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Criminal Justice (Scotland) Act 2016

2016 asp 1

VALID FROM 01/07/2016

PART 6

MISCELLANEOUS

VALID FROM 25/01/2018

CHAPTER 1

PUBLICATION OF PROSECUTORIAL TEST

97 Publication of prosecutorial test

- (1) The Lord Advocate must make available to the public a statement setting out in general terms the matters about which a prosecutor requires to be satisfied in order to initiate, and continue with, criminal proceedings in respect of any offence.
- (2) The reference in subsection (1) to a prosecutor is to one within the Crown Office and Procurator Fiscal Service.

VALID FROM 17/01/2017

CHAPTER 2

SUPPORT FOR VULNERABLE PERSONS

98 Meaning of appropriate adult support

- (1) For the purposes of this Chapter, “appropriate adult support” means—

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- (a) support of the sort mentioned in subsection (3) of section 42 that is provided to a person about whom intimation has been sent under subsection (2) of that section, and
 - (b) such other support for vulnerable persons in connection with a criminal investigation or criminal proceedings as the Scottish Ministers specify by regulations.
- (2) In regulations under subsection (1)(b), the Scottish Ministers may, in particular, specify support by reference to—
- (a) the purpose it is to serve,
 - (b) the description of vulnerable persons to whom it is to be available, and
 - (c) the circumstances in which it is to be available.
- (3) For the purposes of this section—
- “vulnerable person” means a person who, owing to mental disorder, is—
- (a) unable to understand sufficiently what is happening, or
 - (b) communicate effectively,
- in the context of a criminal investigation or criminal proceedings,
- “mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (4) The Scottish Ministers may by regulations amend the definitions of “vulnerable person” and “mental disorder” in subsection (3) for the purpose of making them consistent with (respectively) subsections (1)(c) and (5)(a) of section 42.

Commencement Information

11 S. 98 in force at 17.1.2017 by [S.S.I. 2016/426](#), art. 2, [sch.](#)

99 Responsibility for ensuring availability of appropriate adults

The Scottish Ministers may by regulations—

- (a) confer on a person the function of ensuring that people are available to provide appropriate adult support—
 - (i) throughout Scotland, or
 - (ii) in a particular part of Scotland, and
- (b) make provision about how that function may or must be discharged.

100 Assessment of quality of appropriate adult support

The Scottish Ministers may by regulations—

- (a) confer on a person the functions of—
 - (i) assessing the quality of whatever arrangements may be in place to ensure that people are available to provide appropriate adult support, and
 - (ii) assessing the quality of any appropriate adult support that is provided, and
- (b) make provision about how those functions may or must be discharged.

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101 Training for appropriate adults

The Scottish Ministers may by regulations—

- (a) confer on a person the function of—
 - (i) giving to people who provide, or wish to provide, appropriate adult support training in how to provide that support,
 - (ii) giving to other people specified by the Scottish Ministers in the regulations training in how to deal with people who need appropriate adult support, and
- (b) make provision about how that function may or must be discharged.

VALID FROM 10/01/2020

102 Recommendations from quality assessor and training provider

- (1) A person upon whom a function has been conferred by virtue of section 100 or 101 may—
 - (a) make to a provider of appropriate adult support recommendations about the way that appropriate adult support is provided,
 - (b) make to the Scottish Ministers recommendations about the exercise of their powers under section 61 and the provisions of this Chapter.
- (2) A provider of appropriate adult support must have regard to any recommendation made to it under subsection (1)(a).
- (3) The Scottish Ministers must have regard to any recommendation made under subsection (1)(b).
- (4) In this section, “a provider of appropriate adult support” means a person upon whom the function of ensuring that people are available to provide appropriate adult support has been conferred by virtue of section 99.

VALID FROM 10/01/2020

103 Duty to ensure quality assessment takes place

If, by virtue of regulations under section 99, a person has the function of ensuring that people are available to provide appropriate adult support, it is the Scottish Ministers' duty to ensure that there is a person discharging the functions mentioned in section 100(a).

