

*Order made by the Scottish Ministers, laid before the Scottish Parliament under section 14(5)(b) of the Convention Rights (Compliance) (Scotland) Act 2001 for approval by resolution of the Scottish Parliament within 120 days beginning with 9th September 2015, being the date on which the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015 was made, not taking into account periods of dissolution or recess for more than 4 days.*

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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 423**

**POLICE  
CHILDREN AND YOUNG PERSONS  
PROTECTION OF VULNERABLE ADULTS**

The Police Act 1997 and the Protection of Vulnerable  
Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015

Made - - - - 10th December 2015

Coming into force - - 8th February 2016

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) and 14(5)(a) of the Convention Rights (Compliance) (Scotland) Act 2001<sup>(1)</sup> (“the 2001 Act”) and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this Order to be necessary or expedient in consequence of the provisions in the Police Act 1997<sup>(2)</sup> and the Protection of Vulnerable Groups (Scotland) Act 2007<sup>(3)</sup> in relation to disclosure of spent criminal convictions and other related matters which may be incompatible with Convention rights<sup>(4)</sup>.

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 14(2) of the 2001 Act the Scottish Ministers gave such public notice as they considered appropriate of the contents of the Police Act 1997 and the Protection of Vulnerable

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(1) 2001 asp 7.

(2) 1997 c.50. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(3) 2007 asp 14.

(4) The “Convention rights” has the meaning given by section 1 of the Human Rights Act 1998 (c.42). In the case of *R (on the application of T and another) v Secretary of State for the Home Department and another* [2014] UKSC 35 (judgment of 18th June 2014), the Supreme Court made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions of sections 113A and 113B of the Police Act 1997 (as applicable in England and Wales) were incompatible with article 8 of the Convention because the requirements in relation to blanket disclosure of all spent convictions were not in accordance with the law. Similar provisions in sections 113A and 113B of the Police Act 1997 (as applicable in Scotland) may be incompatible with article 8 of the Convention. Section 49(1)(a) of the Protection of Vulnerable Groups (Scotland) Act 2007 relies on section 113A(3)(a) of the Police Act 1997 and may also be incompatible with article 8 of the Convention.

Groups (Scotland) Act 2007 Remedial Order 2015 and invited persons wishing to make observations on the Order to do so.

In accordance with section 14(4) of the 2001 Act as soon as practicable after the end of the period mentioned in section 14(2)(a) of the 2001 Act, they laid before the Scottish Parliament a statement summarising all the observations to which they had had regard under section 14(3) of the 2001 Act and specifying the modifications which they consider it appropriate to make to the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015.

### **Citation and commencement**

1.—(1) This Order may be cited as the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No. 2) Order 2015.

(2) This Order comes into force on 8th February 2016.

### **Interpretation<sup>2</sup>**

2. In this Order—

“the 1997 Act” means the Police Act 1997;

“the 2007 Act” means the Protection of Vulnerable Groups (Scotland) Act 2007; and

“the relevant date” means 8th February 2016.

### *Amendment of the 1997 Act*

### **Amendment of the 1997 Act**

3.—(1) The 1997 Act is amended as follows.

(2) In section 113A (criminal record certificates)<sup>(5)</sup>—

(a) after subsection (3) insert—

“(3A) But a criminal record certificate must not give the details of a relevant matter if—

(a) those details were excluded from another criminal record certificate by virtue of an order under section 116ZB(9)(b), and

(b) it appears to the Scottish Ministers that the application under subsection (1) is made for the same purpose for which the application for the other certificate was made.”;

(b) subsection (4) is repealed; and

(c) in subsection (6)—

(i) after the definition of “central records” insert—

““conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974<sup>(6)</sup>, including a spent conviction.”;

(ii) in the definition of “relevant matter” for paragraphs (a) and (b) substitute—

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(5) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and has been relevantly amended by sections 78(2) and 79(1) of, and paragraph 28 of schedule 4 to, the Protection of Vulnerable Groups (Scotland) Act 2007.

(6) 1974 c.53.

- “(a) a conviction which is not a protected conviction,
      - (b) a caution which is not spent by virtue of schedule 3 of the Rehabilitation of Offenders Act 1974(7), and”.
- (3) In section 113B (enhanced criminal record certificates)(8)—
  - (a) after subsection (3) insert—
    - “(3A) But an enhanced criminal record certificate must not give the details of a relevant matter if—
      - (a) those details were excluded from another enhanced criminal record certificate by virtue of an order under section 116ZB(9)(b), and
      - (b) it appears to the Scottish Ministers that the application under subsection (1) is made for the same purpose for which the application for the other certificate was made.”;
  - (b) in subsection (4)—
    - (i) the words “, in the chief officer’s opinion” are repealed;
    - (ii) for paragraphs (a) and (b) substitute—
      - “(a) the chief officer reasonably believes to be relevant for the purpose described in the statement under subsection (2), and
      - (b) in the chief officer’s opinion, ought to be included in the certificate.”;
  - (c) subsection (5) is repealed;
  - (d) in subsection (5A)(9) the words “or (5)” are repealed; and
  - (e) subsection (6) is repealed.
- (4) After section 116 (enhanced criminal record certificates: judicial appointments and Crown employment) insert—

**“Copies of criminal record certificate or enhanced criminal record certificate**

**116ZA.**—(1) Subsection (2) applies where—

- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate, and
- (b) the certificate does not include details of a conviction for an offence listed in schedule 8B which is—
  - (i) a spent conviction, but
  - (ii) not a protected conviction.

(2) The Scottish Ministers must send a copy of the certificate to the relevant person at the same time as they issue the certificate.

(3) Subsections (4) and (5) apply where—

- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate to an individual, and

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(7) Schedule 3 was inserted by section 109(4) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”). Caution is an alternative to prosecution by virtue of section 8B(1)(f) of the Rehabilitation of Offenders Act 1974; section 8B was inserted by section 109(2) of the 2010 Act.

(8) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and has been relevantly amended by sections 79(1) and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) and by section 108(2) of the 2010 Act.

(9) Subsection (5A) was inserted by section 80 of the 2007 Act.

- (b) the certificate includes details of a conviction for an offence listed in schedule 8B which is—
  - (i) a spent conviction, but
  - (ii) not a protected conviction.
- (4) Where—
  - (a) the individual notifies the Scottish Ministers before the end of the period mentioned in section 116ZB(3)(a) that the individual does not intend to make an application under section 116ZB(2), or
  - (b) that period expires without the individual having notified the Scottish Ministers that the individual does intend to make such an application

the Scottish Ministers must send a copy of the certificate to the relevant person as soon as possible after receiving the notification or, as the case may be, the expiry of that period.

(5) The Scottish Ministers must not send a copy of the certificate to the relevant person if the individual notifies the Scottish Ministers before the end of the period mentioned in section 116ZB(3)(a) that the individual intends to make an application under section 116ZB(2).

- (6) In this section, “relevant person” means—
  - (a) in relation to a criminal record certificate issued under section 113A(1) or an enhanced criminal record certificate issued under section 113B(1), the person who countersigned the application for the certificate under section 113A(2)(a) or, as the case may be, 113B(2)(a),
  - (b) in relation to a criminal record certificate issued under section 114(1) or an enhanced criminal record certificate issued under section 116(1), the person who made the statement in relation to the certificate under section 114(2) or, as the case may be, 116(2).

#### **Application for an order for a new criminal record certificate or enhanced criminal record certificate**

- 116ZB.**—(1) This section applies where—
- (a) the Scottish Ministers issue a criminal record certificate or an enhanced criminal record certificate to an individual, and
  - (b) the certificate includes details of a conviction for an offence listed in schedule 8B which is—
    - (i) a spent conviction, but
    - (ii) not a protected conviction.
- (2) The individual may apply to the sheriff for an order requiring the Scottish Ministers to issue a new certificate that does not include those details.
- (3) An application under subsection (2)—
- (a) may only be made if the individual, before the end of the period of 10 working days beginning with the date of the issue of the certificate, notifies the Scottish Ministers of an intention to make the application, and
  - (b) must be made before the end of the period of 3 months beginning with the date on which that notification is given.
- (4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).

- (5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (6) In determining an application under subsection (2) the sheriff must—
- (a) if satisfied that the details are not relevant to the purpose for which the certificate was required, allow the application,
  - (b) otherwise, refuse the application.
- (7) The sheriff may allow the application in part where it relates to details in relation to two or more convictions.
- (8) The decision of the sheriff on an application is final.
- (9) Where the sheriff allows the application, the sheriff must order the Scottish Ministers—
- (a) to issue a new certificate to the individual as if the individual had made the application for the certificate under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1) on the date on which the sheriff makes the order,
  - (b) to exclude from that certificate the details which the sheriff is satisfied are not relevant.
- (10) Where the sheriff refuses the application—
- (a) the Scottish Ministers must issue a new certificate to the individual as if the individual had made the application for the certificate under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1) on the date on which the sheriff makes the order,
  - (b) the individual may not make an application under subsection (2) in relation to the details of the conviction in connection with the new certificate (or any subsequent certificate issued in relation to the original certificate application).
- (11) In subsection (10)(b), the “original certificate application” is the application for the certificate mentioned in subsection (1)(a).
- (12) Sections 116ZA and 117 apply to a new certificate issued under subsection (9) or (10) (a) as if the certificate had been issued under section 113A(1), 113B(1), 114(1) or, as the case may be, 116(1).”.
- (5) In section 117 (disputes about accuracy of certificates)(10)—
- (a) for subsection (4) substitute—

“(4) The Scottish Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether—

    - (a) the chief officer still reasonably believes that information to be relevant for the purpose in respect of which it was requested, and
    - (b) in the chief officer’s opinion, that information still ought to be included in the certificate.”; and
  - (b) after subsection (4) insert—

“(5) This section does not apply to any information which could be the subject of an application under section 116ZB(2).”.
- (6) In section 126(1) (interpretation of Part V) after the definition of “prescribed” insert—

““protected conviction” is to be construed in accordance with section 126ZA.”.
- (7) After section 126 insert—

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(10) Subsections (3) and (4) of section 117 were inserted by paragraph 33 of schedule 4 to the Protection of Vulnerable Groups (Scotland) Act 2007.

**“Protected convictions**

**126ZA.**—(1) For the purposes of this Part a conviction is a protected conviction if—

- (a) it is a spent conviction, and
- (b) either—
  - (i) it is not a conviction for an offence listed in schedule 8A or 8B, or
  - (ii) it is a conviction for an offence listed in schedule 8B and at least one of the conditions specified in subsection (2) is satisfied.

(2) The conditions are—

- (a) the disposal in respect of the conviction was an admonition or an absolute discharge,
- (b) the person was aged under 18 on the date of conviction and at least 7 years and 6 months have passed since the date of the conviction,
- (c) the person was aged 18 or over on the date of conviction and at least 15 years have passed since the date of the conviction.

(3) In subsection (2)(a), the reference to an absolute discharge includes a reference to the discharge of the referral of a child’s case to a children’s hearing under—

- (a) section 69(1)(b) and (12) of the Children (Scotland) Act 1995<sup>(11)</sup>, or
- (b) section 91(3)(b), 93(2)(b), 108(3)(b), or 119(3)(b) of the Children’s Hearings (Scotland) Act 2011<sup>(12)</sup>.

**Offences in schedules 8A and 8B**

**126ZB.**—(1) The Scottish Ministers may by regulations modify schedule 8A or 8B.

(2) Regulations under subsection (1) are subject to the affirmative procedure.”.

(8) After Schedule 8 (the Police Information Technology Organisation)<sup>(13)</sup> insert—

“SCHEDULE 8A

OFFENCES WHICH MUST ALWAYS BE DISCLOSED

*Common law offences*

1. Abduction.
2. Abortion.
3. Assault to the danger of life.
4. Assault to severe injury.
5. Assault with intent to rape or ravish.
6. Assault with intent to commit the statutory offence of rape.
7. Bestiality.
8. Cruel and unnatural treatment of persons.
9. Culpable homicide.

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<sup>(11)</sup> 1995 c.36. Section 69 was repealed by paragraph 1 of schedule 6 to the Children’s Hearings (Scotland) Act 2011 (asp 1).

<sup>(12)</sup> 2011 asp 1.

<sup>(13)</sup> Schedule 8 was repealed by Part 1(A) of Schedule 15 to the Police and Justice Act 2006 (c.48).

10. Drugging.
11. Extortion.
12. Hamesucken.
13. Hijacking.
14. Piracy.
15. Plagium.
16. Reset of plagium.
17. Treason.
18. Uttering threats.

### *Statutory offences*

#### **Armed forces**

19. An offence under section 42 of the Armed Forces Act 2006<sup>(14)</sup> (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this schedule.

