

SCHEDULE 7

(introduced by section 203)

MODIFICATIONS OF ENACTMENTS

The Libel Act 1792 (c.60)

1 The Libel Act 1792 is repealed.

The Criminal Libel Act 1819 (c.8)

2 The Criminal Libel Act 1819 is repealed.

The False Oaths (Scotland) Act 1933 (c.20)

3 The False Oaths (Scotland) Act 1933 is repealed.

The Public Records (Scotland) Act 1937 (c.43)

4 In section 14 of the Public Records (Scotland) Act 1937 (interpretation)—

- (a) for the definition of “court records” substitute—
““court records” includes (in addition to records of the ordinary courts) records of the Scottish Land Court;”, and
- (b) for subsection (2) substitute—
“(2) Any question as to whether or not a document is part of the records of a particular court is to be determined—
 - (a) in the case of the High Court, by the Lord Justice General,
 - (b) in any other case, by the Lord President.”.

The Law Officers Act 1944 (c.25)

5 In section 2(3) of the Law Officers Act 1944 (Lord Advocate and Solicitor General for Scotland), for the words from “three” to the end substitute “287 of the Criminal Procedure (Scotland) Act 1995 (c.46)”.

The Defamation Act 1952 (c.66)

6 In the Defamation Act 1952, section 17(2) is repealed.

The Rehabilitation of Offenders Act 1974 (c.53)

7 The Rehabilitation of Offenders Act 1974 is amended as follows.

8 In section 1 (rehabilitated persons and spent convictions), in subsection (4)(b), after “insanity” insert “or, as the case may be, a finding that a person is not criminally responsible under section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46)”.

9 In section 6(6)(bb) (convictions in service disciplinary proceedings), for “the Schedule” substitute “Schedule 1”.

10 The Schedule (service disciplinary proceedings) is renumbered as Schedule 1.

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The Evidence (Proceedings in Other Jurisdictions) Act 1975 (c.34)

- 11 In Schedule 1 to the Evidence (Proceedings in Other Jurisdictions) Act 1975 (consequential amendments), the paragraph relating to the False Oaths (Scotland) Act 1933 is repealed.

The 1982 Act

- 12 The 1982 Act is amended as follows.
- 13 In section 52 (indecent photographs etc. of children), subsection (7) is repealed.
- 14 In section 64 (appeals against orders in relation to public processions), in subsection (6), for “paragraph (a)(ii)” substitute “paragraph (a)(i)”.

The Incest and Related Offences (Scotland) Act 1986 (c.36)

- 15 The Incest and Related Offences (Scotland) Act 1986 is repealed.

The Legal Aid (Scotland) Act 1986 (c.47)

- 16 In section 22 of the Legal Aid (Scotland) Act 1986 (automatic availability of criminal legal aid), in subsection (1)—
- (a) in paragraph (da), for “he is insane so that his trial cannot proceed or continue;” substitute “the accused is unfit for trial under section 53F of the Criminal Procedure (Scotland) Act 1995;”, and
 - (b) in paragraph (dc), for “in case involving insanity” substitute “where accused found not criminally responsible or unfit for trial”.

The Criminal Justice (Scotland) Act 1987 (c.41)

- 17 In the Criminal Justice (Scotland) Act 1987, sections 51 to 54 (investigation of serious or complex fraud) are repealed.

The Criminal Justice Act 1988 (c.33)

- 18 In the Criminal Justice Act 1988, in Schedule 15 (minor and consequential amendments), paragraphs 89, 111 and 117 are repealed.

The Trade Union and Labour Relations (Consolidation) Act 1992 (c.52)

- 19 In section 243(4)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (restriction of offence of conspiracy: Scotland), the words “or sedition” are repealed.

The Criminal Justice and Public Order Act 1994 (c.33)

- 20 In the Criminal Justice and Public Order Act 1994, in section 164 (extension of powers of Serious Fraud Office and of powers to investigate serious fraud in Scotland), subsections (3) and (4) are repealed.

The Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)

- 21 The Criminal Law (Consolidation) (Scotland) Act 1995 is amended as follows.

- 22 Section 16 (powers of search) is repealed.
- 23 In section 23 (interpretation of Part 2), in the definition of “period of a designated sporting event”, for “in” substitute “it”.

The Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)

- 24 In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (minor and consequential amendments), in paragraph 44, sub-paragraph (2) is repealed.

