



Criminal Justice and Licensing (Scotland) Act 2010

2010 asp 13

PART 5

CRIMINAL JUSTICE

VALID FROM 13/12/2010

Jury service

93 Lists of jurors

- (1) The 1995 Act is amended as follows.
- (2) In section 84 (juries: returns of jurors and preparation of lists)—
 - (a) in subsection (3), for “list” substitute “ lists ”,
 - (b) for subsection (4) substitute—
 - “(4) For the purpose of a trial in the sheriff court, the sheriff principal must furnish the clerk of court with a list of names, containing the number of persons required, from lists of potential jurors of—
 - (a) the sheriff court district in which the trial is to be held (the “local district”), and
 - (b) if the sheriff principal considers it appropriate, any other sheriff court district or districts in the sheriffdom in which the trial is to be held (“other districts”).
- (4A) Where the sheriff principal furnishes a list containing names of potential jurors of other districts, the sheriff principal may determine the proportion as between the local district and the other districts in which jurors are to be summoned.”,
- (c) in subsection (5), for “list”, in both places where it occurs, substitute “ lists ”, and
- (d) subsection (7) is repealed.

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(3) In section 85(4) (juries: citation and attendance of jurors)—

- (a) for the words from the beginning to “shall”, in the first place where it occurs, substitute “The sheriff clerk of—
- (a) the sheriffdom in which the High Court is to sit, or
- (b) the sheriff court district in which a trial in the sheriff court is to be held,

shall”, and

- (b) the word “such”, in the first place where it occurs, is repealed.

VALID FROM 10/01/2011

94 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), at beginning insert “ subject to subsection (1A), ”, and
- (b) the words “, civil or criminal” are repealed.

(3) After subsection (1) insert—

“(1A) In relation to criminal proceedings, a person is qualified and liable to serve as a juror despite being over 65 years of age.”.

VALID FROM 10/01/2011

95 Excusal from jury service

(1) The Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is amended as follows.

(2) In section 1 (qualification of jurors)—

- (a) in subsection (1), after “below” insert “ and to section 1A ”,
- (b) in subsection (2), after “service” in the second place where it occurs insert “ in relation to civil proceedings ”,
- (c) in subsection (3), after “service” in the first place where it occurs insert “ in relation to civil proceedings ”,
- (d) in subsection (5), after “above” insert “ or under section 1A ”, and
- (e) in subsection (6), after paragraph (a) insert—
- “(aa) section 1A;”.

(3) After section 1 insert—

“1A Excusal of jurors in relation to criminal proceedings

(1) Subject to subsection (3), a person who is qualified under section 1(1) but is among the persons listed in Part III of Schedule 1 to this Act (being persons

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excusable as of right from jury service) is to be excused from jury service in relation to criminal proceedings on any occasion where the person—

- (a) has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 (c.22); and
 - (b) gives written notice to the sheriff principal that the person wishes to be excused, before the end of the period of 7 days beginning with the day on which the person receives the requirement.
- (2) Without prejudice to subsection (1), a person who is qualified under section 1(1) but is among the persons listed in Group C of Part III of Schedule 1 to this Act is to be excused from jury service in relation to criminal proceedings on any occasion where—
- (a) the person has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825; and
 - (b) the person's commanding officer certifies to the sheriff principal that it would be prejudicial to the efficiency of the force of which the person is a member were the person required to be absent from duty.
- (3) Subsection (1) does not apply to a person who is qualified under section 1(1) but is among the persons listed in paragraph (a)(iii) of Group F of Part III of Schedule 1 to this Act (persons who have attained the age of 71), but instead such a person is to be excused from jury service in relation to criminal proceedings on any occasion where—
- (a) in the case of a person who has been required to provide information under section 3(2) of the Jurors (Scotland) Act 1825, the person gives written notice to the sheriff principal that the person wishes to be excused; or
 - (b) in the case of a person who has been cited to attend for jury service, the person—
 - (i) gives written notice to the clerk of court issuing the citation that the person wishes to be excused, before the date on which the person is cited first to attend; or
 - (ii) attends in compliance with the citation and intimates to the court that the person wishes to be excused.”.
- (4) In section 3(1)(a) (offences in connection with jury service), after “been” insert “ required to provide information under section 3(2) of the Jurors (Scotland) Act 1825 or ”.