#### **Aviation and maritime**

20. An offence under the Piracy Act 1837<sup>(15)</sup>.
21. An offence under any of the following provisions of the Aviation Security Act 1982<sup>(16)</sup>—
- (a) section 1 (hijacking);
  - (b) section 2 (destroying, damaging or endangering safety of aircraft);
  - (c) section 3 (other acts endangering or likely to endanger safety of aircraft); and
  - (d) section 4 (offences in relation to certain dangerous articles).
22. An offence under section 9 of the Aviation and Maritime Security Act 1990<sup>(17)</sup> (hijacking of ships).
23. An offence under article 241 of the Air Navigation Order 2009<sup>(18)</sup> in respect of a contravention of article 137 of that Order (endangering safety of aircraft).

#### **Children**

24. An offence under section 12 of the Children and Young Persons (Scotland) Act 1937<sup>(19)</sup> (cruelty to persons under 16).

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<sup>(14)</sup> 2006 c.52.

<sup>(15)</sup> 1837 c.88. The Act was relevantly amended by the Statute Law Revision (No. 2) Act 1890 (c.51).

<sup>(16)</sup> 1982 c.36.

<sup>(17)</sup> 1990 c.31.

<sup>(18)</sup> S.I. 2009/3015. Article 241 was amended by S.I. 2012/1751 and S.I. 2014/3302.

<sup>(19)</sup> 1937 c.37. Section 12 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289B; the Children Act 1975 (c.72), Schedule 4; the Criminal Justice Act 1988 (c.33), section 45; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 7; the Criminal Justice (Scotland) Act 2003 (asp 7), section 51(5) and S.I. 1951/1974.

## Explosives

25. An offence under the Explosive Substances Act 1883(20).

## Firearms and other weapons

26. An offence under any of the following provisions of the Firearms Act 1968(21)—

- (a) section 4 (conversion of weapons)(22);
- (b) section 5 (weapons subject to a general prohibition)(23);
- (c) section 16 (possession of firearm with intent to injure);
- (d) section 16A(24) (possession of firearm with intent to cause fear or violence);
- (e) section 17(25) (use of firearm to resist arrest);
- (f) section 18 (carrying firearm with criminal intent);
- (g) section 19(26) (carrying firearm in a public place);
- (h) section 20(27) (trespassing with firearm);
- (i) section 21(28) (possession of firearm by persons previously convicted of crime);
- (j) section 24(29) (supplying firearms to minors);
- (k) section 25 (supplying firearm to person drunk or insane);
- (l) section 28A(7)(30) (certificates: supplementary);
- (m) section 29(31) (variation of firearm certificates);
- (n) section 30D(3) (revocation of certificates: supplementary)(32);
- (o) section 39(33) (offences in connection with registration);
- (p) section 40(34) (compulsory register of transactions in firearms);

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- (20) 1883 c.3. The Act was relevantly amended as follows. Section 2 was substituted by the Criminal Jurisdiction Act 1975 (c.59) (“the 1975 Act”), section 7 and extended by the Internationally Protected Persons Act 1978 (c.17), section 1; the Aviation Security Act 1982 (c.36), section 6(1); the United Nations Personnel Act 1997 (c.13), section 1; and the Terrorism Act 2000 (c.11) (“the 2000 Act”), section 62. Section 3 was substituted by the 1975 Act, section 7, extended by the 2000 Act, section 62 and amended by the Criminal Law Act 1977 (c.45), Schedule 12 and the Terrorism Act 2006 (c.11), section 17. Section 4 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 221 and by the Criminal Justice and Courts Act 2015 (c.2), section 1. Section 5 was extended by the 2000 Act, section 62.
- (21) 1968 c.27.
- (22) Section 4 was amended by the Firearms (Amendment) Act 1988 (c.45), section 23(1).
- (23) Section 5 was amended by the Firearms (Amendment) Act 1988 (c.45), section 1(2); the Firearms (Amendment) Act 1997 (c.5), sections 1 and 9 and Schedule 3; the Firearms (Amendment) (No. 2) Act 1997 (c.64), Schedule 1; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), sections 108 and 109 and by S.I. 1968/1200 and S.I. 1992/2823.
- (24) Section 16A was inserted by the Firearms (Amendment) Act 1994 (c.31) (“the 1994 Act”), section 1.
- (25) Section 17 was amended by the Theft Act 1968 (c.60), Schedule 3.
- (26) Section 19 was inserted by Anti-social Behaviour Act 2003 (c.38), section 37.
- (27) Section 20 was amended by the 1994 Act, section 2.
- (28) Section 21 was amended by the Criminal Justice Act 1972 (c.71), sections 29 and 66(7)(a), the Criminal Justice Act 1982 (c.48), Schedule 14, paragraph 24, the Criminal Justice Act 1988 (c.33), Schedule 8, paragraphs 6 and 16 and Schedule 16, the Criminal Justice and Public Order Act 1994 (c.33), Schedule 10, paragraph 24(2), the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 14, the Criminal Justice Act 2003 (c.44), Schedule 32, Part 1, paragraph 12, the Criminal Justice and Immigration Act 2008 (c.4), Schedule 4, Part 1, paragraph 6, the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) and by S.I. 2014/2522.
- (29) Section 24 was amended by the Firearms (Amendment) Act 1988 (c.45) (“the 1988 Act”), section 23(4), the Anti-social Behaviour Act 2003 (c.38), section 38(4)(b) and the Violent Crime Reduction Act 2006 (c.38) (“the 2006 Act”), section 33(5) and by S.I. 2010/1759.
- (30) Section 28A was inserted by the Firearms (Amendment) Act 1997 (c.5) (“the 1997 Act”), Schedule 2, paragraph 4(1).
- (31) Section 29 was amended by the 1997 Act Schedule 2, paragraph 2(2).
- (32) Section 30D was inserted by the 1997 Act, section 40.
- (33) Section 39 was amended by the 1997 Act, Schedule 2, paragraph 2(3).
- (34) Section 40 was amended by the 1988 Act, sections 13(4) and 23(3), the 1997 Act, Schedule 2, paragraph 8 and the 2006 Act, Schedule 5.



- (q) section 46(5) (power of search with warrant);
- (r) section 47 (powers of constables to stop and search); and
- (s) section 48 (production of certificates).

27. An offence under the Chemical Weapons Act 1996(35).

#### **Forced marriage**

28. An offence under section 122 of the Anti-social Behaviour, Crime and Policing Act 2014 (offence of forced marriage: Scotland)(36).

#### **Human trafficking and exploitation**

29. An offence under section 22 of the Criminal Justice (Scotland) Act 2003(37) (traffic in prostitution etc.).

30. An offence under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(38) (trafficking people for exploitation).

31. An offence under section 47 of the Criminal Justice and Licensing (Scotland) Act 2010(39) (slavery, servitude and forced or compulsory labour).

32. An offence under the Prohibition of Female Genital Mutilation (Scotland) Act 2005(40).

#### **Medical professions etc.**

33. An offence under section 10Z9 of the National Health Service (Scotland) Act 1978(41) (offences in relation to registration).

34. An offence under any of the following provisions of the Medical Act 1983(42)—

- (a) section 49 (penalty for pretending to be registered)(43); and
- (b) section 49A (penalty for pretending to hold a licence to practise)(44) .

35. An offence under article 38 (offences relating to the Register) of the Pharmacy Order 2010(45).

#### **Medicines**

36. An offence under any of the following provisions of the Medicines Act 1968(46)—

- (a) section 67(1A) and (1B) (offences under Part III)(47); and

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(35) 1996 c.6. The Act was relevantly amended as follows. Section 2 was amended by the Terrorism Act 2000 (c.11), section 62. Section 32 was extended by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 16.

(36) 2014 c.12.

(37) 2003 asp 7. Section 22 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 46.

(38) 2004 c.19. Section 4 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 46.

(39) 2010 asp 13.

(40) 2005 asp 8.

(41) 1978 c.29. Section 10Z9 was inserted by the Public Services Reform (Scotland) Act 2010 (asp 8), section 108.

(42) 1983 c.54.

(43) Section 49 was amended by the Statute Law (Repeals) Act 1993 (c.50), Schedule 1 and by S.I. 2007/3101.

(44) Section 49A was inserted by S.I. 2002/3135.

(45) S.I. 2010/231.

(46) 1968 c.67.

(47) Section 67(1A) and (1B) was inserted by the Health and Social Care Act 2001 (c.15), section 63(7)(a) and amended by S.I. 2012/1916.

(b) section 78 (restrictions on use of titles, descriptions and emblems)(48).

### **Official Secrets Acts**

37. An offence under the Official Secrets Act 1911(49).

### **Prostitution**

38. An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995(50)—

- (a) section 7(51) (procuring);
- (b) section 11(52) (trading in prostitution and brothel-keeping); and
- (c) section 12 (allowing child to be in brothel).

### **Road traffic**

39. An offence under any of the following provisions of the Road Traffic Act 1988(53)—

- (a) section 1(54) (causing death by dangerous driving);
- (b) section 3ZC(55) (causing death by driving: disqualified drivers); and
- (c) section 3A(56) (causing death by careless driving when under influence of drink or drugs).

### **Serious organised crime**

40. An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010(57)—

- (a) section 28 (involvement in serious organised crime);
- (b) section 30 (directing serious organised crime); and
- (c) section 31 (failure to report serious organised crime).

### **Sexual offences**

41. An offence under section 50(3) of the Customs and Excise Management Act 1979(58) (penalty for improper importation of goods) in relation to goods prohibited to be imported under

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(48) Section 78 was amended by the Statute Law (Repeals) Act 1993 (c.50), Schedule 1, Part XII; the Health Act 2006 (c.28), section 27(2) and S.I. 2010/231.

(49) 1911 c.28. The Act was relevantly amended by the Official Secrets Act 1920 (c.75), Schedules 1 and 2; the Atomic Energy Authority 1954 (c.32), section 6; the Nuclear Installations Act 1965 (c.7), Schedule 1, paragraph 3; the Criminal Law Act 1967 (c.58), Schedule 3; the Criminal Law Act (Northern Ireland) 1967 (c.18), Schedule 2; the European Communities Act 1972 (c.68), section 11(2); the Civil Aviation Act 1982 (c.16), section 18; the Telecommunications Act 1984 (c.12), section 109 and Schedules 4 and 5; the Official Secrets Act 1989 (c.6), section 16(4) and Schedule 2; the Serious Organised Crime and Police Act 2005 (c.15), Schedule 17, paragraph 1; and S.I. 1972/971.

(50) 1995 c.39.

(51) Section 7 was amended by the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 6, paragraph 1.

(52) Section 11 was amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 45.

(53) 1988 c.52.

(54) Section 1 was substituted by the Road Traffic Act 1991 (c.40), section 1.

(55) Section 3ZC was inserted by the Criminal Justice and Courts Act 2015 (c.2) (“the 2015 Act”), section 29.

(56) Section 3A was inserted by the Road Traffic Act 1991 (c.40), section 3 and amended by the Road Safety Act 2006 (c.49), section 31 and by the 2015 Act, Schedule 22, paragraph 2.

(57) 2010 asp 13.

(58) 1979 c.2. Section 50 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111; and S.I. 1996/2686.

section 42 of the Customs Consolidation Act 1876(59), but only where the prohibited goods include indecent photographs of persons.

42. A sexual offence within the meaning given by section 210A(10) of the Criminal Procedure (Scotland) Act 1995(60) other than an offence mentioned in paragraph (xxvii)(ZF) or (ZG) of that section (engaging while an older child in sexual conduct with or towards another older child).

43. An offence under section 113 of the Sexual Offences Act 2003(61) (breach of sexual offences prevention order or interim sexual offences prevention order, etc.).

44. An offence under section 7 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (offence: breach of RSHO or interim RSHO etc.)(62).

### Stalking and harassment

45. An offence under section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995(63) (racially aggravated harassment).

46. An offence under any of the following provisions of the Criminal Justice and Licensing (Scotland) Act 2010(64)—

- (a) section 38 (threatening or abusive behaviour); and
- (b) section 39 (offence of stalking).

### Terrorism

47. An offence under any of the following provisions of the Terrorism Act 2000(65)—

- (a) section 11 (membership);
- (b) section 12 (support);
- (c) section 15 (fund-raising);
- (d) section 16 (use and possession);
- (e) section 17 (funding arrangements);
- (f) section 17A(2) or (4) (insurance payments made in response to terrorist demands)(66);
- (g) section 18 (money laundering);
- (h) section 19(67) (disclosure of information: duty);

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(59) 1876 c.36. Section 42 was amended by the Customs and Excise Act 1952 (c.44), Schedule 12; the Statute Law (Repeals) Act 1993 (c.50), Schedule 1; and the Statute Law (Repeals) Act 2008 (c.12), Schedule 2.

