by virtue of any power to take possession of evidence where there is immediate danger of its being lost or destroyed, or
 - (iii) under the authority of a warrant, and
- (d) information derived from relevant physical data or a sample or impression falling within paragraph (c).

- (2) The relevant physical data, sample, impression or information may be used—

- (a) for the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
- (b) for the identification of a deceased person or a person from whom the relevant physical data, sample or impression came.

- (3) In subsection (2)—

- (a) the reference to crime includes a reference to—
 - (i) conduct which constitutes a criminal offence or two or more criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or
 - (ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,
- (b) the reference to an investigation includes a reference to an investigation outside the United Kingdom of a crime or suspected crime, and
- (c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside the United Kingdom.

- (4) This section is without prejudice to any other power relating to the use of relevant physical data, samples, impressions or information derived from relevant physical data or a sample or impression.”.

- (2) In section 56 of the Criminal Justice (Scotland) Act 2003 (asp 7) (use of samples etc. voluntarily given)—

- (a) in subsection (1)—
- (i) after “sample” insert “or impression”, and
 - (ii) after “from,” insert “or provided by”,
- (b) in subsection (2)—
- 5 (i) after “sample”, where it first occurs, insert “, impression”, and
- (ii) for the words from “may” where it first occurs to the end substitute “, or information derived from that sample, impression or relevant physical data may be held and used—
- (a) for the prevention or detection of crime, the investigation of an offence
- 10 or the conduct of a prosecution, or
- (b) for the identification of a deceased person or a person from whom the sample, impression or relevant physical data came.”,
- (c) in subsection (3)—
- (i) after “sample,”, where it first occurs, insert “impression,”, and
- 15 (ii) after “sample”, where it second occurs, insert “or impression”,
- (d) in subsection (4)(a), after “sample” insert “or impression”,
- (e) in subsection (5)(a), after “sample” insert “or impression”,
- (f) in subsection (6)(a)—
- (i) for the words from “data”, where it first occurs, to “them” substitute
- 20 “impression or data, or information derived from the sample, impression or data,”, and
- (ii) after “sample”, where it second occurs, insert “or impression”,
- (g) in subsection (6)(b)(i), after “sample” insert “, impression”,
- (h) in subsection (7)(a), after “sample”, in both places where it occurs, insert “, impression”, and
- 25 (i) after subsection (7) insert—
- “(7A) In subsection (2)—
- (a) the reference to crime includes a reference to—
- (i) conduct which constitutes a criminal offence or two or more
- 30 criminal offences (whether under the law of a part of the United Kingdom or a country or territory outside the United Kingdom), or
- (ii) conduct which is, or corresponds to, conduct which, if it all took place in any one part of the United Kingdom would constitute a criminal offence or two or more criminal offences,
- (b) the reference to an investigation includes a reference to an investigation
- 35 outside the United Kingdom of a crime or suspected crime, and
- (c) the reference to a prosecution includes a reference to a prosecution brought in respect of a crime in a country or territory outside the United Kingdom.”.

*Referrals from the Scottish Criminal Cases Review Commission***61 Referrals from Scottish Criminal Cases Review Commission: grounds for appeal**

In section 194D of the 1995 Act (further provisions as to references to the High Court by the Scottish Criminal Cases Review Commission), after subsection (4) insert—

“(4A) The grounds for an appeal arising from a reference to the High Court under section 194B of this Act must relate to one or more of the reasons contained in the Commission’s statement of reasons.

(4B) Despite subsection (4A), the High Court may, if it considers it is in the interests of justice to do so, grant leave for additional grounds of appeal to be raised.

(4C) An application by the appellant for leave under subsection (4B) must be made and intimated to the Crown Agent within 21 days after the date on which a copy of the Commission’s statement of reasons is sent under subsection (4)(b).

(4D) The High Court may, on cause shown, extend the period of 21 days mentioned in subsection (4C).

(4E) The Clerk of Justiciary must intimate to the persons mentioned in subsection (4F)—

(a) a decision under subsection (4B), and

(b) in the case of a refusal to grant leave for additional grounds to be raised, the reasons for the decision.

(4F) Those persons are—

(a) the appellant or the appellant’s solicitor, and

(b) the Crown Agent.”.

PART 4

EVIDENCE

62 Witness statements: use during trial

(1) The 1995 Act is amended as follows.

(2) After section 261 insert—

*“Witness statements***261A Witness statements: use during trial**

(1) Subsection (2) applies where—

(a) a witness is giving evidence in criminal proceedings,

(b) the witness has made a prior statement,

(c) the prosecutor has seen or has been given an opportunity to see the statement, and

(d) the accused (or a solicitor or advocate acting on behalf of the accused in the proceedings) has seen or has been given an opportunity to see the statement.

(2) The court may allow the witness to refer to the statement while the witness is giving evidence.”.

(3) In section 262 (construction of sections 259 to 261 of Act)—

(a) in the title, for “261” substitute “261A”,

(b) in each of subsections (1) to (4), for “261” substitute “261A”, and

(c) in subsection (3)—

(i) in the definition of “criminal proceedings”, after “include” insert “(other than in section 261A)”, and

(ii) in the definition of “made”, after “includes” insert “(other than in section 261A)”.

63 Spouse or civil partner of accused a compellable witness

(1) For section 264 of the 1995 Act (spouse of accused a competent witness) substitute—

“264 Spouse or civil partner of accused a compellable witness

(1) The spouse or civil partner of an accused is a competent and compellable witness for the prosecution, the accused or any co-accused in the proceedings against the accused.

(2) Subsection (1) is, if the spouse or civil partner is a co-accused in the proceedings, subject to any enactment or rule of law by virtue of which an accused need not (by reason of being an accused) give evidence in the proceedings.

(3) Subsection (1) displaces any other rule of law that would (but for that subsection) prevent or restrict, by reference to the relationship, the giving of evidence by the spouse or civil partner of an accused.”.

(2) Section 130 of the Civil Partnership Act 2004 (c.33) (civil partner of accused a competent witness) is repealed.

64 Special measures for child witnesses and other vulnerable witnesses

(1) The 1995 Act is amended as follows.

(2) In section 271 (vulnerable witnesses: main definitions)—

(a) in subsection (1)—

(i) for “a trial” substitute “a hearing in relevant criminal proceedings”, and

(ii) for “the trial”, wherever it occurs, substitute “the hearing”, and

(b) in subsection (5)—

(i) the definition of “trial” is repealed, and

(ii) after the definition of “court” insert—

“hearing in relevant criminal proceedings” means any hearing in the course of any criminal proceedings in the High Court or the sheriff court.”.

(3) In section 271A (child witnesses)—

- (a) in subsection (1), for “a trial” substitute “a hearing in relevant criminal proceedings”,
- (b) in subsection (5A)(c), for “the trial diet” substitute “the hearing at which the evidence is to be given”,
- 5 (c) in subsection (6)(a), for “the trial” substitute “a hearing in relevant criminal proceedings”,
- (d) in subsection (7)(b)(ii), for “the trial” substitute “the hearing at which the evidence is to be given”,
- (e) in subsection (8), for “the trial diet” substitute “the hearing at which the evidence is to be given”,
- 10 (f) in subsection (10)(b)(i), for “the trial diet” substitute “the hearing at which the evidence is to be given”,
- (g) in subsection (12), for “the trial diet in the case” substitute “the hearing at which the evidence is to be given”, and
- 15 (h) in subsection (13A)(c), for “the trial diet” substitute “the hearing at which the evidence is to be given”.
- (4) In section 271B (further special provision for child witnesses under the age of 12)—
- (a) in subsection (1)(a), for “a trial” substitute “a hearing in relevant criminal proceedings”,
- 20 (b) in subsection (1)(b), for “the trial” substitute “the hearing”, and
- (c) in subsection (3)(b)(i), for “the trial” substitute “the hearing”.
- (5) In section 271C (vulnerable witnesses other than child witnesses)—
- (a) in subsection (1), for “a trial” substitute “a hearing in relevant criminal proceedings”,
- 25 (b) in subsection (5A)(c), for “the trial diet” substitute “the hearing at which the evidence is to be given”,
- (c) in subsection (6), for “the trial diet” substitute “the hearing at which the evidence is to be given”,
- (d) in subsection (10), for “the trial diet in the case” substitute “the hearing at which the evidence is to be given”, and
- 30 (e) in subsection (12)(c), for “the trial diet” substitute “the hearing at which the evidence is to be given”.
- (6) In section 271D (review of arrangements for vulnerable witnesses)—
- (a) in subsection (1)—
- 35 (i) for “the trial”, where it first occurs, substitute “a hearing in relevant criminal proceedings”, and
- (ii) for “the trial”, where it second occurs, substitute “the hearing”, and
- (b) in subsection (4)(b)(i), for “the trial” substitute “the hearing”.
- (7) In section 271F (the accused)—
- 40 (a) in subsection (1)—

- (i) for “the trial”, where it first occurs, substitute “a hearing in relevant criminal proceedings”, and
- (ii) for “the trial”, where it second occurs (in subsection (1)(a)), substitute “the hearing”,

5

(b) in subsection (2)—

- (i) for “the trial”, where it first occurs, substitute “the hearing”,
- (ii) for “the trial”, where it second occurs (in subsection (2)(a)(iii)), substitute “a hearing in relevant criminal proceedings”, and
- (iii) for “the trial”, where it third occurs (in subsection (2)(b)(i)), substitute “a hearing in relevant criminal proceedings”,

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(c) in subsection (3), for “the trial” substitute “a hearing in relevant criminal proceedings”, and

(d) in subsection (5), for “the trial” substitute “the hearing”.

(8) In section 271J (live television link)—

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(a) in subsection (1), for “the trial” substitute “the hearing”,

(b) in subsection (2)(b), for “the trial” substitute “the hearing”, and

(c) in subsection (5)(a), for “the trial” substitute “the hearing”.

(9) In section 271L (supporters), in subsection (2), for “the trial” substitute “that or any other hearing in the proceedings”.

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(10) In section 288E (prohibition of personal conduct of defence in certain cases involving child witnesses under the age of 12), in subsection (5), for “a child witness referred to in subsection (2)(b) above” substitute “the trial”.

65 Amendment of Criminal Justice (Scotland) Act 2003

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Section 15A of the Criminal Justice (Scotland) Act 2003 (asp 7) (application of certain vulnerable witness provisions in proofs) is repealed.

66 Witness anonymity orders

(1) After section 271M of the 1995 Act insert—

“Witness anonymity orders

271N Witness anonymity orders

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(1) A court may make an order requiring such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

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(2) The court may make such an order only on an application made in accordance with section 271P, if satisfied of the conditions set out in section 271Q having considered the matters set out in section 271R.

(3) The kinds of measures that may be required to be taken in relation to a witness include in particular measures for securing one or more of the matters mentioned in subsection (4).

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(4) Those matters are—

- (a) that the witness's name and other identifying details may be—
 - (i) withheld,
 - (ii) removed from materials disclosed to any party to the proceedings,
- (b) that the witness may use a pseudonym,
- (c) that the witness is not asked questions of any specified description that might lead to the identification of the witness,
- (d) that the witness is screened to any specified extent,
- (e) that the witness's voice is subjected to modulation to any specified extent.

(5) Nothing in this section authorises the court to require—

- (a) the witness to be screened to such an extent that the witness cannot be seen by—
 - (i) the judge or other members of the court,
 - (ii) the jury, or
 - (iii) any interpreter or other person appointed by the court to assist the witness,
- (b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) to (iii).

(6) An order made under this section is referred to in this Act as a “witness anonymity order”.

(7) In this section “specified” means specified in the order concerned.

271P Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the accused.

(2) Where an application is made by the prosecutor, the prosecutor—

- (a) must (unless the court directs otherwise) inform the court of the identity of the witness, but
- (b) is not required to disclose in connection with the application—
 - (i) the identity of the witness, or
 - (ii) any information that might enable the witness to be identified, to any other party to the proceedings (or to the legal representatives of any other party to the proceedings).

(3) Where an application is made by the accused, the accused—

- (a) must inform the court and the prosecutor of the identity of the witness, but
- (b) if there is more than one accused, is not required to disclose in connection with the application—

- (i) the identity of the witness, or
 - (ii) any information that might enable the witness to be identified,
- to any other accused (or to the legal representatives of any other accused).

5 (4) Accordingly, where the prosecutor or the accused proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

- (a) the identity of the witness, or
 - 10 (b) any information that might enable the witness to be identified,
- from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) “Relevant material” means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

15 (6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) Subsection (6) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused’s legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

20 (8) Nothing in this section is to be taken as restricting any power to make rules of court.

271Q Conditions for making orders

25 (1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make the order only if it is satisfied that Conditions A to D below are met.

(3) Condition A is that the proposed order is necessary—

30 (a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or

(b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities or otherwise).

35 (4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the accused’s receiving a fair trial.

(5) Condition C is that the importance of the witness’s testimony is such that in the interests of justice the witness ought to testify.

(6) Condition D is that—

40 (a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

(7) In determining whether the measures to be specified in the order are necessary for the purpose mentioned in subsection (3)(a), the court must have regard in particular to any reasonable fear on the part of the witness—

- (a) that the witness or another person would suffer death or injury, or
- (b) that there would be serious damage to property,

if the witness were to be identified.

271R Relevant considerations

(1) When deciding whether Conditions A to D in section 271Q are met in the case of an application for a witness anonymity order, the court must have regard to—

- (a) the considerations mentioned in subsection (2), and
- (b) such other matters as the court considers relevant.

(2) The considerations are—

- (a) the general right of an accused in criminal proceedings to know the identity of a witness in the proceedings,
- (b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of the witness's evidence comes to be assessed,
- (c) whether evidence given by the witness might be the sole or decisive evidence implicating the accused,
- (d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without the witness's identity being disclosed,
- (e) whether there is any reason to believe that the witness—
 - (i) has a tendency to be dishonest, or
 - (ii) has any motive to be dishonest in the circumstances of the case, having regard in particular to any previous convictions of the witness and to any relationship between the witness and the accused or any associates of the accused,
- (f) whether it would be reasonably practicable to protect the witness's identity by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

271S Warning to jury

(1) Subsection (2) applies where, in a trial on indictment, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the accused.

271T Discharge and variation of order

- (1) This section applies where a court has made a witness anonymity order in relation to any criminal proceedings.
- 5 (2) The court may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of the provisions of sections 271Q and 271R that applied to the making of the order.
- (3) The court may do so—
- (a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or
- 10 (b) on its own initiative.
- (4) The court must give every party to the proceedings the opportunity to be heard—
- (a) before determining an application made to it under subsection (3)(a), and
- (b) before discharging or varying the order on its own initiative.
- 15 (5) Subsection (4) does not prevent the court from hearing one or more of the parties to the proceedings in the absence of an accused and the accused’s legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.
- (6) In subsection (3)(a) “the relevant time” means—
- 20 (a) the time when the order was made, or
- (b) if a previous application has been made under that subsection, the time when the application (or the last application) was made.

271U Appeals

- (1) The prosecutor or the accused may appeal to the High Court against—
- 25 (a) the making of a witness anonymity order under section 271N,
- (b) the kinds of measures that are required to be taken in relation to a witness under a witness anonymity order made under that section,
- (c) the refusal to make a witness anonymity order under that section,
- (d) the discharge of a witness anonymity order under section 271T,
- 30 (e) the variation of a witness anonymity order under that section, or
- (f) the refusal to discharge or vary a witness anonymity order under that section.
- (2) The appeal may be made only with the leave of the court of first instance, granted—
- 35 (a) on the motion of the party making the appeal, or
- (b) on its own initiative.
- (3) The procedure in relation to the appeal is to be prescribed by Act of Adjournal.
- (4) If an appeal is brought under this section, the High Court may—

- (a) postpone the trial diet for any period that appears to it to be appropriate, and
- (b) direct that the period, or some part of it, is not to count towards any time limit applying in respect of the case.

5 (5) An appeal under this section does not affect any right of appeal in relation to any other decision of any court in the criminal proceedings.

271V Appeal against the making of a witness anonymity order

- 10 (1) This section applies where—
- (a) an appeal is brought under section 271U(1)(a) against the making of a witness anonymity order, and
 - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must discharge the order and the trial is to proceed as if the order had not been made.

15 **271W Appeal against the refusal to make a witness anonymity order**

- 20 (1) This section applies where—
- (a) an appeal is brought under section 271U(1)(c) against the refusal to make a witness anonymity order in relation to a witness in criminal proceedings, and
 - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- 25 (2) The High Court must make an order requiring such specified measures to be taken in relation to the witness in the proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

271X Appeal against a variation of a witness anonymity order

- 30 (1) This section applies where—
- (a) an appeal is brought under section 271U(1)(e) against a variation of a witness anonymity order, and
 - (b) the High Court determines that the decision of the judge at first instance was wrong in law.
- (2) The High Court must discharge the variation.
- 35 (3) If the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271Q and 271R, the court may do so.

271Y Appeal against a refusal to vary or discharge a witness anonymity order

- (1) This section applies where—

- (a) an appeal is brought under section 271U(1)(f) against a refusal to discharge or vary a witness anonymity order, and
- (b) the High Court determines that the decision of the judge at first instance was wrong in law.

- 5
- (2) The High Court must discharge the order, or make the variation, as the case requires.
 - (3) If, in the case of a variation, the High Court determines that it is appropriate to make an additional variation in view of the provisions of sections 271Q and 271R, the court may do so.”.
- 10
- (2) Sections 271N to 271Y of the 1995 Act apply to proceedings in cases where the trial or hearing begins on or after the day on which this section comes into force.
 - (3) Nothing in this section or sections 271N to 271Y of the 1995 Act affects the power of a court under any rule of law to make an order for securing that the identity of a witness in a trial or hearing in criminal proceedings is withheld from the accused (or, on a defence application, from other accused), where the trial or hearing begins before the day on which this section comes into force.
- 15
- (4) Schedule 3 makes provision about certain appeals.

67 Television link evidence

- (1) The 1995 Act is amended as follows.
- 20 (2) In section 273 (television link evidence from abroad), in subsection (1), for “solemn” substitute “criminal”.
- (3) After that section insert—

“Evidence from other parts of the United Kingdom

273A Television link evidence from other parts of the United Kingdom

- 25
- (1) In any criminal proceedings in the High Court or the sheriff court a person other than the accused may give evidence through a live television link if—
 - (a) the witness is within the United Kingdom but outside Scotland,
 - (b) an application under this section for the issue of a letter of request has been granted, and
 - 30 (c) the court is satisfied as to the arrangements for the giving of evidence in that manner by that witness.
 - (2) The prosecutor or the defence in any proceedings referred to in subsection (1) may apply for the issue of a letter of request.
 - (3) The application must be made to a judge of the court in which the trial is to take place or, if that court is not yet known, to a judge of the High Court.
 - 35 (4) The judge may, on an application under this section, issue a letter to a court or tribunal exercising jurisdiction in the place where the witness is ordinarily resident requesting assistance in facilitating the giving of evidence by that witness through a live television link, if the judge is satisfied of the matters set out in subsection (5).
 - 40 (5) Those matters are—

- (a) that the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial,
- (b) that the granting of the application—
- (i) is in the interests of justice, and
- (ii) in the case of an application by the prosecutor, is not unfair to the accused.”.