VALID FROM 10/01/2011

96 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—

- “(a) where citation for jury service would result in a person's serving as a juror in relation to criminal proceedings—

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- (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;
 - (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; and
 - (iii) persons who have attained the age of 71;
- (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.

97 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,

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- (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.
- (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,
 - (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.
- (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

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

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

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- (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,
 - (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
- (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.

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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.
- (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.
- (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

- (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—
 - (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

- (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).
- (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.

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- (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.”.

Commencement Information

II S. 97 in force at 6.10.2010 by S.S.I. 2010/339, art. 2

VALID FROM 08/11/2021

Sharing information with anti-fraud organisations

98 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),
- (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”.

VALID FROM 13/12/2010

Closure of premises associated with human exploitation etc.

99 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) ”,
- (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—

- (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

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for or in connection with the commission of such an offence, and

(b) is satisfied that—

- (i) the local authority for the area in which the premises are situated has been consulted, and
- (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—

“(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
- (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.”,

(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

(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.”.

(4) In section 32 of that Act (extension)—

- (a) after subsection (1) insert—

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“(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
- (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),

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- (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 Justice (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 9) (rape etc.),
 - (j) an offence under Part 4 of that Act (sexual offences involving children) other than an offence under section 37 (older children engaging in sexual conduct with each other),
 - (k) an offence under section 42 of that Act (sexual abuse of trust),
 - (l) an offence under section 46 of that Act (sexual abuse of trust of a mentally disordered person),
 - (m) an offence under section 47 (slavery, servitude and forced or compulsory labour) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).
- (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—
- (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
 - (e) an offence as modified by section 54 of the Sexual Offences (Scotland) Act 2009 (asp 9) (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).”

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VALID FROM 01/11/2011

Sexual offences prevention orders

100 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)—
 - (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—

“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.
- (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;”.

VALID FROM 13/12/2010

Foreign travel orders

101 Foreign travel orders

- (1) The Sexual Offences Act 2003 (c.42) is amended as follows.

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- (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 ”.
- (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

- (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 in Scotland specified in the order—
 - (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).
- (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.
- (5) In this section “passport” means—
 - (a) a United Kingdom passport within the meaning of the Immigration Act 1971 (c.77);
 - (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) a requirement under section 117A(2) (surrender of passports: England and Wales and Northern Ireland), or
 - (b) a requirement under section 117B(2) (surrender of passports: Scotland).

(1C) A person may be prosecuted, tried and punished for any offence under subsection (1B)—

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 5. (See end of Document for details)

- (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 the trial or punishment, to be deemed to have been committed in that district).”.

VALID FROM 28/03/2011

Sex offender notification requirements

102 Sex offender notification requirements

- (1) The Sexual Offences Act 2003 (c.42) is amended as follows.
- (2) In section 85 (notification requirements: periodic notification)—
 - (a) in subsection (1), for “period of one year” substitute “ applicable period ”,
 - (b) in subsection (3), for “period referred to in subsection (1)” substitute “ applicable period ”, and
 - (c) after subsection (4) insert—
 - “(5) In this section, the “applicable period” means—
 - (a) in any case where subsection (6) applies to the relevant offender, such period not exceeding one year as the Scottish Ministers may prescribe in regulations, and
 - (b) in any other case, the period of one year.
- (6) This subsection applies to the relevant offender if the last home address notified by the offender under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b).”.
- (3) In section 86 (notification requirements: travel outside the United Kingdom), subsection (4) is repealed.
- (4) In section 87 (method of notification and related matters), subsection (6) is repealed.
- (5) In section 96 (information about release or transfer), subsection (4) is repealed.
- (6) In section 138 (orders and regulations)—
 - (a) in subsection (2), after “84,” insert “ 85, ”, and
 - (b) after subsection (3) insert—
 - “(4) Orders or regulations made by the Scottish Ministers under this Act may—
 - (a) make different provision for different purposes,
 - (b) include supplementary, incidental, consequential, transitional, transitory or saving provisions.”.

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 5. (See end of Document for details)

VALID FROM 13/12/2010

Risk of sexual harm orders

VALID FROM 01/11/2011

103 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,”.

104 Risk of sexual harm orders: spent convictions

In section 7 of the Rehabilitation of Offenders Act 1974 (c.53) (limitations on rehabilitation under the Act), in subsection (2), after paragraph (bb) insert—

- “(bc) in any proceedings on an application under section 2, 4 or 5 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9) or in any appeal under section 6 of that Act;”.

