

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 3

#### TRANSITIONAL PROVISIONS, TRANSITORY MODIFICATIONS AND SAVINGS

##### PART I

###### GENERAL AND MISCELLANEOUS

###### *General saving for old savings*

- 1 The repeal by this Act of an enactment previously repealed subject to savings (whether or not in the repealing enactment) does not affect the continued operation of those savings.

###### *Documents referring to repealed enactments*

- 2 Any document made served or issued after this Act comes into force which contains a reference to any of the repealed enactments shall be construed, except so far as the contrary intention appears, as referring or, as the context may require, including a reference to the corresponding provision of the consolidating Acts.

###### *Provisions relating to the coming into force of other provisions*

- 3 (1) The repeal by this Act of a provision providing for or relating to the coming into force of a provision reproduced in the consolidating Acts does not affect the operation of the first provision, in so far as it remains capable of having effect, in relation to the enactment reproducing the second provision.
- (2) The repeal by this Act of a power to make provision or savings in preparation for or in connection with the coming into force of a provision reproduced in the consolidating Acts does not affect the power, in so far as it remains capable of having effect, in relation to the enactment reproducing the second provision.

##### PART II

###### SPECIFIC PROVISIONS

###### *Local government reform*

- 4 (1) At any time before 1 April 1996 or the coming into force of section 1 of the <sup>M1</sup>Local Government etc (Scotland) Act 1994, whichever is the later, in section 206 of the Principal Act, for subsection (6) there shall be substituted the following subsection—

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“(6) In this section the expression “police authority” means a regional or islands council, except that where there is an amalgamation scheme under the <sup>M2</sup>Police (Scotland) Act 1967 in force it means a joint police committee.”

(2) <sup>F1</sup>.....

**Textual Amendments**

**F1** Sch. 3 para. 4(2) repealed (24.3.2003) by [Proceeds of Crime Act 2002 \(c. 29\)](#), ss. 457, 458(1)(3), [Sch 12](#); S.S.I. 2003.210, art. 2 (subject to transitional provisions and savings in arts. 3-7)

**Marginal Citations**

**M1** 1994 c. 39.

**M2** 1967 c. 77.

*The Principal Reporter*

5 Until the coming into force of section 127 of the Local Government etc. (Scotland) Act 1994, for any reference in any provision of the Principal Act to the Principal Reporter there shall be substituted a reference to the reporter of the local authority in whose area any child referred to in that provision resides.

*Penalties*

6 (1) The repeal by this Act of any enactment—  
(a) by virtue of which the penalty which may be imposed in respect of any offence is altered; but  
(b) which provides that the penalty in respect of such an offence committed before a particular date shall not be so altered,  
shall not affect the penalty which may be imposed in respect of an offence mentioned in paragraph (b) above.  
(2) The periods of imprisonment set forth in subsection (2) of section 219 of the Principal Act shall apply to the non-payment of any sum imposed under that section by a court under a statute or order passed or made before 1 June 1909, notwithstanding that that statute or order fixes any other period of imprisonment.

*District court procedure*

7 The repeal by this Act of section 4 of the <sup>M3</sup>District Courts (Scotland) Act 1975 shall not affect the rules of procedure and practice in the district court.

**Marginal Citations**

**M3** 1975 c. 20

*Detention of children in summary proceedings*

8 Notwithstanding the repeal by Schedule 2 of the <sup>M4</sup>Criminal Justice (Scotland) Act 1987 of section 58A of the <sup>M5</sup>Children and Young Persons (Scotland) Act 1937,

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any child who, before 1 April 1988 (the date of commencement of section 59 of the said Act of 1987), had been ordered to be detained pursuant to the directions of the Secretary of State under section 413 of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1975—

- (a) shall, while so detained after such date, continue to be deemed to be in legal custody; and
- (b) may at any time be released conditionally or unconditionally by the Secretary of State, and any such child conditionally released shall be liable to recall on the directions of the Secretary of State and if he fails to comply with any condition of his release he may be apprehended without warrant and taken to the place from which he was released.

**Marginal Citations**

- M4** 1987 c. 41
- M5** 1 Edw 8 and 1 Geo 6. c. 37
- M6** 1975 c. 21

*Effect of probation and absolute discharge*

- 9 Subsections (1) and (2) of section 246 of the Principal Act shall not affect the operation, in relation to an offender as mentioned in those subsections, of any enactment which was in force as at the commencement of section 9(3)(b) of the <sup>M7</sup>Criminal Justice (Scotland) Act 1949 and is expressed to extend to persons dealt with under section 1(1) of the <sup>M8</sup> Probation of Offenders Act 1907 as well as to convicted persons.