The 1995 Act

- 25 The 1995 Act is amended as follows.
- 26 After section 5 insert—

“5A Signing of warrants etc. outwith sheriff’s jurisdiction

The competence of a sheriff to sign any warrant, judgment, interlocutor or other document relating to any proceedings within the sheriff’s jurisdiction extends to competence to do so at any other place in Scotland.”.

- 27 In section 10A (jurisdiction for transferred cases)—
- (a) after subsection (1) insert—
- “(1A) The jurisdiction of a JP court includes jurisdiction for any cases which come before it by virtue of section 137CA, 137CB or 137CC of this Act.”,
- (b) in subsection (2)—
- (i) the word “and” immediately following paragraph (a) is repealed,
- (ii) after paragraph (a) insert—
- “(aa) power to prosecute in any cases which come before a JP court of that district by virtue of a provision mentioned in subsection (1A) above;”, and
- (iii) in paragraph (b), for “criminal proceedings which otherwise come before that sheriff” substitute “the other cases which come before that sheriff when exercising criminal jurisdiction or (as the case may be) before that JP court”, and
- (c) for subsection (3) substitute—
- “(3) This section is without prejudice to sections 4 to 10 of this Act.”.
- 28 In section 11 (certain offences committed outside Scotland)—
- (a) in subsection (3), for “proceeded against, indicted” substitute “prosecuted”, and
- (b) in subsection (4), for “dealt with, indicted” substitute “prosecuted”.
- 29 In section 17A (right of person accused of sexual offence to be told about restriction on conduct of defence: arrest), in subsection (1)—
- (a) for paragraphs (za) and (a) substitute—
- “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer”, and

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- (b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.
- 30 In section 18(8)(c) (power to take prints etc. under authority of a warrant unaffected by section), for “prints, impressions” substitute “relevant physical data”.
- 31 In section 19(1)(b) (samples etc. taken from person convicted of offence), the words “impression or”, in both places where they occur, are repealed.
- 32 In section 19A (samples etc. from persons convicted of sexual and violent offences), in subsection (6), in paragraph (a) of the definition of “conviction”, for the words from “, by” to the end substitute “by reason of the special defence set out in section 51A of this Act;”.
- 33 Section 20 (use of prints, samples, etc.) is repealed.
- 34 In section 22 (liberation by police), subsections (1H), (2), (4), (4A) and (5) are repealed.
- 35 In section 23A (bail and liberation where person already in custody)—
- (a) in each of subsections (1) and (4), for “23 or 65(8C)” substitute “23, 65(8C) or 107A(7)(b)”, and
 - (b) in subsection (3), for “22A(3) or 23(7)” substitute “22A(3), 23(7) or 107A(7)(b)”.
- 36 In section 35 (judicial examination), in subsection (4A)—
- (a) for paragraphs (za) and (a) substitute—
 - “(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and
 - (b) in paragraph (c), for the words from “preliminary” to “trial” substitute “hearing”.
- 37 In section 55(4) (acquittal at examination of facts)—
- (a) for the words from “insane” to “omission” substitute “not, because of section 51A of this Act, criminally responsible for the conduct”, and
 - (b) for “on the ground of such insanity” substitute “by reason of the special defence set out in that section”.
- 38 The title of section 57 (disposal of case where accused found to be insane) is amended by substituting “not criminally responsible or unfit for trial” for “to be insane” and the cross-heading which precedes it is amended by substituting “*where accused found not criminally responsible*” for “*in case of insanity*”.
- 39 In section 57 (disposal of case where accused found to be insane), in subsection (1) (a), for the words from “, by” to “omission” substitute “acquitted by reason of the special defence set out in section 51A of this Act”.
- 40 In section 60C(7) (disapplication of provision where person acquitted on ground of insanity)—
- (a) after “apply” insert “in a case where the person is acquitted by reason of the special defence set out in section 51A of this Act.”, and
 - (b) paragraphs (a) and (b) are repealed.
- 41 In section 61 (requirements as to medical evidence)—
- (a) in subsection (1), the words “under section 54(1)(a) of this Act or” are repealed,