VALID FROM 13/12/2010

Obtaining information from outwith United Kingdom

105 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

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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.”.

VALID FROM 28/03/2011

Surveillance

106 Grant of authorisations for surveillance

- (1) The Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11) is amended as follows.
- (2) 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 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.”.
- (3) After that section insert—

“10A Authorisation of surveillance: joint surveillance operations

In the case of a joint surveillance operation, where authorisation is sought for the carrying out of any form of conduct to which this Act applies, authorisation may be granted by any one of the persons having power to grant authorisation for the carrying out of that conduct.”.

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- (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 14 (approval required for authorisations to take effect)—
 - (a) in subsection (5)(b), after “General” insert “ or the Deputy Director General ”, and
 - (b) subsection (7) is repealed.
- (7) In section 16 (appeals against decisions by Surveillance Commissioners), in subsection (1), after “General” insert “ or the Deputy Director General ”.
- (8) In section 31 (interpretation), in subsection (1), after the definitions of “directed” and “intrusive” insert—

““joint surveillance operation” 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;”.

VALID FROM 28/03/2011

Interference with property

107 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 (3A) insert—

“(3B) In the case of a joint operation, an authorising officer mentioned in subsection (3C) may authorise a person mentioned in subsection (3D) to take such action as is referred to in subsection (1).

(3C) Those authorising officers are—

 - (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,
 - (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.

(3D) The persons who may be authorised under subsection (1) are—

 - (a) a constable of any of the police forces involved in the joint operation (whether or not the authorised action is to be

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<p>carried out in the area of operation of the constable's police force),</p> <p>(b) where the joint operation falls within paragraph (b) of subsection (3C), a police member of the Scottish Crime and Drug Enforcement Agency.</p> <p>(3E) In subsection (3B), “joint operation” means a case involving—</p> <p>(a) at least two police forces in Scotland working together, or</p> <p>(b) at least one police force in Scotland and the Scottish Crime and Drug Enforcement Agency working together.”,</p> <p>(b) in paragraph (j) of subsection (5), after “General” insert “ , or Deputy Director General, ”, and</p> <p>(c) in paragraph (cc) of subsection (6), after “General” insert “ , or Deputy Director General, ”.</p> <p>(3) In section 94 (authorisations given in absence of authorising officer)—</p> <p>(a) in subsection (2)(h), after “(5)” insert “ or, as the case may be, subsection (6) ”,</p> <p>(b) in subsection (5), at the beginning insert “ Where the case is not a joint operation, ”, and</p> <p>(c) after subsection (5), add—</p> <p>“(6) Where the case is a joint operation, the person referred to in subsection (2)(h) is the chief constable of a police force involved in the joint operation in the relevant area.</p> <p>(7) In subsections (5) and (6)—</p> <p>“joint operation” has the meaning given by section 93(3E), and</p> <p>“relevant area” means the area—</p> <p>(a) for which the police forces involved in the joint operation are maintained, and</p> <p>(b) to which the application for authorisation relates.”.</p>

Amendments of Part 5 of Police Act 1997

108 Amendments of Part 5 of Police Act 1997

- (1) The Police Act 1997 (c.50) is amended as follows.
- (2) In section 113B (enhanced criminal record certificates), in subsection (3), for the words from “, or” immediately following paragraph (a) to the end of paragraph (b), substitute “(or states that there is no such matter or information), and
- (b) if the applicant is subject to notification requirements under Part 2 of the Sexual Offences Act 2003 (c.42), states that fact.”.
- (3) After that section insert—

“113BA Information held outside the United Kingdom

- (1) The Scottish Ministers may by order made by statutory instrument amend the definition of—

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- (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.”.
- (4) 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.”.

