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Article 3 makes saving provision to continue the effect of certain provisions of the 1995 Act repealed by section 78 of the 2016 Act in relation to examinations occurring before 17th January 2017 (“the appointed day”).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