

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

Schedule

Modification of Enactments

Sheriff Courts and Legal Officers (Scotland) Act 1927

438. [Paragraph 1](#) is consequential upon Scottish Ministers having the responsibility for the administration of JP courts. They will also have responsibility for JP court clerks.

Public Records (Scotland) Act 1937

439. [Paragraph 2](#) provides for amendments to the 1937 Act that will make it clear that the sheriff principal will be responsible for the preservation of the records of the JP courts within his or her sheriffdom. New section 2A is added to the 1937 Act which makes provision for the storage of JP court records. These provisions are largely in line with the provisions in place for the storage of sheriff court records, with several exceptions. They provide that the Sheriff Principal may, on the application of the Keeper of the Records of Scotland (“the Keeper”), make an order directing that selected JP court records of that sheriffdom shall be transmitted to the Keeper. This is in contrast to sheriff court records where an order of the Lord President is required. Subsection (2) of new section 2A provides that such an order shall not apply to any record less than 10 years old unless the sheriff principal is satisfied that adequate provision cannot otherwise be made. This again is in contrast to the provision for sheriff court records where records must generally be at least 25 years old. JP court records are to be transmitted to the Keeper within six months of the date of the order whereas sheriff court records cannot be transmitted earlier than three months from the date of the order.

Social Work (Scotland) Act 1968

440. [Paragraph 3](#) is consequential on the changes made by section 51 of the Act which introduces work orders. It provides that a person who accepts such an order is subject to the supervision of the Social Work department of the area where s/he is carrying out that work.

Education (Scotland) Act 1980

441. [Paragraph 4](#) amends the Education (Scotland) Act to allow local authority prosecutions under that Act to be brought in the JP court.

Legal Aid (Scotland) Act 1986

442. [Paragraph 5](#) is consequential on section 14 of the Act. It amends the Legal Aid (Scotland) Act 1986 and is intended to replicate, in summary proceedings, changes made to solemn proceedings by the Criminal Procedure (Amendment) (Scotland) Act 2004. The amendments extend the availability of automatic criminal legal aid in terms of subsection 22(1)(dd) of the 1986 Act to solicitors who have been appointed by the court to deal with a summary trial in the absence of the accused; and disapply the

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provisions of section 31(1) of the 1986 Act, which allows the legally aided accused to select his or her own solicitor in such a case. If the case is proceeding in the absence of the accused s/he will not be in a position to choose a solicitor.

Criminal Justice Act 1988

443. **Paragraph 6** amends section 133(5)(b)(ii) of the Criminal Justice Act 1988. The amendment updates a reference to make clear that the Scottish Ministers can make payments of compensation for a miscarriage of justice where a conviction has been quashed on a reference from the Scottish Criminal Cases Review Commission to the High Court of Justiciary. This corrects a legislative oversight and has a retrospective effect.

Road Traffic Offenders Act 1988

444. **Paragraph 7** is consequential upon the establishment of JP courts and inserts references to that court in place of the district court.

Environmental Protection Act 1990

445. **Paragraph 8** provides that any income received from fixed penalty notices issued under the Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act.

Criminal Procedure (Scotland) Act 1995

446. **Paragraph 9** is consequential upon the creation of JP courts. Subparagraph 1 substitutes references to JP courts for district courts where they appear in section 6 of the Act. The subparagraph further provides that prosecutions under the Education (Scotland) Act 1980 may be brought in the JP court by someone other than the procurator fiscal. This will allow local authority prosecutions to be brought in the JP court.
447. Subparagraph (2) repeals subsections (1) & (2) of section 7 of the 1995 Act and makes further consequential amendments to that section, clarifying the powers of the district court (and therefore the JP court, post-introduction).
448. Subparagraph (3) removes the requirement for the sheriff principal to consult the local authority before prescribing court holidays.
449. Subparagraphs (4) & (5) are consequential on the introduction of JP courts.
450. Subparagraph (6) amends section 9 of the 1995 Act and provides that where several offences have been committed in different sheriff court districts the accused may be tried on a complaint in any of the JP courts for any one of those districts.
451. Subparagraph (7) repeals section 9A of the 1995 Act. Equivalent provision to that contained in that section is made in section 62(5) of the Act.
452. **Paragraph 10** amends section 10 of the 1995 Act and provides that crimes committed in different sheriff court districts may be prosecuted on complaint in any of the sheriff courts or JP courts in which the alleged offences took place. The present provisions may create a doubt as to whether the prosecution requires to be on indictment.
453. **Paragraph 11** inserts a new section 10A into the 1995 Act and is consequential upon sections 22 and 31 of the Act. It confers jurisdiction upon the sheriff and the procurator fiscal of the relevant courts where proceedings have been initiated in or transferred to a court other than that where the offence took place. This is intended to avoid any doubt over jurisdiction as otherwise conferred by sections 4, 9 and 10 of the 1995 Act.
454. **Paragraph 12** makes technical amendments which are consequential on provisions in relation to solemn warrants in sections 32 and 33 of the Act.
455. **Paragraph 13** makes minor amendments to sections 72F and 72G of the 1995 Act. The relevant provisions of that Act presently relate to “proceedings on indictment”. The amendments clarify the scope of those provisions by making it clear that all solemn