(60) 1995 c.46. Section 210A was inserted by the Crime and Disorder Act 1998 (c.37), section 86 and was amended by the Sexual Offences (Amendment) Act 2000 (c.44), section 6(2); the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), section 312; the Criminal Procedure (Amendment) (Scotland) Act 2004 (asp 5), section 21; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), Schedule 1; the Sexual Offences (Scotland) Act 2009 (asp 9), Schedules 5 and 6; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 23; and by S.S.I. 2003/48 and S.S.I. 2010/421.

(61) 2003 c.42. Section 113 was amended by the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11 and by S.S.I. 2011/25.

(62) 2005 asp 9. Section 7 was amended by the 2010 Act, section 103 and the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), Schedule 11, paragraph 78.

(63) 1995 c.39. Section 50A was inserted by the Crime and Disorder Act 1998 (c.37), section 33.

(64) 2010 asp 13.

(65) 2000 c.11.

(66) Section 17A was inserted by the Counter-Terrorism and Security Act 2015 (c.6), section 42.

(67) Section 19 was amended by the Anti-terrorism, Crime and Security Act 2001 (c.24) (“the 2001 Act”), Schedule 2, paragraph 5; the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 4, paragraph 126; the Counter-Terrorism Act 2008 (c.28) (“the 2008 Act”), section 77; and the Crime and Courts Act 2013 (c.22) (“the 2013 Act”), Schedule 8, paragraph 68.

- (i) section 21A(68) (failure to disclose: regulated sector);
- (j) section 21D(69) (tipping off: regulated sector);
- (k) section 38B(70) (information about acts of terrorism);
- (l) section 39(71) (disclosure of information, &c.);
- (m) section 54 (weapons training)(72);
- (n) section 56 (directing terrorist organisation);
- (o) section 57 (possession for terrorist purposes)(73);
- (p) section 58 (collection of information)(74);
- (q) section 58A (eliciting, publishing or communicating)(75); and
- (r) section 61 (inciting terrorism overseas);

**48.** An offence under any of the following provisions of the Anti-terrorism, Crime and Security Act 2001(76)—

- (a) section 47 (use etc. of nuclear weapons);
- (b) section 50 (assisting or inducing certain weapons-related acts overseas);
- (c) section 52 (powers of entry);
- (d) section 54 (offences);
- (e) section 67 (offences);
- (f) section 79 (prohibition of disclosures relating to nuclear security)(77);
- (g) section 80 (prohibition of disclosures of uranium enrichment technology)(78);
- (h) section 113 (use of noxious substances or things to cause harm and intimidate)(79);
- (i) section 114 (hoaxes involving noxious substances or things); and
- (j) paragraph 7 of Schedule 3 (offences).

**49.** An offence under the Terrorism Act 2006(80).

**50.** An offence under any of the following provisions of the Counter-Terrorism Act 2008(81)—

- (a) section 2 (offence of obstruction);
- (b) section 54 (offences relating to notification);
- (c) paragraph 15 of Schedule 5 (breach of foreign travel restriction order and offence);
- (d) paragraph 30 of Schedule 7 (offences: failure to comply with requirement imposed by direction);

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(68) Section 21A was inserted by the 2001 Act, Schedule 2, paragraph 5 and was amended by the 2005 Act, Schedule 4, paragraph 128; the 2013 Act, Schedule 8, paragraph 72 and S.I. 2007/3398.

(69) Section 21D was inserted by S.I. 2007/3398 and amended by the 2013 Act, Schedule 8, paragraph 75.

(70) Section 38B was inserted by the 2001 Act, section 117.

(71) Section 39 was amended by S.I. 2007/3398.

(72) Section 54 was amended by the 2001 Act, section 120; the 2008 Act, Schedule 9; and the Criminal Justice and Courts Act 2015 (c.2), section 1.

(73) Section 57 was amended by the Terrorism Act 2006 (c.11), section 13.

(74) Section 58 was amended by the 2008 Act, Schedule 9.

(75) Section 58A was inserted by the 2008 Act, section 76.

(76) 2001 c.24.

(77) Section 79 was amended by the Energy Act 2004 (c.20), Schedule 14.

(78) Section 80 was amended by the Energy Act 2013 (c.32), Schedule 12.

(79) Section 113 was amended by the Terrorism Act 2006 (c.11), section 34.

(80) 2006 c.11. The Act was relevantly amended as follows. Section 6 was amended by the Criminal Justice and Courts Act 2015 (c.2), section 1 and section 17 was amended by the Serious Crime Act 2015 (c.9), section 81 and paragraph 74 of Schedule 4.

(81) 2008 c.28.

- (e) paragraph 30A of Schedule 7(82) (offences: relevant person circumventing requirements); and
- (f) paragraph 31 of Schedule 7 (offences in connection with licences).

#### **Violent offender orders**

51. An offence under section 113(1) of the Criminal Justice and Immigration Act 2008(83) (breach of violent offender order or interim violent offender order).

#### **Vulnerable persons**

52. An offence under section 83 of the Adults with Incapacity (Scotland) Act 2000(84) (offence of ill-treatment and wilful neglect).

53. An offence under section 315 of the Mental Health (Care and Treatment) (Scotland) Act 2003(85) (ill-treatment and wilful neglect of mentally disordered person).

54. An offence under any of the following provisions of the Protection of Vulnerable Groups (Scotland) Act 2007(86)—

- (a) section 34 (barred individuals not to do regulated work);
- (b) section 35 (organisations not to use barred individuals for regulated work); and
- (c) section 36 (personnel suppliers not to supply barred individuals for regulated work).

55. Any offence where the conduct in respect of which the person was convicted also constituted a breach of a banning order granted under section 19 of the Adult Support and Protection (Scotland) Act 2007(87) (banning orders).

#### **Witness protection**

56. An offence under any of the following provisions of the Serious Organised Crime and Police Act 2005(88)—

- (a) section 86 (offence of disclosing information about protection arrangements); and
- (b) section 88 (offences of disclosing information relating to persons assuming new identity).

#### **Statutory aggravations**

57. An offence in relation to which either of the following provisions apply—

- (a) section 29(1) of the Criminal Justice and Licensing (Scotland) Act 2010(89) (offences aggravated by connection with serious organised crime); or
- (b) section 31 of the Counter-Terrorism Act 2008 (offences aggravated by terrorism(90)).

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(82) Paragraph 30A was inserted by the Terrorist Asset-Freezing etc. Act 2010 (c.38), section 50(3).

(83) 2008 c.4.

(84) 2000 asp 4.

(85) 2003 asp 13.

(86) 2007 asp 14.

(87) 2007 asp 10.

(88) 2005 c.15.

(89) 2010 asp 13.

(90) 2008 c.28.

*Other*

**Common law aggravations**

- 58. An offence, the conviction for which indicates that it was committed against a child.
- 59. An offence, the conviction for which indicates that it included a sexual element.

**Inchoate offences**

- 60. An offence committed by aiding, abetting, counselling, procuring or inciting the commission of the offence of murder or any offence listed in paragraphs 1 to 59 of this schedule.
- 61. An offence committed by attempting or conspiring to commit the offence of murder or any offence listed in paragraphs 1 to 59 of this schedule.

**Superseded offences**

- 62. An offence superseded (whether directly or indirectly) by any offence listed in paragraphs 1 to 61 of this schedule (and any qualification in relation to a listed offence applies to the superseded offence as it applies to the listed offence).

**Combined offences**

- 63. An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 62 of this schedule.

**Corresponding offences elsewhere in the UK or abroad**

- 64. An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 63 of this schedule.

SCHEDULE 8B

OFFENCES WHICH ARE TO BE DISCLOSED SUBJECT TO RULES

*Common law offences*

- 1. An offence of perverting, or attempting to pervert, the course of justice (by whatever means and however the offence is described), including in particular—
  - (a) false accusation of a crime;
  - (b) perjury;
  - (c) prevarication on oath;
  - (d) prison breaking; and
  - (e) subornation of perjury.
- 2. Assault excluding any assault of a kind listed in Schedule 8A.
- 3. Breach of the peace.
- 4. Clandestinely taking possession.

5. Culpable and reckless conduct.
6. Culpable and reckless endangering of the public.
7. Culpable and reckless fireraising.
8. Embezzlement.
9. False accusation of a crime.
10. Fraud.
11. Housebreaking with intent to steal.
12. Mobbing and rioting.
13. Opening a lockfast place with intent to steal.
14. Public indecency.
15. Reset (excluding reset of plagium).
16. Robbery.
17. Theft (excluding plagium).
18. Uttering.
19. Wilful fireraising.

### *Statutory offences*

#### **Adult support and protection**

20. An offence under section 49 of the Adult Support and Protection (Scotland) Act 2007<sup>(91)</sup> (obstruction).

#### **Animals**

21. An offence under the Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974<sup>(92)</sup>.

22. An offence under any of the following provisions of the Wildlife and Countryside Act 1981<sup>(93)</sup>—

- (a) section 1<sup>(94)</sup> (protection of wild birds, their nests and eggs and prevention of poaching);
- (b) section 5<sup>(95)</sup> (prohibition of certain methods of killing or taking wild birds);
- (c) section 9<sup>(96)</sup> (protection of other wild animals and prevention of poaching);
- (d) section 11<sup>(97)</sup> (prohibition of certain methods of killing or taking wild animals);
- (e) section 11A, 11B and 11C<sup>(98)</sup> (offences in relation to snares);

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<sup>(91)</sup> 2007 asp 10.

<sup>(92)</sup> S.I. 1974/2211, as amended by S.I. 1977/361, S.I. 1984/1182, S.I. 1990/2371, S.I. 2011/2883 and S.I. 2014/3158.

<sup>(93)</sup> 1981 c.69.

<sup>(94)</sup> Section 1 was amended by the Criminal Justice (Scotland) Act 2003 (asp 7), schedule 5, the Nature Conservation (Scotland) Act 2004 (asp 6) (“the 2004 Act”), schedule 6, paragraph 2, the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6) (“the 2011 Act”), section 3(2) and (3) and S.I. 2011/1043.

<sup>(95)</sup> Section 5 was amended by the 2004 Act, schedule 6, paragraph 6.

<sup>(96)</sup> Section 9 was amended by the 2004 Act, schedule 6, paragraph 8 and the 2011 Act, section 7(2).

<sup>(97)</sup> Section 11 was amended by the 2004 Act, schedule 6, paragraph 10 and the 2011 Act, section 13(2).

<sup>(98)</sup> Sections 11A, 11B and 11C were inserted by section 13(3) of the 2011 Act. Section 11A was amended by S.S.I. 2013/119.

- (f) section 14ZC(**99**) (prohibition on keeping etc. of invasive animals or plants);
  - (g) section 15A(**100**) (possession of pesticides); and
  - (h) section 18 (attempts to commit offences etc.), but only in relation to an offence listed in sub-paragraphs (a) to (g) of this paragraph.
- 23.** An offence under the Dangerous Dogs Act 1991(**101**).
- 24.** An offence under the Protection of Badgers Act 1992(**102**).
- 25.** An offence under any of the following provisions of the Conservation (Natural Habitats, &c.) Regulations 1994(**103**)—
- (a) regulation 39(**104**) (protection of certain wild animals); and
  - (b) regulation 41(**105**) (prohibition of certain methods of taking or killing wild animals).
- 26.** An offence under the Welfare of Animals (Slaughter or Killing) Regulations 1995(**106**).
- 27.** An offence under the Wild Mammals Protection Act 1996(**107**).
- 28.** An offence under the Protection of Wild Mammals (Scotland) Act 2002(**108**).
- 29.** An offence under the Animal Health and Welfare (Scotland) Act 2006(**109**).

#### **Armed forces**

- 30.** An offence under section 42 of the Armed Forces Act 2006(**110**) (criminal conduct) where the corresponding offence under the law of England and Wales is, or corresponds to, an offence listed in this schedule.

#### **Assaulting or hindering public officials**

- 31.** An offence under section 89 of the Police Act 1996(**111**) (assaults on constables).
- 32.** An offence under section 32 of the Commissioners for Revenue and Customs Act 2005(**112**) (assault).

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(**99**) Section 14ZC was inserted by section 14(3) of the 2011 Act.

(**100**) Section 15A was inserted by the 2004 Act, schedule 6, paragraph 14 and was amended by section 21(4) of the 2011 Act and by S.I. 2013/1506.