Commencement Information

I2 S. 108(1) in force at 12.10.2010 for specified purposes by S.S.I. 2010/344, art. 2(b)(i)

I3 S. 108(4) in force at 12.10.2010 by S.S.I. 2010/344, art. 2(b)(ii)

VALID FROM 01/11/2011

Rehabilitation of offenders

109 Spent alternatives to prosecution: Rehabilitation of Offenders Act 1974

- (1) The Rehabilitation of Offenders Act 1974 (c.53) is amended as follows.
- (2) After section 8A (protection afforded to spent cautions), insert—

“8B Protection afforded to spent alternatives to prosecution: Scotland

- (1) For the purposes of this Act, a person has been given an alternative to prosecution in respect of an offence if the person (whether before or after the commencement of this section)—
 - (a) has been given a warning in respect of the offence by—
 - (i) a constable in Scotland, or

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- (ii) a procurator fiscal,
 - (b) has accepted, or is deemed to have accepted—
 - (i) a conditional offer issued in respect of the offence under section 302 of the Criminal Procedure (Scotland) Act 1995 (c.46), or
 - (ii) a compensation offer issued in respect of the offence under section 302A of that Act,
 - (c) has had a work order made against the person in respect of the offence under section 303ZA of that Act,
 - (d) has been given a fixed penalty notice in respect of the offence under section 129 of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8),
 - (e) has accepted an offer made by a procurator fiscal in respect of the offence to undertake an activity or treatment or to receive services or do any other thing as an alternative to prosecution, or
 - (f) in respect of an offence under the law of a country or territory outside Scotland, has been given, or has accepted or is deemed to have accepted, anything corresponding to a warning, offer, order or notice falling within paragraphs (a) to (e) under the law of that country or territory.
- (2) In this Act, references to an “alternative to prosecution” are to be read in accordance with subsection (1).
- (3) Schedule 3 to this Act (protection for spent alternatives to prosecution: Scotland) has effect.”.
- (3) After section 9A (unauthorised disclosure of spent cautions), insert—

**“9B Unauthorised disclosure of spent alternatives to prosecution:
Scotland**

- (1) In this section—
- (a) “official record” means a record that—
 - (i) contains information about persons given an alternative to prosecution in respect of an offence, and
 - (ii) is kept for the purposes of its functions by a court, police force, Government department, part of the Scottish Administration or other local or public authority in Scotland,
 - (b) “relevant information” means information imputing that a named or otherwise identifiable living person has committed, been charged with, prosecuted for or given an alternative to prosecution in respect of an offence which is the subject of an alternative to prosecution which has become spent,
 - (c) “subject of the information”, in relation to relevant information, means the named or otherwise identifiable living person to whom the information relates.
- (2) Subsection (3) applies to a person who, in the course of the person's official duties (anywhere in the United Kingdom), has or has had custody of or access to an official record or the information contained in an official record.

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- (3) The person commits an offence if the person—
 - (a) obtains relevant information in the course of the person's official duties,
 - (b) knows or has reasonable cause to suspect that the information is relevant information, and
 - (c) discloses the information to another person otherwise than in the course of the person's official duties.
 - (4) Subsection (3) is subject to the terms of an order under subsection (6).
 - (5) In proceedings for an offence under subsection (3), it is a defence for the accused to show that the disclosure was made—
 - (a) to the subject of the information or to a person whom the accused reasonably believed to be the subject of the information, or
 - (b) to another person at the express request of the subject of the information or of a person whom the accused reasonably believed to be the subject of the information.
 - (6) The Scottish Ministers may by order provide for the disclosure of relevant information derived from an official record to be excepted from the provisions of subsection (3) in cases or classes of cases specified in the order.
 - (7) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
 - (8) A person commits an offence if the person obtains relevant information from an official record by means of fraud, dishonesty or bribery.
 - (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.”.
- (4) After Schedule 2 (protection for spent cautions) insert—

“SCHEDULE 3

(introduced by section 8B(3))

PROTECTION FOR SPENT ALTERNATIVES
TO PROSECUTION: SCOTLAND

Preliminary

- 1 (1) For the purposes of this Act, an alternative to prosecution given to any person (whether before or after the commencement of this Schedule) becomes spent—
- (a) in the case of—
 - (i) a warning referred to in paragraph (a) of subsection (1) of section 8B, or
 - (ii) a fixed penalty notice referred to in paragraph (d) of that subsection,
- at the time the warning or notice is given,