104 Elaboration of regulation-making powers under this Chapter

- (1) A power under this Chapter to confer a function on a person by regulations may be exercised so as to confer the function, or aspects of the function, on more than one person.
- (2) A power under this Chapter to make provision by regulations about how a function may or must be discharged may, in particular, be exercised so as to—

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- (a) require or allow the person discharging the function to enter into a contract with another person,
 - (b) require the person discharging the function to have regard to any guidance about the discharge of the function issued by the Scottish Ministers.
- (3) The powers under this Chapter to make regulations may be exercised so as to—
- (a) make such provision as the Scottish Ministers consider necessary or expedient in consequence of, or for the purpose of giving full effect to, any regulations made in exercise of a power under this Chapter,
 - (b) modify any enactment (including this Act),
 - (c) make different provision for different purposes.

105 Procedure for making regulations under this Chapter

- (1) Regulations under this Chapter are subject to the affirmative procedure.
- (2) Prior to laying a draft Scottish statutory instrument containing regulations under this Chapter before the Scottish Parliament for approval by resolution, the Scottish Ministers must consult publicly.

106 Other powers of Ministers unaffected

Nothing in this Chapter is to be taken to imply that the powers it gives to the Scottish Ministers to confer functions are the only powers that they have to confer those (or similar) functions.

PROSPECTIVE

CHAPTER 3

NOTIFICATION IF PARENT OF UNDER 18 IMPRISONED

107 Child's named person to be notified

- (1) This section applies where a person is admitted to any penal institution for imprisonment or detention arising from—
 - (a) anything done by a court of criminal jurisdiction (including the imposition of a sentence, the making of an order or the issuing of a warrant),
 - (b) anything done under section 17 or 17A of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as to the recall of a prisoner),
 - (c) anything done by virtue of the Extradition Act 2003 (particularly section 9(2) or 77(2) of that Act), or
 - (d) the operation of any other enactment concerning criminal matters (including penal matters).
- (2) The Scottish Ministers must ensure that the person is asked—
 - (a) whether the person is a parent of a child, and
 - (b) if the person claims to be a parent of a child, to—
 - (i) state the identity of the child, and

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- (ii) give information enabling the identity of the service provider in relation to the child to be ascertained.
- (3) If the identity of the service provider can be ascertained by or on behalf of the Scottish Ministers without undue difficulty in light of anything disclosed by the person, they must ensure that the service provider is notified of—
- (a) the fact of the person's admission to the penal institution,
 - (b) what has been stated by the person about the identity of the child, and
 - (c) such other matters disclosed by the person as appear to them to be relevant for the purpose of the exercise of the named person functions with respect to the child.
- (4) In addition, the Scottish Ministers must ensure that the service provider is notified of anything disclosed by the person about the identity of any other child—
- (a) of whom the person claims to be a parent, and
 - (b) the service provider in relation to whom is unknown to them.
- (5) No requirement is imposed by subsection (2) if the person's admission to the penal institution is on—
- (a) returning after—
 - (i) any unauthorised absence, or
 - (ii) any temporary release in accordance with prison rules, or
 - (b) being transferred from—
 - (i) any other penal institution,
 - (ii) any secure accommodation in which the person has been kept, or
 - (iii) any hospital in which the person has been detained, so as to be given medical treatment for a mental disorder, by virtue of Part VI of the 1995 Act or the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (6) Each of the requirements imposed by subsections (2) to (4) is to be fulfilled without unnecessary delay.
- (7) The references in subsections (2) to (4) to the Scottish Ministers are to them in their exercise of functions in connection with the person's imprisonment or detention in the penal institution.
- (8) The references in subsections (3) and (4) to disclosure by the person are to such disclosure in response to something asked under subsection (2).