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proceedings are covered, whether or not the stage of service of an indictment has been reached.

456. [Paragraph 14](#) makes provision consequential upon sections 3 and 27 of the Act.
457. [Paragraph 15](#) subparagraph (1) deletes certain words that are unnecessary.
458. Subparagraph (2) makes a number of minor amendments that tidy up existing provisions.
459. Subparagraph (3) provides for intimation to be made to the Crown Agent rather than the Lord Advocate in bail appeals made by witnesses.
460. [Paragraph 16](#) makes various provisions in relation to appeals.
461. Subparagraph (1) makes changes to the appeal system in solemn cases. Section 107 of the 1995 Act is amended. The timescale for seeking leave of the High Court to rely on grounds of appeal which have been deemed to be unarguable at an earlier sift is amended. In consequence, the procedure for notification of the application to the Crown Agent is adjusted.
462. Subparagraphs (2), (3), (4), and (5) adjust existing provisions for the sake of accuracy in the 1995 Act.
463. Subparagraph (6) rectifies an omission in section 119(11) of the 1995 Act by substituting new cross references in that subsection to parts of section 65 of the Act (relating to custody time limits in solemn proceedings). The effect is that where the High Court grants authority to bring a new prosecution under section 118(1)(c) of the 1995 Act in disposing of an appeal, and the accused is remanded in custody pending trial, s/he will have the protection of the custody time limits in section 65 in both Sheriff Court and High Court solemn proceedings.
464. [Paragraph 17](#) makes minor adjustments to section 135 of the 1995 Act, and is consequential on the introduction of section 102A into that Act by section 32 of this Act.
465. [Paragraph 18\(1\)](#) is consequential on the introduction of section 32A into the 1995 Act by section 5 of this Act.
466. [Paragraph 18\(2\)](#) and (3) make changes to the appeal system in summary cases. Subparagraph (2) amends section 180 of the 1995 Act, which deals with appeals against conviction, and subparagraph (3) amends section 187, which deals with appeals against sentence. The effect of the amendments is identical. The timescale for seeking leave of the High Court to rely on grounds of appeal which have been deemed to be unarguable at an earlier sift is amended. In consequence, the procedure for notification of the application to the Crown Agent is adjusted.
467. [Paragraph 18\(4\)](#) is consequential on the introduction of section 32A into the 1995 Act by section 5 of this Act.
468. [Paragraph 19](#) amends section 210A of the Criminal Procedure (Scotland) Act 1995 which makes provision about the imposition of extended sentences by adding to the list in that section the new offences created by the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005.
469. [Paragraph 20](#) makes amendments to sections 211, 217, 222 and 223 of the 1995 Act. The amendments make further provision in relation to the collection and enforcement of fines.
470. Subparagraph (1) amends section 211(6) of the 1995 Act, which makes provision as to whom fines should be paid and accounted for. The word “summary” is deleted from subsection (6) in order to provide that all court imposed fines are to be subject to the provision in section 211(6). The words “clerk of court” are substituted with the words “clerk of any court, or to any other person (or class of person) authorised by

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the Scottish Ministers for the purpose”. This provides flexibility as to the individual or office holder who, in future, should be responsible for the collection of fines and will allow, for example, certain accounting functions to be carried out centrally, rather than by individual clerks of court. The words “by him” are also deleted from the subsection – they are no longer being necessary in view of the other changes being made. This subparagraph also repeals subsection (5) of section 211. Section 211(6) now makes provision in relation to the payment of all court imposed fines, so section 211(5) is deleted as unnecessary.

