

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 7 – Modification of enactments

Paragraphs 25-62 – The 1995 Act

892. [Paragraph 26](#) inserts new section 5A into the 1995 Act providing that it is competent for a sheriff to sign certain documents at any place in Scotland. As this is currently provided for under section 9A of the 1995 Act, this amendment has no effect on existing practice. However, new section 5A will become necessary upon the full repeal of section 9A (by paragraph 9(7) of the Schedule to the Criminal Proceedings etc. (Reform) (Scotland) Act 2007). Separate provision as to the signing of documents by justices of the peace and stipendiary magistrates is made in section 62 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007.
893. [Paragraph 27](#) amends section 10A of the 1995 Act and is consequential upon section 61 of the Act. It confers jurisdiction upon both the JP court and the procurator fiscal of the relevant court where proceedings have been initiated in or transferred to another JP court.
894. [Paragraph 28](#) amends subsections (3) and (4) of section 11 of the 1995 Act to provide that where applicable the offences referred to within the 1995 provisions may be triable by either solemn or summary procedure. Section 11 gives jurisdiction to the Scottish courts to try certain specified offences which are committed outside Scotland by certain specified individuals. Subsection (3) makes provision concerning the jurisdiction of the sheriff court in the taking of proceedings in relation to these offences. Subsection (4) makes provision concerning the taking of proceedings in Scotland in relation to certain specified criminal behaviour taking place in Scotland concerning property which has been stolen outwith Scotland but within the United Kingdom.
895. [Paragraphs 29, 36, 44, 45, 54, 55 and 56](#) substitute references to specific types of hearings (such as trials and victim statement proofs) with “any relevant hearing” in sections 17A, 35, 66, 71, 140, 144 and 146 of the 1995 Act. These are consequential upon section 69, which extends the prohibitions on an accused conducting his own defence contained in sections 288C, 288E and 288F of the 1995 Act to any relevant hearings.
896. [Paragraph 30](#) amends section 18(8)(c) of the 1995 Act. The amendment to section 18(8)(c) removes the reference to “impressions” and replaces the reference to “prints” with “relevant physical data”. Since the meaning of “prints” is limited to fingerprints, its replacement with “relevant physical data” ensures there is no doubt that palm prints and other kinds of relevant physical data, as defined in section 18(7A) of the 1995 Act, are included for the purpose of section 18(8)(c). The power to take samples, information derived from samples and relevant physical data under authority of a warrant remains.

*These notes relate to the Criminal Justice and Licensing (Scotland)
Act 2010 (asp 13) which received Royal Assent on 6 August 2010*

897. [Paragraph 31](#) removes the obsolete reference to “impressions” in section 19(1)(b) of the 1995 Act.
898. [Paragraphs 32, 37, 38, 39, 40, 42, 43, 51 and 57-58](#) all concern the change in references to “insanity” and “insanity as a plea in bar” in the 1995 Act. References in the 1995 Act to “insanity” as a defence are changed to refer to the defence created by the new section 51A of the 1995 Act, as inserted by section 168 of this Act. References to “insanity as a plea in bar” are changed to refer to unfitness for trial.
899. [Paragraph 33](#) repeals section 20 of the 1995 Act in consequence of new section 19C (inserted by section 82).
900. [Paragraph 34](#) repeals parts of section 22 of the 1995 Act, in consequence of the amendments made by section 55 of this Act.
901. [Paragraph 35](#) amends section 23A of the 1995 Act, which provides that bail can be granted notwithstanding that an accused is in custody for another offence. The amendment inserts a reference to bail granted pending a Crown appeal under new section 107A (2)(b), which is being inserted into the 1995 Act by section 74 of this Act.
902. [Paragraph 41](#) amends section 61 of the 1995 Act. Section 61 of the 1995 Act contains a requirement that various court orders must be based on the evidence of two medical practitioners, one of whom must have been approved as having special expertise in mental health. The effect of these amendments is that this requirement does not apply to a finding by a court that a person is unfit for trial.
903. [Paragraph 46](#) amends section 78(2) of the 1995 Act so as to provide that diminished responsibility is treated as if it were a special defence for the purpose of giving advance notice (see 1995 Act, section 78(1)). The plea is not treated as if it were a special defence for any other purpose (eg disclosure to the jury under section 89(1)).
904. [Paragraph 49](#) removes a superfluous word from section 90D of the 1995 Act.
905. [Paragraph 50](#) substitutes a new subsection (4) into section 102A of the 1995 Act. The effect of this is to remove from that subsection a reference to section 27(1)(a) of the 1995 Act which has no application in the context of the section 102A provision.
906. [Paragraph 52](#) is consequential upon section 61 of this Act. The effect is to ensure time limits for transferred and related cases apply also to relevant cases in JP courts.
907. [Paragraph 53](#) makes an amendment to section 137B of the 1995 Act. Where a sheriff has made an order allowing the transfer of, or initiation of proceedings in, another sheriff court [paragraph 53](#) provides that any other sheriff of the same sheriffdom may revoke or vary that order.
908. [Paragraph 60](#) amends section 254 to make clear that the term “article” includes animal. A consequential rearrangement of section 254 is made.
909. [Paragraph 61](#) inserts new subsection (4AA) into section 258. This clarifies that where an objection to a notice of uncontroversial evidence has been lodged in summary proceedings, this may be challenged at any time prior to an intermediate diet.
910. [Paragraph 62](#) amends section 307 of the 1995 Act (which defines certain terms for the purposes of the 1995 Act) so as to provide that the meaning of “unfit for trial” is given in the new section 53F (as provided for by section 170 of this Act).