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- (b) in any other case, at the end of the relevant period.
 - (2) The relevant period in relation to an alternative to prosecution is the period of 3 months beginning on the day on which the alternative to prosecution is given.
 - (3) Sub-paragraph (1)(a) is subject to sub-paragraph (5).
 - (4) Sub-paragraph (2) is subject to sub-paragraph (6).
 - (5) If a person who is given a fixed penalty notice referred to in section 8B(1) (d) in respect of an offence is subsequently prosecuted and convicted of the offence, the notice—
 - (a) becomes spent at the end of the rehabilitation period for the offence, and
 - (b) is to be treated as not having become spent in relation to any period before the end of that rehabilitation period.
 - (6) If a person who is given an alternative to prosecution (other than one to which sub-paragraph (1)(a) applies) in respect of an offence is subsequently prosecuted and convicted of the offence—
 - (a) the relevant period in relation to the alternative to prosecution ends at the same time as the rehabilitation period for the offence ends, and
 - (b) if the conviction occurs after the end of the period referred to in sub-paragraph (2), the alternative to prosecution is to be treated as not having become spent in relation to any period before the end of the rehabilitation period for the offence.
- 2 (1) In this Schedule, “ancillary circumstances”, in relation to an alternative to prosecution, means any circumstances of the following—
- (a) the offence in respect of which the alternative to prosecution is given or the conduct constituting the offence,
 - (b) any process preliminary to the alternative to prosecution being given (including consideration by any person of how to deal with the offence and the procedure for giving the alternative to prosecution),
 - (c) any proceedings for the offence which took place before the alternative to prosecution was given (including anything that happens after that time for the purpose of bringing the proceedings to an end),
 - (d) any judicial review proceedings relating to the alternative to prosecution,
 - (e) anything done or undergone in pursuance of the terms of the alternative to prosecution.
- (2) Where an alternative to prosecution is given in respect of two or more offences, references in sub-paragraph (1) to the offence in respect of which the alternative to prosecution is given includes a reference to each of the offences.
- (3) In this Schedule, “proceedings before a judicial authority” has the same meaning as in section 4.

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Protection for spent alternatives to prosecution and ancillary circumstances

- 3 (1) A person who is given an alternative to prosecution in respect of an offence is, from the time the alternative to prosecution becomes spent, to be treated for all purposes in law as a person who has not committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence.
- (2) Despite any enactment or rule of law to the contrary—
 - (a) where an alternative to prosecution given to a person in respect of an offence has become spent, evidence is not admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in Scotland to prove that the person has committed, been charged with or prosecuted for, or been given an alternative to prosecution in respect of, the offence,
 - (b) a person must not, in any such proceedings, be asked any question relating to the person's past which cannot be answered without acknowledging or referring to an alternative to prosecution that has become spent or any ancillary circumstances, and
 - (c) if a person is asked such a question in any such proceedings, the person is not required to answer it.
- (3) Sub-paragraphs (1) and (2) do not apply in relation to any proceedings—
 - (a) for the offence in respect of which the alternative to prosecution was given, and
 - (b) which are not part of the ancillary circumstances.
- 4 (1) This paragraph applies where a person (“A”) is asked a question, otherwise than in proceedings before a judicial authority, seeking information about—
 - (a) A's or another person's previous conduct or circumstances,
 - (b) offences previously committed by A or the other person, or
 - (c) alternatives to prosecution previously given to A or the other person.
- (2) The question is to be treated as not relating to alternatives to prosecution that have become spent or to any ancillary circumstances and may be answered accordingly.
- (3) A is not to be subjected to any liability or otherwise prejudiced in law because of a failure to acknowledge or disclose an alternative to prosecution that has become spent or any ancillary circumstances in answering the question.
- 5 (1) An obligation imposed on a person (“A”) by a rule of law or by the provisions of an agreement or arrangement to disclose any matter to another person does not extend to requiring A to disclose an alternative to prosecution (whether one given to A or another person) that has become spent or any ancillary circumstances.
- (2) An alternative to prosecution that has become spent or any ancillary circumstances, or any failure to disclose an alternative to prosecution that has become spent or any ancillary circumstances, is not a ground for dismissing or excluding a person from any office, profession, occupation or