(**101**) 1991 c.65. The Act was amended by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), Schedule 4, paragraph 81, the Dangerous Dogs (Amendment) Act 1997 (c.53), sections 1 to 3, the Control of Dogs (Scotland) Act 2010 (asp 9), section 10 and paragraph 2 of Schedule 1, and the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), sections 106(2)(a)(ii) and 107.

(**102**) 1992 c.51. The Act was amended by the Planning (Consequential Provisions) (Scotland) Act 1997( c.11), Schedule 2, paragraph 53, the Wild Mammals (Scotland) Act 2002 (asp 6), Schedule 1 and the 2004 Act, schedule 6, paragraph 26 and sections 33 and 41(4) of the 2011 Act.

(**103**) S.I. 1994/2716.

(**104**) Regulation 39 was amended by S.S.I. 2008/17 and S.S.I. 2008/425.

(**105**) Regulation 41 was amended by S.S.I. 2004/475 and S.S.I. 2007/80.

(**106**) S.I. 1995/731 was amended by S.I. 1999/400 and S.I. 1999/1820 and S.S.I. 2000/62, S.S.I. 2001/145, S.S.I. 2002/238, S.S.I. 2004/13, S.S.I. 2006/536, S.S.I. 2007/150, S.S.I. 2012/321 and S.S.I. 2015/13.

(**107**) 1996 c.3. The Act was amended by the Protection of Wild Mammals (Scotland) Act 2002 (asp 6), schedule 6, paragraph 1 and S.S.I. 2016/536.

(**108**) 2002 asp 6. The Act was amended by the Wildlife and Natural Environment (Scotland) Act 2011 (asp 6), schedule 1, Part 2 and by S.S.I. 2006/536.

(**109**) 2006 asp 11. The Act was amended by the Police and Fire Reform (Scotland) Act 2012 (asp 8) (“the 2012 Act”), schedule 7, Part 1, paragraph 34.

(**110**) 2006 c.52.

(**111**) 1996 c.16. Section 89 was amended by the Police Reform Act 2002 (c.30), section 104(1); the Serious Organised Crime and Police Act 2005 (c.15), Part 2 of Schedule 17; and by S.I. 2012/1809 and S.S.I. 2013/602.

(**112**) 2005 c.11.



- 33. An offence under the Emergency Workers (Scotland) Act 2005(113).
- 34. An offence under section 85 of the Fire (Scotland) Act 2005(114) (false alarms).
- 35. An offence under section 90 of the Police and Fire Reform (Scotland) Act 2012(115) (assaulting or impeding police).

#### **Aviation**

- 36. An offence under any of the following provisions of the Aviation Security Act 1982(116)—
  - (a) section 20B(117) (detention direction); and
  - (b) section 21FA(118) (air cargo agents: documents).

#### **Bomb hoaxes**

- 37. An offence under section 51 of the Criminal Law Act 1977(119) (bomb hoaxes).

#### **Bribery**

- 38. An offence under the Bribery Act 2010(120).

#### **Care services**

- 39. An offence under any of the following provisions of the Regulation of Care (Scotland) Act 2001(121)—
  - (a) section 45(122) (application for registration under Part 3); and
  - (b) section 52 (use of title “social worker” etc.).
- 40. An offence under any of the following provisions of the Public Services Reform (Scotland) Act 2010(123)—
  - (a) section 80(1) (offences in relation to registration under Chapter 3);
  - (b) section 81 (false statements in application under Chapter 3); and
  - (c) section 90 (offences under Chapter 4).
- 41. An offence under article 27 of the Public Services Reform (General Teaching Council for Scotland) Order 2011(124) (offences).
- 42. An offence under regulation 19 of the Social Care and Social Work Improvement (Scotland) (Requirements for Care Services) Regulations 2011(125) (offences).

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(113) 2005 asp 2. The Act was amended by the Fire (Scotland) Act 2005 (asp 5), section 38 and schedule 3, paragraph 23; the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 44(4); and the 2012 Act, schedule 7, Part 1, paragraph 25 and Part 2, paragraph 67; and by S.S.I. 2008/37 and S.S.I. 2013/211.

(114) 2005 asp 5.

(115) 2012 asp 8.

(116) 1982 c.36.

(117) Section 20B was inserted by the Anti-terrorism, Crime and Security Act 2001 (c.24), section 86(1) and amended by the Civil Aviation Act 2012 (c.19), Schedule 11, paragraph 15.

(118) Section 21FA was inserted by the Anti-Terrorism, Crime and Security Act 2001 (c.24), section 87.

(119) 1977 c.45. Section 51 was amended by the Criminal Justice Act 1991 (c.53), section 26(4).

(120) 2010 c.23.

(121) 2001 asp 8.

(122) Section 45 was amended by S.I. 2007/3101.

(123) 2010 asp 8.

(124) S.S.I. 2011/215.

(125) S.S.I. 2011/210.

### Charities

43. An offence under the Charities and Trustee Investment (Scotland) Act 2005(126).

### Child Support

44. An offence under section 50 of the Child Support Act 1991(127) (unauthorised disclosure of information).

### Children

45. An offence under section 6 of the Child Abduction Act 1984(128) (offence in Scotland of parent, etc. taking or sending child out of United Kingdom).

### Crossbows

46. An offence under section 1 of the Crossbows Act 1987(129) (sale and letting on hire).

### Domestic abuse

47. An offence under section 2 of the Domestic Abuse (Scotland) Act 2011(130) (breach of domestic abuse interdict with power of arrest).

### Drugs

48. An offence under any of the following provisions of the Misuse of Drugs Act 1971(131)—
- (a) section 3(132) (restriction of importation and exportation of controlled drugs);
  - (b) section 4(133) (restriction of production and supply of controlled drugs);
  - (c) section 4A(134) (aggravation of offence of supply of controlled drug);
  - (d) section 5(3) (restriction of possession of controlled drugs);
  - (e) section 6 (restriction of cultivation of cannabis plant);
  - (f) section 8(a) and (b) (occupiers etc. of premises to be punishable for certain activities taking place there);
  - (g) section 12(135) (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners etc. convicted of certain offences);
  - (h) section 13(136) (directions prohibiting prescribing, supply etc. of controlled drugs by practitioners in other cases);

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(126) 2005 asp 10, to which there are no relevant amendments.

(127) 1991 c.48. The Act was amended by the Child Maintenance and Other Payments Act 2008 (c.6), Schedule 7, paragraph 1 and Schedule 8; and by S.I. 2005/1790, S.I. 2008/2833 and S.I. 2012/2007.

(128) 1984 c.37. Section 6 was amended by the Law Reform (Parent and Child) (Scotland) Act 1986 (c.9), sections 9 and 10 and Schedule 1, paragraph 20; the Age of Legal Capacity (Scotland) Act 1991 (c.50), Schedule 2, paragraph 1; and the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 34.

(129) 1987 c.32. Section 1 was amended by section 35(2) of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”).

(130) 2011 asp 13.

(131) 1971 c.38.

(132) Section 3 was amended by paragraph 4 of Schedule 17 to the 2010 Act.

(133) Section 4 was amended by paragraph 5 of Schedule 17 to the 2010 Act.

(134) Section 4A was inserted by section 1(1) of the Drugs Act 2005 (c.17).

(135) Section 12 was amended by paragraph 8 of Schedule 4 to the Customs and Excise Management Act 1979 (c.2).

(136) Section 13 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), Schedule 17, paragraph 12 and by the Scotland Act 2012 (c.11), section 19.

- (i) section 17 (power to obtain information from doctors, pharmacists etc. in certain circumstances);
- (j) section 19(**137**) (attempts etc. to commit offences), but only in relation to an offence listed in sub-paragraphs (a) to (i) of this paragraph; and
- (k) section 20 (assisting in or inducing commission outside United Kingdom of offence punishable under corresponding law).

**49.** An offence under any of the following provisions of the Customs and Excise Management Act 1979(**138**) in relation to goods prohibited to be imported or exported under section 3(1) of the Misuse of Drugs Act 1971(**139**) (restriction of importation and exportation of controlled drugs)—

- (a) section 50(2) or (3) (penalty for improper importation of goods);
- (b) section 68(2) (offences in relation to exportation of prohibited or restricted goods); and
- (c) section 170 (fraudulent evasion of duty).

**50.** An offence under the Criminal Justice (International Co-operation) Act 1990(**140**).

#### **Escape from custody etc.**

**51.** An offence under section 316 of the Mental Health (Care and Treatment) (Scotland) Act 2003(**141**) (inducing and assisting absconding etc.).

**52.** An offence under section 91 of the Police and Fire Reform (Scotland) Act 2012(**142**) (escape from custody).

#### **Financial Services**

**53.** An offence under the Financial Services and Markets Act 2000(**143**).

**54.** An offence under the Financial Services Act 2012(**144**).

#### **Fire safety**

**55.** An offence under section 72(1) or (3) of the Fire (Scotland) Act 2005 (offences)(**145**).

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(**137**) Section 19 was amended by the Serious Crime Act 2007 (c.27), Schedule 6, paragraph 53.

(**138**) 1979 c.2. Sections 50, 68 and 170 were amended by the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111 and S.I. 2015/664. Sections 50 and 170 were also amended by the Forgery and Counterfeiting Act 1981 (c.45), section 23 and by S.I. 1996/2686. Sections 50 and 68 were also amended by the Criminal Procedure (Scotland) Act 1975 (c.21), section 289F and 289G. Sections 68 and 170 were also amended by the Finance (No. 2) Act 1992 (c.48), Schedule 2.

(**139**) 1971 c.38. Section 3 was amended by the Police Reform and Social Responsibility Act 2011 (c.13), Schedule 17, paragraph 4.

(**140**) 1990 c.5. The Act was relevantly amended by section 23 of the Criminal Justice Act 1993 (c.36), section 1 of the Criminal Justice (International Co-operation) (Amendment) Act 1998 (c.27), Part 2 of Schedule 7 to the Criminal Justice (Scotland) Act 1995 (c.20), Schedule 5 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40), paragraph 21 of Schedule 11 to the Proceeds of Crime Act 2002 (c.29), paragraph 3 of Schedule 28 to the Criminal Justice Act 2003 (c.44) and paragraph 22 of Schedule 17 to the Police Reform and Social Responsibility Act 2011 (c.13).

(**141**) 2003 asp 13. Section 316 was amended by section 71(3) of the Adult Support and Protection (Scotland) Act 2007 (asp 10) and by S.S.I. 2005/46

(**142**) 2012 asp 8.

(**143**) 2000 c.8. The Act was relevantly amended by the Pension Schemes Act 2015 (c.8), Schedule 3, paragraph 2 and the Financial Services Act 2012 (c.21), sections 11(2), 13, 25(1), 26 and 95 and Schedules 8, 9 and 12 and Part 1 of Schedule 18 and S.I. 2000/534, S.I. 2001/1090, S.I. 2005/1433, S.I. 2010/22, S.I. 2012/2554 and S.I. 2013/1773.

(**144**) 2012 c.21. The Act was amended by the Financial Services (Banking Reform) Act 2013 (c.33), sections 105 and 106, Schedule 9, paragraph 4(3)(e) and Schedule 10, paragraph 9 and S.I. 2014/3329.

(**145**) 2005 asp 5. Section 72 was amended by S.S.I. 2005/2060.

### Firearms

- 56.** An offence under any of the following provisions of the Firearms Act 1968(**146**)—
- (a) section 1 (requirement of firearms certificate)(**147**);
  - (b) section 2 (requirement of certificate for possession of shot guns);
  - (c) section 3 (business and other transactions with firearms and ammunition firearms)(**148**);
  - (d) section 22 (acquisition and possession of firearms by minors)(**149**); and
  - (e) section 23 (exceptions from section 22(4))(**150**).
- 57.** An offence under section 50(5) of the Civic Government (Scotland) Act 1982(**151**) (drunk in possession of firearm).
- 58.** An offence under the Firearms (Amendment) Act 1997(**152**).
- 59.** An offence under any of the following provisions of the Violent Crime Reduction Act 2006(**153**)—
- (a) section 28 (using someone to mind a weapon);
  - (b) section 32 (sales of air weapons by way of trade or business to be face to face);
  - (c) section 35 (restriction on sale and purchase of primers); and
  - (d) section 36 (manufacture, import and sale of realistic imitation firearms).

### Food safety and standards

- 60.** An offence under any of the following provisions of the Food Safety Act 1990(**154**)—
- (a) section 7(**155**) (rendering food injurious to health); and
  - (b) section 9(**156**) (inspection and seizure of suspected food).
- 61.** An offence under regulation 4(b) of the General Food Regulations 2004(**157**).

### Forced marriage

- 62.** An offence under section 9 of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (offence of breaching order)(**158**).