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- (b) in subsection (3), the words “or 54(1)(a)” are repealed, and
 - (c) in subsection (5), for “the said section 54(1)” substitute “section 54(1)(c) of this Act”.
- 42 The title of section 62 (appeal by accused in case involving insanity) is amended by substituting “not criminally responsible or unfit for trial” for “in case involving insanity” and the section is amended as follows—
- (a) in subsection (1)(a), for “insane” substitute “unfit for trial”, and
 - (b) in subsection (2)(b)(iii), for the words from “virtue” to “omission” substitute “reason of the special defence set out in section 51A of this Act”.
- 43 The title of section 63 (appeal by prosecutor in case involving insanity) is amended by substituting “where accused found not criminally responsible or unfit for trial” for “in case involving insanity” and subsection (1) of that section is amended as follows—
- (a) in paragraph (a), for “insane” substitute “unfit for trial”,
 - (b) for paragraph (b) substitute—
 - “(b) an acquittal by reason of the special defence set out in section 51A of this Act;”, and
 - (c) in paragraph (c), for the words from “on” to “omission” substitute “by reason of the special defence set out in section 51A of this Act”.
- 44 In section 66 (service and lodging of indictment etc.), in subsection (6A)(a)—
- (a) for sub-paragraphs (zi) and (i) substitute—
 - “(i) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer;”, and
 - (b) in sub-paragraph (iii), for the words from “preliminary” to “trial” substitute “hearing”.
- 45 In section 71 (first diet)—
- (a) in subsection (A1), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”,
 - (b) in subsection (B1)(c), for the words “before the trial diet” substitute “in relation to any hearing in the course of the proceedings”,
 - (c) in subsection (1A)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
 - (d) in subsection (1B)(a), for “the trial” substitute “any hearing in the course of the proceedings”,
 - (e) in subsection (5A)(b), for the words “his defence at the trial” substitute “the conduct of his case at any relevant hearing in the course of the proceedings”, and
 - (f) after subsection (7), insert—
 - “(7A) In subsections (A1) and (5A)(b), “relevant hearing” means—
 - (a) in relation to proceedings mentioned in paragraph (a) of subsection (B1), any hearing at, or for the purposes of, which a witness is to give evidence,
 - (b) in relation to proceedings mentioned in paragraph (b) of that subsection, a hearing referred to in section 288E(2A),

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- (c) in relation to proceedings mentioned in paragraph (c) of that subsection, a hearing in respect of which an order is made under section 288F.”.
- 46 In section 78(2) (which attracts the procedure for notifying special defences in relation to certain other defences), after “apply” insert “to a plea of diminished responsibility or”.
- 47 In section 79 (preliminary pleas and preliminary issues), in subsection (2)(b)(ii), after “under section” insert “22ZB(3)(b),”.
- 48 In section 85 (juries: citation and attendance of jurors), in subsection (6), after “section 1” insert “or 1A”.
- 49 In section 90D (review of orders under section 90B(1)(a) or (b)), in subsection (3) (b), for “any other any” substitute “any other”.
- 50 In section 102A (failure of accused to appear), for paragraph (b) of subsection (4) substitute—
“(b) section 27(7) of this Act,”.
- 51 In section 118(5) (disposal of appeal from solemn proceedings where High Court considers appellant to have been insane)—
(a) for “insane when he did so” substitute “not, because of section 51A of this Act, criminally responsible for it”, and
(b) for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of this Act”.
- 52 In section 136A (time limits for transferred and related cases), in subsection (1)—
(a) in paragraph (a)(i), for “in pursuance of section 137A(1)” substitute “under section 137A or 137CA”, and
(b) in paragraph (a)(ii), for “in pursuance of section 137B(1), (1A) or (1C)” substitute “under 137B or 137CB”.
- 53 In section 137B (transfer of sheriff court summary proceedings outwith sheriffdom), in subsection (4), for “a sheriff who has made an order under subsection (2A) above” substitute “the sheriff who has made an order under subsection (2A) above (or another sheriff of the same sheriffdom)”.
- 54 In section 140 (citation), in subsection (2A)—
(a) for paragraph (a) substitute—
“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings (including at any commissioner proceedings) may be conducted only by a lawyer,” and
(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.
- 55 In section 144 (procedure at first diet), in subsection (3A)—
(a) for paragraph (a) substitute—
“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and
(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.