**Marginal Citations**

- M7** 1949 c. 94.
- M8** 1907 c. 17.

*Restriction on discharge of hospital order*

- 10 Until the coming into force of section 54 of the <sup>M9</sup>Criminal Justice (Scotland) Act 1995, in section 59 of the Principal Act for the words “without limit of time” there shall be substituted the words “either without limit of time or during such period as may be specified in the order”.

**Marginal Citations**

- M9** 1995 c. 20.

*Aiding and abetting*

- 11 Subsection (2) of section 293 of the Principal Act shall not apply in respect of any offence committed before 1 October 1987 (the date of commencement of section 64 of the Criminal Justice (Scotland) Act 1987).

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### *Penal servitude and hard labour*

- 12 (1) Any enactment which confers power on a court to pass a sentence of penal servitude in any case shall be construed, subject to sub-paragraph (3) below, as conferring power to pass a sentence of imprisonment for a term not exceeding the maximum term of penal servitude for which a sentence could have been passed in that case immediately before 12 June 1950.
- (2) Any enactment which confers power on a court to pass a sentence of imprisonment with hard labour in any case shall be construed as conferring power to pass a sentence of imprisonment for a term not exceeding the term for which a sentence of imprisonment with hard labour could have been passed in that case immediately before 12 June 1950.
- (3) Nothing in sub-paragraph (1) above shall be construed as empowering a court, other than the High Court, to pass a sentence of imprisonment for a term exceeding [<sup>F2</sup>five years] .

#### **Textual Amendments**

- F2** Words in [Sch. 3 para. 12\(3\)](#) substituted (1.5.2004) by [1997 c. 48, ss. 13\(4\), 65](#) (with [art. 3](#)); [S.I. 2004/176, art. 2](#) (with [art. 3](#))

### *Supervised attendance orders*

- 13 (1) In section 235 of the Principal Act, paragraph (b) of subsection (3) shall also apply to an offender where, having been convicted of an offence, he has had imposed on him a fine which (or any part or instalment of which) he has failed to pay and the court, prior to 1 April 1991 (the date of commencement of section 62 of the <sup>M10</sup>Law Reform (Miscellaneous Provisions) (Scotland) Act 1990), has imposed on him a period of imprisonment under paragraph (a) of subsection (1) of section 219 of the Principal Act but he has not served any of that period of imprisonment.
- (2) Where, in respect of an offender, a court makes a supervised attendance order in circumstances where paragraph (b) of the said subsection (3) applies as mentioned in sub-paragraph (1) above, the making of that order shall have the effect of discharging the sentence of imprisonment imposed on the offender.

#### **Marginal Citations**

- M10** [1990 c. 40](#)

### *Hearsay evidence*

- 14 Nothing in the sections 259 to 261 of the Principal Act shall apply to—
- (a) proceedings commenced; or
  - (b) where the proceedings consist of an application to the sheriff by virtue of section 42(2)(c) of the <sup>M11</sup>Social Work (Scotland) Act 1968 or by virtue of Chapter 3 of Part II of the <sup>M12</sup>Children (Scotland) Act 1995, an application made,

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before sections 17 to 20 of the <sup>M13</sup>Criminal Justice (Scotland) Act 1995 came into force; and, for the purposes of paragraph (a) above, solemn proceedings are commenced when the indictment is served.