### Fraud and forgery

- 63.** An offence under the Forgery and Counterfeiting Act 1981(**159**).

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(146) 1968 c.27.

(147) Section 1 was amended by the Firearms (Amendment) Act 1988 (c.45) (“the 1988 Act”), section 2(2) and (3) and the Anti-social Behaviour Act 2003 (c.38) (“the 2003 Act”), section 39(2).

(148) Section 3 was amended by the Violent Crime Reduction Act 2006 (c.38) (“the 2006 Act”), section 31(1) and Schedule 5 and the Firearms (Amendment) Act 1997 (c.5) (“the 1997 Act”), section 2(1).

(149) Section 22 was amended by the 1988 Act, section 23(4), the 2003 Act, Schedule 3 and the 2006 Act, section 33(3) and by S.I. 1992/2823 and S.I. 2010/1759.

(150) Section 23 was amended by the 1988 Act, section 23(4), Schedule 2, paragraph 3 and Schedule 3, the 2003 Act, section 38(3) (b) and Schedule 3 and the 2006 Act, section 34(3) and Schedule 5.

(151) 1982 c.45.

(152) 1997 c.5. The Act was relevantly amended by S.I. 2011/713.

(153) 2006 c.38.

(154) 1990 c.16.

(155) Section 7 was amended by S.I. 2004/3279.

(156) Section 9 was amended by S.I. 2004/3279 and S.S.I. 2013/336.

(157) S.I. 2004/3279. Regulation 4 was substituted by S.S.I. 2005/616.

(158) 2011 asp 15.

(159) 1981 c.45. The Act was relevantly amended by S.S.I 2014/3168.

**64.** An offence under section 46A of the Criminal Law (Consolidation) (Scotland) Act 1995 (false monetary instruments)(**160**).

**65.** An offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in fraud)(**161**).

**66.** An offence under section 92 of the Police and Fire Reform (Scotland) Act 2012 (impersonation etc.)(**162**).

### **Harassment**

**67.** An offence under section 234A of the Criminal Procedure (Scotland) Act 1995 (non-harassment orders)(**163**).

**68.** An offence under section 9 of the Protection from Harassment Act 1997 (breach of non-harassment order)(**164**).

### **Immigration, etc.**

**69.** An offence under any of the following provisions of the Immigration Act 1971(**165**)—

- (a) section 24(**166**) (illegal entry and similar offences);
- (b) section 24A(**167**) (deception);
- (c) section 25(**168**) (assisting unlawful immigration to member State);
- (d) section 25A(**169**) (helping asylum-seeker to enter United Kingdom);
- (e) section 25B(**170**) (assisting entry to United Kingdom in breach of deportation or exclusion order);
- (f) section 26(**171**) (general offences in connection with administration of Act);
- (g) section 26A(**172**) (registration card);
- (h) section 26B(**173**) (possession of immigration stamp); and
- (i) section 27(**174**) (offences by captains, owners or agents of ships or aircraft).

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(**160**) 1995 c.39. Section 46A was inserted by the Crime (International Co-operation) Act 2003 (c.32), section 89.

(**161**) 2010 asp 13.

(**162**) 2012 asp 8.

(**163**) 1995 c.46. Section 234A was inserted by the Protection from Harassment Act 1997 (c.40), section 11, and amended by the Crime and Punishment (Scotland) Act 1997 (c.48), Schedule 3; the Criminal Justice (Scotland) Act 2003 (asp 7), section 49(1); and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 15.

(**164**) 1997 c.40. The Act was relevantly amended by the 2010 Act, section 49(2) and the Domestic Abuse (Scotland) Act 2011 (asp 13), section 1(3).

(**165**) 1971 c.77.

(**166**) Section 24 was amended by the National Health Service (Scotland) Act 1972 (c.58), section 64(1) and Schedule 6, paragraph 155; the Criminal Procedure (Scotland) Act 1975 (c.21), sections 289F and 289G; the British Nationality Act 1981 (c.61), section 39 and Schedule 4, paragraph 2; the Immigration Act 1988 (c.14), sections 6 and 10 and Schedule 1, paragraph 10; the Asylum and Immigration Act 1996 (c.49), section 6; the Immigration and Asylum Act 1999 (c.33), Schedule 16, paragraph 1; and the Nationality, Asylum and Immigration Act 2002 (c.41), section 62.

(**167**) Section 24A was inserted by the Immigration and Asylum Act 1999 (c.33), section 28 and amended by the Nationality, Immigration and Asylum Act 2002 (c.41) (“the 2002 Act”), Schedule 9, paragraph 1.

(**168**) Sections 25 to 25C were substituted for section 25 by the 2002 Act, section 143. Section 25 was amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.9), section 1 and the UK Borders Act 2007 (c.30) (“the 2007 Act”), section 30.

(**169**) Section 25A was amended by the 2007 Act, sections 29 and 30.

(**170**) Section 25B was amended by the 2007 Act, section 30.

(**171**) Section 26 was amended by the Criminal Procedure (Scotland) Act 1975, sections 289F and 289G; the British Nationality Act 1981, section 39 and Schedule 4, paragraph 3; the Asylum and Immigration Act 1996 (c.49), section 6; the Immigration and Asylum Act 1999 (c.33), section 30; the 2002 Act, section 151 and Schedule 9, paragraph 1.

(**172**) Section 26A was inserted by the 2002 Act, section 148 and amended by S.I. 2008/1693.

(**173**) Section 26B was inserted by the 2002 Act, section 149.

(**174**) Section 27 was amended by the Counter-Terrorism and Security Act 2015 (c.6), Schedule 5, paragraph 2 and by S.I. 1993/1813.

**70.** An offence under any of the following provisions of the Immigration and Asylum Act 1999**(175)**—

- (a) section 105 (false representations);
- (b) section 106 (dishonest representations);
- (c) any of the following paragraphs of Schedule 11—
  - (i) paragraph 1 (obtaining certificates of authorisation by false pretences);
  - (ii) paragraph 4**(176)** (assaulting a detainee custody officer); and
  - (iii) paragraph 5 (obstructing detainee custody officer); and
- (d) any of the following paragraphs of Schedule 12—
  - (i) paragraph 3**(177)** (failure to submit to a medical examination);
  - (ii) paragraph 4**(178)** (assisting detained persons to escape);
  - (iii) paragraph 5 (bringing alcohol into a detention centre); and
  - (iv) paragraph 6 (conveying articles into or out of a detention centre).

**71.** An offence under section 35 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**(179)** (deportation or removal: cooperation).

**72.** An offence under section 21 of the Immigration, Asylum and Nationality Act 2006**(180)** (offence).

### **Insolvency**

**73.** An offence under any of the following provisions of the Insolvency Act 1986**(181)**—

- (a) section 131**(182)** (company’s statement of affairs);
- (b) section 206**(183)** (fraud, etc. in anticipation of winding up);
- (c) section 208**(184)** (misconduct in course of winding up);
- (d) section 216**(185)** (restriction on re-use of company names); and
- (e) section 235**(186)** (duty to co-operate with office-holder).

### **Landmines**

**74.** An offence under section 2 of the Landmines Act 1998**(187)** (prohibited conduct).

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**(175)** 1999 c.33.

**(176)** Paragraphs 4 and 5 of Schedule 11 were amended by the Immigration Act 2014 (c.22) (“the 2014 Act”), Schedule 9, paragraph 12.

**(177)** Paragraphs 3, 4, 5 and 6 of Schedule 12 were amended by the 2002 Act, section 66.

**(178)** Paragraph 4 of Schedule 12 was also amended by the 2014 Act, Schedule 9, paragraph 12.

**(179)** 2004 c.19. Section 35 was amended by the Immigration Act 2014 (c.22), Schedule 2, paragraph 5.

**(180)** 2006 c.13.

**(181)** 1986 c.45.

**(182)** Section 131 was amended by S.I. 2010/18.

**(183)** Section 206 was amended by the Company Directors Disqualification Act 1986 (c.46) (“the 1986 Act”), sections 21 and 25; the Criminal Justice (Scotland) Act 1987 (c.41) (“the 1987 Act”), sections 30, 35 and 47; and the Criminal Justice Act 1988 (c.33) (“the 1988 Act”), sections 86 and 123 and Schedule 8, paragraph 13 and by S.I. 1986/1996.

**(184)** Section 208 was amended by the Small Business, Enterprise and Employment Act 2015 (c.26), Schedule 9, paragraph 52.

**(185)** Section 216 was amended by the 1986 Act, sections 21 and 25; the 1987 Act, sections 30, 35 and 47; and the 1988 Act, sections 86 and 123 and Schedule 8, paragraph 13.

**(186)** Section 235 was amended by the Enterprise Act 2002 (c.40), Schedule 17, paragraph 24.

**(187)** 1998 c.33.

## Medicines

75. An offence under section 67(2) and (3) (offences under Part III) of the Medicines Act 1968(188).

76. An offence under any of the following provisions of the Human Medicines Regulations 2012(189)—

- (a) regulation 34(1) (offences: breach of regulations and false information and defence concerning starting materials); and
- (b) regulation 255(1)(a), (b), (c) or (d) (offences relating to dealings with medicinal products).

## Mental health

77. An offence under section 318 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (false statements)(190).

## Neglect of duty

78. An offence under Part 4 (shipping: alcohol and drugs) or Part 5 (aviation: alcohol and drugs) of the Railways and Transport Safety Act 2003(191).

79. An offence under section 22 of the Police and Fire Reform (Scotland) Act 2012 (failure to perform duty)(192).

## Obscene material etc.

80. An offence under section 1(1) of the Indecent Displays Act 1981(193) (indecent displays).

81. An offence under any of the following provisions of the Civic Government (Scotland) Act 1982(194) —

- (a) section 51(195) (obscene material);
- (b) section 51A(196) (extreme pornography); and
- (c) paragraph 19(3)(197) of Schedule 2 (enforcement).

82. An offence under section 85(3) of the Postal Services Act 2000(198) (prohibition on sending certain articles by post).

83. An offence under section 127(1) of the Communications Act 2003(199) (improper use of public electronic communications network).

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(188) 1968 c.67. Section 67(2) and (3) was amended by the Health and Social Care Act 2001 (c.15), section 63(7)(a) and S.I. 2012/1916.

(189) S.I. 2012/1916. The Regulations were relevantly amended by S.I. 2013/1855.

(190) 2003 asp 3.

(191) 2003 c.20. Parts 4 and 5 were amended by the Armed Forces Act 2006 (c.52), Schedule 16, paragraphs 198 and 199 and the Deregulation Act 2015 (c.20), Schedule 11.

(192) 2012 asp 8.

(193) 1981 c.42. Section 1 was amended by the Cinemas Act 1985 (c.13), section 24; the Broadcasting Act 1990 (c.42), Schedule 20, paragraph 20; and the Licensing Act 2003 (c.17), Schedule 6, paragraph 80.

(194) 1982 c.45.

(195) Section 51 was amended by the Indecent Displays (Control) Act 1981 (c.42); the Broadcasting Act 1990 (c.42), sections 4, 87, 163 and 203 and Schedule 21; the Criminal Justice and Public Order Act 1994 (c.33), Schedule 9, paragraph 30; and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 42.

(196) Section 51A was inserted by the 2010 Act, section 42.

(197) Paragraph 19 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) (“the 1975 Act”), section 289G; the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 129 and by S.I. 1984/526.

(198) 2000 c.26.

(199) 2003 c.21. Section 127 was amended by the Criminal Justice and Courts Act 2015 (c.2), section 51.

### Offences in relation to children

**84.** An offence under any of the following provisions of the Children and Young Persons (Scotland) Act 1937(**200**)—

- (a) section 15 (causing or allowing persons under 16 to be used for begging);
- (b) section 22 (exposing children under seven to risk of burning);
- (c) section 31(1) (penalties and legal proceedings in respect of general provisions as to employment);
- (d) section 33 (prohibition of persons under sixteen taking part in performances endangering life or limb); and
- (e) section 34 (restrictions on training for performances of a dangerous nature).

**85.** An offence under section 40(1) of the Children and Young Persons Act 1963(**201**) (offences).

**86.** An offence under section 50(2) of the Civic Government (Scotland) Act 1982(**202**) (drunk in charge of a child).

**87.** An offence under section 81 of the Children (Scotland) Act 1995(**203**) (offences in connection with orders etc. for the protection of children).

**88.** An offence under any of the following provisions of the Children’s Hearings (Scotland) Act 2011(**204**)—

- (a) section 59 (offences); and
- (b) section 171 (offences related to absconding).