471. Subparagraph (2) is consequential on the introduction of Fines Enforcement Officers by this Act and provides that where an offender who has been fined and is under the supervision of an officer of the local authority fails to adhere to the payment arrangements for that fine the report that will be produced by the local authority officer should be submitted to the FEO where an enforcement order is in force in respect of the fine. Section 226G(4) (as inserted by section 55 of this Act) provides that the FEO must include a copy of that report with the report s/he is required to produce to the court when referring a case back to court.
 472. Subparagraph (3) makes amendments to section 222 of the 1995 Act, which sets out the procedure for the transfer of fines, both within Scotland and between Scotland and the rest of the UK. It provides that a transfer of fines order may, in future, be made at the instance of the clerk of court rather than the court. It inserts a new subsection (1A) into section 222 which provides that the clerk of court in any court within a sheriffdom may transfer a fine to any other court within the same sheriffdom for the purpose of enforcement. This provision will enable the clerk of court to transfer all outstanding fines against an offender within the sheriffdom to a single court, so that, where an offender needs to appear in court in respect of outstanding fines, all fines outstanding against that offender can be considered together at the one hearing. Taken together, these provisions will allow the clerk of court to transfer all fines (from both within and outwith the sheriffdom) to a single court in order that they may all be considered at one court hearing where it proves necessary to do so. Other consequential amendments are made.
 473. Subparagraph (4) amends section 223 of the 1995 Act, which makes provision in relation to the procedure to be followed by clerks of court in relation to the transfer of fines. It is provided that where a transfer of fine order is made the clerk of the receiving court requires to remit or account for the fine to the court in which it was originally imposed if that court is outwith Scotland. Other consequential amendments are made.
 474. [Paragraph 21](#) is consequential upon section 5 of this Act, and removes the right of the prosecutor to be heard on bail post-conviction as provided for in section 245J(5) of the 1995 Act.
 475. [Paragraph 22](#) is consequential upon the change to the legal basis for the appointment of stipendiary magistrates.
 476. [Paragraph 23](#) amends section 283 of the 1995 Act. That section deals with certification of evidence obtained using video surveillance. The amendment expands the terminology used to include the recording of sounds as well as visual images, and to allow for recordings to be made on devices other than video tape.
 477. [Paragraph 24](#) is consequential upon the increase in sentencing power of the sheriff provided for in part 3 of this Act.
 478. [Paragraph 25](#) inserts definitions into the 1995 Act as a consequence of the establishment of JP courts.
 479. [Paragraph 26](#) makes further amendments to the 1995 Act as a consequence of the introduction of JP courts.
- Bail, Judicial Appointments etc. (Scotland) Act 2000

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480. [Paragraph 27](#) repeals sections 8 to 11 of, and paragraphs 2 and 3(2) of the schedule to, the 2000 Act which make provision for the appointment and functions of JPs. Sections 67 to 77 of the Act make new provision for the appointment and functions of JPs. The repeal of section 11 and para 3(2) of the schedule to the 2000 Act is consequential on allowing education prosecutions to take place in JP courts.

Sexual Offences (Procedure and Evidence) (Scotland) Act 2002

481. [Paragraph 28](#) makes provision consequential on section 19 of the Act.
Public Appointments and Public Bodies etc. (Scotland) Act 2003

482. [Paragraph 29](#) makes a consequential amendment to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 to remove Justice of the Peace Advisory Committees (JPACs) from the list of specified authorities which are subject to the Code of Practice for Ministerial Appointments to Public Bodies in Scotland. The amendment is a consequence of the change in the way in which JPAC members are appointed. At present, all appointments covered by schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 are made by Ministers or on the recommendation of Ministers. In future, the Executive anticipates that JPAC members will be appointed by sheriffs principal, rather than by Ministers. Future inclusion of JPAC appointments in Schedule 2 to the 2003 Act would therefore be inappropriate.

Criminal Justice (Scotland) Act 2003

483. [Paragraph 30](#) makes provision consequential on section 62(5) of the Act, and generally in connection with the establishment of JP courts.

Dog Fouling (Scotland) Act 2003

484. [Paragraph 31](#) provides that any income received from fixed penalty notices issued under the 2003 Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act.

Antisocial Behaviour etc. (Scotland) Act 2004

485. [Paragraph 32\(a\)](#) provides that any income received from fixed penalty notices issued under section 51 of the 2004 Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act. Other amendments consequential on the establishment of the JP court are made.

Enactments generally: references to district courts and justices

486. [Paragraph 33](#) makes changes to enactments as a consequence of the introduction of JP courts. It also makes provision for Scottish Ministers to make further consequential amendments in that regard if necessary.