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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 426 (C. 44)**

**CRIMINAL LAW**

**The Criminal Justice (Scotland) Act 2016  
(Commencement No. 3 and Saving Provision) Order 2016**

<i>Made</i>	- - - -	<i>15th December 2016</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>19th December 2016</i>
<i>Coming into force</i>	- -	<i>17th January 2017</i>

The Scottish Ministers make the following Order in exercise of the powers conferred by section 117(2) and (3) of the Criminal Justice (Scotland) Act 2016<sup>(1)</sup>.

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Criminal Justice (Scotland) Act 2016 (Commencement No. 3 and Saving Provision) Order 2016 and comes into force on 17th January 2017.

(2) In this Order—

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup>; and

“the 2016 Act” means the Criminal Justice (Scotland) Act 2016.

**Appointed day**

**2.** 17th January 2017 is the day appointed for the coming into force of the provisions of the 2016 Act specified in column 1 of the table in the schedule (the subject matter of which is described in column 2 of that table).

**Saving provision – judicial examination**

**3.** Despite their repeal by section 78 of the 2016 Act, the following provisions of the 1995 Act have effect on and after 17th January 2017 (“the appointed day”) as they had effect immediately before that date—

- (a) sections 36(10) and (11) and 37, but only in relation to any examination, or further examination, occurring before the appointed day;

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(1) 2016 asp 1.

(2) 1995 c.46.

- (b) section 38, but only in relation to any transcript served on the accused under section 37(6)(a) of the 1995 Act in relation to any examination, or further examination, occurring before the appointed day;
- (c) section 68(1), but only in relation to a record made under section 37 of the 1995 Act in relation to any examination, or further examination, occurring before the appointed day;
- (d) section 79(2)(b)(iii), but only in relation to an application under section 278(2) of the 1995 Act in respect of a record made under section 37 of that Act in relation to any examination, or further examination, occurring before the appointed day; and
- (e) section 278, but only in relation to a record made under section 37 of the 1995 Act in relation to any examination, or further examination, occurring before the appointed day.

St Andrew's House,  
Edinburgh  
15th December 2016

*MICHAEL MATHESON*  
A member of the Scottish Government

## SCHEDULE

## Article 2

<i>Column 1</i>	<i>Column 2</i>
<b><i>Provisions of the 2016 Act</i></b>	<b><i>Subject matter</i></b>
Section 60	Power to modify application of Part 1
Section 61	Further provision about vulnerable persons
Section 62	Meaning of constable
Section 63	Meaning of officially accused
Section 64	Meaning of police custody
Section 78	Proceedings on petition
Section 82	Preliminary hearings
Section 83	Plea of guilty
Section 87	Preliminary pleas in summary cases
Section 88	Preliminary diets in solemn cases
Section 89	Extending certain time limits: summary
Section 90	Extending certain time limits: solemn
Section 91	Certain lateness not excusable
Section 92	Advocation in solemn proceedings
Section 93	Advocation in summary proceedings
Section 94	Finality of appeal proceedings
Section 95	Courts reform: spent provisions
Section 96	References by SCCRC
Section 98	Meaning of appropriate adult support
Section 99	Responsibility for ensuring availability of appropriate adult support
Section 100	Assessment of quality of appropriate adult support
Section 101	Training for appropriate adults
Section 104	Elaboration of regulation making powers under Chapter
Section 105	Procedure for making regulations under Chapter
Section 106	Other powers of Ministers unaffected
Section 110(2)(a)	Live television links: related repeals
Section 111(1)	Electronic proceedings: court rules

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force various provisions of the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”).

Article 2 brings into force, on 17th January 2017, the provisions of the 2016 Act specified in the schedule of the Order.

Sections 60 to 64 of the 2016 Act make provision in relation to arrest and custody.

Sections 78, 82 and 83 of the 2016 Act make amendments to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) in relation to solemn procedure.

Sections 87 to 96 of the 2016 Act make amendments to the 1995 Act in relation to appeals and references to the High Court by the Scottish Criminal Cases Review Commission.

Sections 98 to 101 and sections 104 to 106 of the 2016 Act make provision in relation to appropriate adult support for vulnerable persons.

Sections 110(2)(a) and 111(1) of the 2016 Act make provision in relation to, respectively, an appellant’s appearance at certain diets and the power of the High Court to make rules in relation to electronic proceedings.

Article 3 makes saving provision to continue the effect of certain provisions of the 1995 Act repealed by section 78 of the 2016 Act in relation to examinations occurring before 17th January 2017 (“the appointed day”).

Paragraph (a) of that article continues the effect of section 36(10) of the 1995 Act so as to ensure that where an ostensible defence is disclosed in the course of an examination, or further examination, occurring before the appointed day, the prosecutor is required to secure the investigation of that defence so far as is reasonably practical. That paragraph also continues the effect of section 36(11) of the 1995 Act, so that the duty to investigate a defence under section 36(10) continues not to apply where that defence is not capable of being investigated. Finally, paragraph (a) continues the effect of section 37 of the 1995 Act in respect of an examination, or further examination, occurring before the appointed day so as to ensure that the records of such an examination continue to be prepared in accordance with that section.

Paragraph (b) of article 3 continues the effect of section 38 of the 1995 Act so as to ensure that any verbatim transcript of an examination, or further examination, occurring before the appointed day which is served on the accused under section 37(6)(a) of the 1995 Act may be rectified in accordance with section 38.

Paragraph (c) of article 3 continues the effect of section 68(1) of the 1995 Act in relation to a record made under section 37 in respect of an examination, or further examination, occurring before the appointed day. This ensures that a list of productions with an indictment must continue to include such a record.

Finally, paragraphs (d) and (e) make provision about the leading as evidence of a record made under section 37 of the 1995 Act in relation to an examination, or further examination, occurring before the appointed day. Paragraph (e) continues the effect of section 278 of the 1995 Act so as to ensure that such a record may be received in evidence without being sworn to by witnesses, subject to any application under section 278(2) to have that record excluded from evidence. Paragraph (d) continues the effect of section 79(2)(b)(iii) of the 1995 Act so as to ensure that an application under

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section 278(2) continues to be a preliminary issue in proceedings of which notice requires to be given under section 79(1) of the 1995 Act.

The Bill for the 2016 Act received Royal Assent on 13th January 2016. Sections 71, 73 to 77 and 115 to 118 came into force on the following day.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the 2016 Act have been brought into force by commencement orders made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>Instrument. No.</i>
Section 84	10th March 2016	<a href="#">S.S.I. 2016/95</a>
Section 112	1st July 2016	<a href="#">S.S.I. 2016/199</a>