### Offensive behaviour etc.

**89.** An offence under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012(**205**).

### Offensive weapons

**90.** An offence under the Restriction of Offensive Weapons Act 1959(**206**).

**91.** An offence under section 50(3) (penalty for improper importation of goods) or section 170 (fraudulent evasion of duty) of the Customs and Excise Management Act 1979(**207**) in relation to goods prohibited to be imported under—

- (a) section 1(2) of the Restriction of Offensive Weapons Act 1959 (penalties for offences in connection with dangerous weapons); or
- (b) section 141(4) of the Criminal Justice Act 1988 (offensive weapons).

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**(200)** 1937 c.37. The Act was relevantly amended by the Education (Scotland) Act 1962 (c.47), section 139; the Children and Young Persons Act 1963 (c.37), section 64 and Schedules 3 and 5; the 1975 Act, section 289G; the Children (Scotland) Act 1995 (c.36), Schedule 4, paragraph 7; the Employment Act 1989 (c.38), section 10 and Schedule 3; and S.I. 1998/276 and S.S.I. 2000/149.

**(201)** 1963 c.37. Section 40 was amended by the 1975 Act, sections 289F and 289G and by S.I. 1998/276.

**(202)** 1982 c.45. Section 50 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) (“the 1975 Act”), section 289G.

**(203)** 1995 c.36. Section 81 was repealed by the Children’s Hearings (Scotland) Act 2011 (asp 1), schedule 6, paragraph 1.

**(204)** 2011 asp 1.

**(205)** 2012 asp 1.

**(206)** 1959 c.37. The Act was relevantly amended by the Restrictions of Offensive Weapons Act 1961 (c.2), section 1; the 1975 Act, sections 289E and 289G; the Criminal Justice Act 1982 (c.48), sections 35 and 46; and the Criminal Justice Act 1988 (c.33), section 46 and Schedule 8, paragraph 16.

**(207)** 1979 c.2. Section 50 was amended by the 1975 Act, section 289F and 289G; the Police and Criminal Evidence Act 1984 (c.60), section 114(1); the Finance Act 1988 (c.33), section 12; the Criminal Justice Act 2003 (c.44), section 293; the Criminal Justice and Immigration Act 2008 (c.4), Schedule 17; the Anti-social Behaviour, Crime and Policing Act 2014 (c.12), section 111; and S.I. 1996/2686.



- 92.** An offence under any of the following provisions of the Criminal Justice Act 1988(**208**)—
- (a) section 141 (offensive weapons); and
  - (b) section 141A (sale of knives and certain articles with blade or point to persons under eighteen).
- 93.** An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995(**209**)—
- (a) section 47 (prohibition of the carrying of offensive weapons);
  - (b) section 48 (search for offensive weapons);
  - (c) section 49 (offence of having in a public place an article with a blade or point);
  - (d) section 49A (offence of having article with blade or point (or offensive weapon) on school premises);
  - (e) section 49C (offence of having offensive weapon etc. in prison); and
  - (f) section 50 (extension of constable’s power to stop, search and arrest without warrant).

#### **Official Secrets Acts**

- 94.** An offence under the Official Secrets Act 1920(**210**).
- 95.** An offence under the Official Secrets Act 1989(**211**).

#### **Prisons**

- 96.** An offence under section 41 of the Prisons (Scotland) Act 1989 (unlawful introduction of tobacco, etc., into prison)(**212**).

#### **Proceeds of crime and money laundering**

- 97.** An offence under any of the following provisions of the Proceeds of Crime Act 2002(**213**)—
- (a) Part 7(**214**) (money laundering);
  - (b) Part 8(**215**) (investigations); and

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**(208)** 1988 c.33. The Act was relevantly amended by the Offensive Weapons Act 1996 (c.26) (“the 1996 Act”), section 6; the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (“the 2006 Act”), section 75; the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) (“the 2007 Act”), section 60 and Schedule 5; and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 36.

**(209)** 1995 c.39. The Act was relevantly amended by the 1996 Act (c.26), section 2; the 2006 Act, section 7; the 2007 Act, section 63; and the 2010 Act, section 37.

**(210)** 1920 c.75. The Act was amended by the Official Secrets Act 1939 (c.121), section 1; the Criminal Procedure (Scotland) Act 1975 (c.21), sections 221 and 289B; the Schedule to the Forgery and Counterfeiting Act 1981 (c.45); the Interception of Communications Act 1985 (c.56), section 114; the Official Secrets Act 1989 (c.6), section 11; and the Postal Services Act 2000 (c.26), Schedule 9, paragraph 1.

**(211)** 1989 c.6. The Act was relevantly amended as follows. Section 4 was amended by the Intelligence Services Act 1994 (c.13), Schedule 4, paragraph 4 and the Regulation of Investigatory Powers Act 2000 (c.23), Schedule 4, paragraph 5. Section 12 was amended by the Reserve Forces Act 1996 (c.14), Schedule 10, paragraph 22; the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 30 the Scotland Act 1998 (c.46), Schedule 8, paragraph 26; the Northern Ireland Act 1998 (c.47), Schedule 13; the Police (Northern Ireland) Act 2000 (c.32), Schedule 6, paragraph 9; the Energy Act 2004 (c.20), Schedule 14, paragraph 6; the Serious Organised Crime and Police Act 2005 (c.15) (“the 2005 Act”), Schedule 4, paragraph 58; the Government of Wales Act 2006 (c.32), Schedules 10 and 12; and the Crime and Courts Act 2013 (c.22), Schedule 8, paragraph 36.

**(212)** 1989 c.45. Section 41 was amended by the Criminal Justice and Public Order Act 1994 (c.33), section 153 and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”), section 34.

**(213)** 2002 c.29.

**(214)** Part 7 was amended by the 2005 Act, sections 102 to 106 and Schedule 17; the Crime and Courts Act 2013 (c.22), Schedule 8; the Serious Crime Act 2015 (c.9), section 37; S.I. 2006/308; and S.I. 2007/3398.

**(215)** Part 8 was relevantly amended as follows. Section 342 was amended by the Serious Crime Act 2007 (c.27) (“the 2007 Act”), Schedule 10; the Coroners and Justice Act 2009 (c.25), Schedule 19, paragraph 9; and S.I. 2007/3398.

(c) section 453A(**216**) (certain offences in relation to financial investigators).

**98.** An offence under the Proceeds of Crime Act 2002 (External Investigations) Order 2013(**217**).

**99.** An offence under the Proceeds of Crime Act 2002 (External Investigations) (Scotland) Order 2015(**218**).

### **Prostitution**

**100.** An offence under any of the following provisions of the Criminal Law (Consolidation) (Scotland) Act 1995(**219**)—

(a) section 9(**220**) (permitting girl to use premises for intercourse); and

(b) section 13(9)(**221**) (living on earnings of another from male prostitution).

**101.** An offence under the Prostitution (Public Places) (Scotland) Act 2007(**222**).

### **Public order**

**102.** An offence under any of the following provisions of the Public Order Act 1986(**223**)—

(a) section 1 (riot);

(b) section 2 (violent disorder);

(c) section 3(**224**) (affray);

(d) section 4 (fear or provocation of violence);

(e) section 4A(**225**) (intentional harassment, alarm or distress);

(f) section 5(**226**) (harassment alarm or distress);

(g) section 18(**227**) (use of words or behaviour or display of written material);

(h) section 19 (publishing or distributing written material);

(i) section 20 (public performance of play);

(j) section 21 (distributing, showing or playing a recording);

(k) section 22 (broadcasting or including programme in cable programme service);

(l) section 23 (possession of racially inflammatory material);

(m) section 29B(**228**) (use of words or behaviour or display of written material);

(n) section 29C (publishing or distributing written material);

(o) section 29D (public performance of play);

(p) section 29E (distributing, showing or playing recording);

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(**216**) Section 453A was inserted by the 2007 Act, section 81 and amended by the Policing and Crime Act 2009 (c.26), Schedule 7, paragraph 94.

(**217**) S.I. 2013/2605.

(**218**) S.I. 2015/206.

(**219**) 1995 c.39.

(**220**) Section 9 was amended by the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 5, paragraph 1 and by the 2010 Act, schedule 4, paragraph 11.

(**221**) Section 13 was amended by the Sexual Offences (Scotland) Act 2009, schedules 5 and 6 and the Criminal Justice and Licensing (Scotland) Act 2010, section 45.

(**222**) 2007 asp 11.

(**223**) 1986 c.64.

(**224**) Sections 3, 4, 4A and 5 were amended by the Serious Organised Crime and Police Act 2005 (c.15), Schedule 17.

(**225**) Section 4A was inserted by the Criminal Justice and Public Order Act 1994 (c.33), section 154.

(**226**) Section 5 was amended by the Crime and Courts Act 2013 (c.22), section 57.

(**227**) Sections 18, 20, 21, 22 and 23 were amended by the Broadcasting Act 1990 (c.42), sections 164 and 203 and Schedule 21.

(**228**) Sections 29B, 29C, 29D, 29E, 29F and 29G were inserted by the Racial and Religious Hatred Act 2006 (c.1), Schedule 1, paragraph 1 and amended by the Criminal Justice and Immigration Act 2008 (c.4), Schedules 16 and 28.

- (q) section 29F (broadcasting or including programme in programme service); and
- (r) section 29G (possession of inflammatory material).

### Road traffic

**103.** An offence under any of the following provisions of the Road Traffic Act 1988(229)—

- (a) section 1A(230) (causing serious injury by dangerous driving);
- (b) section 2 (dangerous driving);
- (c) section 2B(231) (causing death by careless, or inconsiderate, driving);
- (d) section 3ZB(232) (causing death by driving: unlicensed or uninsured drivers);
- (e) section 3ZD (causing serious injury by driving: disqualified drivers);
- (f) section 4(1)(233) (driving, or being in charge, when under the influence of drink or drugs);
- (g) section 5(1)(a) (driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit); and
- (h) section 178 (taking motor vehicle without authority, etc.).

### Sexual offences

**104.** An offence under section 37(1) or (4) of the Sexual Offences (Scotland) Act 2009(234) (older children engaging in sexual conduct with each other).

### Solicitors

**105.** An offence under the Solicitors (Scotland) Act 1980(235).

### Terrorism

**106.** An offence under any of the following provisions of the Terrorism Act 2000(236)—

- (a) section 13 (uniform);
- (b) section 36 (police powers);
- (c) section 51 (offences);
- (d) section 116 (powers to stop and search);

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(229) 1988 c.52.

(230) Section 1A was inserted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), section 143(2).

(231) Section 2B was inserted by the Road Safety Act 2006 (c.49) (“the 2006 Act”), section 20.

(232) Section 3ZB was inserted by the 2006 Act, section 21 and was amended by the Criminal Justice and Courts Act 2015 (c.2), Schedule 6.

(233) Section 4(1) was amended by the Road Traffic Act 1991 (c.40), section 4 and (in relation to Scotland) by the Serious Organised Crime and Police Act 2005 (c.15), Schedule 7, paragraph 27(4).

(234) 2009 asp 9.

(235) 1980 c.46. The Act was relevantly amended as follows. Section 26 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73) (“the 1985 Act”), section 56 and Schedule 1, paragraph 4; the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c.40) (“the 1990 Act”), Schedule 8, paragraph 29; the Legal Services (Scotland) Act 2010 (asp 16) (“the 2010 Act”), sections 123 and 125; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 27 was repealed by the 1990 Act, Schedule 9. Section 28 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 6; and by S.S.I. 2000/121 and S.S.I. 2004/383. Section 31 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 8; the 1990 Act, Schedule 9; the 2010 Act, section 123; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 32 was amended by the 1985 Act, section 56 and Schedule 1, paragraph 9; the Solicitors (Scotland) Act 1988 (c.42), section 6 and Schedule 1, paragraph 7; the 1990 Act, section 74 and Schedule 8, paragraph 29; the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), Schedule 4, paragraph 7; the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5), section 61; the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6), section 7; the 2010 Act, section 123; and by S.S.I. 2000/121 and S.S.I. 2004/382. Section 64CB was inserted by S.I. 2003/1398.

(236) 2000 c.11.

- (e) paragraph 32 of Schedule 5 (urgent cases); and
- (f) paragraph 18 of Schedule 7(237) (offences).

### **Vets**

**107.** An offence under any of the following provisions of the Veterinary Surgeons Act 1966(238)—

- (a) section 19(239) (restriction of practice of veterinary surgery by unqualified persons); and
- (b) section 20(240) (prohibition of use of practitioners' titles by unqualified persons).

### **Miscellaneous statutory offences**

**108.** An offence under any of the following provisions of the Civic Government (Scotland) Act 1982(241)—

- (a) section 57(242) (being in or on building etc. with intent to commit theft);
- (b) section 58 (convicted thief in possession)(243); and
- (c) section 60(244) (powers of search and seizure).