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- 56 In section 146 (plea of not guilty), in subsection (3A)—
(a) for paragraph (a) substitute—
“(a) that his case at, or for the purposes of, any relevant hearing (within the meaning of section 288C(1A)) in the course of the proceedings may be conducted only by a lawyer,” and
(b) in paragraph (c), for the words “his defence at the trial” substitute “the conduct of his case at, or for the purposes of, the hearing”.
- 57 The title of section 190 (disposal of appeal where appellant insane) is amended by substituting “not criminally responsible” for “insane”.
- 58 In section 190—
(a) in subsection (1), for “insane when he did so” substitute “not, because of section 51A of this Act, criminally responsible for it”, and
(b) for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of this Act”.
- 59 In section 247 (effect of probation and absolute discharge)—
(a) in subsection (1), for the words from “placing” to “him” substitute “discharging the offender”,
(b) in subsection (2), the words “placed on probation or” are repealed, and
(c) subsection (6) is repealed.
- 60 In section 254 (search warrant for forfeited articles)—
(a) the existing provision becomes subsection (1), and
(b) after that subsection insert—
“(2) In subsection (1), “article” includes animal.”.
- 61 In section 258 (uncontroversial evidence), after subsection (4A) insert—
“(4AA) Where in summary proceedings the relevant diet for the purposes of subsection (4A) above is an intermediate diet, an application under that subsection may be made at (or at any time before) that diet.”.
- 62 In section 307 (interpretation), in subsection (1), after the definition of “treatment order”, insert—
““unfit for trial” has the meaning given by section 53F of this Act;”.

The Offensive Weapons Act 1996 (c.26)

- 63 In the Offensive Weapons Act 1996, section 5 is repealed.

The Defamation Act 1996 (c.31)

- 64 In the Defamation Act 1996, section 20(2) is repealed.

The Crime and Punishment (Scotland) Act 1997 (c.48)

- 65 The Crime and Punishment (Scotland) Act 1997 is amended as follows.
- 66 In section 9 (power to specify hospital unit), in subsection (1)(a), for “insane” substitute “found not criminally responsible or unfit for trial”.
- 67 In section 13 (increase in sentences available to sheriff and district courts), subsection (2) is repealed.

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- 68 In section 56 (powers of the court on remand or committal of children and young persons), subsection (3) is repealed.

The Terrorism Act 2000 (c.11)

- 69 In paragraph 30 of Part II of Schedule 5 to the Terrorism Act 2000 (explanations), in sub-paragraph (3)(a), for “section 2 of the False Oaths (Scotland) Act 1933” substitute “section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

The Protection of Children (Scotland) Act 2003 (asp 5)

- 70 In section 10 of the Protection of Children (Scotland) Act 2003 (referral of individuals acquitted of offence against a child on ground of insanity), in subsection (11)(a)—
- (a) in sub-paragraph (i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46)”, and
 - (b) in sub-paragraph (ii), for “the Criminal Procedure (Scotland) Act 1995 (c.46)” substitute “that Act”.

The Criminal Justice (Scotland) Act 2003 (asp 7)

- 71 In section 3 of the Criminal Justice (Scotland) Act 2003 (the Risk Management Authority), in paragraph (b) of subsection (2), for “to be insane” substitute “not criminally responsible or unfit for trial”.

The Legal Deposit Libraries Act 2003 (c.28)

- 72 Section 10 of the Legal Deposit Libraries Act 2003 (exemption from liability: activities in relation to publications) is amended as follows—
- (a) in subsection (1), the words “, or subject to any criminal liability,” are repealed,
 - (b) in subsection (2)(a), the words “in the case of liability in damages” are repealed,
 - (c) in subsection (3), the words “, or subject to any criminal liability,” are repealed,
 - (d) in subsection (4)(a), the words “in the case of liability in damages” are repealed,
 - (e) in subsection (6)(a), the words “, or subject to any criminal liability,” are repealed, and
 - (f) in subsection (8), the words “and criminal liability” are repealed.

The Sexual Offences Act 2003 (c.42)

- 73 In section 135 of the Sexual Offences Act 2003 (interpretation: mentally disordered persons), after subsection (2) insert—
- “(2A) In the application of this Part in relation to Scotland, a reference to a person being found not guilty of an offence by reason of insanity is to be read as a reference to a person being acquitted of an offence by reason of the special

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defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995.”.

The Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5)

- 74 In the Criminal Procedure (Amendment) (Scotland) Act 2004 the following provisions are repealed—
- (a) in section 4 (prohibition on accused conducting case in person in certain cases), subsection (4),
 - (b) section 17 (bail conditions: remote monitoring of restrictions on movements), and
 - (c) in the schedule (further modifications of the 1995 Act), paragraph 55.

The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)

- 75 In section 8 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (effect of conviction etc. under section 7 above or section 128 of Sexual Offences Act 2003)—
- (a) in subsection (1)—
 - (i) the word “or” immediately following paragraph (c) is repealed, and
 - (ii) after paragraph (c) insert—
 - “(ca) is acquitted by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and
 - (b) in subsection (5)—
 - (i) in paragraph (a), for “(1)(a), (c) or (d)” substitute “(1)(a) or (c) to (d)”, and
 - (ii) in paragraph (c), for “(1)(a), (c) or (d)” substitute “(1)(a) or (c) to (d)”.

