*Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998 for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2011 No. [ ]

# CONSTITUTIONAL LAW
# DEVOLUTION, SCOTLAND
# CRIMINAL LAW

## The Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011

*Made - - - -*

*Coming into force in accordance with article 1*

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (4) and (5) of the Scotland Act 1998(**1**).

In accordance with section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this Order was laid before and approved by a resolution of each House of Parliament.

### Citation and commencement

**1.**—(1) This Order may be cited as the Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011.

(2) Except as provided in paragraph (3) below, this Order comes into force on the day after the day on which it is made.

(3) Part 1 of the Schedule, article 3 (so far as it gives effect to Part 1 of the Schedule) and article 4(1) come into force on whichever is the later of—

(a) 1st August 2011, and

(b) the day after the day on which this Order is made.

### Extent

**2.**—(1) Except as provided in paragraphs (2) to (6) below this Order extends to Scotland, England and Wales and Northern Ireland.

(**1**) 1998 c.46.

(2) Article 4(1) and Part 1 of the Schedule extend to Scotland only.

(3) Article 4(3) and paragraph 15 of the Schedule extend to Northern Ireland only.

(4) Paragraphs 7(a), 16 and 17 of the Schedule extend to England and Wales only.

(5) Paragraphs 10 and 12 of the Schedule extend to Scotland and to England and Wales only.

(6) Part 2 and paragraphs 7(b) and 13 of the Schedule extend to England and Wales and Northern Ireland only.

**Modifications of enactments**

**3.** The Schedule to this Order has effect.

**Savings and transitional provisions**

**4.**—(1) The modifications made by Part 1 of the Schedule have effect in relation to relevant physical data, samples and information derived from samples whenever taken or provided.

(2) The repeal of sections 234(4) to (11) and 244 of the Criminal Procedure (Scotland) Act 1995(**2**) made by paragraph 7 of the Schedule and the modifications made by Part 4 of the Schedule are of no effect in respect of an offence committed before this Order comes into force or in relation to any probation order or community service order made under that Act.

(3) The amendments to the Juries (Northern Ireland) Order 1996(**3**) made by paragraph 15 of the Schedule are of no effect in respect of a person given notice under Article 4(3) of that Order before the commencement of that paragraph.

(4) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of paragraph (2) to have been committed on the first of those days.

Signed by authority of the Secretary of State

*Name*
Parliamentary Under Secretary of State
Scotland Office

Dover HouseLondon
Date

(**2**) 1995 c.46 ("the 1995 Act").
(**3**) S.I. 1996/1141 (N.I. 6).

SCHEDULE Article 3

MODIFICATIONS

# PART 1

## RETENTION AND USE OF SAMPLES

### The Criminal Procedure (Scotland) Act 1995

**1.** Section 19C (sections 18 and 19 to 19AA: use of samples etc.) of the Criminal Procedure (Scotland) Act 1995(**4**) is amended as follows—

(a) in subsection (1), at the end of paragraphs (a) and (b) insert "(including any taken or provided by virtue of paragraph 20 of Schedule 8 to the Terrorism Act 2000(**5**))";

(b) in subsection (2)—

(i) omit the word "or" at the end of paragraph (a),

(ii) after paragraph (b) insert—

"(c) in the interests of national security, or

(d) for the purposes of a terrorist investigation"; and

(c) in subsection (6)—

(i) omit the word "and" at the end of paragraph (b),

(ii) after paragraph (c) insert—

", and

(d) "terrorist investigation" has the meaning given by section 32 of the Terrorism Act 2000.".

### The Criminal Justice (Scotland) Act 2003

**2.** Section 56 (use of samples etc. voluntarily given) of the Criminal Justice (Scotland) Act 2003(**6**) is amended as follows—

(a) in subsection (2)—

(i) omit the word "or" at the end of paragraph (a),

(ii) after paragraph (b) insert—

"(c) in the interests of national security, or

(d) for the purposes of a terrorist investigation"; and

(b) in subsection (8)—

(i) omit the word "and" at the end of the definition of "sample",

(ii) after the definition of "relevant physical data" insert—

"; and

"terrorist investigation" has the meaning given by section 32 of the Terrorism Act 2000.".

(**4**) Section 19C was inserted by section 82(1) of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act").
(**5**) 2000 c.11.
(**6**) 2003 asp 7, section 56 was amended by section 82(2) of the 2010 Act.