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- employment, or for prejudicing the person in any way in any occupation or employment.
- 6 The Scottish Ministers may by order—
- (a) exclude or modify the application of either or both of sub-paragraphs (2) and (3) of paragraph 4 in relation to questions put in such circumstances as may be specified in the order,
 - (b) provide for exceptions from any of the provisions of paragraph 5 in such cases or classes of case, or in relation to alternatives to prosecution of such descriptions, as may be specified in the order
- 7 Paragraphs 3 to 5 do not affect—
- (a) the operation of an alternative to prosecution, or
 - (b) the operation of an enactment by virtue of which, because of an alternative to prosecution, a person is subject to a disqualification, disability, prohibition or other restriction or effect for a period extending beyond the time at which the alternative to prosecution becomes spent
- 8 (1) Section 7(2), (3) and (4) apply for the purpose of this Schedule as follows.
- (2) Subsection (2), apart from paragraphs (b) and (d), applies to the determination of any issue, and the admission or requirement of evidence, relating to alternatives to prosecution previously given to a person and to ancillary circumstances as it applies to matters relating to a person's previous convictions and circumstances ancillary thereto.
- (3) Subsection (3) applies to evidence of alternatives to prosecution previously given to a person and ancillary circumstances as it applies to evidence of a person's previous convictions and the circumstances ancillary thereto.
- (4) For that purpose, subsection (3) has effect as if—
- (a) a reference to subsection (2) or (4) of section 7 were a reference to that subsection as applied by this paragraph, and
 - (b) the words “or proceedings to which section 8 below applies” were omitted.
- (5) Subsection (4) applies for the purpose of excluding the application of paragraph 3.
- (6) For that purpose, subsection (4) has effect as if the words “(other than proceedings to which section 8 below applies)” were omitted.
- (7) References in the provisions applied by this paragraph to section 4(1) are to be read as references to paragraph 3.”.

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 5. (See end of Document for details)

VALID FROM 01/11/2011

Medical services in prisons

110 Medical services in prisons

- (1) For section 3A of the Prisons (Scotland) Act 1989 (c.45) (medical services in prisons) substitute—

“3A Medical officers for prisons

- (1) The Scottish Ministers must designate one or more medical officers for each prison.
- (2) A person may be designated as a medical officer for a prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).
- (3) A medical officer has the functions that are conferred on a medical officer for a prison by or under this Act or any other enactment.
- (4) A medical officer is not an officer of the prison for the purposes of this Act.
- (5) Rules under section 39 of this Act may provide for the governor of a prison to authorise the carrying out by officers of the prison of a search of any person who is in, or is seeking to enter, the prison for the purpose of providing medical services for any prisoner at the prison.
- (6) Nothing in rules made by virtue of subsection (5) allows the governor to authorise an officer of a prison to require a person to remove any of the person's clothing other than an outer coat, jacket, headgear, gloves and footwear.”.

- (2) In section 41D of that Act (unlawful disclosure of information by medical officers), for subsection (1) substitute—

“(1) This section applies to—

- (a) a medical officer for a prison, and
- (b) any person acting under the supervision of such a medical officer.”.

- (3) In section 107 of the Criminal Justice and Public Order Act 1994 (c.33) (officers of contracted out prisons), for subsections (6) to (8) substitute—

“(6) The director must designate one or more medical officers for the prison.

- (7) A person may be designated as a medical officer for the prison only if the person is a registered medical practitioner performing primary medical services for prisoners at the prison under the National Health Service (Scotland) Act 1978 (c.29).”.

- (4) In section 110 of that Act (consequential modifications of the 1989 Act etc.)—

- (a) in each of subsections (3) and (4), for “3A(6)” substitute “ 3A(5) and (6) ”,
- (b) subsection (4A) is repealed, and

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(c) in subsection (6), for “3A(1) to (5) (medical services)” substitute “ 3A(1) and (2) (medical officers) ”.

(5) In section 111(3) of that Act (intervention by the Scottish Ministers), in paragraph (c), after “prison” insert “ and the medical officer or officers for the prison ”.

VALID FROM 13/12/2010

Miscellaneous

111 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.

112 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.

113 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—

Status: Point in time view as at 05/11/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Licensing (Scotland) Act 2010, PART 5. (See end of Document for details)

- (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, and
 - (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.”
 - (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.

114 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—

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“(4A) A financial reporting order may be made—

- (a) on the prosecutor's motion, or
- (b) at the court's own instance.”.

VALID FROM 28/03/2011

115 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”, and
 - (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—

“(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—

- (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.

(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.

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(3C) A compensation order may be made—

- (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)—
 - (i) for “No” substitute “ Unless (and to the extent that) subsections (3) to (3C) allow a compensation order to be made, no ”, and
 - (ii) in paragraph (b), the words from “, except” to the end are repealed,
- (e) subsection (6) is repealed, and
- (f) after subsection (8) insert—

“(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)—

- (a) paragraph (a) of subsection (1) is repealed, and
- (b) after subsection (1) insert—

“(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.”.

Status:

Point in time view as at 05/11/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

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