108 Definition of certain expressions

In this Chapter—

“child” means a person who is under 18 years of age,

“named person functions” has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014,

“parent” includes any person who—

- (a) is a guardian of a child,
- (b) is liable to maintain, or has care of, a child, or
- (c) has parental responsibilities in relation to a child (as construed by reference to section 1(1) to (3) of the Children (Scotland) Act 1995),

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“penal institution” means—

- (a) any prison, other than—
 - (i) a naval, military or air force prison, or
 - (ii) any legalised police cells (within the meaning of section 14(1) of the Prisons (Scotland) Act 1989),
- (b) any remand centre (within the meaning of section 19(1)(a) of the Prisons (Scotland) Act 1989), or
- (c) any young offenders institution (within the meaning of section 19(1)(b) of the Prisons (Scotland) Act 1989),

“prison rules” means rules made under section 39 of the Prisons (Scotland) Act 1989,

“secure accommodation” means accommodation provided in a residential establishment, approved in accordance with regulations made under section 78(2) of the Public Services Reform (Scotland) Act 2010, for the purpose of restricting the liberty of children,

“service provider” in relation to a child has the meaning given by section 32 of the Children and Young People (Scotland) Act 2014.

VALID FROM 17/01/2017

CHAPTER 4

STATEMENTS AND PROCEDURE

VALID FROM 25/01/2018

Statements by accused

109 Statements by accused

(1) After section 261 of the 1995 Act there is inserted—

“261ZA Statements by accused

- (1) Evidence of a statement to which this subsection applies is not inadmissible as evidence of any fact contained in the statement on account of the evidence's being hearsay.
- (2) Subsection (1) applies to a statement made by the accused in the course of the accused's being questioned (whether as a suspect or not) by a constable, or another official, investigating an offence.
- (3) Subsection (1) does not affect the issue of whether evidence of a statement made by one accused is admissible as evidence in relation to another accused.”.

(2) The title of section 261 of the 1995 Act becomes “**Statements by co-accused**”.

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Use of technology

110 Live television links

(1) After section 288G of the 1995 Act there is inserted—

“Use of live television link

288H Participation through live television link

- (1) Where the court so determines at any time before or at a specified hearing, a detained person is to participate in the hearing by means of a live television link.
- (2) The court—
 - (a) must give the parties in the case an opportunity to make representations before making a determination under subsection (1),
 - (b) may make such a determination only if it considers that to do so is not contrary to the interests of justice.
- (3) The court may require a detained person to participate by means of a live television link in any proceedings at a specified hearing or otherwise in the case for the sole purpose of considering whether to make a determination under subsection (1) with respect to a specified hearing.
- (4) Where a detained person participates in any specified hearing or other proceedings by means of a live television link—
 - (a) a place of detention is, for the purposes of the hearing or other proceedings, deemed to be part of the court-room, and
 - (b) accordingly, the hearing or other proceedings are deemed to take place in the presence of the detained person.
- (5) In this section—

“court-room” includes chambers,
“live television link” means live television link between a place of detention and the court-room in which any specified hearing is or other proceedings are to be held or (as the case may be) any specified hearing or other proceedings are being held.

288I Evidence and personal appearance

- (1) No evidence as to a charge on any complaint or indictment may be led or presented at a specified hearing in respect of which there is a determination under section 288H(1).
- (2) The court—
 - (a) may, at any time before or at a specified hearing, revoke a determination under section 288H(1),
 - (b) must do so in relation to a detained person if it considers that it is in the interests of justice for the detained person to appear in person.

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- (3) The court may postpone a specified hearing to a later day if, on the day on which a specified hearing takes place or is due to take place—
- (a) the court decides not to make a determination under section 288H(1) with respect to the hearing, or
 - (b) the court revokes such a determination under subsection (2).

288J Effect of postponement

- (1) Except where a postponement under section 288I(3) is while section 21(2) of the Criminal Justice (Scotland) Act 2016 applies to a detained person, the following do not count towards any time limit arising in the person's case if the postponement in the case is to the next day on which the court is sitting—
 - (a) that next day,
 - (b) any intervening Saturday, Sunday or court holiday.
- (2) Even while section 21(2) of the Criminal Justice (Scotland) Act 2016 applies to a detained person, that section does not prevent a postponement under section 288I(3) in the person's case.
- (3) In section 288I and this section, “postpone” includes adjourn.