**109.** An offence under section 22 of the Rent (Scotland) Act 1984(245) (unlawful eviction and harassment of occupier).

**110.** An offence under section 85(1) of the Postal Services Act 2000(246) (prohibition on sending certain articles by post).

**111.** An offence under any of the following provisions of the Serious Organised Crime and Police Act 2005(247)—

- (a) section 67 (offences in connection with disclosure notices or search warrants);
- (b) section 129(248) (corresponding Scottish offence);
- (c) section 145 (interference with contractual relationships so as to harm animal research organisation); and
- (d) section 146(249) (intimidation of persons connected with animal research organisation).

### **Statutory aggravations**

**112.** An offence (other than an offence listed in schedule 8A) in relation to which either of the following provisions applies—

- (a) section 96 of the Crime and Disorder Act 1998 (offences racially aggravated)(250); or

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(237) Paragraph 18 was amended by S.I. 2011/1938.

(238) 1966 c.36.

(239) Section 19 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) ("the 1975 Act"), section 289B; the Criminal Law Act 1977 (c.45) ("the 1977 Act"), Schedule 13; and the Animals (Scientific Procedures) Act 1986 (c.14), section 27 and Schedule 3, paragraph 5.

(240) Section 20 was amended by the 1975 Act, section 289B; and the 1977 Act, Schedule 13.

(241) 1982 c.45.

(242) Section 57 was amended by the Criminal Procedure (Scotland) Act 1975 (c.21) ("the 1975 Act"), section 289G.

(243) Section 58 was amended by the 1975 Act, section 289G and the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) ("the 2010 Act"), section 24 and Schedules 2 and 5.

(244) Section 60 was amended by the 1975 Act, section 289G and the Crime and Disorder Act 1998 (c.37), section 24.

(245) 1984 c.58. Section 22 was amended by the Housing (Scotland) Act 1988 (c.43), section 38.

(246) 2000 c.26.

(247) 2005 c.15.

(248) Section 129 was amended by the Terrorism Act 2000 (c.11), section 12.

(249) Section 146 was amended by the Charities Act 2011 (c.25), Schedule 7, paragraph 103.

(250) 1998 c.37. Section 96 was amended by the 2010 Act, section 25.

(b) section 74 of the Criminal Justice (Scotland) Act 2003 (offences aggravated by religious prejudice)(251).

113. An offence (other than an offence listed in schedule 8A) to which either of the following provisions of the Offences (Aggravation by Prejudice) (Scotland) Act 2009(252) applies—

- (a) section 1(1) (prejudice relating to disability); or
- (b) section 2(1) (prejudice relating to sexual orientation or transgender identity).

#### *Other*

#### **Common law aggravations**

114. An offence (other than an offence listed in schedule 8A or in paragraph 112 of this schedule), the conviction for which indicates that it included an element of racial prejudice or was racially motivated.

115. An offence (other than an offence listed in schedule 8A or in paragraph 112 of this schedule), the conviction for which indicates that it included an element of religious prejudice or was motivated by religious prejudice.

#### **Inchoate offences**

116. An offence committed by aiding, abetting, counselling, procuring or inciting the commission of any offence listed in paragraphs 1 to 115 of this schedule.

117. An offence committed by attempting or conspiring to commit any offence listed in paragraphs 1 to 115 of this schedule.

#### **Superseded offences**

118. An offence superseded (whether directly or indirectly) by any offence listed in paragraphs 1 to 117 of this schedule (and any qualification in relation to a listed offence applies to the superseded offence as it applies to the listed offence).

#### **Combined offences**

119. An offence which was charged, and the conviction for which was received, in conjunction with any offence listed in paragraphs 1 to 118 of this schedule.

#### **Corresponding offences elsewhere in the UK or abroad**

120. An offence under the law of England and Wales or Northern Ireland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in paragraphs 1 to 119 of this schedule.”

#### *Amendment of the 2007 Act*

#### **Amendment of the 2007 Act 2**

4.—(1) The 2007 Act is amended as follows.

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(251)2003 asp 7. Section 74 was amended by the 2010 Act, section 25.  
(252)2009 asp 8.

(2) In section 46 (statement of scheme membership) subsection (3)(b) and the word “, and” immediately preceding it are repealed.

(3) In section 49 (vetting information) for subsection (1)(c) substitute—

“(c) information which—

(i) the chief officer of a relevant police force reasonably believes to be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and

(ii) in the chief officer’s opinion, ought to be included in the scheme member’s scheme record, and”.

(4) In section 51 (correction of inaccurate scheme record)—

(a) for subsection (5) substitute—

“(5) Ministers, on receiving such a request, must ask the chief officer of the relevant police force who provided that information to reconsider whether—

(a) the chief officer still reasonably believes that information to be relevant in relation to the type of regulated work in relation to which the scheme member participates in the Scheme, and

(b) in the chief officer’s opinion, that information still ought to be included in the scheme member’s scheme record.”; and

(b) after subsection (6) insert—

“(7) This section does not apply to vetting information included in a scheme record which could be the subject of an application under section 52A(2).”.

(5) After section 51 (correction of inaccurate scheme record) insert—

**“Procedure following correction of inaccurate scheme record**

**52ZA.**—(1) This section applies where—

(a) on receiving a copy of a scheme record under section 52(3)(b) or (5), a scheme member requests that Ministers correct information included in the record,

(b) Ministers correct the information, and

(c) as a result of the correction, the scheme record includes vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—

(i) a spent conviction, but

(ii) not a protected conviction.

(2) Section 51(2) does not apply in relation to the corrected information.

(3) Ministers must treat the request for disclosure to which the copy of the scheme record relates as if—

(a) it has not yet been complied with, and

(b) it had been made on the day on which the information is corrected.”.

(6) For section 52 (disclosure of scheme records) substitute—

**“Disclosure of scheme records**

**52.**—(1) This section applies in relation to a scheme member’s scheme record if—

(a) disclosure conditions A to D are satisfied, and

- (b) section 53 does not require Ministers to disclose the scheme member's short scheme record.
- (2) Subsection (3) applies where the scheme record does not include vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—
  - (a) a spent conviction, but
  - (b) not a protected conviction.
- (3) Ministers must—
  - (a) disclose the scheme record, and
  - (b) send a copy of the scheme record to the scheme member.
- (4) Subsections (5) to (9) apply where the scheme record includes vetting information about a conviction for an offence listed in schedule 8B of the 1997 Act which is—
  - (a) a spent conviction, but
  - (b) not a protected conviction.
- (5) Ministers must send a copy of the scheme record to the scheme member (who may make an application to the sheriff under section 52A(2)).
- (6) Subsection (7) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member does not intend to make an application under section 52A(2), or
  - (b) that period expires without the scheme member having notified Ministers that the scheme member does intend to make such an application.
- (7) Ministers must disclose the scheme record as soon as possible after receiving the notification or, as the case may be, the expiry of that period.
- (8) Subsection (9) applies where—
  - (a) the scheme member notifies Ministers before the end of the period mentioned in section 52A(3)(a) that the scheme member intends to make an application under section 52A(2), but
  - (b) either—
    - (i) the scheme member does not make such an application before the end of the period mentioned in section 52A(3)(b), or
    - (ii) the scheme member does make such an application but abandons it before it is determined by the sheriff.
- (9) Ministers must not disclose the scheme record (and the request for disclosure of the record is to be treated as having been withdrawn).

### **Review of vetting information in scheme record**

- 52A.—**(1) This section applies where a scheme member receives a copy of the scheme member's scheme record under section 52(5).
- (2) The scheme member may apply to the sheriff for an order requiring Ministers to remove from the scheme record the vetting information referred to in section 52(4).
  - (3) An application under subsection (2)—
    - (a) may only be made if the scheme member notifies Ministers before the end of the period of 10 working days beginning with the date on which the scheme record

- was sent to the scheme member under section 52(5) of an intention to make the application,
- (b) must be made before the end of the period of 3 months beginning with the date on which that notification is given, and
  - (c) must not relate to vetting information about a conviction which has previously been the subject of an application which—
    - (i) was refused under subsection (6)(b), and
    - (ii) related to the same type of regulated work.
- (4) No finding of fact on which a conviction is based may be challenged in an application under subsection (2).
- (5) Proceedings in an application under subsection (2) may take place in private if the sheriff considers it appropriate in all the circumstances.
- (6) In determining an application under subsection (2) the sheriff must—
- (a) if satisfied that the vetting information is not relevant in relation to a type of regulated work in relation to which the scheme member participates in the Scheme, allow the application,
  - (b) otherwise, refuse the application.
- (7) The sheriff may allow the application in part where it relates to vetting information about two or more convictions.
- (8) The decision of the sheriff on an application is final.
- (9) Where the sheriff allows the application, the sheriff must order Ministers to remove the information from the scheme record in relation to a type of regulated work in relation to which the scheme member participates in the Scheme.
- (10) On the determination of an application under subsection (2), Ministers must treat the disclosure request to which the application relates as if it had been made under section 52 on the day after the date on which the determination is made.”
- (7) In section 53 (disclosure of short scheme records)—
- (a) in subsection (1) before “Ministers” insert “Subject to subsection (1A),”;
  - (b) after subsection (1) insert—
    - “(1A) But Ministers must treat the request as a request for a disclosure of the member’s scheme record under section 52 if the scheme record includes vetting information.”;
  - (c) in subsection (3) for paragraphs (b) to (e) substitute—
    - “(b) says that no vetting information is included in the scheme member’s scheme record.”; and
  - (d) subsection (4) is repealed.
- (8) After section 57 (disclosure restrictions) insert—

**“Meaning of “conviction” and “protected conviction”**

**57A.** For the purposes of sections 52 and 52A—

“conviction” means a conviction within the meaning of the Rehabilitation of Offenders Act 1974, and “spent conviction” is to be construed in accordance with that Act,

“protected conviction” is to be construed in accordance with section 126ZA of the 1997 Act.”.



*Transitional provision*

**Current applications for criminal record certificates and enhanced criminal record certificates under sections 113A, 113B, 114 and 116 of the 1997 Act**

- 5.—(1) Paragraph (2) of this article applies where the Scottish Ministers—
- (a) have, before the relevant date, received an application for—
    - (i) a criminal record certificate under section 113A (criminal record certificates) or, as the case may be, section 114 (criminal record certificates: Crown employment) of the 1997 Act; or
    - (ii) an enhanced criminal record certificate under section 113B (enhanced criminal record certificates) or, as the case may be, section 116 (enhanced criminal record certificates: judicial appointments and Crown employment) of the 1997 Act; and
  - (b) have not by that date issued the certificate.
- (2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.
- (3) Paragraph (4) applies where before the relevant date the Scottish Ministers have issued—
- (a) a criminal record certificate under section 113A or, as the case may be, section 114 of the 1997 Act; or
  - (b) an enhanced criminal record certificate under section 113B or, as the case may be, section 116 of the 1997 Act.
- (4) Section 116ZB(2) of the 1997 Act as inserted by article 3(4) of this Order does not apply in relation to the certificate.

**Current applications for new certificates under section 117 of the 1997 Act**

- 6.—(1) Paragraph (2) of this article applies where the Scottish Ministers—
- (a) have, before the relevant date, received an application for a new criminal record certificate or, as the case may be, a new enhanced criminal record certificate under sections 113A to 116 of the 1997 Act in accordance with section 117 (disputes about accuracy of certificates) of the 1997 Act; and
  - (b) have not by that date issued the new certificate.
- (2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

**Current applications for registration under section 120 of the 1997 Act**

- 7.—(1) Paragraph (2) of this article applies where the Scottish Ministers—
- (a) have, before the relevant date, received an application for registration under section 120 (registered persons) of the 1997 Act; and
  - (b) have not by that date included the person in the register kept under section 120 of the 1997 Act.
- (2) An application referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.

**Current disclosure requests under sections 52 and 53 of the 2007 Act**

- 8.—(1) Paragraph (2) of this article applies where the Scottish Ministers—

- (a) have, before the relevant date, received a request for—
    - (i) disclosure of a scheme member’s scheme record under section 52 (disclosure of scheme records) of the 2007 Act; or
    - (ii) disclosure of a scheme member’s short scheme record under section 53 (disclosure of short scheme records) of the 2007 Act; and
  - (b) have not by that date disclosed the scheme record or, as the case may be, short scheme record.
- (2) Any request for a disclosure referred to in paragraph (1)(a) is to be treated for all purposes as having been received after the relevant date.