#### Marginal Citations

**M11** 1968 c. 49.

**M12** 1995 c. 36.

**M13** 1995 c. 20.

#### *Confiscation of proceeds of crime, etc.*

- 15 (1) Where a person is charged with an offence in relation to which provision is made by Part I of the <sup>M14</sup>Proceeds of Crime (Scotland) Act 1995, being an offence committed before the coming into force of Chapter I of Part II of the Criminal Justice (Scotland) Act 1995, Part I of the said Proceeds of Crime (Scotland) Act shall not affect the powers of the court in the event of his being convicted of the offence.
- (2) Where a person is charged with an offence committed before the coming into force of Part II of the Proceeds of Crime (Scotland) Act 1995, in the event of his being convicted of the offence, the court shall be entitled to exercise the powers conferred by section 223 or section 436 of the <sup>M15</sup>Criminal Procedure (Scotland) Act 1975, but not the powers conferred by that Part.
- (3) Paragraph (b) of section 2(4) of the Proceeds of Crime (Scotland) Act 1995 shall not apply in the case of an offence committed before the coming into force of Chapter I of Part II of the Criminal Justice (Scotland) Act 1995.
- (4) In any case in which, notwithstanding the coming into force of the <sup>M16</sup>Bankruptcy (Scotland) Act 1985, the <sup>M17</sup>Bankruptcy (Scotland) Act 1913 applies to a sequestration, paragraph 1(2) of Schedule 2 to the <sup>M18</sup>Proceeds of Crime (Scotland) Act 1995 shall have effect as if for sub-sub-paragraphs (a) and (b) thereof there were substituted the following paragraphs—
- “(a) property comprised in the whole property of the debtor which vests in the trustee under section 97 of the Bankruptcy (Scotland) Act 1913,
  - (b) any income of the bankrupt which has been ordered, under subsection (2) of section 98 of that Act, to be paid to the trustee or any estate which, under subsection (1) of that section, vests in the trustee,”
- and paragraph 1(3) of that Schedule shall have effect as if, for the reference in it to the said Act of 1985, there were substituted a reference to the said Act of 1913.
- (5) In any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made, before 29 December 1986 (the date on which the <sup>M19</sup>Insolvency Act 1986 came into force), paragraph 2(2) to (5) of Schedule 2 to the Proceeds of Crime (Scotland) Act 1995 shall have effect with the following modifications—
- (a) for references to the bankrupt’s estate for the purposes of Part IX of the said Act of 1986 there are substituted references to the property of the bankrupt for the purposes of the <sup>M20</sup>Bankruptcy Act 1914;

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- (b) for references to the said Act of 1986 and to sections 280(2)(c), 286, 339, and 423 of that Act there are respectively substituted references to the said Act of 1914 and to sections 26(2), 8, 27 and 42 of that Act;
  - (c) the references in subsection (4) to an interim receiver appointed as there mentioned include, where a receiving order has been made, a reference to the receiver constituted by virtue of section 7 of the said Act of 1914, and
  - (d) subsection (2)(b) is omitted.
- (6) In any case in which a winding up of a company commenced, or is treated as having commenced, before 29 December 1986, paragraph 3(2) to (6) of the said Schedule 2 shall have effect with the substitution for references to the said Act of 1986 of references to the <sup>M21</sup>Companies Act 1985.
- (7) In any case in which a receiver was appointed as is mentioned in sub-paragraph (1) of paragraph 4 of the said Schedule 2 before 29 December 1986, sub-paragraphs (2) to (4) of that paragraph have effect with the substitution for references to the said Act of 1986 of references to the Companies Act 1985.

**Marginal Citations**

- M14** 1995 c. 43.
- M15** 1975 c.21.
- M16** 1985 c. 66.
- M17** 1913 c. 20.
- M18** 1995 c. 43.
- M19** 1986 c. 45.
- M20** 1914 c.59.
- M21** 1985 c. 6.

*Criminal Justice (Scotland) Act 1995 (c. 20)*

- 16 (1) Any enactment repealed by this Act which has been amended by any provision of the Criminal Justice (Scotland) Act 1995 which has not been brought into force at the commencement of this Act shall, notwithstanding such repeal, continue to have effect until such provision is brought into force as if it had not been so repealed or amended.
- (2) Any provision of the consolidating Acts which re-enacts any enactment contained in the said Criminal Justice (Scotland) Act which has not been brought into force at the commencement of this Act shall be of no effect until such enactment is brought into force.
- (3) The repeal by this Act of any enactment contained in the Criminal Justice (Scotland) Act 1995 which has not been brought into force shall not have effect until such enactment is brought into force.

*Children (Scotland) Act 1995 (c. 36)*

- 17 Any enactment repealed by this Act which has been amended by any provision of the Children (Scotland) Act 1995 which has not been brought into force at the commencement of this Act shall, notwithstanding such repeal, continue to have effect until such provision is brought into force as if it had not been so repealed or amended.

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*False oaths*

- 18      Where an offence mentioned in section 45(5) of the <sup>M22</sup>Criminal Law (Consolidation) (Scotland) Act 1995 is, by any Act passed before 28 June 1933, as originally enacted, made punishable only on summary conviction, it shall remain only so punishable.

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**Marginal Citations**

**M22** 1995 c. 39.

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