

Changes to legislation: *Crime and Punishment (Scotland) Act 1997, Paragraph 21 is up to date with all changes known to be in force on or before 28 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

SCHEDULE 1

MINOR AND CONSEQUENTIAL AMENDMENTS

Extent Information

E1 Sch. 1: amendments/repeals are coextensive with the enactments they affect see s. 65(7).

The Criminal Procedure (Scotland) Act 1995 (c.46.)

Commencement Information

II Sch. 1 para. 21 partly in force; Sch. 1 para. 21 not in force at Royal Assent see s. 65(2); Sch. 1 para. 21(1)(2)(4)(9)–(15)(17)(19)–(22)(30)(32)(34)(b) in force at 1.8.1997 by S.I. 1997/1712, art. 3, Sch. (with arts. 4, 5); Sch. 1 para. 21(33)(a) in force at 20.10.1997 by S.I. 1997/2323, art. 3, Sch. 1; Sch. 1 para. 21(23)(25)(31) in force for certain purposes at 20.10.1997 by S.I. 1997/2323, art. 3, Sch.; Sch. 1 para. 21(5)(8)(35) in force at 1.1.1998 by S.I. 1997/2323, art. 4, Sch. 2; Sch. 1 para. 21(16)(18)(26)(33)(b)(34)(a) in force at 1.4.1999 by S.I. 1999/652, art. 2, Sch. (with art. 3)

- 21 (1) The 1995 Act shall be amended as follows.
- (2) In section 15 (rights of persons arrested or detained), in subsection (6)(b), for the words “actual custody” there shall be substituted the word “care”.
- ^{F1}(3)
- (4) In section 46 (presumption and determination of age of child)—
- (a) in subsection (1), after the word “offence” there shall be inserted the words “, whose age is not specified in the indictment or complaint in relation to that offence, ”;
- (b) in subsection (3) at the beginning there shall be inserted the words “ Without prejudice to section 255A of this Act, ”.
- (5) In section 53 (power to make interim hospital order)—
- (a) in subsection (1), after the word “way” there shall be inserted the words “, including imposing a sentence of imprisonment and making a hospital direction, ”;
- (b) in subsection (3), for the words “28” there shall be substituted the word “ 7 ”;
- (c) in subsection (4), after the word “not” there shall be inserted the words “ at that time ”;
- (d) in subsection (5), for the words “28” there shall be substituted the word “ 7 ”;
- (e) after subsection (5), there shall be inserted the following subsection—

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- “(5A) Subsections (1) and (4) of section 60 of the ^{M1}Mental Health (Scotland) Act 1984 shall apply to an interim hospital order as they apply to a hospital order.”; and
- (f) in subsection (6), after the word “way” there shall be inserted the words “, including imposing a sentence of imprisonment and making a hospital direction ”.
- (6) In section 58 (hospital orders)—
- (a) in subsection (4), for the words “28” there shall be substituted the word “7 ”; and
- (b) in subsection (9), for the words “28” there shall be substituted the word “7 ”.
- (7) In section 62(6)(b) (disposal in appeals by accused in cases involving insanity), for the words “or order” there shall be substituted the words “, order or other disposal ”.
- (8) In section 63 (appeals by prosecutor in cases involving insanity)—
- (a) in subsection (1), paragraph (d) shall cease to have effect;
- (b) in subsection (2)(b)(ii), the words “or (d)” shall cease to have effect; and
- (c) in subsection (5)(b)—
- (i) for the words “or order”, in the first place where they occur, there shall be substituted the words “ order or disposal ”; and
- (ii) for the words “or order”, in the second place where they occur, there shall be substituted the words “ or acquittal ”.
- (9) In section 65 (prevention of delay), after subsection (3) there shall be inserted the following subsection—
- “(3A) An application under subsection (3) shall not be made at any time when an appeal made with leave under section 74(1) of this Act has not been disposed of by the High Court.”.
- (10) In section 74(4) (disposal of appeals in connection with preliminary diets)—
- (a) the word “and” after paragraph (a) shall cease to have effect; and
- (b) after paragraph (b) there shall be inserted the following words “; and
- (c) may on cause shown extend the period mentioned in section 65(1) of this Act.”.
- (11) In section 81(6) (list of jurors where trial does not take place)—
- (a) the word “, signed” shall cease to have effect; and
- (b) for the words “85(1) and (2)” there shall be substituted the words “ 85(2) ”.
- (12) In section 83 (transfer of sheriff court solemn proceedings)—
- (a) in subsection (1), for the words “transfer the case to a sheriff court” there shall be substituted the words “ adjourn the trial and transfer it to a sitting of a sheriff court, appointed as mentioned in section 66(1) of this Act, ”;
- (b) in subsection (2)—
- (i) before the word “make” there shall be inserted the words “ adjourn the trial and ”; and
- (ii) for the word “case” there shall be substituted the word “ trial as mentioned in subsection (1) above ”; and
- (c) after subsection (2), there shall be inserted the following subsection—