#### **Correction of scheme records under section 51 of the 2007 Act**

- 9.—(1) Paragraph (2) of this article applies where the Scottish Ministers—
- (a) have, before the relevant date, received—
    - (i) a notification of changes under section 50 (duty to notify certain changes) of the 2007 Act; or
    - (ii) a request from a scheme member for correction of a scheme record under section 51 (correction of inaccurate scheme record) of the 2007 Act; and
  - (b) have not by that date corrected the scheme record.
- (2) A notification or, as the case may be, a request referred to in paragraph (1) is to be treated for all purposes as having been received after the relevant date.
- (3) For the purposes of section 51, information is not to be regarded as inaccurate if it is information about a conviction which no longer falls within the definition of vetting information by virtue of the coming into force of this Order.

#### **Current nominations under regulation 4 of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010**

- 10.—(1) Paragraph (2) of this article applies where the Scottish Ministers—
- (a) have, before the relevant date, received—
    - (i) a nomination of a countersignatory under regulation 4(1) or 4(2) (nomination of countersignatories) of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010(253); or
    - (ii) representations under paragraph (6) of that regulation; and
  - (b) have not by that date accepted the nomination.
- (2) A nomination or, as the case may be, representations as referred to in paragraph (1) are to be treated for all purposes as having been received after the relevant date.

#### *Consequential amendments*

#### **Amendment of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010**

11. After regulation 5 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010(254) insert—

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(253) S.S.I. 2010/383.

(254) S.S.I. 2010/167, to which there are no relevant amendments.

**“Waiver of fees for disclosure request under section 52 when deemed to be such under section 53(1A)**

**5A.** The fee prescribed by regulation 3(3) is waived where—

- (a) the scheme member has requested disclosure of the scheme member’s short scheme record under section 53 of the Act and paid the fee prescribed by regulation 3(4); and
- (b) in accordance with section 53(1A) of the Act, the request for the disclosure of the scheme member’s short scheme record is treated as a request for disclosure of the member’s scheme record as if the request had been made under section 52 of the Act.”.

**Revocation**

**12.** The Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015(**255**) is revoked.

St Andrew’s House,Edinburgh  
10th December 2015

*ANGELA CONSTANCE*  
A member of the Scottish Government

## EXPLANATORY NOTE

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

This Order makes amendments to the Police Act 1997 (“the 1997 Act”) and the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) to remove any potential incompatibility, arising from the disclosure of criminal convictions and cautions under the 1997 Act and the 2007 Act, with the European Convention on Human Rights (“the Convention”).

In the case of *R (on the application of T and another) v Secretary of State for the Home Department and another* [2014] UKSC 35 (judgment of 18th June 2014), the United Kingdom Supreme Court made a declaration of incompatibility under section 4 of the Human Rights Act 1998 that the provisions in sections 113A and 113B of the 1997 Act (as they applied in England and Wales) were incompatible with article 8 of the Convention because the requirements in relation to blanket disclosure of all spent convictions were not in accordance with the law. Similar provisions in sections 113A and 113B of the 1997 Act (as it applies in Scotland) may be incompatible with article 8. In addition, in section 49(1)(a) of the 2007 Act the definition of “vetting information” relies on section 113A(3)(a) of the 1997 Act and may also be incompatible with article 8.

Article 3 amends the 1997 Act. Section 113A of the 1997 Act is amended by article 3(2). Article 3(2)(c) amends the definition of “relevant matter” in section 113A(6) of the 1997 Act. “Conviction” means a conviction (including a spent conviction) within the meaning of the Rehabilitation of Offenders Act 1974. Paragraph (a) of the definition of “relevant matter” is amended so that it means a conviction but not a protected conviction and paragraph (b) is amended so that it includes all cautions which are not yet spent by virtue of schedule 3 of the Rehabilitation of Offenders Act 1974. Protected conviction is defined by reference to a new section 126ZA inserted into the 1997 Act by article 3(7) of the Order. Protected conviction is defined by reference to the lists of offences inserted into the 1997 Act as new schedules 8A (list of offences which must always be disclosed) and 8B (offences which are to be disclosed subject to rules). Both schedules are inserted by article 3(8) of the Order. A protected conviction is a conviction which is not listed in either schedule 8A or 8B, or is listed in schedule 8B but the conviction was given less than 15 years ago, or in the case of persons under 18 less than 7 years and 6 months, or the sentence received was either admonition or absolute discharge. Protected convictions and spent cautions will not be included in criminal record certificates or enhanced criminal record certificates. Section 49(1)(a) of the 2007 Act relies on the definition of “relevant matter” in section 113A(6) of the 1997 Act and therefore protected convictions and spent cautions will also not be within the definition of “vetting information” for the purposes of the 2007 Act.

Article 3(3)(b)(ii) of the Order amends section 113A(4) to strengthen the test which the chief officer of a police force must apply when the Scottish Ministers request Other Relevant Information (“ORI”). The chief officer must reasonably believe that information is relevant for the purpose for which an enhanced criminal record certificate is required and that the information ought to be disclosed. Article 3(3)(c) repeals section 113B(5) which allowed the police to include ORI in an enhanced disclosure without providing it in the applicant’s copy of the certificate.

Article 3(4) inserts new sections 116ZA and 116ZB into the 1997 Act. The purpose of the new section 116ZA is to specify when a copy of a criminal record certificate or an enhanced criminal record certificate must be sent to the person who signed the statement which accompanied the application for it. Previous requirements to send it to this person at the same time as to the applicant are repealed (articles 3(2)(b) and 3(3)(e)). Where a certificate does not include information about a spent conviction listed in new schedule 8B which is not a protected conviction it continues to

be sent at the same time to the applicant and the person who signed the statement accompanying the application. Where a certificate does include information about a spent conviction listed in new schedule 8B which is not a protected conviction, a copy of it is issued to the person who signed the statement if, within a period of 10 working days, the applicant either tells Disclosure Scotland to issue the copy or does not indicate to Disclosure Scotland that they intend to make an application to the sheriff under the new section 116ZB(2) for an order for a new certificate from which that information is removed. If the applicant tells Disclosure Scotland that they intend to make an application to the sheriff under the new section 116ZB(2), but does not make the application, Disclosure Scotland must not send a copy of the certificate to the person who signed the statement accompanying the application and the process ends.

The new section 116ZB sets out the procedure for an application to the sheriff to remove information from the certificate. When the application is determined, the sheriff must make an order requiring the issue of a new certificate as at the date of the order (new section 116ZB(9) and (10)). Where the sheriff is satisfied that the information is not relevant for the purpose for which a certificate was required, the sheriff must order that the information is excluded from the new certificate (new section 116ZB(9)(b)). Where the application is refused, the applicant cannot make a further application to the sheriff for removal of the same information which is included in the new certificate (new section 116ZB(10)(b)). Where a sheriff has ordered information to be excluded from a certificate, then the information must not be included in any subsequent criminal record certificate or enhanced criminal record certificate if it is required for the same purpose for which the original certificate was required – new sections 113A(3A) and 113B(3A) as inserted by article 3(2)(a) and 3(3)(a) respectively.

Article 3(5)(a) inserts a new section 117(4) into the 1997 Act in consequence of the change made to section 113B(4) in relation to ORI in order to reflect fully the test which the chief officer of a police force must apply. Article 3(5)(b) inserts a new subsection (5) in section 117 to ensure that, where a certificate includes information about a spent conviction listed in new schedule 8B which is not a protected conviction, an individual cannot make an application under section 117 if the individual could make an application to the sheriff under the new section 116ZB(2) for a new certificate with the information removed.

Article 4 amends the 2007 Act. Article 4(2) repeals section 46(3)(b) of the 2007 Act so that the Scottish Ministers are not required to issue a statement of scheme membership if the individual makes a disclosure request under sections 52 or 53 of the 2007 Act at the same time as they apply to join the PVG Scheme.

Article 4(3) amends subsection (1)(c) of the definition of “vetting information” in relation to ORI provided by the police. This is now aligned with the similar provision in section 113B(4) of the 1997 Act. The chief officer must reasonably believe that information is relevant in relation to the type of regulated work in relation to which the scheme member participates in the PVG Scheme and that the information ought to be disclosed.

Article 4(4)(a) inserts a new section 51(5) into the 2007 Act in consequence of the change made to section 49(1)(c) in relation to ORI in order to reflect fully the test which the chief officer of a police force must apply. Article 4(4)(b) inserts a new subsection (7) in section 51 to ensure that, where a scheme record includes information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, an individual cannot request correction of a scheme record under section 51 if the individual could make an application to the sheriff under the new section 52A(2) to have the information removed from the scheme record.

Article 4(5) inserts a new section 52ZA into the 2007 Act. It provides that in the circumstances where a scheme record corrected under section 51 includes information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction and which would otherwise need to be disclosed following correction of a scheme record, the request for the disclosure is treated as not having been complied with and as if the request had been made on the date the correction is made.

Article 4(6) substitutes a new section 52 of the 2007 Act on disclosure of scheme records and inserts a new section 52A to provide for an application to the sheriff for removal of certain vetting information. The purpose of the new section 52 is to specify when a scheme record is to be disclosed to the person who countersigned the disclosure request. Where a scheme record does not include information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, it continues to be disclosed at the same time as the copy of it is sent to the scheme member. Where a scheme record includes information about a spent conviction listed in new schedule 8B to the 1997 Act which is not a protected conviction, it is to be disclosed if, within a period of 10 working days, the applicant either tells Disclosure Scotland to disclose it or does not indicate to Disclosure Scotland that they intend to make an application to the sheriff under the new section 52A(2) for removal of the information from the scheme record. If the scheme member tells Disclosure Scotland that they intend to make an application to the sheriff under the new section 52A(2), but does not make the application or the application is abandoned, the disclosure request is treated as having been withdrawn.

The new section 52A of the 2007 sets out the procedure for an application to the sheriff for removal of vetting information from a scheme record. Where the sheriff is satisfied that the information is not relevant for a type of work in relation to which the scheme member participates in the PVG Scheme, the sheriff must order the Scottish Ministers to remove the information from the scheme record (new section 52A(9)). When the appeal is determined the Scottish Ministers must treat the disclosure request as if it had been made on the day after the date of the order (new section 52A(10)) and the disclosure request will be treated again in accordance with section 52. Where the application is refused, the scheme member cannot make a further application to the sheriff for removal of the same information from the scheme record in relation to a disclosure request for the same type of regulated work (new section 52A(3)(c)).

Article 4(7) amends section 53(3) of the 2007 Act to alter the content of a short scheme record. A short scheme record will include a scheme member's statement of scheme membership and state that there is no vetting information on the scheme record. If a scheme member with vetting information included in their scheme record requests disclosure of a short scheme record, it will be treated under the new section 53(1A) as a disclosure request for a scheme record under section 52 of the 2007 Act.

Article 4(8) inserts a new section 57A into the 2007 Act to make provision for the definition of "conviction" and "protected conviction" for the purposes of sections 52 and 52A of the 2007 Act. "Conviction" has the same meaning as in the Rehabilitation of Offenders Act 1974, including a spent conviction. "Protected conviction" has the same meaning as in section 126ZA of the 1997 Act.

Articles 5 to 10 make transitional provision. Any applications for criminal record certificates and enhanced criminal record certificates under sections 113A, 113B, 114 and 116 of the 1997 Act (article 5(1) and (2)), applications for new certificates under section 117 of the 1997 Act (article 6), applications for registration under section 120 of the 1997 Act (article 7), disclosure requests under sections 52 and 53 of the 2007 Act (article 8), requests for correction of scheme records under section 51 of the 2007 Act (article 9(1) and (2)) and nominations of a countersignatory under regulation 4(1) or 4(2) of the Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2010 (article 10) which have been received prior to the coming into force of this Order and are not yet completed are to be treated as having been received after the coming into force of this Order (article 11). This means that the new definition of 'relevant matter' in section 113A(6) of the 1997 Act will apply when all of these applications or requests are completed. Article 5(3) and (4) provides that section 116ZB(2) does not apply to a criminal record certificate or an enhanced criminal record certificate issued prior to the coming into force of this Order so that there can be no application to the sheriff for a new certificate. Article 9(3) provides that, for the purposes of section 51 of the 2007 Act, information is not to be regarded as inaccurate if it is information about a conviction which no longer falls within the definition of "vetting information" by virtue of the coming into force of this Order.

Article 11 makes a consequential amendment to the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees for Scheme Membership and Disclosure Requests) Regulations 2010 to provide for a fee waiver when a request for a disclosure of a short scheme record is treated as a request for a scheme record by virtue of the new section 53(1A) of the 2007 Act (as inserted by article 4(6)(b) of this Order).

Article 12 revokes the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2015.