288K Specified hearings

- (1) The Lord Justice General may by directions specify types of hearing at the High Court, sheriff court and JP court in which a detained person may participate in accordance with section 288H(1).
- (2) Directions under subsection (1) may specify types of hearing by reference to—
 - (a) the venues at which they take place,
 - (b) particular places of detention,
 - (c) categories of cases or proceedings to which they relate.
- (3) Directions under subsection (1) may—
 - (a) vary or revoke earlier such directions,
 - (b) make different provision for different purposes.
- (4) The validity of any proceedings is not affected by the participation of a detained person by means of a live television link in a hearing that is not a specified hearing.
- (5) In this section, “hearing” includes any diet or hearing in criminal proceedings which may be held in the presence of an accused, a convicted person or an appellant in the proceedings.

288L Defined terms

For the purpose of sections 288H to 288K—

“detained person” means person who is—

- (a) an accused, a convicted person or an appellant in the case to which a specified hearing relates, and

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(b) imprisoned or otherwise lawfully detained (whether or not in connection with an offence) at any place in Scotland,
 “place of detention” means place in which a detained person is imprisoned or detained,
 “specified hearing” means hearing of a type specified in directions having effect for the time being under section 288K.”.

(2) In addition—

- (a) in section 117 (presence of appellant or applicant at hearing) of the 1995 Act—
- (i) subsection (6) is repealed,
 - (ii) in subsection (7), for the word “(6)” there is substituted “ (5) ”,
- (b) section 80 of the Criminal Justice (Scotland) Act 2003 is repealed.

111 Electronic proceedings

(1) In section 305 (Acts of Adjournal) of the 1995 Act, after subsection (1) there is inserted—

“(1A) Subsection (1) above extends to making provision by Act of Adjournal for something to be done in electronic form or by electronic means.”.

(2) These provisions of the 1995 Act are repealed—

- (a) in section 141—
- (i) subsection (3A),
 - (ii) in subsection (5), the words “(including a legible version of an electronic communication)”,
 - (iii) subsection (5ZA),
 - (iv) in subsection (5A), paragraph (b) together with the word “or” immediately preceding it,
 - (v) subsections (6A), (7A) and (7B),
- (b) section 303B together with the italic heading immediately preceding it,
- (c) section 308A.

(3) In the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, section 42 is repealed.

CHAPTER 5

AUTHORISATION UNDER PART III OF THE POLICE ACT 1997

112 Authorisation of persons other than constables

In section 108 (interpretation of Part III) of the Police Act 1997, after subsection (1) there is inserted—

“(1A) A reference in this Part to a staff officer of the Police Investigations and Review Commissioner is to any person who—

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- (a) is a member of the Commissioner's staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or
- (b) is a member of the Commissioner's staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.

VALID FROM 09/03/2023

CHAPTER 6

POLICE NEGOTIATING BOARD FOR SCOTLAND

113 Establishment and functions

- (1) After section 55 of the Police and Fire Reform (Scotland) Act 2012 there is inserted—

“CHAPTER 8A

POLICE NEGOTIATING BOARD FOR SCOTLAND

55A Establishment of the PNBS

- (1) There is established a body to be known as the Police Negotiating Board for Scotland.
- (2) Schedule 2A makes further provision about the Police Negotiating Board for Scotland.
- (3) In this Chapter, the references to the PNBS are to the Police Negotiating Board for Scotland.

55B Representations about pay etc.