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“(3) Where a warrant to cite any person to attend a sitting of the sheriff court has been issued by the sheriff clerk under section 66(1) of this Act and the trial has been adjourned and transferred by an order under subsection (2) above, the warrant shall have effect as if the trial diet had originally been fixed for the court, and the date of the sitting of that court, to which the trial is so transferred.”.

- (13) In section 103 (appeal sittings)—
- (a) in subsection (3), for the words “subsection (1)” there shall be substituted the words “ subsection (2) ”;
 - (b) in subsection (4), for the words “and (2)” there shall be substituted the words “ to (3) ”; and
 - (c) in subsection (7), after the words “subsection (5)” there shall be inserted the words “ and (6) ”.
- (14) In subsection (1)(b) of section 104 (power of High Court in appeals) the word “additional” shall cease to have effect.
- (15) In section 107(4) (application where leave to appeal refused), for the words “subsection (7)” there shall be substituted the words “ subsection (10) ”.
- (16) In section 113(2)(c) (recipients of copy of judge’s report) for the words “section 124(3) of this Act, to the Secretary of State” there shall be substituted the words “ Part XA of this Act, to the Commission ”.
- (17) In section 118 (disposal of appeals)—
- (a) in subsection (4)(b), the word “additional” shall cease to have effect; and
 - (b) after subsection (8) there shall be inserted the following subsection—

“(9) The High Court may give its reasons for the disposal of any appeal in writing without giving those reasons orally.”.
- (18) In section 124 (finality of proceedings and Secretary of State’s reference)—
- (a) in subsection (1), after “this Part” there shall be inserted the words “ or Part XA ”;
 - (b) in subsection (2), for the words “subsection (3) below” there shall be substituted the words “ Part XA of this Act ”; and
 - (c) subsections (3) to (5) shall cease to have effect.
- (19) In section 141 (manner of citation)—
- (a) in subsection (3)—
 - (i) the words “signed by the prosecutor and” shall cease to have effect;
 - (ii) in paragraph (a), after the word “accused,” there shall be inserted the words “ signed by the prosecutor and ”; and
 - (iii) in paragraph (b), after the word “sent” there shall be inserted the words “ by or on behalf of the prosecutor ”; and
 - (b) , after subsection (5) there shall be inserted the following subsection—

“(5A) The citation of a witness to a sitting or diet or adjourned sitting or diet as mentioned in subsection (1) above shall be effective if it is sent by the accused’s solicitor by ordinary post to the dwelling house or place of business of the witness or, if he has no known dwelling

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house or place of business, to any other place in which he may be resident at the time.”.