# PART 2

## SEXUAL OFFENCES

**Sexual Offences Act 2003**

**3.**—(1) Section 122(1B)(b) (breach of foreign travel order) of the Sexual Offences Act 2003(**7**) shall extend to England and Wales and Northern Ireland.

(2) Paragraph 44A of Schedule 3 (list of sexual offences for the purposes of Part 2) to the Sexual Offences Act 2003(**8**) shall extend to England and Wales and Northern Ireland.

# PART 3

## TRANSFER OF COMMUNITY PAYBACK ORDERS

**4.** The Criminal Procedure (Scotland) Act 1995 is amended as follows.

**5.** After section 227ZN insert:—

"**Community payback orders: persons residing in England and Wales or Northern Ireland**

**227ZO.** Schedule 13 to this Act, which makes provision for the transfer of community payback orders to England and Wales or Northern Ireland, has effect.".

**6.** After Schedule 12 insert:—

"SCHEDULE 13 Section 227ZO

TRANSFER OF COMMUNITY PAYBACK ORDERS TO ENGLAND AND WALES OR NORTHERN IRELAND

# PART 1

## ENGLAND AND WALES

**1.**—(1) This paragraph applies where the court is considering imposing a community payback order under section 227A of this Act on an offender who—

(a) resides in England and Wales, or

(b) when the order takes effect, will reside in England and Wales.

(2) The court must not impose the order unless—

(a) the offender has attained the age of 16 years, and

(b) the court is satisfied that arrangements have been, or can be, made in the relevant area—

(i) for the offender to comply with the requirements imposed by the order in accordance with arrangements that exist in the relevant area for offenders to comply with the same or broadly similar requirements imposed by the corresponding order, and

(**7**) 2003 c.42. Section 122(1B) was inserted by section 101(6) of the 2010 Act, but only so far as it extends to Scotland.
(**8**) Paragraph 44A was inserted by section 42(3) of the 2010 Act, but only so far as it extends to Scotland.

(ii) for the appointment of a responsible officer.

**2.**—(1) This paragraph applies where—

(a) an offender on whom a community payback order has been imposed under section 227A of this Act proposes to change, or has changed, residence to a locality in England and Wales ("the new locality"), and

(b) the court is considering varying the order so as to specify the relevant area in which the offender resides or will reside.

(2) The court must not vary the order unless—

(a) the offender has attained the age of 16 years, and

(b) the court is satisfied as mentioned in paragraph 1(2)(b).

(3) If the court considers that a requirement ("the requirement concerned") imposed by the order cannot be complied with if the offender resides in the new locality, the court must not vary the order so as to specify the relevant area unless it also varies the order so as to—

(a) revoke or discharge the requirement concerned, or

(b) substitute for the requirement concerned another requirement that can be so complied with.

(4) The court must not make a variation under sub-paragraph (3) unless it is satisfied as mentioned in paragraph 1(2)(b) (reading the reference there to the order as a reference to the order as proposed to be varied).

**3.**—(1) This paragraph applies where the court is considering—

(a) imposing a community payback order by virtue of paragraph 1, or

(b) varying a community payback order by virtue of paragraph 2.

(2) Before imposing or, as the case may be, varying the order, the court must explain to the offender in ordinary language—

(a) the requirements of the legislation relating to the corresponding order,

(b) the powers of the home court under that legislation and this Schedule, and

(c) the court's powers under this Act.

(3) The court must not impose or, as the case may be, vary the order unless the offender has, after the court has explained those matters, confirmed that the offender—

(a) understands those matters, and

(b) is willing to comply with the requirements referred to in sub-paragraph (2)(a).

(4) Sub-paragraphs (2) and (3) do not affect sections 227B(8) and (9) and 227ZA(6) and (7) of this Act.

(5) Sections 227B(4), 227ZA(2), 227ZG(2) and 227ZH(2) of this Act have effect as if the references in them to a report by an officer of a local authority or a report by the responsible officer included references to a report by an officer of a relevant service.

(6) Sections 227R and 227S of this Act have effect as if the references in them to an approved medical practitioner (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003(**9**)) included references to a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983(**10**).

(**9**) 2003 asp 13.
(**10**) 1983 c.20.