PART 5

CRIMINAL JUSTICE

Jury service

10 **68 Upper age limit for jurors**

- (1) Section 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55) (qualification of jurors) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (b), for “65 years of” substitute “the relevant”, and
- 15 (b) the words “, civil or criminal” are repealed.
- (3) After subsection (1) insert—
- “(1A) In subsection (1)(b), “the relevant age” means—
- (a) in relation to civil proceedings, 65 years of age; and
- (b) in relation to criminal proceedings, 70 years of age.”.

20 **69 Persons excusable from jury service**

In the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55), in Schedule 1 (ineligibility for and disqualification and excusal from jury service), Part 3, Group F, for paragraph (a) substitute—

- 25 “(a) where citation for jury service would result in a person’s serving as a juror in relation to criminal proceedings—
- (i) persons who have served as a juror in the period of 5 years ending with the date on which the person is cited first to attend, and
- (ii) persons who have attended for jury service in relation to criminal proceedings, but have not served as a juror, in the period of 2 years ending with the date on which the person is cited first to attend;
- 30 (aa) where citation for jury service would result in a person’s serving as a juror in relation to civil proceedings, persons who have served, or duly attended for service, as a juror in the period of 5 years ending with the date on which the person is cited first to attend;”.

Data matching for detection of fraud etc.

70 Data matching for detection of fraud etc.

(1) The Public Finance and Accountability (Scotland) Act 2000 (asp 1) is amended as follows.

(2) In section 11 (Audit Scotland: financial provisions)—

(a) after subsection (1)(c) insert—

“(ca) carrying out a data matching exercise under section 26A,”, and

(b) after subsection (5) insert—

“(5A) Charges under subsection (1)(ca) may be imposed on (either or both)—

(a) persons who disclose data for a data matching exercise,

(b) persons who receive the results of such an exercise.”.

(3) After section 26 insert—

“PART 2A

DATA MATCHING

26A Power to carry out data matching exercises

(1) Audit Scotland may carry out data matching exercises or arrange for them to be carried out on its behalf.

(2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).

(3) The power in subsection (1) may be exercised for one or more of the following purposes—

(a) assisting in the prevention and detection of fraud,

(b) assisting in the prevention and detection of crime (other than fraud),

(c) assisting in the apprehension and prosecution of offenders.

(4) A data matching exercise may not be used for the sole purpose of identifying patterns and trends in a person’s characteristics or behaviour which suggest the person is likely to commit fraud in the future.

26B Voluntary disclosure of data to Audit Scotland

(1) For the purposes of a data matching exercise, any person may disclose data to Audit Scotland (or a person acting on its behalf).

(2) Such disclosure does not breach—

(a) any duty of confidentiality owed by the person making the disclosure, or

(b) any other restriction on the disclosure of data.

(3) Nothing in this section authorises a disclosure—

(a) which contravenes the Data Protection Act 1998 (c.29),

(b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c.23) (interception, acquisition and disclosure of communications data), or

(c) of data comprising or including patient data.

5 (4) “Patient data” means data relating to an individual which is held for medical purposes and from which the individual can be identified.

(5) “Medical purposes” are the purposes of—

(a) preventative medicine,

(b) medical diagnosis,

10 (c) medical research,

(d) the provision of care and treatment,

(e) the management of health and social care services, and

(f) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment.

15 (6) Nothing in this section prevents disclosure of data under any other provision of this Act, another enactment or any rule of law.

(7) Data matching exercises may include data disclosed by a person outside Scotland.

26C Power to require disclosure of data

20 (1) Audit Scotland may require the persons mentioned in subsection (2) to disclose to it (or a person acting on its behalf) such data as it (or the person acting on its behalf) may reasonably require for the purpose of carrying out data matching exercises in such form as it (or such person) may so require.

(2) Those persons are—

25 (a) a body or an office holder any of whose accounts is an account in relation to which sections 21 and 22 apply,

(b) a body whose accounts must be audited under Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance),

30 (c) a Licensing Board continued in existence by or established under section 5 of the Licensing (Scotland) Act 2005 (asp 16), or

(d) an officer or a member of a body, office holder or board mentioned in paragraph (a), (b) or (c).

(3) Audit Scotland must not require a person to disclose data if—

(a) the disclosure would contravene the Data Protection Act 1998 (c.29),

35 (b) the disclosure is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c.23) (interception, acquisition and disclosure of communications data).

(4) A disclosure made in response to a requirement imposed under subsection (1) does not breach—

40 (a) any duty of confidentiality owed by the person making the disclosure, or

(b) any other restriction on the disclosure of data.

- (5) A person mentioned in subsection (2) who without reasonable excuse fails to comply with a requirement made in accordance with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

26D Disclosure of results of data matching

- (1) This section applies to the following data—
- (a) data relating to a particular person obtained by or on behalf of Audit Scotland for the purpose of carrying out a data matching exercise, and
 - (b) the results of such an exercise.
- (2) Data to which this section applies may be disclosed by or on behalf of Audit Scotland if the disclosure is—
- (a) for, or in connection with, a purpose for which a data matching exercise is carried out,
 - (b) to a Scottish audit agency, or a related party, for, or in connection with a function of that audit agency under—
 - (i) Part 2 of this Act, or
 - (ii) Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance),
 - (c) to a United Kingdom audit agency, or a related party, for, or in connection with, a function of that audit agency corresponding or similar to—
 - (i) the functions of a Scottish audit agency, or
 - (ii) the functions of Audit Scotland under this Part, or
 - (d) in pursuance of a duty imposed by or under an enactment.
- (3) “Scottish audit agency”, for the purpose of subsections (2)(b) and (c)(i), means—
- (a) the Auditor General, or
 - (b) the Accounts Commission.
- (4) “United Kingdom audit agency”, for the purposes of subsection (2)(c), means—
- (a) the National Audit Office,
 - (b) the Audit Commission for Local Authorities and the National Health Service in England and Wales,
 - (c) the Auditor General for Wales,
 - (d) the Comptroller and Auditor General for Northern Ireland, or
 - (e) a person designated as a local government auditor under article 4 of the Local Government (Northern Ireland) Order 2005 (S.I. 2005/1968 (NI.18)).

- (5) “Related party”, in relation to a Scottish or United Kingdom audit agency means—
- (a) a person acting on its behalf,
 - (b) a body or office holder whose accounts are required to be audited by it or by a person appointed by it, or
 - (c) a person appointed by it to audit those accounts.
- (6) If the data used for a data matching exercise includes patient data—
- (a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body, and
 - (b) subsection (2)(b) or (c) applies only so far as the function for, or in connection with, which the disclosure is made relates to such a body.
- (7) In subsection (6)—
- “patient data” has the same meaning as section 26B(4), and
- “relevant NHS body” means—
- (a) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5),
 - (b) a health service body as defined in section 53(1) of the Audit Commission Act 1998 (c.18),
 - (c) a Welsh NHS body as defined in section 60 of the Public Audit (Wales) Act 2004 (c.23),
 - (d) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) applies.
- (8) Data disclosed under subsection (2) may not be further disclosed except—
- (a) for, or in connection with—
 - (i) the purpose for which it was disclosed under subsection (2)(a), or
 - (ii) the function for which it was disclosed under subsection (2)(b) or (c),
 - (b) otherwise for the investigation or prosecution of an offence, or
 - (c) in pursuance of a duty imposed by or under an enactment.
- (9) Except as authorised by subsections (2) and (8), a person who discloses data to which this section applies is guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

26E Publication of reports on data matching

- (1) Audit Scotland may publish a report on a data matching exercise (including a report on the results of an exercise).
- (2) Such a report must not include data relating to a particular person if—

- (a) the person is the subject of any data included in the data matching exercise,
- (b) the person can be identified from the data, and
- (c) the data is not otherwise in the public domain.

- 5 (3) A report published under subsection (1) is to be published in such manner as Audit Scotland considers appropriate for the purposes of bringing it to the attention of those members of the public who may be interested.
- (4) Nothing in section 26D prevents publication under this section.
- 10 (5) This section does not affect any powers of an auditor where the data matching exercise in question forms part of an audit under—
- (a) Part 2 of this Act, or
 - (b) Part 7 of the Local Government (Scotland) Act 1973 (c.65) (finance).

26F Data matching code of practice

- 15 (1) Audit Scotland must prepare, and keep under review, a code of practice with respect to data matching exercises.
- (2) Regard must be had to the code in carrying out and participating in any such exercise.
- (3) Audit Scotland must consult the following persons before preparing or altering the code of practice—
- 20 (a) the Information Commissioner,
- (b) the persons mentioned in section 26C(2), and
- (c) any other person Audit Scotland thinks fit.
- (4) Audit Scotland must, from time to time, publish the code.

26G Powers of the Scottish Ministers

- 25 (1) The Scottish Ministers may by order amend this Part—
- (a) to add a public body to the persons mentioned in section 26C(2),
 - (b) to modify the application of this Part in relation to a public body so added, or
 - (c) to remove a person from the persons mentioned in section 26C(2).
- 30 (2) An order under this section may include such incidental, consequential, supplementary or transitional provision as the Scottish Ministers think fit.
- (3) In this section, “public body” means a person whose functions—
- (a) are functions of a public nature, or
 - (b) include functions of a public nature.
- 35 (4) A person referred to in subsection (3)(b) is a public body to the extent only of the functions referred to in that subsection.”.

*Sharing information with anti-fraud organisations***71 Sharing information with anti-fraud organisations**

In the Serious Crime Act 2007 (c.27), the following provisions are repealed—

- (a) in section 68 (disclosure of information to prevent fraud), subsections (5) and (6),
- 5 (b) in section 69 (offence for certain further disclosures of information), subsection (3), and
- (c) in section 71 (code of practice for disclosure of information to prevent fraud)—
 - (i) subsection (4), and
 - (ii) in subsection (6), the definition of “relevant public authority”.

*Closure of premises associated with human exploitation etc.***72 Closure of premises associated with human exploitation etc.**

- (1) In section 26 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8) (authorisation of closure notice)—

- (a) in subsection (1), for “and (3)” substitute “to (3B)”,
- 15 (b) in subsection (3), after “may” insert “, in a case involving antisocial behaviour,”, and
- (c) after subsection (3) insert—

“(3A) A senior police officer may, in a case involving an exploitation offence, authorise the service of a closure notice only where the senior police officer—

- 20 (a) has reasonable grounds for believing that—
 - (i) such an offence is being (or, at any time in the immediately preceding 3 months, was) committed in the premises, or
 - (ii) the premises are being (or, at any time in the immediately preceding 3 months, have been) used for or in connection with the commission of such an offence, and
- 25 (b) is satisfied that—
 - (i) the local authority for the area in which the premises are situated has been consulted, and
 - 30 (ii) reasonable steps have been taken to establish the identity of any person who lives on, has control of, has responsibility for or has an interest in the premises.

(3B) Subsection (3A) is without prejudice to subsection (3) (including in so far as subsection (3) is applicable in relation to a brothel or other place where prostitution may occur).”.

- (2) In section 27 of that Act (service etc.), in subsection (2)—
- (a) in paragraph (b)(i), after “section 26(3)(b)(ii)” insert “or (as the case may be) (3A)(b)(ii)”, and
 - (b) in paragraph (b)(ii), for “in that subsection” substitute “there”.
- (3) In section 30 of that Act (application: determination)—

- (a) in subsection (1), after “subsection (2)” insert “or (2A)”,
- (b) in subsection (2), for “Those” substitute “Where the application is in a case involving antisocial behaviour, the”,
- (c) after subsection (2) insert—

5 “(2A) Where the application is in a case involving an exploitation offence, the conditions are—

(a) that it appears that—

(i) such an offence is being (or was recently) committed in the premises, or

10 (ii) the premises continue to be (or recently have been) used for or in connection with the commission of such an offence, and

(b) that the making of the order is necessary to prevent the commission of such an offence for the period specified in the order.”,

15 (d) in subsection (3)(b), for the words from “engaged” to the end substitute “(as the case may be)—

(i) engaged in antisocial behaviour which has occurred in the premises, or

(ii) involved in the commission of an exploitation offence in or connected with the premises.”, and

20 (e) after subsection (3) insert—

“(3A) For the purpose of paragraph (b)(ii) of subsection (3), a person such as is mentioned in paragraph (a) of that subsection is not involved in the commission of an exploitation offence where that person is the victim of the offence.”.

25 (4) In section 32 of that Act (extension)—

(a) after subsection (1) insert—

30 “(1A) The sheriff may, on the application of a senior police officer and if satisfied that it is necessary to do so to prevent the commission of an exploitation offence, make an order extending the period for which a closure order has effect for a period not exceeding the maximum period.”,

(b) in subsection (2), for “subsection (1)” substitute “subsections (1) and (1A)”,

(c) in subsection (3)—

(i) after “may” insert “, in a case involving antisocial behaviour,”, and

(ii) for “this section” substitute “subsection (1)”, and

35 (d) after subsection (3) insert—

“(3A) A senior police officer may, in a case involving an exploitation offence, make an application under subsection (1A) only if—

(a) it is made while the closure order has effect, and

(b) the senior police officer—

- (i) has reasonable grounds for believing that it is necessary to extend the period for which the closure order has effect for the purpose of preventing the commission of an exploitation offence, and
- (ii) is satisfied that the appropriate local authority has been consulted about the intention to make the application.”.

(5) In section 33 of that Act (revocation), in subsection (1), for the words from “the occurrence” to the end substitute “(as the case may be)—

- (a) the occurrence of relevant harm, or
- (b) the commission of an exploitation offence,

revoke the order.”.

(6) In section 36 of that Act (appeals), in subsection (5), after “section 32(1)” insert “or (1A)”.

(7) After section 40 of that Act insert—

“40A Exploitation offences

(1) In this Part, an “exploitation offence” is any of the following offences—

(a) so far as concerning travel or identity documentation for enabling the trafficking of people (including passports, visas and work permits)—

- (i) fraud, or
- (ii) uttering a forged document,

(b) so far as concerning the trafficking of people, an offence under section 26(1)(d) of the Immigration Act 1971 (c.77) (falsification of documentation),

(c) an offence under section 52 or 52A of the Civic Government (Scotland) Act 1982 (c.45) (possession, taking or distribution of indecent images of children),

(d) an offence under sections 7 to 12 or 13(9) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (offences relating to prostitution and brothels),

(e) an offence under section 22 of the Criminal Law (Scotland) Act 2003 (asp 7) (traffic in prostitution etc.),

(f) an offence under section 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) (meeting a child following certain preliminary contact),

(g) an offence under sections 9 to 12 of that Act (offences relating to provision by child of sexual services or child pornography),

(h) an offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19) (trafficking people for exploitation),

(i) an offence under Part 1 of the Sexual Offences (Scotland) Act 2009 (asp 00) (rape etc.),

(j) an offence under Part 4 of that Act (sexual offences involving children) other than an offence under section 27 (older children engaging in penetrative sexual conduct with each other),

(k) an offence under section 31 of that Act (sexual abuse of trust),

(l) an offence under section 35 of that Act (sexual abuse of trust of a mentally disordered person).

5 (2) For the purposes of subsection (1)(a) and (b), a reference to trafficking of people is a reference to a person intentionally doing something in respect of at least one other person which involves the commission of an offence mentioned in subsection (1)(e) or (h).

(3) For the purposes of subsection (1), a reference to an offence includes a reference to—

10 (a) an attempt to commit an offence,

(b) incitement to commit an offence,

(c) counselling or procuring the commission of an offence,

(d) involvement art and part in an offence, and

15 (e) an offence as modified by section 42 of the Sexual Offences (Scotland) Act 2009 (asp 00) (incitement to commit certain sexual acts outside the United Kingdom).

(4) The Scottish Ministers may by order add to or otherwise modify the specification of offences listed in subsection (1).”.

Sexual offences prevention orders

20 **73 Sexual offences prevention orders**

(1) In section 141 of the Criminal Justice and Immigration Act 2008 (c.4) (sexual offences prevention orders: relevant sexual offences), subsection (2) is repealed.

(2) In the Sexual Offences Act 2003 (c.42)—

25 (a) in section 106 (applications and grounds for sexual offences prevention orders: supplemental), in subsection (13), the words from “in their” to the end are repealed,

(b) in section 109 (interim SOPOs), in subsection (5), for “107(3)” substitute “107(2)”,

(c) after section 111 insert—

30 **“111A SOPO and interim SOPO requirements: Scotland**

(1) This section applies in relation to a sexual offences prevention order or an interim sexual offences prevention order made, or to be made, by a court in Scotland.

35 (2) Such an order, in addition to or instead of prohibiting the defendant from doing anything described in the order, may require the defendant to do anything described in the order.

(3) Accordingly, in relation to such an order—

(a) the references in sections 107(2) and 108(5) to a prohibition include a reference to a requirement, and

(b) the reference in section 113(1) to a person’s doing anything which he is prohibited from doing includes a reference to his failing to do anything which he is required to do.”, and

(d) in section 112 (provisions relating to sexual offences prevention orders in Scotland), in subsection (1), after paragraph (d) insert—

“(da) a court may make an order under section 104(1)—

- (i) at its own instance, or
- (ii) on the motion of the prosecutor;”.

Foreign travel orders

10 **74 Foreign travel orders**

- (1) The Sexual Offences Act 2003 (c.42) is amended as follows.
- (2) In section 115 (definition of “protecting children generally or any child from serious sexual harm from the defendant outside the United Kingdom”), in subsection (2), for “16” in both places it occurs substitute “18”.
- 15 (3) In section 116 (qualifying offenders: offences), in subsection (2)(d), for “16” substitute “18”.
- (4) In section 117(1) (foreign travel orders: effect), for “6 months” substitute “5 years”.
- (5) Before section 118, insert—

“117B Surrender of passports: Scotland

- 20 (1) This section applies in relation to a foreign travel order which contains a prohibition within section 117(2)(c).
- (2) The order must require the person in respect of whom the order has effect to surrender all of the person’s passports, at a police station specified in the order—
 - 25 (a) on or before the date when the prohibition takes effect, or
 - (b) within a period specified in the order.
- (3) Any passports surrendered must be returned as soon as reasonably practicable after the person ceases to be subject to a foreign travel order containing a prohibition within section 117(2)(c).
- 30 (4) Subsection (3) does not apply in relation to—
 - (a) a passport issued by or on behalf of the authorities of a country outside the United Kingdom if the passport has been returned to those authorities;
 - (b) a passport issued by or on behalf of an international organisation if the passport has been returned to that organisation.
- 35 (5) In this section “passport” means—
 - (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c.77);
 - 40 (b) a passport issued by or on behalf of the authorities of a country outside the United Kingdom, or by or on behalf of an international organisation;

(c) a document that can be used (in some or all circumstances) instead of a passport.”.