- (20) In section 179(2) (stated case: adjustment and signature) the word “additional” shall cease to have effect.
- (21) In subsection (5)(b) of section 182 (stated case: hearing of appeal) the word “additional” shall cease to have effect.
- (22) In subsection (1)(b) of section 189 (disposal of appeal against sentence) the word “additional” shall cease to have effect.
- (23) In section 199 (power to mitigate penalties), in subsection (3) after paragraph (b) there shall be inserted the following paragraph—

“; or

(c) to any proceedings in which the court on conviction is under a duty to impose a sentence under section 205A(2) or 205B(2) of this Act.”.

- (24) In section 202(1) (deferral of sentence) at the beginning there shall be inserted the words “ Subject to section 205A of this Act, ”.
- (25) In section 207(2) (detention of young offenders)—
 - (a) for the words “section 205(2) and (3)” there shall be substituted the words “ sections 205(2) and (3), 205A(2)(b) and 205B(2)(b) ”; and
 - (b) for the word “exceed” there shall be substituted the words “ be less than the minimum nor more than ”.

- (26) In section 209 (supervised release orders), after subsection (7) there shall be inserted the following subsection—

“(7A) Where a person—

- (a) is serving a sentence of imprisonment and on his release from that sentence will be subject to a supervised release order; and
- (b) is sentenced to a further term of imprisonment, whether that term is to run consecutively or concurrently with the sentence mentioned in paragraph (a) above,

the relevant period for any supervised release order made in relation to him shall begin on the date when he is released from those terms of imprisonment; and where there is more than one such order he shall on his release be subject to whichever of them is for the longer or, as the case may be, the longest period.”.

F2(27)

F2(28)

F2(29)

- (30) In section 234A (non-harassment orders), subsection (5) shall cease to have effect.
- (31) In section 246(1) (admonition), at the beginning, there shall be inserted the words “ Subject to sections 205A and 205B of this Act, ”.
- (32) In section 280 (routine evidence), in subsection (6)(b), for the words “the accused” there shall be substituted the word “ he ”.

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- (33) In section 298 (trial judge’s report)—
- (a) in subsection (1)(a), after the words “108” there shall be inserted the words “, 108A ”; and
 - (b) in subsection (2), for the words “section 124(3) of this Act, the Secretary of State” there shall be substituted the words “ Part XA of this Act, the Commission ”.
- (34) In section 307(1) (interpretation)—
- (a) after the definition of “Clerk of Justiciary” insert—
““the Commission” has the meaning given by section 194A(1) of this Act;”; and
 - (b) after paragraph (a) of the definition of “hospital”, there shall be inserted the following paragraph—
“any hospital managed by a National Health Service Trust established under section 12A of that Act;”.
- (35) In Schedule 4 (supervision and treatment orders)—
- (a) in paragraph 3(3), after the word “officer;” there shall be inserted the following sub-paragraph—
“(bb) the medical practitioner by whom or under whose supervision the supervised person is to be treated under the order;”;
 - (b) in paragraph 10(1), after the word “officer” there shall be inserted the words “ and to the medical practitioner by whom or under whose supervision the supervised person was treated under the supervision and treatment order ”;
 - (c) in paragraph 11(1)(a), after the word “officer” there shall be inserted the words “ and to the medical practitioner by whom or under whose supervision the supervised person has been treated under the supervision and treatment order ”.

Textual Amendments

- F1** Sch. 1 para. 21(3) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 141(1)(a), **Sch. 10**; S.I. 1998/2327, **art. 2(1)(y)(aa)(2)(pp)(3)(y)**
- F2** Sch. 1 para. 21(27)-(29) repealed (13.12.2010) by **Criminal Justice and Licensing (Scotland) Act 2010** (asp 13), s. 206(1), **Sch. 2 para. 41(b)**; S.S.I. 2010/413, art. 2, Sch. (with art. 3(1))

Marginal Citations

- M1** 1984 c.36.

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Changes and effects yet to be applied to :

- Sch. 1 para. 21(29) words substituted by [2003 asp 7 sch. 4 para. 4](#)