
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 413

**The Criminal Justice and Licensing (Scotland)
Act 2010 (Commencement No. 6, Transitional
and Savings Provisions) Order 2010**

Citation and interpretation

1.—(1) This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2010.

(2) In this Order—

“premises licence application” means an application made under section 20(1) of the 2005 Act;

“the Act” means the Criminal Justice and Licensing (Scotland) Act 2010;

“the 1988 Act” means the Criminal Justice Act 1988(1);

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995(2);

“the 2005 Act” means the Licensing (Scotland) Act 2005(3).

(3) For the purposes of this Order, where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it is to be taken to have been committed on the first of those days.

Commencement dates

2.—(1) The provisions of the Act specified in column 1 of the Schedule to this Order (the subject matter of which is specified in column 2 of the Schedule) come into force on the corresponding date specified in column 3 of the Schedule.

(2) Where a purpose is specified in column 4 of the Schedule, the corresponding provision specified in column 1 of the Schedule only comes into force for that purpose.

Savings provision— section 14 and schedule 2 (community payback orders)

3.—(1) The commencement of section 14 of, and schedule 2 to, the Act is of no effect in relation to an offence committed before 1st February 2011 or in relation to any probation order, supervised attendance order or community service order made under the 1995 Act.

(2) The commencement of section 20 of the Act is of no effect in relation to an offence committed before 1st February 2011.

Savings provision – section 40 (certain sexual offences by non-natural persons)

4. Notwithstanding the commencement of section 40 of the Act where an offence, under any of the provisions specified in that section, is committed before 13th December 2010—

(1) 1988 c.33.

(2) 1995 c.46.

(3) 2005 asp 16.

- (a) by a non-natural person, the penalty which may be imposed is only one which may be imposed as if that section had not been commenced; or
- (b) by a natural person, the penalty which may be imposed cannot exceed the maximum penalty applicable at the time the offence was committed.

Savings provision and transitional provision - section 60 (prosecution on indictment: Scottish Law Officers)

5.—(1) Subject to paragraph (2), notwithstanding the commencement of section 60 of the Act, indictments raised in the name of the Lord Advocate or, as the case may be, in the name of the Solicitor General prior to 13th December 2010 in respect of proceedings which have not concluded as at that date shall proceed as if that section has not been commenced.

(2) The amendments made to section 287 of the 1995 Act by section 60(4)(a)(iii) and (d)(i) of the Act shall apply to indictments in respect of which paragraph (1) makes provision.

(3) Section 287(2B)(4) of the 1995 Act applies in respect of indictments raised in the name of the Solicitor General prior to 13th December 2010 in proceedings which have not concluded as at that date in the same way as it applies to indictments raised at the instance of the Solicitor General after that date.

(4) The reference to section 287(2B) in section 287(4)(a)(5) of the 1995 Act must in cases, in respect of which paragraph (3) applies, be construed accordingly.

Transitional provision – section 99 (closure of premises associated with human exploitation etc.)

6. The amendments made to the Antisocial Behaviour etc. (Scotland) Act 2004(6) by virtue of section 99 of the Act, insofar as they relate to cases involving exploitation offences, have effect only in respect of those cases in which a senior police officer(7) has reasonable grounds for believing, or as the case may be a sheriff is satisfied, that—

- (a) an exploitation offence is being committed, or has been committed in the premises; or
- (b) the premises are being used, or have been used for, or in connection with, the commission of such an offence,

on or after 13th December 2010.

Transitional provision – section 113 (compensation for miscarriages of justice)

7.—(1) Paragraphs (2) and (3) apply in the case of compensation under section 133(1) of the 1988 Act to a person in respect of whom—

- (a) a conviction has been reversed or pardoned before 13th December 2010; and
- (b) no application for compensation has been made to the Scottish Ministers under section 133(2) of the 1988 Act in respect of that conviction before that date.

(2) The period referred to in section 133(2AA)(8) of the 1988 Act is to be the period of 3 years starting with the date of commencement of section 113 of the Act.

(4) Section 287(2B) was inserted by section 60(4)(c) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the Act”).

(5) Section 287(4)(a) was amended by section 60(4)(d)(ii) of the Act.

(6) 2004 asp 8.

(7) “Senior police officer” is defined in section 19(1) of the Antisocial Behaviour etc. (Scotland) Act 2004.

(8) Section 133(2AA) was inserted by section 113(1)(b) of the Act.

(3) The reference in section 133(2AB)(9) of the 1988 Act to “that time limit” is to be the period specified in paragraph (2).

Transitional provision – section 185 (duration of licences)

8. Notwithstanding the commencement of section 185 of the Act, where a provisional premises licence has been issued under section 45 of the 2005 Act before 13th December 2010 and the provisional period has not expired by that date, the provisional period for such a licence under section 45(6) of the 2005 Act is to be treated as being 4 years beginning on the date of issue of the licence.

St Andrew’s House,
Edinburgh
19th November 2010

KENNY MACASKILL
A member of the Scottish Executive

(9) Section 133(2AB) was inserted by section 113(1)(b) of the Act.