(6) In section 122 (breach of foreign travel order), before subsection (2) insert—

“(1B) A person commits an offence if, without reasonable excuse, the person fails to comply with a requirement under section 117B(2).”.

Risk of sexual harm orders

75 Risk of sexual harm orders

(1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) is amended as follows.

(2) In section 2 (risk of sexual harm orders: applications, grounds and effect)—

(a) in subsection (7)(a), after “doing” insert “, or requires that person to do,”, and

(b) in subsection (8), after “prohibitions” insert “or requirements”.

(3) In section 4 (risk of sexual harm orders: variations, renewals and discharges), in subsection (4), after “prohibitions” in both places where it occurs insert “or requirements”.

(4) In section 5 (interim risk of sexual harm orders), in subsection (3), after “doing” insert “, or requiring that person to do,”.

(5) In section 7 (offence: breach of risk of sexual harm order or interim risk of sexual harm order), in subsection (1), after “doing” insert “, or fails to do anything which the person is required to do,”.

Obtaining information from outwith United Kingdom

76 Obtaining information from outwith United Kingdom

After section 194I of the 1995 Act insert—

“194IA Power to request assistance in obtaining information abroad

(1) Where it appears to the Commission that there may be information which they require for the purposes of carrying out their functions, and the information is outside the United Kingdom, they may apply to the High Court to request assistance.

(2) On an application made by the Commission under subsection (1), the High Court may request assistance if satisfied that it is reasonable in the circumstances.

(3) In this section, “request assistance” means request assistance in obtaining outside the United Kingdom any information specified in the request for use by the Commission for the purposes of carrying out their functions.

(4) Section 8 of the Crime (International Co-operation) Act 2003 (c.32) (sending requests for assistance) applies to requests for assistance under this section as it applies to requests for assistance under section 7 of that Act.

(5) Subsections (2), (3) and (6) of section 9 of that Act (use of evidence obtained) apply to information obtained pursuant to a request for assistance under this section as they apply under subsection (1) of that section to evidence obtained pursuant to a request for assistance under section 7 of that Act.”.

*Surveillance***77 Grant of authorisations for directed and intrusive surveillance**

(1) The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) is amended as follows.

(2) After section 9 insert—

“9A Authorisation of directed surveillance: joint surveillance operations

(1) Subsection (2) applies in the case of a joint surveillance operation where authorisation is sought for the carrying out of directed surveillance.

(2) The persons designated for the purposes of section 6 are those prescribed by order under section 8(1).”.

(3) In section 10 (authorisation of intrusive surveillance)—

(a) in subsection (1), for the words from “the” where it second occurs to the end substitute “any of the persons mentioned in subsection (1A) may grant authorisations (including authorisations in the case of a joint surveillance operation) for the carrying out of intrusive surveillance.”, and

(b) after that subsection insert—

“(1A) Those persons are—

(a) the chief constable of every police force,

(b) the Director General of the Scottish Crime and Drug Enforcement Agency,

(c) the Deputy Director General of the Scottish Crime and Drug Enforcement Agency.”.

(4) In section 11 (rules for grant of authorisations), in subsection (3), after “General” insert “or the Deputy Director General”.

(5) In section 12A (grant of authorisations in cases of urgency: Scottish Crime and Drug Enforcement Agency), in subsection (1), after “General” insert “or the Deputy Director General”.

(6) In section 31 (interpretation), in subsection (1), after the definitions of “directed” and “intrusive” insert—

““joint surveillance operation”, where authorisation is sought for the carrying out of directed or intrusive surveillance, means a case involving—

(a) at least two police forces in Scotland working together; or

(b) at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency working together;”.

*Interference with property***78 Authorisations to interfere with property etc.**

(1) The Police Act 1997 (c.50) is amended as follows.

(2) In section 93 (authorisations to interfere with property etc.)—

(a) after subsection (3) insert—

“(3A) In the case of a joint operation, an authorising officer mentioned in subsection (3B) may authorise a person mentioned in subsection (3C) to take such action as is referred to in subsection (1).

(3B) Those authorising officers are—

5 (a) the chief constable of a police force—

(i) maintained under or by virtue of section 1 of the Police (Scotland) Act 1967, and

(ii) involved in the joint operation, or

10 (b) where the Scottish Crime and Drug Enforcement Agency is involved in the joint operation, the Director General or Deputy Director General of that Agency.

(3C) The persons who may be authorised under subsection (1) are—

15 (a) a constable of any of the police forces involved in the joint operation (whether or not the authorised action is to be carried out in the area of operation of the constable’s police force),

(b) where the joint operation falls within paragraph (b) of subsection (3B), a police member of the Scottish Crime and Drug Enforcement Agency.

(3D) In subsection (3A), “joint operation” means a case involving—

20 (a) at least two police forces in Scotland working together, or

(b) at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency working together.”, and

(b) in paragraph (j) of subsection (5), after “General” insert “, or Deputy Director General,”.

(3) In section 94 (authorisations given in absence of authorising officer)—

25 (a) in subsection (2)(h), after “(5)” insert “or, as the case may be, subsection (6)”,

(b) in subsection (5)(a), at the beginning insert “where the case is not a joint operation,”, and

(c) after subsection (5), add—

30 “(6) Where the case is a joint operation, the chief constable of a police force involved in the joint operation in the relevant area.

(7) In subsections (5) and (6)—

“joint operation” has the meaning given by section 93(3D), and

“relevant area” means the area—

35 (a) for which the police forces involved in the joint operation are maintained, and

(b) to which the application for authorisation relates.”.

Amendments of Part 5 of Police Act 1997

79 Amendments of Part 5 of Police Act 1997

(1) The Police Act 1997 (c.50) is amended as follows.

(2) After section 113B insert—

“113BA Information held outside the United Kingdom

(1) The Scottish Ministers may by order made by statutory instrument amend the definition of—

- (a) “criminal conviction certificate” in section 112(2),
- (b) “central records” in sections 112(3) and 113A(6),
- (c) “criminal record certificate” in section 113A(3),
- (d) “relevant matter” in section 113A(6),
- (e) “enhanced criminal record certificate” in section 113B(3).

(2) An order under subsection (1) may be made only for the purposes of, or in connection with, enabling certificates issued under this Part to include details of information held outside the United Kingdom.

(3) No order may be made under subsection (1) unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.”.

(3) In section 120ZB (regulations about registration), after subsection (2) insert—

“(2A) The provision which may be made by virtue of subsection (2)(a) includes in particular provision for—

- (a) the payment of fees in respect of applications to be listed in the register,
- (b) the payment of different fees in different circumstances,
- (c) annual or other recurring fees to be paid in respect of registration, and
- (d) such annual or other recurring fees to be paid in advance or in arrears.

(2B) Where provision is made under subsection (2)(a) for a fee to be charged in respect of an application to be listed in the register, the Scottish Ministers need not consider the application unless the fee is paid.”.

Miscellaneous

80 Assistance for victim support

(1) The Scottish Ministers may make grants for the purposes of or in connection with the provision of assistance to victims, witnesses or other persons affected by an offence.

(2) Grants under subsection (1) may be made—

- (a) to such bodies, and
- (b) subject to such conditions,

as the Scottish Ministers consider appropriate.

81 Public defence solicitors

(1) In section 28A of the Legal Aid (Scotland) Act 1986 (c.47) (power of Board to employ solicitors to provide criminal assistance)—

- (a) in subsection (1), the words from “may” where it first occurs to “accordingly,” are repealed, and

(b) subsection (9A) is repealed.

- (2) In section 73 of the Criminal Justice (Scotland) Act 2003 (asp 7) (public defence), paragraph (b) is repealed.

82 Compensation for miscarriages of justice

- (1) In section 133 of the Criminal Justice Act 1988 (c.33) (compensation for miscarriages of justice)—

(a) after subsection (1) insert—

“(1A) The Scottish Ministers may by order provide for—

(a) further circumstances in respect of which a person (or, if dead, the person’s representatives) may be paid compensation for a miscarriage of justice,

(b) circumstances in respect of which a person (or, if dead, the person’s representatives) may be paid compensation for wrongful detention prior to acquittal or a decision by the prosecutor to take no proceedings (or to discontinue proceedings).”

(b) after subsection (2) insert—

“(2AA) Such an application requires to be made within the period of 3 years starting with—

(a) in the case of compensation under subsection (1), the date on which the conviction is reversed or (as the case may be) the person is pardoned,

(b) in the case of compensation under subsection (1A), whichever is relevant of—

(i) that date, or

(ii) the date on which the person is acquitted or the relevant decision is made known to the person.

(2AB) The Scottish Ministers may accept such an application outwith that time limit if they think it is appropriate in exceptional circumstances to do so.”

(c) in subsection (4A), after paragraph (a) insert—

“(aa) the seriousness of the offence with which the person was charged or detained (but in respect of which offence the person was not convicted);”

(d) after subsection (4A) insert—

“(4B) The assessor must also have particular regard to any guidance issued by the Scottish Ministers for the purposes of this section.”

(e) in subsection (5)—

(i) after “quashed” insert “(or set aside)”,

(ii) the word “or” where it occurs immediately after each of paragraphs (a), (b) and (c) is repealed,

(iii) after paragraph (d) add “; or

(e) under section 188(1)(b) of the Criminal Procedure (Scotland) Act 1995.”

(f) after subsection (6) insert—

“(6A) For the purposes of this section, a person suffers punishment as a result of conviction also where (in relation to the conviction) the court imposes some other disposal including by way of—

- (a) making a probation order, or
- (b) discharging the person absolutely.”, and

(g) after subsection (7) insert—

“(8) The power to make an order under subsection (1A) is exercisable by statutory instrument.

(9) A statutory instrument containing such an order is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(2) In Schedule 12 to that Act (assessors of compensation for miscarriages of justice), in paragraph 1—

- (a) immediately after sub-paragraph (c), insert “or”, and
- (b) sub-paragraph (e) and the word “or” immediately preceding it are repealed.

83 Financial reporting orders

In section 77 of the Serious Organised Crime and Police Act 2005 (c.15) (financial reporting orders: making in Scotland), after subsection (4) insert—

“(4A) A financial reporting order may be made—

- (a) on the prosecutor’s motion, or
- (b) at the court’s own instance.”.

84 Compensation orders

(1) In section 249 of the 1995 Act (compensation order against convicted person)—

(a) in subsection (1)—

- (i) for “Subject to subsections (2) and (4) below, where” substitute “Where”,
- (ii) after “compensation” where it second occurs insert “in favour of the victim”,

(b) after subsection (1A) insert—

“(1B) Where a person is convicted of an offence, the court may (instead of or in addition to dealing with the person in any other way), in accordance with subsections (3A) to (3C), make a compensation order requiring the convicted person to pay compensation in favour of—

- (a) the victim, or
- (b) a person who is liable for funeral expenses in respect of which subsection (3C)(b) allows a compensation order to be made.

(1C) For the purposes of subsection (1B)(a), “victim” means—

- (a) a person who has suffered personal injury, loss or damage in respect of which a compensation order may be made by virtue of subsection (3A), or

(b) a relative (as defined in Schedule 1 to the Damages (Scotland) Act 1976 (c.13)) who has suffered bereavement in respect of which subsection (3C)(a) allows a compensation order to be made.”,

(c) after subsection (3) insert—

5 “(3A) A compensation order may be made in respect of personal injury, loss or damage (apart from loss suffered by a person’s dependents in consequence of a person’s death) that was caused directly or indirectly by an accident arising out of the presence of a motor vehicle on a road if—

10 (a) it was being used in contravention of section 143(1) of the Road Traffic Act 1988 (c.52), and

(b) no compensation is payable under arrangements to which the Secretary of State is a party.

15 (3B) Where a compensation order is made by virtue of subsection (3) or (3A), the order may include an amount representing the whole or part of any loss of (including reduction in) preferential rates of insurance if the loss is attributable to the accident.

(3C) A compensation order may be made—

20 (a) for bereavement in connection with a person’s death resulting from the acts which constituted the offence,

(b) for funeral expenses in connection with such a death,

except where the death was due to an accident arising out of the presence of a motor vehicle on a road.”,

(d) in subsection (4)—

25 (i) for “No” substitute “Unless (and to the extent that) subsections (3) to (3C) allow a compensation order to be made, no”,

(ii) in paragraph (b), the words from “, except” to the end are repealed,

(e) subsection (6) is repealed, and

(f) after subsection (8) insert—

30 “(8A) In summary proceedings before the sheriff, where the fine or maximum fine to which a person is liable on summary conviction of an offence exceeds the prescribed sum, the sheriff may make a compensation order awarding in respect of the offence an amount not exceeding the amount of the fine to which the person is so liable.”.

(2) In section 251 of that Act (review of compensation order)—

35 (a) paragraph (a) of subsection (1) is repealed, and

(b) after subsection (1) insert—

40 “(1A) On the application of the prosecutor at any time before a compensation order has been complied with (or fully complied with), the court may increase the amount payable under the compensation order if it is satisfied that the person against whom it was made—

(a) because of the availability of materially different information about financial circumstances, has more means than were made known to the court when the order was made, or

- (b) because of a material change of financial circumstances, has more means than the person had then.”.

PART 6

DISCLOSURE

Meaning of “information”

85 Meaning of “information”

- (1) In this Part “information”, in relation to an accused, means material of any kind (other than precognitions and victim statements) given to or obtained by the prosecutor in connection with the case against the accused.
- (2) In particular, “information” includes—
- (a) information contained in precognitions,
 - (b) information contained in victim statements,
 - (c) any previous convictions and outstanding charges relating to witnesses whom the prosecutor intends to call in the proceedings against the accused, if the convictions and charges are material to the accused’s case,
 - (d) in solemn cases, any statements of witnesses whom the prosecutor intends to call in the proceedings against the accused,
 - (e) in summary cases, any statements of witnesses whom the prosecutor intends to lead in evidence, if any such statement contains information that has not otherwise been disclosed by the prosecutor.

Solemn cases: schedules of information

86 Provision of information to prosecutor

- (1) This section applies where—
- (a) an accused appears for the first time on petition, or
 - (b) an accused appears for the first time on indictment.
- (2) As soon as practicable after the appearance, the prosecutor must give notice of the appearance to the investigating agency that reported to the prosecutor the matter to which the appearance relates.
- (3) As soon as practicable after receiving notice under subsection (2), the investigating agency must comply with subsections (4) and (5).
- (4) The investigating agency must prepare and give to the prosecutor schedules listing all the information that may be relevant to the case for or against the accused that the agency is aware of that was obtained (whether by the agency or otherwise) in the course of investigating the matter to which the appearance relates.
- (5) For the purposes of subsection (4) the investigating agency must, in relation to each item of information—
- (a) determine which of the categories mentioned in subsection (6) it falls into,
 - (b) list it in a schedule containing information falling into the same category, and

(c) set out a brief description of it.

(6) Those categories are—

- (a) sensitive,
- (b) highly sensitive,
- (c) non-sensitive.

(7) The investigating agency need not include in a schedule prepared under subsection (4) anything that the agency has already included in a schedule prepared under that subsection in relation to the same matter (whether because the same matter has been the subject of an earlier petition or indictment or otherwise).

(8) In this section “sensitive”, in relation to an item of information, means that if the item were to be disclosed it would be likely—

- (a) to cause serious injury, or death, to any person,
- (b) to obstruct or prevent the prevention, detection, investigation or prosecution of crime, or
- (c) to cause serious prejudice to the public interest.

(9) In this section “investigating agency” means—

- (a) a police force, or
- (b) such other person who—
 - (i) engages (to any extent) in the investigation of crime or sudden deaths, and
 - (ii) submits reports relating to those investigations to the procurator fiscal, as the Scottish Ministers may prescribe by regulations.

87 Continuing duty to provide schedules of information

(1) This section applies where—

- (a) an investigating agency has complied with section 86(3) in relation to an accused, and
- (b) during the relevant period the investigating agency becomes aware that further information that may be relevant to the case for or against the accused has been obtained (whether by the agency or otherwise) in the course of investigating the accused’s case.

(2) The agency must comply with the duties imposed by section 86(3) in relation to that further information.

(3) In this section—

“investigating agency” has the same meaning as in section 86,

“the relevant period” means the period—

- (a) beginning with the investigating agency’s compliance with section 86(3) in relation to the accused, and
- (b) ending with the agency’s receiving notice from the prosecutor of the conclusion of the proceedings against the accused.

- (4) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—
- (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - 5 (c) the proceedings against the accused are deserted *simpliciter*,
 - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
 - (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
 - 10 (f) the indictment falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

88 Review and adjustment of schedules of information

- (1) This section applies where by virtue of section 86(3) or 87(2) a prosecutor receives from
15 an investigating agency schedules of information relating to an accused.
- (2) The prosecutor must—
- (a) review the schedules, and
 - (b) consider in relation to each piece of information whether the prosecutor agrees with the determination made by the agency by virtue of section 86(5)(a) or 87(2).
- 20 (3) If in relation to an item of information the prosecutor disagrees with the determination made by the agency, the prosecutor must—
- (a) return the schedules to the agency from whom the prosecutor received them, and
 - (b) require the agency to adjust the schedules so as to include the item of information in the category mentioned in section 86(5)(a) into which the prosecutor considers
25 that the item of information falls.
- (4) As soon as practicable after receiving the schedules, the investigating agency must—
- (a) adjust them in the way required by the prosecutor, and
 - (b) return them to the prosecutor.

Duties

89 Prosecutor's duty to disclose information

- (1) This section applies where—
- (a) an accused appears for the first time on petition,
 - (b) an accused appears for the first time on indictment, or
 - (c) a plea of not guilty is recorded against an accused charged on summary complaint.
- 35 (2) As soon as practicable after the appearance or the recording of the plea, the prosecutor must—
- (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware, and

(b) determine whether subsection (3) applies to any of the information.