- (1) The PNBS may make representations to the Scottish Ministers about—
 - (a) any draft regulations shared with it under section 54(1)(a),
 - (b) any draft determination of a kind mentioned in subsection (2),
 - (c) the matters mentioned in subsection (4) generally.
- (2) The draft determination referred to in subsection (1)(b) is a draft of a determination to be made by the Scottish Ministers—
 - (a) in relation to a matter mentioned in subsection (4), and
 - (b) by virtue of regulations made under section 48.
- (3) The Scottish Ministers may, after consulting the chairperson of the PNBS—
 - (a) require the PNBS to make representations under subsection (1),
 - (b) set or extend a time limit within which it must do so.

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- (4) The matters referred to in subsections (1)(c) and (2)(a) are the following matters in relation to constables (other than special constables) and police cadets—
- (a) pay, allowances and expenses,
 - (b) public holidays and leave,
 - (c) hours of duty.

55C Representations on other matters

- (1) The PNBS may make representations to the Scottish Ministers about—
- (a) any draft regulations shared with it under section 54(2),
 - (b) the matters mentioned in subsection (2) generally.
- (2) The matters referred to in subsection (1)(b) are matters relating to the governance, administration and conditions of service of constables (other than special constables) and police cadets.
- (3) But those matters do not include the matters mentioned in section 55B(4).

55D Steps following arbitration

- (1) If representations under section 55B(1) are made in terms settled through arbitration in accordance with the PNBS's constitution, the Scottish Ministers must take all reasonable steps appearing to them to be necessary for giving effect to those representations.
- (2) However, this—
- (a) requires the Scottish Ministers to take such steps only in qualifying cases (see paragraph 8(2) of schedule 2A),
 - (b) does not require the Scottish Ministers—
 - (i) to take such steps in relation to representations that are no longer being pursued by the PNBS, or
 - (ii) where such steps would comprise or include the making of regulations under section 48, to make regulations under that section more than once with respect to the same representations.

55E Reporting by the PNBS

- (1) The PNBS must, as soon as practicable after the end of each reporting year, prepare a report on how it has carried out its functions during that year.
- (2) The PNBS must—
- (a) give a copy of each report to the Scottish Ministers,
 - (b) publish each report in such manner as it considers appropriate.
- (3) In this Chapter, “reporting year” is as defined in the PNBS's constitution.”.
- (2) In section 54 (consultation on regulations) of the Police and Fire Reform (Scotland) Act 2012, in subsection (1)—
- (a) for the words from “61(1)” to “pensions)” there is substituted “ 55B(4) ”,

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(b) in paragraph (a), for the words “the United Kingdom” there is substituted “Scotland”.

(3) In section 125 (subordinate legislation) of the Police and Fire Reform (Scotland) Act 2012, after subsection (3) there is inserted—

“(3A) Regulations under paragraph 5(7) of schedule 2A are subject to the affirmative procedure if they include provisions of the kind mentioned in paragraph 7(2) or 8(2) of that schedule.”.

(4) After schedule 2 to the Police and Fire Reform (Scotland) Act 2012 there is inserted (as schedule 2A to that Act) the schedule set out in schedule 3.

114 Consequential and transitional

(1) In connection with section 113—

(a) in schedule 1 to the Freedom of Information (Scotland) Act 2002, after paragraph 50A there is inserted—

“50B The Police Negotiating Board for Scotland.”,

(b) in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003, at the appropriate place under the heading referring to offices there is inserted— “ Chairperson of the Police Negotiating Board for Scotland ”.

(2) On the coming into force of section 113—

(a) a person then holding office as the chairman of the Police Negotiating Board for the United Kingdom by virtue of section 61(2) of the Police Act 1996 is to be regarded as if appointed as the chairperson of the Police Negotiating Board for Scotland under paragraph 2(2) of schedule 2A to the Police and Fire Reform (Scotland) Act 2012,

(b) any agreements then extant within or involving the Police Negotiating Board for the United Kingdom (so far as relating to the Police Service of Scotland) of the kind for which Chapter 8A of Part 1 of the Police and Fire Reform (Scotland) Act 2012 includes provision are to be regarded as if made as agreements within or involving the Police Negotiating Board for Scotland by virtue of that Chapter.

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