The Management of Offenders etc. (Scotland) Act 2005 (asp 14)

- 76 In section 10 of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders)—
- (a) in subsection (1)—
 - (i) in paragraph (c)(i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of that Act of 1995”, and
 - (ii) in paragraph (d), for the words from “section 54(1)” to the end substitute “section 53F of that Act of 1995 (unfitness for trial) to be unfit for trial.”, and
 - (b) in subsection (11)(a), for “to be insane” substitute “not criminally responsible or unfit for trial”.

The Serious Organised Crime and Police Act 2005 (c.15)

- 77 In section 65 of the Serious Organised Crime and Police Act 2005 (restrictions on the use of statements), in subsection (2)(c), for “section 2 of the False Oaths (Scotland) Act 1933 (c.20)” substitute “section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39)”.

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The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6)

- 78 The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 is amended as follows.
- 79 In section 7 (liberation on undertaking), in subsection (2), paragraphs (c), (e), (f) and (g) are repealed.
- 80 In section 74 (appointment of stipendiary magistrates), subsection (6) is repealed.
- 81 After section 74 insert—

“74A Exercise of functions by stipendiary magistrates

- (1) A stipendiary magistrate may, by reason of holding that office—
- (a) exercise the same judicial and signing functions as are exercisable by a JP,
 - (b) do so in the same manner as a JP (including by using the title of office of JP).
- (2) For the purpose of subsection (1)—
- (a) the acts of a stipendiary magistrate are valid as if the magistrate were a JP,
 - (b) it does not matter if an enactment from which a JP derives authority to act in a specific case does not bear to give equivalent authority to a stipendiary magistrate.
- (3) However, subsections (1) and (2) are subject to any provision of an enactment which expressly excludes a stipendiary magistrate from acting in a specific case.
- (4) This section does not limit any other functions of a stipendiary magistrate (in particular, those exercisable in that capacity only).”
- 82 In section 76 (signing functions)—
- (a) in subsection (2), for “signing functions in the same manner as” substitute “the same signing functions as are exercisable by”, and
 - (b) subsection (4) is repealed.
- 83 In the schedule (modification of enactments)—
- (a) paragraph 3(b) is repealed, and
 - (b) in paragraph 26—
 - (i) the words “(in addition to the provisions amended by paragraphs 7(4) and 16(a))” are repealed, and
 - (ii) sub-paragraph (b) is repealed.

The Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

- 84 In section 32 of the Protection of Vulnerable Groups (Scotland) Act 2007 (relevant offences etc.), in subsection (3)(b)(i), for “on the ground of insanity” substitute “by reason of the special defence set out in section 51A of the 1995 Act”.

The Counter-Terrorism Act 2008 (c.28)

- 85 In section 45 of the Counter-Terrorism Act 2008 (sentences or orders triggering notification requirements), in subsection (2)(b)—

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- (a) in sub-paragraph (ii), for the words from “on grounds of insanity” to the end substitute “by reason of the special defence set out in section 51A of that Act (criminal responsibility of persons with mental disorder), or”, and
- (b) in sub-paragraph (iii), for the words from “the Criminal” to “facts)” substitute “that Act (examination of facts where person unfit for trial)”.

The Sexual Offences (Scotland) Act 2009 (asp 9)

- 86 In section 55(7) of the Sexual Offences (Scotland) Act 2009 (offences committed outside the United Kingdom), for “proceeded against, indicted” substitute “prosecuted”.

The Coroners and Justice Act 2009 (c.25)

- 87 In section 156 of the Coroners and Justice Act 2009 (exploitation proceeds orders: qualifying offenders)—
- (a) in subsection (2)—
 - (i) the word “or” immediately following paragraph (b) is repealed, and
 - (ii) after paragraph (b) insert—
 - “(ba) has been acquitted by such a court of an offence by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995 (c.46), or”, and
 - (b) in subsection (3)(a)—
 - (i) the word “or” immediately following sub-paragraph (ii) is repealed, and
 - (ii) after sub-paragraph (ii) insert—
 - “(iia) such a court has made, in respect of a foreign offence, a finding equivalent to a finding of the person’s acquittal by reason of the special defence set out in section 51A of the Criminal Procedure (Scotland) Act 1995, or”.