(3) This subsection applies if—

- (a) the information would materially weaken or undermine the prosecution case,
- (b) the information would materially strengthen the accused’s case, or
- (c) the information is likely to form part of the prosecution case.

(4) The following are examples of information to which subsection (3) applies—

- (a) information that tends to exculpate the accused,
- (b) information that would be likely to be of material assistance to the proper preparation or presentation of the accused’s defence,
- (c) information that relates to a material line of the accused’s defence and which is likely to form part of the prosecution case.

(5) If subsection (3) applies to any of the information, the prosecutor must disclose that information to the accused.

(6) If subsection (3) does not apply, the prosecutor must notify the accused of that fact.

(7) The prosecutor need not disclose under subsection (5) anything that the prosecutor has already disclosed in relation to the same matter (whether because the same matter has been the subject of an earlier petition, indictment or complaint or otherwise).

90 Continuing duty of prosecutor

(1) This section applies where the prosecutor has complied with subsection (5) or (6) of section 89 in relation to an accused.

(2) During the relevant period, the prosecutor must—

- (a) from time to time review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware,
- (b) determine whether subsection (3) of section 89 applies to any of the information, and
- (c) comply with subsection (5) or (6) of that section.

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

- (a) beginning with the prosecutor’s compliance with subsection (5) or (6) of section 89 in relation to an accused, and
- (b) ending with the conclusion of the proceedings against the accused.

(4) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—

- (a) a plea of guilty is recorded against the accused,
- (b) the accused is acquitted,
- (c) the proceedings against the accused are deserted *simpliciter*,
- (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
- (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or

- (f) the indictment or complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

91 Exemptions from disclosure

5 Information must not be disclosed under section 89(5) or 90(2) to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000 (c.23).

92 Redaction of non-disclosable information by prosecutor

(1) Subsection (2) applies where—

10 (a) by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor is required to disclose to the accused an item of information (the “disclosable information”), and

(b) the disclosable information forms part of, or contains, other information (the “non-disclosable information”) which the prosecutor is not required to disclose by
15 virtue of any of those sections.

(2) Before disclosing the disclosable information, the prosecutor may (whether by redaction or otherwise) remove or obscure the non-disclosable information.

93 Solemn cases: additional disclosure requirement

20 (1) Subsection (2) applies where the prosecutor is obliged to comply with the requirement imposed by subsection (5) of section 89 in relation to an accused such as is mentioned in paragraph (a) or (b) of subsection (1) of that section.

(2) In addition to complying with that requirement, the prosecutor must also disclose to the accused any schedule of information which—

(a) relates to the proceedings against the accused, and

25 (b) following the making of any adjustment required by virtue of section 88(3)(b), is specified as falling into the category of non-sensitive.

(3) In this section “sensitive” has the same meaning as in section 86.

Defence statements

94 Defence statements: solemn proceedings

30 (1) As soon as practicable after the accused lodges under section 70A of the 1995 Act a defence statement or a pre-trial statement, the prosecutor must—

(a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware,

(b) determine whether subsection (3) of section 89 applies to any of that information,
35 and

(c) comply with subsection (5) or (6) of section 89.

(2) After section 70 of the 1995 Act insert—

“70A Defence statements

- (1) This section applies where an indictment is served on an accused.
- (2) The accused must lodge a defence statement at least 14 days before the first diet.
- (3) The accused must lodge a defence statement at least 14 days before the preliminary hearing.
- (4) The accused must lodge a statement (a “pre-trial statement”) at least 7 days before the trial diet stating—
- (a) in relation to the last defence statement lodged by the accused by virtue of this section, whether there has been a material change in circumstances since the defence statement was lodged, and
- (b) if so, setting out details of the change and the new position.
- (5) The accused may lodge a defence statement at any other time before the trial diet.
- (6) In this section “defence statement” means a statement setting out—
- (a) the nature of the accused’s defence, including any particular defences on which the accused intends to rely,
- (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
- (c) any point of law in relation to disclosure which the accused wishes to take and any authority on which the accused intends to rely for that purpose,
- (d) by reference to the accused’s defence, the nature of any information that the accused requires the prosecutor to disclose, and
- (e) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.”.

95 Defence statements: summary proceedings

(1) This section applies where—

- (a) a plea of not guilty is recorded against an accused charged on summary complaint, and
- (b) during the relevant period the prosecutor receives from the accused a defence statement.

(2) A defence statement must set out—

- (a) the nature of the accused’s defence, including any particular defences on which the accused intends to rely,
- (b) any matters of fact on which the accused takes issue with the prosecution and the reason for doing so,
- (c) any point of law in relation to disclosure which the accused wishes to take and any authority on which the accused intends to rely for that purpose,

- (d) by reference to the accused’s defence, the nature of any information that the accused wishes the prosecutor to disclose, and
- (e) the reasons why the accused considers that disclosure by the prosecutor of any such information is necessary.

- 5 (3) As soon as practicable after receiving the defence statement the prosecutor must—
- (a) review all the information that may be relevant to the case for or against the accused of which the prosecutor is aware,
 - (b) determine whether subsection (3) of section 89 applies to any of that information, and
 - 10 (c) comply with subsection (5) or (6) of that section.
- (4) In this section “the relevant period”, in relation to the accused, is the period—
- (a) beginning with the recording of the accused’s plea of not guilty, and
 - (b) ending with the conclusion of the proceedings to which the plea relates.
- (5) For the purposes of subsection (4), proceedings are to be taken to be concluded if—
- 15 (a) a plea of guilty is recorded against the accused,
 - (b) the accused is acquitted,
 - (c) the proceedings against the accused are deserted *simpliciter*,
 - (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal,
 - 20 (e) the proceedings are deserted *pro loco et tempore* for any reason and no further trial diet is appointed, or
 - (f) the complaint falls or is for any other reason not brought to trial, the diet is not continued, adjourned or postponed and no further proceedings are in contemplation.

Effect of guilty plea

96 Effect of guilty plea

- (1) This section applies where—
- (a) by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor is required to disclose information to an accused, but
 - 30 (b) before the prosecutor does so, a plea of guilty is recorded against the accused.
- (2) The prosecutor need not comply with the requirement in so far as it relates to the disclosure of information which is likely to form part of the prosecution case.
- (3) Subsections (1) and (2) cease to apply if the accused withdraws the plea of guilty.

Means of disclosure

97 Means of disclosure

- (1) This section applies where by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor is required to disclose information to an accused.
- (2) The prosecutor may disclose the information by any means.

- (3) In particular, the prosecutor may disclose the information by enabling the accused to inspect it at a reasonable time and in a reasonable place.

Confidentiality

98 Confidentiality of disclosed information

- 5 (1) This section applies where by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor discloses information to an accused.
- (2) The accused must not use or disclose the information or anything recorded in it other than in accordance with subsection (3).
- (3) The accused may use or disclose the information—
- 10 (a) for the purposes of the proper preparation and presentation of the accused’s case in the proceedings in relation to which the information was disclosed (“the original proceedings”),
- (b) with a view to the taking of an appeal in relation to the matter giving rise to the original proceedings,
- 15 (c) for the purposes of the proper preparation and presentation of the accused’s case in any such appeal.
- (4) A person to whom information is disclosed by virtue of subsection (3) must not use or disclose the information or anything recorded in it other than for the purpose for which it was disclosed.
- 20 (5) In subsection (3) “appeal” includes the reference of a case to the High Court of Justiciary by the Scottish Criminal Cases Review Commission under section 194B of the 1995 Act.
- (6) Nothing in this section affects any other restriction or prohibition on the use or disclosure of information, whether the restriction or prohibition arises by virtue of an enactment (whenever passed or made) or otherwise.
- 25

99 Contravention of section 98

- (1) A person who knowingly uses or discloses information in contravention of section 98 commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
- 30 (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

Disclosure to third party

100 Order enabling disclosure to third party

- 35 (1) This section applies where by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor discloses information to an accused.
- (2) On the application of the accused the court may make an order enabling the accused to disclose specified information to a specified person for a specified purpose.

- (3) Before making an order under this section the court must give—
- (a) the prosecutor, and
 - (b) any person appearing to the court to have an interest in the information to which the application relates,
- 5 an opportunity to be heard.
- (4) Section 99 does not apply in relation to information disclosed by virtue of an order under this section.
- (5) In this section—
- “court” means—
- 10 (a) if the proceedings in relation to which the information was disclosed to the accused are on indictment, the court hearing the proceedings,
 - (b) if the proceedings in relation to which the information was disclosed to the accused are petition or summary proceedings, the sheriff, and
- “specified” means specified in the order.

15 **101 Contravention of order under section 100**

- (1) A person who knowingly uses or discloses information in contravention of an order under section 100(2) commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
 - 20 (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both,
 - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both.

Applications to court: orders restricting disclosure

25 **102 Application for non-disclosure order**

- (1) This section applies where—
 - (a) by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor is required to disclose an item of information to an accused,
 - (b) section 89(3)(a) or (b) applies to the information, and
 - (c) the prosecutor considers that subsection (2) applies.
- 30 (2) This subsection applies if disclosure of the item of information—
 - (a) would be likely to cause serious injury, or death, to any person,
 - (b) would be likely to obstruct or prevent the prevention, detection, investigation or prosecution of crime, or
 - (c) would be likely to cause serious prejudice to the public interest.
- 35 (3) The prosecutor must apply to the court for a non-disclosure order in relation to the item of information.

- (4) A non-disclosure order is an order under section 106 requiring the prosecutor to withhold (wholly or to a specified extent) from the accused a specified item of information—
- 5 (a) that the prosecutor would otherwise be required to disclose to the accused by virtue of section 89(5), 90(2)(c), 94(1)(c) or, as the case may be, 95(3)(c), and
- (b) to which section 89(3)(a) or (b) applies.
- (5) In subsection (4), “specified” means specified in the order.

103 Application for non-notification order or exclusion order

- 10 (1) This section applies where the prosecutor is required by section 102(3) to apply to the court for a non-disclosure order.
- (2) If the application for a non-disclosure order relates to solemn proceedings, the prosecutor may apply to the court for—
- 15 (a) a non-notification order and an exclusion order, or
- (b) an exclusion order (but not a non-notification order).
- (3) If the application for a non-disclosure order relates to summary proceedings, the prosecutor may apply to the court for an exclusion order.
- (4) A non-notification order is an order under section 104 prohibiting notice being given to the accused of—
- 20 (a) the making of an application for—
- (i) the non-disclosure order to which the non-notification order relates,
- (ii) the non-notification order, and
- (iii) an exclusion order, and
- (b) the determination of those applications.
- (5) An exclusion order is an order under section 105 prohibiting the accused from attending or making representations in proceedings for the determination of the application for a non-disclosure order to which the exclusion order relates.
- 25 (6) Subsection (7) applies where the prosecutor applies—
- (a) by virtue of subsection (2)(a) for a non-notification order and an exclusion order, or
- 30 (b) by virtue of subsection (2)(a) or (b) for an exclusion order.
- (7) Before determining in accordance with section 106 the application for the non-disclosure order, the court must—
- (a) in accordance with section 104, determine any applications for a non-notification order and an exclusion order,
- 35 (b) in accordance with section 105, determine any application for an exclusion order.

104 Application for non-notification order and exclusion order

- (1) This section applies where the prosecutor applies for a non-notification order and an exclusion order.

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- (2) On receiving the application, the court must appoint a hearing to determine whether a non-notification order should be made.
- (3) The accused is not to be notified of—
- 5 (a) the applications for the non-disclosure order, non-notification order and exclusion order, or
- (b) the hearing appointed under subsection (2).
- (4) The accused is not to be given the opportunity to be heard or be represented at the hearing.
- (5) If, after giving the prosecutor an opportunity to be heard, the court is satisfied that the
- 10 conditions in subsection (6) are met, the court may make a non-notification order.
- (6) Those conditions are—
- (a) that disclosure to the accused of the making of the application for the non-disclosure order would be likely to disclose to the accused the nature of the information to which that application relates,
- 15 (b) that it is not in the public interest that the nature of the information be disclosed to the accused, and
- (c) that, having regard to all the circumstances, the making of a non-notification order would be consistent with the accused's receiving a fair trial.
- (7) If the court makes a non-notification order, it must also make an exclusion order.
- 20 (8) If the court refuses to make a non-notification order—
- (a) the court must appoint a hearing to determine the application for an exclusion order,
- (b) the court must give notice to the accused of the hearing, and
- 25 (c) if, after giving the prosecutor and the accused an opportunity to be heard, the court is satisfied that the conditions in subsection (4) of section 105 are met, the court may make an exclusion order under subsection (3) of that section.

105 Application for exclusion order

- (1) This section applies where by virtue of section 103(2)(b) the prosecutor applies for an exclusion order (but not a non-notification order).
- 30 (2) On receiving the application the court must appoint a hearing.
- (3) If after giving the prosecutor and the accused an opportunity to be heard the court is satisfied that the conditions in subsection (4) are met, the court may make an exclusion order.
- (4) Those conditions are—
- 35 (a) that disclosure to the accused of the nature of the information to which the application for the non-disclosure order relates would be likely to disclose to the accused that information,
- (b) that it is not in the public interest that the nature of the information be disclosed to the accused, and
- 40 (c) that, having regard to all the circumstances, the making of an exclusion order would be consistent with the accused's receiving a fair trial.

106 Application for non-disclosure order: determination

- (1) This section applies where—
- (a) the prosecutor applies for a non-disclosure order, and
 - (b) any application for a non-notification order or an exclusion order has been determined by the court.
- (2) If after—
- (a) considering the item of information to which the application for a non-disclosure order relates, and
 - (b) giving the prosecutor and (if the court has not made an exclusion order) the accused the opportunity to be heard,
- the court is satisfied that the conditions mentioned in subsection (3) are met, the court may grant a non-disclosure order.
- (3) The conditions are—
- (a) that by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c) the prosecutor is required to disclose the item of information,
 - (b) that if the item of information were to be disclosed it would be likely—
 - (i) to cause serious injury, or death, to any person,
 - (ii) to obstruct or prevent the prevention, detection, investigation or prosecution of crime, or
 - (iii) to cause serious prejudice to the public interest,
 - (c) that withholding the item of information would be consistent with the accused's receiving a fair trial, and
 - (d) that the public interest would be protected only if a non-disclosure order were to be made.
- (4) In determining the application, the court must consider whether the item of information could in the opinion of the court be disclosed or partly disclosed in such a way that—
- (a) the conditions in paragraph (b) of subsection (3) would not be met, and
 - (b) the disclosure (or partial disclosure) would be consistent with the accused's receiving a fair trial.
- (5) For the purposes of subsection (4) the ways in which the item of information might be disclosed or partly disclosed include in particular—
- (a) providing the information after (whether by redaction or otherwise) removing or obscuring parts of it,
 - (b) providing extracts or summaries of the information or part of it.
- (6) Where the court determines that the item of information could be disclosed (or partly disclosed) as mentioned in subsection (4), the court may, instead of making a non-disclosure order, make an order requiring the prosecutor to disclose to the accused the item of information in the way specified in the order.

*Special counsel***107 Special counsel**

- (1) This section applies where the court is determining—
- (a) an application for—
 - (i) a non-notification order,
 - (ii) an exclusion order, or
 - (iii) a non-disclosure order,
 - (b) an application for review of the grant or refusal of any of those orders,
 - (c) an appeal relating to any of those orders.
- (2) If the condition in subsection (3) is met, the court may appoint a person (“special counsel”) to represent the interests of the accused to whom the application, review or appeal relates.
- (3) The condition is that the court considers that the appointment of special counsel is necessary to ensure that the accused receives a fair trial.

*Appeals***108 Appeal by prosecutor against refusal of application for order**

- (1) This section applies where the court refuses an application by the prosecutor for—
- (a) a non-notification order,
 - (b) an exclusion order, or
 - (c) a non-disclosure order.
- (2) The prosecutor may appeal against the decision of the court.

109 Appeal by accused against making of exclusion order or non-disclosure order

The accused may appeal against an order of the court making an exclusion order or a non-disclosure order.

110 Appeal by special counsel

- (1) This section applies where—
- (a) the court makes a non-notification order, an exclusion order or a non-disclosure order, and
 - (b) special counsel was appointed in relation to the application for any of those orders.
- (2) Special counsel may appeal against the making of the order.

*Reviews***111 Review of grant of non-disclosure order**

- (1) This section applies where—
- (a) the court makes a non-disclosure order, and

(b) during the relevant period—

(i) the prosecutor or the accused becomes aware of information that was unavailable to the court at the time when the order was made, and

(ii) the prosecutor or, as the case may be, the accused considers that the information is material information that the prosecutor ought to disclose to the accused by virtue of section 89(5), 90(2)(c), 94(1)(c) or 95(3)(c).

(2) The prosecutor or, as the case may be, the accused may apply to the court to review the non-disclosure order.

(3) Except in the case mentioned in subsection (4), the same persons are entitled to be heard on the application for review as were entitled to be heard on the application for the non-disclosure order.

(4) If—

(a) a non-notification order was granted in relation to the non-disclosure order which is under review, and

(b) the court is satisfied that the conditions in section 104(6) are met,

the court may, where the prosecutor applies for the review, make an order prohibiting notification being given to the accused of the application for review.

(5) If—

(a) an exclusion order was granted in relation to the non-disclosure order which is under review, and

(b) the court is satisfied that the conditions in section 105(4) are met,

the court may, where the prosecutor or the accused applies for the review, exclude the accused from the review.

(6) If the court is not satisfied that the conditions mentioned in section 106(3) are met, the court may—

(a) recall the non-disclosure order, or

(b) recall the non-disclosure order and make an order requiring disclosure to the specified extent.

(7) Nothing in this section affects any right of appeal in relation to the non-disclosure order.

(8) In this section—

“specified” means specified in the order of the court,

“the relevant period”, in relation to an accused, means the period—

(a) beginning with the making of the non-disclosure order, and

(b) ending with the conclusion of the proceedings against the accused.

(9) For the purposes of this section, proceedings against an accused are to be taken to be concluded if—

(a) a plea of guilty is recorded against the accused,

(b) the accused is acquitted,

(c) the proceedings against the accused are deserted *simpliciter*,

- (d) the accused is convicted and does not appeal against the conviction before the expiry of the time allowed for such an appeal.
- (e) any appeal by the prosecutor is determined or abandoned, or
- (f) the accused is convicted and any appeal is determined or abandoned.

5 **112 Review by court of non-disclosure order**

- (1) This section applies where the court makes a non-disclosure order.
- (2) During the relevant period, the court must from time to time consider whether, having regard to the information of which the court is aware, the non-disclosure order continues to be appropriate.
- 10 (3) If the court considers that the non-disclosure order might no longer be appropriate, the court must appoint a hearing to review the matter.
- (4) In this section “the relevant period” has the same meaning as in section 90(4).

Applications and reviews: general

113 Applications and reviews: general provisions

- 15 (1) This section applies in relation to—
 - (a) an application for an order mentioned in subsection (2), and
 - (b) a review relating to such an order.
- (2) The orders are—
 - (a) a non-notification order.
 - 20 (b) an exclusion order,
 - (c) a non-disclosure order.
- (3) Except where it is impracticable to do so, the application or review is to be assigned to the same justice of the peace, sheriff or, as the case may be, judge as has been (or is to be assigned) to the trial diet in the proceedings against the accused to which the application relates.
- 25 (4) The accused is not entitled to see or be made aware of the contents of an application for—
 - (a) a non-notification order,
 - (b) an exclusion order,
 - 30 (c) a non-disclosure order,
 - (d) a review made by the prosecutor.

Code of practice

114 Code of practice

- (1) The Lord Advocate—
 - 35 (a) must issue a code of practice providing guidance about this Part, and
 - (b) may from time to time revise the code for the time being in force.

- (2) The persons mentioned in subsection (3) must have regard to the code of practice for the time being in force in carrying out their functions in relation to the investigation and reporting of crime and sudden deaths.
- (3) Those persons are—
- 5 (a) police forces,
- (b) prosecutors,
- (c) such other persons who—
- (i) engage (to any extent) in the investigation of crime or sudden deaths, and
- (ii) submit reports relating to those investigations to the procurator fiscal,
- 10 as the Scottish Ministers may prescribe by regulations.
- (4) The Lord Advocate must lay before the Scottish Parliament any code or revised code issued under this section.

Acts of Adjournal

115 Acts of Adjournal

15 The High Court may by Act of Adjournal make such rules as it considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Part.

Interpretation of Part 6

116 Interpretation of Part 6

- 20 (1) In this Part “prosecutor” and “procurator fiscal” have the meanings given by section 307(1) of the 1995 Act.
- (2) References in the following sections to the accused include references to a solicitor or advocate acting on behalf of the accused—
- (a) section 89(5) and (6),
- 25 (b) section 90(1),
- (c) section 93(2) (where it first occurs),
- (d) section 95(1)(b),
- (e) section 97,
- (f) section 98(1), and (2) and (where it first occurs) (3),
- 30 (g) section 100,
- (h) section 102,
- (i) section 103,
- (j) section 104,
- (k) section 105,
- 35 (l) section 106(2), and
- (m) section 111(1), (2), (4) and (5).

PART 7

MENTAL DISORDER AND UNFITNESS FOR TRIAL

117 **Criminal responsibility of persons with mental disorder**

- (1) Before section 52 of the 1995 Act insert—

5 *“Criminal responsibility of mentally disordered persons*

51A Criminal responsibility of persons with mental disorder

- 10 (1) A person is not criminally responsible for conduct constituting an offence, and is to be acquitted of the offence, if the person was at the time of the conduct unable by reason of mental disorder to appreciate the nature or wrongfulness of the conduct.
- (2) But a person does not lack criminal responsibility for such conduct if the mental disorder in question consists only of a personality disorder which is characterised solely or principally by abnormally aggressive or seriously irresponsible conduct.
- 15 (3) The defence set out in subsection (1) is a special defence.
- (4) The special defence may be stated only by the person charged with the offence and it is for that person to establish it on the balance of probabilities.
- (5) In this section, “conduct” includes acts and omissions.

Diminished responsibility

20 **51B Diminished responsibility**

- 25 (1) A person who would otherwise be convicted of murder is instead to be convicted of culpable homicide on grounds of diminished responsibility if the person’s ability to determine or control conduct for which the person would otherwise be convicted of murder was, at the time of the conduct, substantially impaired by reason of abnormality of mind.
- (2) For the avoidance of doubt, the reference in subsection (1) to abnormality of mind includes mental disorder.
- (3) The fact that a person was under the influence of alcohol, drugs or any other substance at the time of the conduct in question does not of itself—
- 30 (a) constitute abnormality of mind for the purposes of subsection (1), or
- (b) prevent it from being established for those purposes.
- (4) It is for the person charged with murder to establish, on the balance of probabilities, that the condition set out in subsection (1) is satisfied.
- (5) In this section, “conduct” includes acts and omissions.”.

118 Acquittal involving mental disorder: procedure

Before section 54 of the 1995 Act insert—

“Acquittal involving mental disorder

53E Acquittal involving mental disorder

- 5 (1) Where the prosecutor accepts a plea by the person charged with the
commission of an offence of the special defence set out in section 51A of this
Act, the court must declare that the person is acquitted by reason of the special
defence.
- (2) Subsection (3) below applies where—
- 10 (a) the prosecutor does not accept such a plea, and
(b) evidence tending to establish the special defence set out in section 51A
of this Act is brought before the court.
- (3) Where this subsection applies the court is to—
- 15 (a) in proceedings on indictment, direct the jury to find whether the special
defence has been established and, if they find that it has, to declare
whether the person is acquitted on that ground,
(b) in summary proceedings, state whether the special defence has been
established and, if it states that it has, declare whether the person is
acquitted on that ground.”.

119 Unfitness for trial

- 20 (1) In the 1995 Act, after section 53E (inserted by section 118), insert—

“Unfitness for trial

53F Unfitness for trial

- 25 (1) A person is unfit for trial if it is established on the balance of probabilities that
the person is incapable, by reason of a mental or physical condition, of
participating effectively in a trial.
- (2) In determining whether a person is unfit for trial the court is to have regard
to—
- 30 (a) the ability of the person to—
(i) understand the nature of the charge,
(ii) understand the requirement to tender a plea to the charge and the
effect of such a plea,
(iii) understand the purpose of, and follow the course of, the trial,
(iv) understand the evidence that may be given against the person,
35 (v) instruct and otherwise communicate with the person’s legal
representative, and
(b) any other factor which the court considers relevant.
- (3) The court is not to find that a person is unfit for trial by reason only of the
40 person being unable to recall whether the event which forms the basis of the
charge occurred in the manner described in the charge.

(4) In this section “the court” means—

(a) as regards a person charged on indictment, the High Court or the sheriff court,

(b) as regards a person charged summarily, the sheriff court.”.

5 (2) The title of section 54 of the 1995 Act (insanity in bar of trial) is replaced by “Unfitness for trial: further provision”, the cross-heading which precedes it is omitted and the section is amended as follows—

(a) in subsection (1)—

10 (i) the words “, on the written or oral evidence of two medical practitioners,” are repealed, and

(ii) for “insane” substitute “unfit for trial”,

(b) in subsection (3)—

15 (i) for “the insanity of a person” substitute “whether a person is unfit for trial”, and

(ii) after “mental” insert “or physical”, and

(c) in subsection (5), for “insane” substitute “unfit for trial”.

(3) Subsections (6) and (7) are repealed.

120 Abolition of common law rules

Any rule of law providing for—

20 (a) the special defence of insanity,

(b) the plea of diminished responsibility, or

(c) insanity in bar of trial,

ceases to have effect.

PART 8

25 LICENSING UNDER CIVIC GOVERNMENT (SCOTLAND) ACT 1982

121 Conditions to which licences under 1982 Act are to be subject

(1) The 1982 Act is amended as follows.

(2) In section 3(4) (automatic grant or renewal of licence where application not determined within specified period), the word “unconditionally” is repealed.

30 (3) After section 3 insert—

“3A Mandatory licence conditions

(1) The Scottish Ministers may by order made by statutory instrument prescribe conditions to which licences granted by licensing authorities under this Act are to be subject.

35 (2) Different conditions may be prescribed under subsection (1)—

(a) in respect of different licences, or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(3) A statutory instrument containing an order made under subsection (1) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) Subsection (1) does not affect any other power of the Scottish Ministers under this Act or any other enactment to prescribe conditions—

(a) to which licences granted by licensing authorities under this Act are to be subject, or

(b) to be imposed by licensing authorities in granting or renewing licences under this Act.

(5) The following conditions are referred to in this Part and Part 2 of this Act as “mandatory conditions”—

(a) conditions prescribed under subsection (1),

(b) conditions prescribed under any power referred to in subsection (4), and

(c) conditions imposed, or required to be imposed, by any provision of this Part or Part 2 of this Act.

(6) In this section and section 3B, references to licences granted by licensing authorities include references to—

(a) licences renewed by licensing authorities, and

(b) licences deemed by virtue of section 3(4) to be granted or renewed by licensing authorities.

3B Standard licence conditions

(1) A licensing authority may determine conditions to which licences granted by them under this Act are to be subject.

(2) Conditions determined under subsection (1) are referred to in this Part and Part 2 as “standard conditions”.

(3) Different conditions may be determined under subsection (1)—

(a) in respect of different licences, or different types of licence,

(b) otherwise for different purposes, circumstances or cases.

(4) A licensing authority must publish, in such manner as they think appropriate, any standard conditions determined by them.

(5) Standard conditions have no effect—

(a) unless they are published, and

(b) so far as they are inconsistent with any mandatory conditions.

(6) Subsection (1) is subject to paragraph 5(1A)(a) of Schedule 1 to this Act.”.

(4) In section 27C (conditions in respect of knife dealers’ licences)—

(a) in subsection (1)—

(i) in paragraph (b), after “prejudice to” insert “section 3B and”, and

(ii) in paragraph (c), after “that” insert “section and”, and

(b) subsection (2) is repealed.

- (5) In section 41(3) (power to attach conditions to public entertainment licences), after “prejudice to” insert “section 3B of and”.
- (6) In Schedule 1 (further provisions as to the general licensing system), in paragraph 5—
- (a) in sub-paragraph (1)—
- (i) in paragraph (a), the word “unconditionally” is repealed, and
- (ii) paragraph (b) is repealed,
- (b) after that sub-paragraph insert—
- “(1A) In granting or renewing a licence under sub-paragraph (1)(a), a licensing authority may (either or both)—
- (a) disapply or vary any standard conditions so far as applicable to the licence,
- (b) impose conditions in addition to any mandatory or standard conditions to which the licence is subject.”,
- (c) in sub-paragraph (2), for “(1)(b)” substitute “(1A)(b)”, and
- (d) after that sub-paragraph insert—
- “(2A) A variation made under sub-paragraph (1A)(a) or condition imposed under sub-paragraph (1A)(b) has no effect so far as it is inconsistent with any mandatory condition to which the licence is subject.”.

122 Licensing: powers of entry and inspection for civilian employees

- (1) The 1982 Act is amended as follows.
- (2) In section 5 (rights of entry and inspection)—
- (a) in subsection (1), after “licensing authority” insert “, an authorised civilian employee”,
- (b) in subsection (3)(a) and (b)—
- (i) after “constable” where it first occurs insert “, an authorised civilian employee”, and
- (ii) after “such an” insert “employee or”,
- (c) in subsection (3)(c), after “constable” insert “, an authorised civilian employee”,
- (d) in subsection (4)—
- (i) after “licensing authority” insert “, an authorised civilian employee”, and
- (ii) after “the officer” insert “, employee”, and
- (e) in subsection (6), after “licensing authority” insert “or authorised civilian employee”.
- (3) In section 8 (interpretation of Parts 1 and 2), after the definition of “appropriate relevant authority” insert—
- ““authorised civilian employee” means a person—
- (a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and

(b) authorised by the chief constable for the purposes of sections 5, 11 and 29 of this Act;”.

(4) In section 11 (inspection and testing of vehicles), in subsection (2)—

(a) after “the authority” insert “, an authorised civilian employee”,

(b) in paragraph (b), after “licensing authority” insert “, an authorised civilian employee”, and

(c) after “authorised officer” where it last occurs, insert “, employee”.

(5) In paragraph 3 (miscellaneous definitions) of Schedule 2 (control of sex shops), after the definition of “appropriate relevant authority” insert—

““authorised civilian employee” means a person—

(a) employed by a police authority under section 9(1)(a) of the Police (Scotland) Act 1967 (c.77), and

(b) authorised by the chief constable for the purposes of paragraph 20 of this Schedule;”.

(6) In paragraph 20 of that Schedule (rights of entry and inspection)—

(a) in sub-paragraph (1), after “local authority” insert “, an authorised civilian employee”,

(b) in sub-paragraph (3), after “local authority” insert “or an authorised civilian employee”, and

(c) in sub-paragraph (5)—

(i) after “constable” where it first occurs insert “, an authorised civilian employee”, and

(ii) after “such” insert “employee or”.

123 Licensing of metal dealers

(1) The 1982 Act is amended as follows.

(2) In section 9 (optional provisions)—

(a) for subsection (1) substitute—

“(1) The provisions mentioned in subsection (1A) (referred to in this section as the “optional provisions”) have effect in the area of a licensing authority only if and in so far as the authority makes a resolution in accordance with subsections (2) to (8).

(1A) Those provisions are—

(a) sections 10 to 27 (except section 20) of this Act,

(b) sections 28 to 43 (except section 41A) of this Act,

(c) any regulations made under section 20 of this Act, and

(d) any order made under section 44(1)(a) of this Act.”.

(3) In section 29 (metal dealers’ exemption warrants)—

(a) in subsection (1)—

- (i) for the words from “a certificate” to “stating” substitute “such evidence as they may determine showing”,
- (ii) for “certificate” where it second occurs substitute “evidence”, and
- (iii) for the words from “£100,000” to the end substitute “such sum (including nil) as the licensing authority may determine.”,

(b) for subsection (2) substitute—

“(2) A licensing authority must publish any determinations made under subsection (1).”, and

(c) in subsection (10), the definition of “auditor” is repealed.

10 124 Licensing of taxis and private hire cars

(1) The 1982 Act is amended as follows.

(2) In section 13 (taxi and private hire car licences), in subsection (3), for “during any continuous period of 12 months” substitute “throughout the period of 12 months immediately”.

(3) In section 17 (taxi fares)—

(a) for subsections (2) to (4) substitute—

“(2) The licensing authority must fix scales for the fares and other charges mentioned in subsection (1) within 18 months beginning with the date on which the scales came into effect.

(3) In fixing scales under subsection (2), the licensing authority may—

- (a) alter fares or other charges,
- (b) fix fares or other charges at the same rates.

(4) Before fixing scales under subsection (2), the licensing authority must review the scales in accordance with subsection (4A).

(4A) In carrying out a review, the licensing authority must—

- (a) consult with persons or organisations appearing to it to be, or to be representative of, the operators of taxis operating within its area,
- (b) following such consultation—
 - (i) review the existing scales, and
 - (ii) propose new scales (whether at altered rates or the same rates),
- (c) publish those proposed scales in a newspaper circulating in its area—
 - (i) setting out the proposed scales,
 - (ii) explaining the effect of the proposed scales,
 - (iii) proposing a date on which the proposed scales are to come into effect, and
 - (iv) stating that any person may make representations in writing until the relevant date, and
- (d) consider any such representations.

(4B) In subsection (4A)(c)(iv) “the relevant date” is a date specified by the licensing authority falling at least one month after the first publication by the authority of the proposed scales.

(4C) After fixing scales under subsection (2), the licensing authority must give notice in accordance with subsection (4D).

(4D) The licensing authority must—

(a) set out, and explain the effect of, the scales as fixed,

(b) notify the persons mentioned in subsection (4E) of—

(i) the date on which the scales as fixed are to come into effect, and

(ii) the rights of appeal under section 18.

(4E) Those persons are—

(a) all operators of taxis operating within their area, and

(b) the persons and organisations consulted under subsection (4A)(a).”, and

(b) in subsection (5)—

(i) for “(4)” where it first occurs substitute “(4D)(b)”,

(ii) in paragraph (a)—

(A) for “(4)” where it first occurs substitute “(4E)”,

(B) for “five days after the decision referred to in subsection (4)” substitute “seven days after the scales are fixed under subsection (2)”.

(4) In section 18 (appeals in respect of taxi fares)—

(a) for subsection (1) substitute—

“(1) Any person mentioned in subsection (1A) may, within 14 days of notice being given under section 17(4C), appeal against those scales to the traffic commissioner for the Scottish Traffic Area as constituted for the purpose of the Public Passenger Vehicles Act 1981.”,

(b) after that subsection insert—

“(1A) Those persons are—

(a) any person who operates a taxi in an area for which scales have been fixed under section 17(2), and

(b) any person or organisation appearing to the traffic commissioner to be representative of such taxi operators.”,

(c) in subsection (3)—

(i) the words “to them” are repealed,

(ii) in paragraph (b) the word “may” is repealed, and

(iii) in paragraph (b)(i), for “on the grounds that” substitute “if”, and

(d) subsection (9) is repealed.

(5) After section 18 insert—

“18A Publication and coming into effect of taxi fares

(1) Following the fixing of scales by a licensing authority under section 17(2), the licensing authority must—

- 5 (a) determine the date on which the scales are to come into effect, and
 (b) publish the scales in accordance with subsections (3) to (5).

(2) The scales may come into effect no earlier than seven days after the date on which they are published.

(3) The licensing authority must—

- 10 (a) give notice of the scales by advertisement in a newspaper circulating in its area, and
 (b) specify in that advertisement the date on which the scales are to come into effect.

(4) The authority must give notice of the scales—

- 15 (a) where no appeal has been lodged under subsection (1) of section 18, as soon as practicable after the expiry of the period of 14 days mentioned in that subsection,
 (b) where such an appeal has been lodged, as soon as practicable after the determination of the appeal.

20 (5) For the purposes of subsection (4), an appeal is determined on the date on which the appeal is abandoned or notice is given to the appellant of its disposal.”.

125 Licensing of market operators

(1) Section 40 of the 1982 Act (market operators’ licences) is amended as follows.

25 (2) In subsection (2), the words from “either” to the end of paragraph (a) are repealed.

(3) In subsection (4), the words “by retail” are repealed.

126 Licensing of public entertainment

(1) Section 41 of the 1982 Act (public entertainment licences) is amended as follows.

(2) In subsection (2)—

- 30 (a) the words “, on payment of money or money’s worth,” are repealed,
 (b) in paragraph (d), for “, section 1 of the Cinemas Act 1985 or Part II of the Gaming Act 1968” substitute “or section 1 of the Cinemas Act 1985”,
 (c) for paragraph (e), substitute—

35 “(e) premises in respect of which there is a club gaming permit (within the meaning of section 271 of the Gambling Act 2005 (c.19)) or a prize gaming permit (within the meaning of section 289 of that Act of 2005);”,

(d) the word “or” immediately preceding paragraph (g) is repealed, and

(e) after paragraph (g), add “, or

(h) such other premises as the Scottish Ministers may by order made by statutory instrument specify.”.

(3) After subsection (2) insert—

“(2A) A statutory instrument containing an order made under subsection (2)(h) is subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

127 Licensing of late night catering

(1) Section 42 of the 1982 Act (late hours catering) is amended as follows.

(2) In subsections (1) and (2), for “meals or refreshment” in each place where those words occur substitute “food”.

(3) In subsection (2), for “they are” substitute “it is”.

(4) In subsection (3), for “meals or refreshments” in both places where those words occur substitute “food”.

(5) After subsection (6), add—

“(7) In this section “food” has the meaning given in section 1 of the Food Safety Act 1990 (c.16).”.

128 Applications for licences

(1) The 1982 Act is amended as follows.

(2) In Schedule 1 (further provisions as to the general licensing system)—

(a) in paragraph 1(2)(b), for “and address” in both places where those words occur substitute “, address and date and place of birth”,

(b) in paragraph 1(2)(c)—

(i) in sub-paragraph (iii), for “and private addresses” substitute “, private addresses and dates and places of birth”, and

(ii) in sub-paragraph (iv), for “and address” substitute “, address and date and place of birth”,

(c) in paragraph 3(1)(e), for “21” substitute “28”,

(d) in paragraph 4(2), for “7” substitute “14”,

(e) in paragraph 8, after sub-paragraph (5) insert—

“(5A) On good cause being shown, a licensing authority may, for the purposes of sub-paragraph (5), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.”,

(f) in paragraph 11(8), for “21” substitute “14”, and

(g) in paragraph 17(2), for “28” substitute “21”.

(3) In Schedule 2 (control of sex shops)—

(a) in paragraph 6(2), for paragraph (b) substitute—

“(b) the date and place of birth of the applicant;”,

(b) in paragraph 6(2)(c), for “age” substitute “date and place of birth”,

- (c) in paragraph 6(3)—
- (i) in paragraph (c), for “and private addresses” substitute “, private addresses and dates and places of birth”, and
 - (ii) in paragraph (d), for “age” substitute “date and place of birth”,
- 5 (d) in paragraph 8(7), after “them” insert “and, where they propose to do so, must, within such reasonable period (not being less than 14 days) of the date of the hearing, notify the applicant and each such person of that date”,
- (e) in paragraph 9(3), in both paragraphs (e) and (f), for “the United Kingdom” substitute “a member state of the European Union”,
- 10 (f) in paragraph 12, after sub-paragraph (3) insert—
- “(3A) On good cause being shown, a local authority may, for the purposes of sub-paragraph (3), deem an application for renewal of a licence made up to 28 days after the expiry of the licence to be an application made before the expiry.”,
- (g) in paragraph 13(6), for “21” substitute “14”, and
- 15 (h) in paragraph 23(2), for “28” substitute “21”.

PART 9

ALCOHOL LICENSING

129 Sale of alcohol to persons under 21 etc.

- (1) The 2005 Act is amended as follows.
- 20 (2) In section 7 (duty to assess overprovision)—
- (a) in subsection (1), after “statement” where it second occurs insert “(an “overprovision statement””, and
 - (b) after subsection (1) insert—
- “(1A) A Licensing Board may at any time review an overprovision statement.”.
- 25 (3) After section 7 insert—

“7A Duty to assess impact of off-sales to persons under the age of 21

- (1) Each licensing policy statement published by a Licensing Board must in particular include a statement (a “detrimental impact statement”) as to the extent to which the Board considers that off-sales to persons under the age of
- 30 21—
- (a) in its area, or
 - (b) in any locality within its area,
- are having a detrimental impact in that area or locality.
- (2) In subsection (1)—
- 35 (a) “off-sales” means the sale of alcohol on licensed premises for consumption off those premises,
- (b) “detrimental impact” means any adverse effect on one or more of the licensing objectives.

- (3) A Licensing Board may at any time review a detrimental impact statement.
- (4) In preparing a detrimental impact statement, a Licensing Board must—
- (a) ensure that the policy stated in the statement seeks to promote the licensing objectives, and
 - (b) consult—
 - (i) the Local Licensing Forum for the Board’s area,
 - (ii) if the membership of the Forum is not representative of the interests of all of the persons specified in paragraph 2(6) of schedule 2, such person or persons as appear to the Board to be representative of those interests of which the membership is not representative, and
 - (iii) such other persons as the Board thinks appropriate.
- (5) At the request of a Licensing Board—
- (a) the appropriate chief constable, or
 - (b) the relevant council,
- must provide to the Board such statistical or other information as the Board may reasonably require for the purpose of preparing a detrimental impact statement.
- (6) A Licensing Board must, at the request of—
- (a) the appropriate chief constable, or
 - (b) the Local Licensing Forum for the Licensing Board’s area,
- within 42 days of the date of receipt of the request, consider reviewing the detrimental impact statement.
- (7) Where, following a review under subsection (3) or (6), a Licensing Board revises the detrimental impact statement, it must publish it in a supplementary licensing policy statement.
- (8) It is for the Licensing Board to determine a “locality” within its area for the purposes of subsection (1).
- (9) In subsection (2)(a) “licensed premises” does not include premises in respect of which an occasional licence has effect.”.

(4) After section 27 insert—

“27A Power of Board to vary premises licence conditions

- (1) A Licensing Board may, in relation to any matter which the Scottish Ministers may by regulations prescribe, make a variation of the conditions to which a premises licence in respect of licensed premises within its area is subject.
- (2) A variation under subsection (1) may apply to—
- (a) all licensed premises,
 - (b) particular licensed premises,
 - (b) licensed premises within particular parts of its area, or
 - (c) licensed premises of a particular description.

- (3) A variation under subsection (1) has effect for such period as the Board may specify in it.
- (4) The Board may make a variation under subsection (1) only where it is satisfied that the variation is necessary or expedient for the purposes of any of the licensing objectives.
- (5) Where a Licensing Board makes a variation under subsection (1), the Board must—
- (a) amend the premises licence,
 - (b) within the period of one month, give notice of the variation to—
 - (i) the appropriate chief constable, and
 - (ii) the holders of premises licences in respect of premises to which the variation applies,
 - (c) send a copy of the variation to the address of the premises to which the variation applies, and
 - (d) publicise the variation in such manner as the Board sees fit.
- (6) A variation under subsection (1) does not have effect unless notice under subsection (5)(b)(ii) has been given.
- (7) In subsection (1), the power to make a variation of the conditions to which a premises licence is subject includes—
- (a) a power to make a revocation of such a variation in the same manner and subject to the same conditions, duties and limitations as the variation,
 - (b) a power to make a variation (or a revocation of a variation) of the conditions to which a provisional premises licence is subject.”.
- (5) In section 146 (orders and regulations), in subsections (4)(b) and (5)(b), after “27(2)” insert “, 27A(1)”.

130 Premises licence applications: notification requirements

- (1) Section 21 of the 2005 Act (notification of premises licence application) is amended as follows.
- (2) For subsection (2), substitute—
- “(2) On giving notice of an application under subsection (1), the Licensing Board—
- (a) must provide the appropriate chief constable with a copy of the application, and
 - (b) may provide any other person to whom notice is given with a copy of the application.”.
- (3) In subsection (3), the following are repealed—
- (a) the word “and” after paragraph (a), and
 - (b) paragraph (b).
- (4) In subsection (6), the following are repealed—
- (a) the definition of “antisocial behaviour”,
 - (b) the word “and” following the definition of “neighbouring land”, and

- (c) the definition of “relevant period”.

131 Premises licence applications: modification of layout plans

In section 23 of the 2005 Act (determination of premises licence application), in subsection (7)(b), after “plan” insert “or layout plan (or both)”.

132 Premises licence applications: antisocial behaviour reports

- (1) The 2005 Act is amended as follows.

- (2) In section 22 (objections and representations), after subsection (2) insert—

“(2A) The appropriate chief constable may, under subsection (1)(b), make representations concerning a premises licence application by giving to the Licensing Board a report detailing—

- (a) any cases of antisocial behaviour identified by constables as having taken place on, or in the vicinity of, the premises,
(b) any complaints or other representations made to constables concerning antisocial behaviour on, or in the vicinity of, the premises.”.

- (3) After section 24 insert—

“24A Power to request antisocial behaviour report

- (1) A Licensing Board may, at any time before determining a premises licence application, request the appropriate chief constable to give the Board a report detailing—

- (a) all cases of antisocial behaviour identified within the relevant period by constables as having taken place on, or in the vicinity of, the premises,
(b) all complaints or other representations made within the relevant period to constables concerning antisocial behaviour on, or in the vicinity of, the premises.

- (2) The appropriate chief constable must give the report within 21 days of the request.

- (3) Where the Licensing Board requests a report under subsection (1), the Board must suspend consideration of the application until it receives the report.

- (4) On receipt of the chief constable’s report under subsection (2), the Licensing Board must—

- (a) give a copy of the report to the applicant in such manner and by such time as may be prescribed by regulations, and
(b) resume consideration of the application and determine it in accordance with section 23.

- (5) In this section—

“antisocial behaviour” has the same meaning as in section 143 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), and

“relevant period” means the period of one year ending with the date of the request.”.

133 Sale of alcohol to trade

- (1) The 2005 Act is amended as follows.
- (2) In section 63 (prohibition of sale, consumption and taking away of alcohol outwith licensed hours), in subsection (2)(f), after “on” where it first occurs insert “or taken from”.
- (3) In section 117 (offence relating to sale of alcohol to trade), in subsection (1), after “from” insert “licensed premises or”.

134 Occasional licences

- (1) The 2005 Act is amended as follows.
- (2) In section 57 (notification of application to chief constable and Licensing Standards Officer), after subsection (3), add—
- “(4) Subsection (5) applies where the Licensing Board is satisfied that the application requires to be dealt with quickly.
- (5) Subsections (2) and (3) have effect in relation to the application as if the references to the period of 21 days were references to such shorter period of not less than 24 hours as the Board may determine.”.
- (3) In paragraph 10 of schedule 1 (delegation of functions of Licensing Boards), after sub-paragraph (4), add—
- “(5) Despite sub-paragraph (1), a Licensing Board may not delegate the function of deciding whether an occasional licence application requires to be dealt with quickly for the purposes of section 57(4) to a member of staff provided under paragraph 8(1)(b).”.

135 Extended hours applications: variation of conditions

After section 70 of the 2005 Act insert—

“70A Extended hours applications: variation of conditions

- (1) On granting an extended hours application under section 68(1) in respect of a premises licence, the Licensing Board may make such variation of the conditions to which the licence is subject as the Board considers necessary or expedient for the purposes of any of the licensing objectives.
- (2) A variation made under subsection (1)—
- (a) may have effect only in relation to a period of licensed hours which is extended under section 68(1), and
- (b) ceases to have effect at the end of the period for which the extension of the licensed hours has effect under section 68(2).
- (3) In subsection (1), “variation” includes addition, deletion or other modification.”.

136 Personal licences

- (1) The 2005 Act is amended as follows.
- (2) In section 74 (determination of personal licence application)—

- (a) in subsection (2)—
- (i) the word “and” immediately following paragraph (a) is repealed, and
 - (ii) after paragraph (b) add—
 - “(c) the applicant has signed the application, and
 - (d) subsection (8) does not apply.”,

- (b) in subsection (3)—
- (i) the word “and” immediately following paragraph (b) is repealed, and
 - (ii) after paragraph (b) insert—
 - “(ba) the applicant does not already hold a personal licence, and”, and

- (c) after subsection (6) insert—

“(7) Subsection (8) applies if—

- (a) all of the conditions specified in subsection (3) are met in relation to the applicant,
- (b) the Board has received from the appropriate chief constable a notice under section 73(3)(a), and
- (c) the applicant has held a personal licence which—
 - (i) expired within the period of 3 years ending on the day on which the application was received, or
 - (ii) was surrendered by the applicant by notice under section 77(6) received within that period.

- (8) The Licensing Board may—

- (a) after having regard to the circumstances in which the personal licence previously held expired, or as the case may be, was surrendered—
 - (i) refuse the application, or
 - (ii) grant the application, and
- (b) hold a hearing for the purposes of considering and determining the application.”.

- (3) In section 76 (issue of licence), after subsection (3) add—

“(4) A person who holds a void personal licence must surrender it to the Licensing Board.

(5) A person who, without reasonable excuse, fails to comply with subsection (4) commits an offence.

(6) A person who passes off a void personal licence as a valid personal licence knowing that the licence is void commits an offence.

(7) A person guilty of an offence under subsection (5) or (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

- (4) In section 92 (theft, loss etc. of personal licence), after subsection (3) insert—

“(3A) A replacement personal licence is void if at the time it is issued the personal licence in respect of which it was issued is not lost, stolen, damaged or destroyed.

(3B) Where a replacement personal licence is issued in respect of a personal licence which has been lost or stolen, the replacement personal licence becomes void if the personal licence is subsequently found or recovered.

5 (3C) A person who holds a void replacement personal licence must surrender it to the Licensing Board.

(3D) A person who, without reasonable excuse, fails to comply with subsection (3C) commits an offence.

(3E) A person who passes off a void replacement personal licence as a valid licence, knowing that the licence is void, commits an offence.

10 (3F) A person guilty of an offence under subsection (3D) or (3E) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

137 Emergency closure orders

(1) The 2005 Act is amended as follows.

(2) In section 97 (closure orders)—

15 (a) in subsection (2), for “senior police officer may, if the officer” substitute “constable of or above the rank of inspector may, if the constable”, and

(b) in subsection (4), the words “by a senior police officer” are repealed.

(3) In section 98 (termination of closure orders)—

(a) in subsection (1)—

20 (i) for “senior police officer” substitute “constable of or above the rank of inspector”, and

(ii) for “the officer” substitute “the constable”,

(b) in subsection (2)—

(i) for “senior police office” substitute “constable”, and

25 (ii) for “the officer” substitute “the constable”.

(4) In section 99 (extension of emergency closure order), in subsection (1)—

(a) for “senior police officer” substitute “constable of or above the rank of inspector”, and

(b) in paragraph (b), for “officer” substitute “constable”.

30 138 False statements in applications: offence

After section 134 of the 2005 Act insert—

“134A Offence of knowingly making a false statement in an application

(1) A person who knowingly makes a false statement in an application under this Act commits an offence.

35 (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

139 Further modifications of 2005 Act

Schedule 4 makes further modifications of the 2005 Act (including extending police powers to object).

PART 10

MISCELLANEOUS

140 Licensed premises: social responsibility levy

(1) The Scottish Ministers may by regulations make provision for the imposition on relevant licence-holders of charges for the purpose mentioned in subsection (3).

(2) In this section, “relevant licence-holders” means—

- (a) holders of premises licences or occasional licences granted under the 2005 Act,
- (b) holders of street trader’s licences granted under section 39 of the 1982 Act where the licence authorises the carrying on of a food business within the meaning of section 1(3) of the Food Safety Act 1990 (c.16),
- (c) holders of public entertainment licences granted under section 41 of the 1982 Act, and
- (d) holders of late hours catering licences granted under section 42 of the 1982 Act.

(3) The purpose referred to in subsection (1) is to meet or contribute to expenditure incurred or to be incurred by any local authority—

- (a) in furtherance of the licensing objectives, and
- (b) which the authority considers necessary or desirable with a view to remedying or mitigating any adverse impact on those objectives attributable (directly or indirectly) to the operation of the businesses of relevant licence-holders in the authority’s area.

(4) Regulations under this section may, in particular—

- (a) specify charges or provide for them to be determined under the regulations,
- (b) specify charges, or provide for them to be determined, by reference to such factors or circumstances as may be specified in or determined under the regulations,
- (c) provide for annual or other recurring charges,
- (d) provide for exemptions from charges,
- (e) provide for the remission or repayment of charges,
- (f) provide for the collection and enforcement of charges,
- (g) provide for the charging of interest on overdue charges,
- (h) provide for the payment of charges to be a condition of the licences held by relevant licence holders,
- (i) make provision about the particular purposes for which income from charges may be applied,
- (j) provide for the accounting for income from charges and the expenditure of that income,

(k) confer functions on local authorities in relation to the determination, administration, collection and enforcement of charges, or in relation to any other matter provided for in the regulations.

(5) In this section—

“business”, in relation to a relevant licence-holder, means the business comprising the activity in respect of which the licence-holder’s licence was granted,

“licensing objectives” means the objectives specified in section 4 of the 2005 Act,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and “area”, in relation to a local authority, means the local government area for which the authority is constituted.

141 Annual report on Criminal Justice (Terrorism and Conspiracy) Act 1998

Section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c.40) (requirement for annual report on working of the Act) is repealed.

142 Corruption in public bodies

(1) In section 8 of the Public Bodies Corrupt Practices Act 1889 (c.69) (application of Act to Scotland), the words from “the sheriff principal” to “and” where it second occurs are repealed.

(2) In section 3 of the Prevention of Corruption Act 1906 (c.34) (application to Scotland), subsection (2) is repealed.

PART 11

GENERAL

143 Orders and regulations

(1) Any power of the Scottish Ministers to make regulations or an order under this Act is exercisable by statutory instrument.

(2) Any such power includes power to make—

(a) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) different provision for different purposes or different areas.

(3) Subject to subsection (4), a statutory instrument containing regulations or an order under this Act (except an order under section 148(1)) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(4) A statutory instrument containing—

(a) regulations under section 140(1), or

(b) an order under section 146(1) or 147(1) containing provisions which add to, replace or omit any part of the text of an Act,

is not to be made unless a draft of the instrument containing the regulations or order has been laid before, and approved by resolution of, the Parliament.

144 Interpretation

In this Act—

“the 1982 Act” means the Civic Government (Scotland) Act 1982 (c.45),

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46), and

“the 2005 Act” means the Licensing (Scotland) Act 2005 (asp 16).

145 Modification of enactments

Schedule 5 modifies enactments.

146 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of or for giving full effect to any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

147 Transitional provision etc.

(1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

(2) An order under subsection (1) may modify any enactment (including this Act).

148 Short title and commencement

(1) The provisions of this Act, other than this section and sections 143 to 147, come into force in accordance with provision made by order by the Scottish Ministers.

(2) This Act may be cited as the Criminal Justice and Licensing (Scotland) Act 2009.

SCHEDULE 1
(introduced by section 3(2))

THE SCOTTISH SENTENCING COUNCIL

Membership

- 5 1 (1) The Council consists of a chairing member, other judicial members, legal members and lay members.
- (2) The chairing member is the Lord Justice Clerk.
- (3) The other judicial members comprise—
- 10 (a) one other person holding the office of judge who normally sits as a judge of the Outer House of the Court of Session or the High Court of Justiciary,
- (b) two persons holding the office of sheriff principal or sheriff, and
- (c) one person holding the office of justice of the peace or stipendiary magistrate.
- (4) The legal members comprise—
- (a) one prosecutor within the meaning of section 307 of the 1995 Act,
- 15 (b) one constable,
- (c) one advocate practising as such in Scotland (other than one who is a prosecutor), and
- (d) one solicitor practising as such in Scotland (other than one who is a prosecutor).
- (5) The lay members comprise—
- 20 (a) one person appearing to the Scottish Ministers to have knowledge of the issues faced by victims of crime, and
- (b) two other persons neither of whom is qualified for appointment as a judicial or legal member.

Procedure for appointment of members

- 25 2 (1) It is for the Lord Justice General, after consulting the Scottish Ministers, to appoint the members of the Council other than the Lord Justice Clerk and the lay members.
- (2) It is for the Scottish Ministers, after consulting the Lord Justice General, to appoint the lay members.
- (3) The Lord Justice General may appoint a person to be a member only if the person has
- 30 been nominated, or otherwise selected for appointment, in accordance with such procedures as the Scottish Ministers may by regulations prescribe.
- (4) The regulations may—
- (a) in particular, make provision for or in connection with enabling a person to nominate or select persons suitable for appointment,
- 35 (b) prescribe different procedures for different categories of membership.
- (5) The Scottish Ministers must consult the Lord Justice General before making the regulations.

Persons disqualified from membership

3 A person is disqualified from appointment, and from holding office, as a member of the Council if the person is or becomes—

- 5 (a) a member of the House of Commons,
- (b) a member of the Scottish Parliament,
- (c) a member of the European Parliament,
- (d) a councillor of any council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),
- (e) a Minister of the Crown, or
- 10 (f) a member of the Scottish Executive.

Term of office

4 (1) A member holds office for such period not exceeding 5 years as the Lord Justice General or, as the case may be, the Scottish Ministers may, at the time of appointment, determine.

15 (2) A member ceases to hold office—

- (a) on becoming disqualified from holding office as a member, or
- (b) on ceasing to fall within the category of membership under which the member was appointed.

(3) A person who has previously been a member may not be re-appointed.

20 *Resignation and removal of members*

5 (1) A member appointed by the Lord Justice General may resign office by giving notice in writing to the Lord Justice General.

(2) A member appointed by the Scottish Ministers may resign office by giving notice in writing to the Scottish Ministers.

25 (3) The Lord Justice General may, by notice in writing, remove a judicial or legal member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

30 (4) The Scottish Ministers may, by notice in writing, remove a lay member if satisfied that the member is unfit to be a member by reason of inability, neglect of duty or misbehaviour.

Suspension of judicial members

6 A judicial member is suspended from acting as such during any period in which the member is suspended from the judicial office which the member holds.

Chairing of the Council

35 7 (1) The Lord Justice Clerk is to chair meetings of the Council.

- (2) If the Lord Justice Clerk is for any reason unable to chair a meeting, the meeting may be chaired by another judicial member nominated—
- (a) by the Lord Justice Clerk, or
 - (b) if the Lord Justice Clerk is unable to make such a nomination, by the Council.

- 5 (3) The Lord Justice Clerk may nominate another judicial member to chair meetings of the Council for a temporary period.

Committees

- 8 The Council may establish committees comprising members of the Council.

Proceedings

- 10 9 The Council may determine—
- (a) its own procedure (including the number of members required to constitute a quorum), and
 - (b) the procedure (including the number of members required to constitute a quorum) of any committees established by it.

Validity of acts

- 15 10 The validity of proceedings or actings of the Council is not affected by—
- (a) any vacancy in the membership of the Council,
 - (b) any defect in the appointment of a member of the Council, or
 - (c) disqualification of any person from holding office as a member of the Council.

Ancillary powers

- 20 11 The Council may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.

Delegation

- 25 12 (1) Any function of the Council, other than the function of preparing and publishing sentencing guidelines, may be carried out on its behalf by—
- (a) a member of the Council,
 - (b) a committee, or
 - (c) any other person,
- authorised (whether specially or generally) by it for the purpose.
- 30 (2) Nothing in sub-paragraph (1) prevents the Council from exercising any function delegated under that sub-paragraph.

Maladministration

13 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), after paragraph 50 insert—

5 “50A The Scottish Sentencing Council.”.

Freedom of information

14 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 7 (other authorities), after paragraph 98 insert—

10 “98A The Scottish Sentencing Council.”.

SCHEDULE 2

(introduced by section 18(9))

SHORT-TERM CUSTODY AND COMMUNITY SENTENCES: CONSEQUENTIAL AMENDMENTS

Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17)

15 1 The Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) is amended in accordance with paragraphs 2 to 14.

2 In section 34 (period during which licence in force), for subsection (1) substitute—

20 “(1) Where a short-term custody and community prisoner is released on short-term community licence by virtue of section 5, 27(1) or, as the case may be, 42(4)(a), the licence remains in force until the expiry of the prisoner’s sentence.”.

3 In the following places after “section” insert “5,”—

- (a) section 35 (prisoner to comply with licence conditions),
 (b) subsection (1)(a) of section 36 (suspension of licence conditions while detained),
 25 (c) subsections (1)(a) and (4)(a) of section 37 (revocation of licence).

4 In section 40 (compassionate release: effect of revocation in certain circumstances), in subsection (3), for paragraph (a) substitute—

“(a) in the case of a short-term custody and community prisoner, one-half of the prisoner’s sentence.”.

30 5 (1) Section 42 (consideration by Parole Board) is amended as follows.

(2) In subsection (1), after “41(2)(b)” insert “, 42A(9)”.

(3) In subsection (5), after “on” insert “short-term community licence.”.

6 After section 42 insert—

“42A Determination that section 42(3) applicable: consequences for short-term custody and community prisoners

- 5 (1) This section applies where the Parole Board determines, under subsection (2) of section 42, that subsection (3) of that section applies to a short-term custody and community prisoner.
- (2) The Parole Board must give the prisoner reasons in writing for its determination.
- 10 (3) If on the day of the determination less than 4 months of the prisoner’s sentence remain to be served, the prisoner must be confined until the expiry of the prisoner’s sentence.
- (4) If on the day of the determination at least 4 months but no more than 2 years of the prisoner’s sentence remain to be served, the Parole Board may, subject to section 26, fix a date falling within the period mentioned in subsection (5) on which it will next consider the prisoner’s case.
- 15 (5) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
- (b) ending on the expiry of the prisoner’s sentence.
- 20 (6) If no date is fixed under subsection (4) the prisoner must be confined until the expiry of the prisoner’s sentence.
- (7) If on the day of the determination at least 2 years of the prisoner’s sentence remain to be served, the Parole Board must, subject to section 26, fix a date falling within the period mentioned in subsection (8) on which it will next consider the prisoner’s case.
- 25 (8) That period is the period—
- (a) beginning with the day falling 4 months after the day of the determination, and
- (b) ending immediately before the second anniversary of the day of the determination.
- 30 (9) Where a date is fixed under subsection (4) or (7), the Scottish Ministers must refer the case to the Parole Board before that date.”.

7 (1) Section 45 (prisoner’s right to request early reconsideration by Parole Board) is amended as follows.

35 (2) In subsection (1), after “under—” insert—

“(za) section 42A(4),

(zb) section 42A(7).”.

(3) In subsection (2), after “section” insert “42A(4), 42A(7).”.

(4) In subsection (3), after “section” insert “42A(4) or”.

40 (5) In subsection (4), after “section” insert “42A(4) or, as the case may be.”.

8 In section 46 (multiple licences to be replaced by single licence), in subsection (1)(a), after “section” insert “5.”.

9 (1) Section 51 (prisoners serving extended sentences) is amended as follows.

(2) In subsection (1), for “(2)” substitute “(1A)”.

(3) After that subsection insert—

5 “(1A) In section 5, the reference to the prisoner’s short-term custody and community sentence is to be read as a reference to the confinement term of the prisoner’s extended sentence.”.

10 (1) Section 55 (application to young offender and children) is amended as follows.

(2) In subsection (1), for “custody-only” substitute “short-term custody and community”.

(3) In subsection (2)(a), for “15 days” substitute “the prescribed period”.

10 (4) In subsection (4)(a), for “15 days or more” substitute “at least the prescribed period”.

11 In section 56 (fine defaulters and persons in contempt of court), in subsection (1), for “custody-only” substitute “short-term custody and community”.

12 In section 65 (rules, regulations and orders), in subsection (4)(a), for “4(2), 7, 47(1)(b)” substitute “4(1), 7, 47(1)(b), 55(2) or (4)”.

15 13 (1) Schedule 2 (prisoners serving more than one sentence) is amended as follows.

(2) Before paragraph 1, in the italic heading, for “custody-only” substitute “short-term custody and community”.

(3) In paragraph 1—

20 (a) in sub-paragraph (1)(a), for “custody-only” substitute “short-term custody and community”,

(b) in sub-paragraph (3)—

(i) for “and 34(1)” substitute “, 34(1) and 42A”,

(ii) for “custody-only” in both places where it occurs substitute “short-term custody and community”,

25 (c) after sub-paragraph (3) add—

“(4) In section 47(3A)—

30 (a) references to the expiry of one-half of the prisoner’s sentence are to be read as references to the expiry of one-half of the short-term custody and community sentence that expires after the expiry of one-half of the other short-term custody and community sentence (or sentences),

(b) in paragraph (a)(i), the reference to the expiry of the prisoner’s sentence is to be read as a reference to the longer (or longest) of the sentences imposed on the prisoner.”.

35 (4) Before paragraph 3, in the italic heading, for “custody-only” substitute “short-term custody and community”.

(5) In paragraph 3—

(a) in sub-paragraph (1)(a), for “custody-only” substitute “short-term custody and community”,

40 (b) in sub-paragraph (3), for “and 34(1)” substitute “, 34(1), 42A and subsections (3A) and (8)(a) of section 47”,

(c) in sub-paragraph (4)—

- (i) for “the custody-only” substitute “one-half of the short-term custody and community”,
- (ii) in paragraph (a), for “any other custody-only” substitute “one-half of any other short-term custody and community”,
- 5 (d) in sub-paragraph (5)(b)(ii) and (6)(b), for “the custody-only” substitute “at least one-half of the short-term custody and community”.
- (6) In paragraph 5—
- (a) in sub-paragraph (1), in both paragraphs (a) and (b), for “custody-only” substitute “short-term custody and community”,
- 10 (b) in sub-paragraph (3)—
- (i) after “19” insert “, 29A, 29B”,
- (ii) after “(2)” insert “, 42A”.
- (c) in sub-paragraph (4)—
- 15 (i) for “the custody-only” substitute “one-half of the short-term custody and community”,
- (ii) in paragraph (a), for “any other custody-only” substitute “one-half of any other short-term custody and community”.
- (7) In paragraph 6, in sub-paragraph (1)(b), after “section” insert “5,”.
- (8) In paragraph 7, after sub-paragraph (1) insert—
- 20 “(1A) Where a short-term custody and community sentence imposed on a prisoner is an extended sentence, the modifications in paragraphs 1(3) and (4), 3(4), (5)(b)(ii), (6) and (8A) are to be read subject to sub-paragraph (2).”.
- 14 (1) Schedule 3 (sentences framed to run consecutively) is amended as follows.
- (2) In paragraph 1(4)(a), for “custody-only sentence, that sentence” substitute “short-term custody and community sentence, one-half of that sentence”.
- 25 (3) Before paragraph 3 insert—
- “2A (1) This paragraph applies where—
- (a) the court imposes a short-term custody and community sentence as a further sentence,
- 30 (b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and
- (c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a short-term custody and community sentence.
- (2) In determining the date on which the previous sentence expires, no
- 35 account is to be taken of the period of confinement served under the further sentence.
- (3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.
- (4) In paragraph 3—
- 40 (a) in sub-paragraph (1)(a), for “custody-only” substitute “short-term custody and community”,

(b) after sub-paragraph (2) insert—

“(3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.

(5) After paragraph 3 insert—

5 “3A (1) This paragraph applies where—

(a) the court imposes a custody and community sentence as a further sentence,

(b) the court frames the sentence to take effect in accordance with paragraph 1(2) or (3), and

10 (c) the prisoner’s previous sentence (or one of the prisoner’s previous sentences) is a short-term custody and community sentence.

(2) In determining the date on which the previous sentence expires, no account is to be taken of the period of confinement served under the further sentence.

15 (3) In determining the date on which the further sentence expires, no account is to be taken of the balance of the previous sentence.”.

(6) In paragraph 5—

(a) sub-paragraph (1) is repealed,

20 (b) in sub-paragraphs (2) and (3), for “paragraph 4” substitute “the relevant paragraph”,

(c) in sub-paragraph (4)—

(i) in paragraph (a), for “4(2) and (3)” substitute “sub-paragraphs (2) and (3) of the relevant paragraph”, and

25 (ii) in paragraph (c), for “paragraph 4(3)” substitute “sub-paragraph (3) of the relevant paragraph”,

(d) after sub-paragraph (4) insert—

“(4A) Where a short-term custody and community sentence or custody and community sentence imposed on a prisoner is an extended sentence, references in this schedule to—

30 (a) the prisoner’s “previous sentence” are to be read as references to the “previous confinement term” of the prisoner’s sentence,

(b) the prisoner’s “further sentence” are to be read as references to the “further confinement term” of the prisoner’s sentence.”, and

(e) after sub-paragraph (5) insert—

35 “(6) In this paragraph “the relevant paragraph” means paragraph 2A, 3, 3A or 4 (whichever applies in the circumstances described).”.

The 1995 Act

15 The 1995 Act is amended in accordance with paragraphs 16 and 17.

40 16 (1) Section 167 (forms of finding and sentence in summary proceedings) is amended as follows.

- (2) In subsection (7D), for “any previous custody-only” substitute “one-half of any previous short-term custody and community”.
- (3) In subsection (7E), for “custody-only” substitute “short-term custody and community”.
- 17 (1) Section 210A (extended sentences for sex and violent offenders) is amended as follows.
- 5 (2) In subsections (1)(b) and (2)(b), after “a” insert “short-term community or”.
- (3) In subsection (10), after the definition of “sexual offence” insert—
- ““short-term community licence” has the same meaning as in Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17).”.

SCHEDULE 3

(introduced by section 66(4))

WITNESS ANONYMITY ORDERS: TRANSITIONAL

Interpretation

1 In this schedule—

“commencement” means the day on which section 66 comes into force,

15 “pre-commencement anonymity order” means an order made by a court before commencement under any rule of law relating to the power of the court to make an order for securing that the identity of a witness in criminal proceedings is withheld from the accused (or, on a defence application, from other accused),

20 “witness anonymity order” has the meaning given by section 271N of the 1995 Act.

Pre-commencement anonymity orders: appeals

2 (1) This paragraph applies where—

(a) the High Court of Justiciary is considering an appeal against a conviction in a case where the trial began before commencement, and

25 (b) the court from which the appeal lies (“the trial court”) made a pre-commencement anonymity order in relation to a witness at the trial.

(2) The High Court—

30 (a) may not treat the conviction as unsafe solely on the ground that the trial court had no power under any rule of law to make the order mentioned in sub-paragraph (1)(b), but

(b) must treat the conviction as unsafe if it considers that, as a result of the order, the accused did not receive a fair trial.

SCHEDULE 4

(introduced by section 139)

FURTHER MODIFICATIONS OF 2005 ACT

1 The 2005 Act is amended in accordance with the following paragraphs.

2 In section 4 (the licensing objectives), subsection (2) is repealed.

3 In section 21 (notification of premises licence applications), subsection (5) is repealed.

4 In section 22 (objections and representations), subsection (2) is repealed.

5 In section 23 (determination of premises licence application), for subsection (6)
5 substitute—

“(6) In considering whether the granting of the application would be inconsistent with one or more of the licensing objectives, the Licensing Board must in particular take into account—

10 (a) any conviction, notice of which is given by the appropriate chief constable under subsection (4)(b) of section 21, and

(b) any report given by the appropriate chief constable under section 22(2) or 24A(2).”.

6 (1) Section 24 (applicant’s duty to notify Licensing Board of convictions) is amended as follows.

15 (2) In subsection (8)(b), for “the crime prevention objective” substitute “any of the licensing objectives”.

(3) For subsection (10) substitute—

20 “(10) In considering for the purposes of section 23 whether the granting of the application would be inconsistent with one or more of the licensing objectives, the Licensing Board must take into account, in addition to the matters in subsection (6) of that section—

(a) any conviction confirmation of which is given by the appropriate chief constable in a notice under subsection (7)(b) of this section, or

(b) any recommendation of the chief constable included in such a notice.”.

25 7 (1) Section 33 (transfer of premises licence on application of licence holder) is amended as follows.

(2) For subsections (7) to (9) substitute—

30 “(7) On giving a notice under subsection (6)(a) or (b), if the appropriate chief constable considers that it is necessary for the purposes of any of the licensing objectives that the application for the transfer of the licence to the transferee be refused, the chief constable may include in the notice a recommendation to that effect.

(8) Where, in relation to an application under subsection (1)—

(a) the Licensing Board receives a notice under subsection (6)(a), and

35 (b) the notice does not include a recommendation under subsection (7),
the Board must grant the application.

(9) In any other case, the Licensing Board must hold a hearing for the purpose of considering and determining the application.”.

40 (3) In subsection (10)(a), for “the crime prevention objective” substitute “any of the licensing objectives”.

- 8 In section 44 (procedure where Licensing Board receives notice of conviction), in subsection (5)(b), for “the crime prevention objective” substitute “any of the licensing objectives”.
- 9 In section 57 (notification of occasional licence application to chief constable and Licensing Standards Officer), subsection (2) is repealed.
- 5
- 10 (1) Section 59 (determination of occasional licence application) is amended as follows.
- (2) In subsection (2), paragraph (a) is repealed.
- (3) Subsection (7) is repealed.
- 11 In section 69 (notification of extended hours application), in subsection (2), for “the crime prevention objective” substitute “any of the licensing objectives”.
- 10
- 12 In section 73 (notification of personal licence application to chief constable), for subsection (4) substitute—
- “*(4)* On giving a notice under subsection (3)(a) or (b), if the appropriate chief constable considers that it is necessary for the purposes of any of the licensing objectives that the personal licence application be refused, the chief constable may include in the notice a recommendation to that effect.”.
- 15
- 13 (1) Section 74 (determination of personal licence application) is amended as follows.
- (2) In subsection (2)—
- (a) the word “and” immediately following paragraph (a) is repealed,
- 20 (b) after paragraph (b) add “, and
- (c) the notice does not include a recommendation under section 73(4).”.
- (3) In subsection (5), for paragraph (b) substitute—
- “*(b)* the notice received from the appropriate chief constable under subsection (3)(a) or (b) of section 73 includes a recommendation under subsection (4) of that section.”.
- 25
- (4) After subsection (5) insert—
- “(5A) If—
- (a) all of those conditions are met in relation to the applicant,
- (b) the Board has received from the appropriate chief constable a notice under subsection (3)(b) of section 73, and
- 30 (c) the notice does not include a recommendation under subsection (4) of that section,
- the Board may hold a hearing for the purpose of considering and determining the application.
- (5B) If the Board decides not to hold a hearing under subsection (5A), the Board must grant the application.”.
- 35
- (5) In subsection (6)—
- (a) after “subsection (5)” insert “or (5A)”,
- (b) in paragraph (a), for “the crime prevention objective” substitute “any of the licensing objectives”.
- 40

14 (1) Section 75 (applicant’s duty to notify Licensing Board of convictions) is amended as follows.

(2) In subsection (7)(b), for “the crime prevention objective” substitute “any of the licensing objectives”.

5 (3) In subsection (9)—

(a) the word “and” immediately following paragraph (a) is repealed,

(b) after paragraph (b) add “, and

(c) references in it to a recommendation under section 73(4) include references to a recommendation under subsection (7) of this section.”.

10 15 (1) Section 83 (procedure where Licensing Board receives notice of conviction) is amended as follows.

(2) In subsection (5)(b), for “the crime prevention objective” substitute “any of the licensing objectives”.

15 (3) In subsection (8)(c), for “the crime prevention objective” substitute “any of the licensing objectives”.

16 After section 84 insert—

“84A Power of chief constable to report conduct inconsistent with the licensing objectives

20 (1) If a chief constable considers that any personal licence holder has acted in a manner which is inconsistent with any of the licensing objectives, the chief constable may report the matter to the relevant Licensing Board.

(2) Where a Licensing Board receives a report from a chief constable under subsection (1), the Board must hold a hearing.

25 (3) Subsections (6), (7) and (8)(a) of section 84 and subsection (1)(b) of section 85 apply in relation to a hearing under subsection (2) of this section as they apply in relation to a hearing under subsection (3)(a) or (5) of section 84.

(4) In subsection (1), “relevant Licensing Board” has the meaning given in section 83(11).”.

17 17 In section 148 (index of defined expressions), in the table, the entry relating to “crime prevention objective” is repealed.

18 18 In schedule 1 (Licensing Boards), in paragraph 10(4), the words from “, or no notice” to the end are repealed.

SCHEDULE 5

(introduced by section 145)

MODIFICATIONS OF ENACTMENTS

The False Oaths (Scotland) Act 1933 (c.20)

1 The False Oaths (Scotland) Act 1933 is repealed.

The Public Records (Scotland) Act 1937 (c.43)

2 In section 14 of the Public Records (Scotland) Act 1937 (interpretation)—

(a) for the definition of “court records” substitute—

5 ““court records” includes (in addition to records of the ordinary courts)
records of the Scottish Land Court;”, and

(b) for subsection (2) substitute—

“(2) Any question as to whether or not a document is part of the records of a
particular court is to be determined—

(a) in the case of the High Court, by the Lord Justice General,

10 (b) in any other case, by the Lord President.”.

The Rehabilitation of Offenders Act 1974 (c.53)

3 In section 1 of the Rehabilitation of Offenders Act 1974 (rehabilitated persons and spent
convictions), in subsection (4)(b), after “insanity” insert “or, as the case may be, a
15 finding that a person is not criminally responsible under section 51A of the Criminal
Procedure (Scotland) Act 1995 (c.46)”.

The Evidence (Proceedings in Other Jurisdictions) Act 1975 (c.34)

4 In Schedule 1 to the Evidence (Proceedings in Other Jurisdictions) Act 1975
(consequential amendments), the paragraph relating to the False Oaths (Scotland) Act
1933 is repealed.

The 1982 Act

5 The 1982 Act is amended as follows.

6 In section 52 (indecent photographs etc. of children), subsection (7) is repealed.

7 In section 64 (appeals against orders in relation to public processions), in subsection (6),
for “paragraph (a)(ii)” substitute “paragraph (a)(i)”.

The Legal Aid (Scotland) Act 1986 (c.47)

8 In section 22 of the Legal Aid (Scotland) Act 1986 (automatic availability of criminal
legal aid), in subsection (1)—

(a) in paragraph (da), for “he is insane so that his trial cannot proceed or continue;”
30 substitute “the accused is unfit for trial under section 53F of the Criminal
Procedure (Scotland) Act 1995;”, and

(b) in paragraph (dc), for “in case involving insanity” substitute “where accused
found not criminally responsible or unfit for trial”.

The Criminal Justice (Scotland) Act 1987 (c.41)

9 In the Criminal Justice (Scotland) Act 1987, sections 51 to 54 (investigation of serious
35 or complex fraud) are repealed.

The Criminal Justice Act 1988 (c.33)

10 In the Criminal Justice Act 1988, in Schedule 15 (minor and consequential amendments), paragraphs 89 and 117 are repealed.

The Criminal Justice and Public Order Act 1994 (c.33)

5 11 In the Criminal Justice and Public Order Act 1994, in section 164 (extension of powers of Serious Fraud Office and of powers to investigate serious fraud in Scotland), subsections (3) and (4) are repealed.

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

12 The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

10 13 Section 16 (powers of search) is repealed.

14 In section 23 (interpretation of Part 2), in the definition of “period of a designated sporting event”, for “in” substitute “it”.

The 1995 Act

15 The 1995 Act is amended as follows.

15 16 After section 5 insert—

“5A Signing of warrants etc. outwith sheriff’s jurisdiction

The competence of a sheriff to sign any warrant, judgement, interlocutor or other document relating to any proceedings within the sheriff’s jurisdiction extends to competence to do so at any other place in Scotland.”.

20 17 In section 10A (jurisdiction for transferred cases)—

(a) after subsection (1) insert—

“(1A) The jurisdiction of a JP court includes jurisdiction for any cases which come before it by virtue of section 137CA, 137CB or 137CC of this Act.”,

(b) in subsection (2)—

25 (i) the word “and” immediately following paragraph (a) is repealed,

(ii) after paragraph (a) insert—

“(aa) power to prosecute in any cases which come before a JP court of that district by virtue of a provision mentioned in subsection (1A) above;”,
and

30 (iii) in paragraph (b), for “criminal proceedings which otherwise come before that sheriff” substitute “the other cases which come before that sheriff when exercising criminal jurisdiction or (as the case may be) before that JP court”, and

(c) for subsection (3) substitute—

35 “(3) This section is without prejudice to sections 4 to 10 of this Act.”.

- 18 In section 19A (samples etc. from persons convicted of sexual and violent offences), in subsection (6), in paragraph (a) of the definition of “conviction”, for the words from “, by” to the end substitute “by reason of the special defence set out in section 51A of this Act;”.
- 5 19 In section 22 (liberation by police), subsections (1H), (2), (4), (4A) and (5) are repealed.
- 20 In section 55(4) (acquittal at examination of facts)—
- (a) for the words from “insane” to “omission” substitute “not, because of section 51A of this Act, criminally responsible for the conduct”, and
- (b) for “on the ground of such insanity” substitute “by reason of the special defence set out in that section”.
- 10 21 The title of section 57 (disposal of case where accused found to be insane) is amended by substituting “not criminally responsible or unfit for trial” for “to be insane” and the cross-heading which precedes it is amended by substituting “*where accused found not criminally responsible*” for “*in case of insanity*”.
- 15 22 In section 57 (disposal of case where accused found to be insane), in subsection (1)(a), for the words from “, by” to “omission” substitute “acquitted by reason of the special defence set out in section 51A of this Act”.
- 23 In section 60C(7) (disapplication of provision where person acquitted on ground of insanity)—
- 20 (a) after “apply” insert “in a case where the person is acquitted by reason of the special defence set out in section 51A of this Act.”, and
- (b) paragraphs (a) and (b) are repealed.
- 24 In section 61 (requirements as to medical evidence)—
- (a) in subsection (1), the words “under section 54(1)(a) of this Act or” are repealed,
- 25 (b) in subsection (3), the words “or 54(1)(a)” are repealed, and
- (c) in subsection (5), for “the said section 54(1)” substitute “section 54(1)(c) of this Act”.
- 25 25 The title of section 62 (appeal by accused in case involving insanity) is amended by substituting “not criminally responsible or unfit for trial” for “in case involving insanity” and the section is amended as follows—
- 30 (a) in subsection (1)(a), for “insane” substitute “unfit for trial”, and
- (b) in subsection (2)(b)(iii), for the words from “virtue” to “omission” substitute “reason of the special defence set out in section 51A of this Act”.
- 35 26 The title of section 63 (appeal by prosecutor in case involving insanity) is amended by substituting “where accused found not criminally responsible or unfit for trial” for “in case involving insanity” and subsection (1) of that section is amended as follows—
- (a) in paragraph (a), for “insane” substitute “unfit for trial”,
- (b) for paragraph (b) substitute—
- 40 “(b) an acquittal by reason of the special defence set out in section 51A of this Act;”, and
- (c) in paragraph (c), for the words from “on” to “omission” substitute “by reason of the special defence set out in section 51A of this Act”.

- 27 In section 78(2) (which attracts the procedure for notifying special defences in relation to certain other defences), after “apply” insert “to a plea of diminished responsibility or”.
- 5 28 In section 90D (review of orders under section 90B(1)(a) or (b)), in subsection (3)(b), for “any other any” substitute “any other”.
- 29 In section 102A (failure of accused to appear), for paragraph (b) of subsection (4) substitute—
“(b) section 27(7) of this Act,”.
- 10 30 In section 118(5) (disposal of appeal from solemn proceedings where High Court considers appellant to have been insane)—
(a) for “insane when he did so” substitute “not, because of section 51A of this Act, criminally responsible for it”, and
(b) for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of this Act”.
- 15 31 In section 136A (time limits for transferred and related cases), in subsection (1)—
(a) in paragraph (a)(i), for “in pursuance of section 137A(1)” substitute “under section 137A or 137CA”, and
(b) in paragraph (a)(ii), for “in pursuance of section 137B(1), (1A) or (1C)” substitute “under 137B or 137CB”.
- 20 32 In section 137B (transfer of sheriff court summary proceedings outwith sheriffdom), in subsection (4), for “a sheriff who has made an order under subsection (2A) above” substitute “the sheriff who has made an order under subsection (2A) above (or another sheriff of the same sheriffdom)”.
- 25 33 The title of section 190 (disposal of appeal where appellant insane) is amended by substituting “not criminally responsible” for “insane”.
- 34 In section 190—
(a) in subsection (1), for “insane when he did so” substitute “not, because of section 51A of this Act, criminally responsible for it”, and
(b) for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of this Act”.
- 30 35 Sections 228 to 234 (probation) are repealed.
- 36 Section 234J (concurrent drug treatment and testing and probation orders) is repealed.
- 37 Sections 235 to 245 (supervised attendance orders and community service orders) are repealed.
- 35 38 (1) Section 245D (combination of restriction of liberty orders with other orders) is amended as follows.
(2) In subsection (1)(b)—
(a) in sub-paragraph (i), for “probation order made under section 228(1)” substitute “community payback order imposed under section 227A(1)”, and
(b) in sub-paragraph (ii)—
- 40

- (i) for “probation order made under section 228(1) of this Act,” substitute “community payback order imposed under section 227A(1) of this Act or”, and
- (ii) the words “or both such orders” are repealed.
- 5 (3) In subsection (2), for “probation order” substitute “community payback order”.
- (4) In subsection (3)—
- (a) the word “228(1),” is repealed,
- (b) in paragraph (a), for “probation order” substitute “community payback order”, and
- 10 (c) in paragraph (b), for “either or both of a probation order and” substitute “either a community payback order or”.
- (5) In subsection (4)—
- (a) for “probation order” substitute “community payback order”, and
- (b) for paragraph (b) substitute—
- “(b) the responsible officer in relation to the community payback order.”.
- 15 (6) Subsection (6) is repealed.
- (7) In subsection (7)—
- (a) in paragraph (a)—
- (i) for “contained in a probation order and is dealt with under section 232(2)(c) of this Act” substitute “imposed by a community payback order and is dealt with under section 227ZB(5)(c) or (d) of this Act”, and
- 20 (ii) the words from “234G(2)(b)” to “section” where it third occurs are repealed,
- (b) in paragraph (b), the words from “232(2)(c)” to “section” where it third occurs are repealed, and
- 25 (c) in paragraph (c), for “232(2)(c) of this Act in relation to the probation order” substitute “227ZB(5)(c) or (d) of this Act”.
- (8) In subsection (8), for “232(2)” substitute “227ZB”.
- (9) In subsection (9)—
- (a) in paragraph (a), for “probation order” substitute “community payback order”, and
- 30 (b) paragraph (c) is repealed.
- 39 Sections 245K to 245Q (community reparation orders) are repealed.
- 40 In section 247 (effect of probation and absolute discharge)—
- (a) in subsection (1), for the words from “placing” to “him” substitute “discharging the offender”,
- 35 (b) in subsection (2), the words “placed on probation or” are repealed, and
- (c) subsection (6) is repealed.
- 41 In section 254 (search warrant for forfeited articles)—
- (a) the existing provision becomes subsection (1), and
- (b) after that subsection insert—

“(2) In subsection (1), “article” includes animal.”.

42 In section 258 (uncontroversial evidence), after subsection (4A) insert—

5 “(4AA) Where in summary proceedings the relevant diet for the purposes of subsection (4A) above is an intermediate diet, an application under that subsection may be made at (or at any time before) that diet.”.

43 In section 307 (interpretation), in subsection (1), after the definition of “treatment order”, insert—

““unfit for trial” has the meaning given by section 53F of this Act;”.

The Crime and Punishment (Scotland) Act 1997 (c.48)

10 44 In section 9 of the Crime and Punishment (Scotland) Act 1997 (power to specify hospital unit), in subsection (1)(a), for “insane” substitute “found not criminally responsible or unfit for trial”.

The Terrorism Act 2000 (c.11)

15 45 In paragraph 30 of Part II of Schedule 5 to the Terrorism Act 2000 (explanations), in sub-paragraph (3)(a), for “section 2 of the False Oaths (Scotland) Act 1933” substitute “section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

The Protection of Children (Scotland) Act 2003 (asp 5)

46 In section 10 of the Protection of Children (Scotland) Act 2003 (referral of individuals acquitted of offence against a child on ground of insanity), in subsection (11)(a)—

20 (a) in sub-paragraph (i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46)”, and

(b) in sub-paragraph (ii), for “the Criminal Procedure (Scotland) Act 1995 (c.46)” substitute “that Act”.

25 *The Criminal Justice (Scotland) Act 2003 (asp 7)*

47 In section 3 of the Criminal Justice (Scotland) Act 2003 (the Risk Management Authority), in paragraph (b) of subsection (2), for “to be insane” substitute “not criminally responsible or unfit for trial”.

The Sexual Offences Act 2003 (c.42)

30 48 In section 135 of the Sexual Offences Act 2003 (interpretation: mentally disordered persons), after subsection (2) insert—

35 “(2A) In the application of this Part in relation to Scotland, a reference to a person being found not guilty of an offence by reason of insanity is to be read as a reference to a person being acquitted of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995.”.

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)

49 In section 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003)—

- 5 (a) in subsection (1)—
- (i) the word “or” immediately following paragraph (c) is repealed, and
 - (ii) after paragraph (c) insert—
 - “(ca) is acquitted by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and
- 10 (b) in subsection (5)—
- (i) in paragraph (a), for “(1)(a), (c) or (d)” substitute “(1)(a) or (c) to (d)”, and
 - (ii) in paragraph (c), for “(1)(a), (c) or (d)” substitute “(1)(a) or (c) to (d)”.

The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

15 50 In section 10 of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders)—

- (a) in subsection (1)—
- (i) in paragraph (c)(i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of that Act of 1995”, and
 - (ii) in paragraph (d), for the words from “section 54(1)” to the end substitute “section 53F of that Act of 1995 (unfitness for trial) to be unfit for trial;”, and
- 20 (b) in subsection (11)(a), for “to be insane” substitute “not criminally responsible or unfit for trial”.

The Serious Organised Crime and Police Act 2005 (c.15)

25 51 In section 65 of the Serious Organised Crime and Police Act 2005 (restrictions on the use of statements), in subsection (2)(c), for “section 2 of the False Oaths (Scotland) Act 1933 (c.20)” substitute “section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

- 30 52 The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.
- 53 In section 7 (liberation on undertaking), in subsection (2), paragraphs (c), (e), (f) and (g) are repealed.
- 54 In the schedule (modification of enactments)—
- (a) paragraph 3(b) is repealed, and
 - (b) in paragraph 26, the words “(in addition to the provisions amended by paragraphs 7(4) and 16(a))” are repealed.
- 35

The Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

55 In section 32 of the Protection of Vulnerable Groups (Scotland) Act 2007 (relevant offences etc.), in subsection (3)(b)(i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of the 1995 Act”.

5 *The Counter-Terrorism Act 2008 (c.28)*

56 In section 45 of the Counter-Terrorism Act 2008 (sentences or orders triggering notification requirements), in subsection (2)(b)—

10 (a) in sub-paragraph (ii), for the words from “on grounds of insanity” to the end substitute “by reason of the special defence set out in section 51A of that Act (criminal responsibility of persons with mental disorder), or”, and

(b) in sub-paragraph (iii), for the words from “the Criminal” to “facts)” substitute “that Act (examination of facts where person unfit for trial)”.

The Coroners and Justice Act 2009 (c.00)

15 57 In section 134 of the Coroners and Justice Act 2009 (exploitation proceeds orders: qualifying offenders)—

(a) in subsection (2)—

(i) the word “or” immediately following paragraph (b) is repealed, and

(ii) after paragraph (b) insert—

20 “(ba) has been acquitted by such a court of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and

(b) in subsection (3)(a)—

(i) the word “or” immediately following sub-paragraph (ii) is repealed, and

(ii) after sub-paragraph (ii) insert—

25 “(ia) such a court has made, in respect of a foreign offence, a finding equivalent to a finding of the person’s acquittal by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995, or”.

Criminal Justice and Licensing (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about sentencing, offenders and defaulters; to make provision about criminal law, procedure and evidence; to make provision about criminal justice and the investigation of crime (including police functions); to amend the law relating to the licensing of certain activities by local authorities; to amend the law relating to the sale of alcohol; and for connected purposes.

Introduced by: Kenny MacAskill
On: 5 March 2009
Bill type: Executive Bill

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